

## THE ALARMS CORPORATION PTY LTD – GENERAL TERMS AND CONDITIONS OF TRADE

To the fullest extent legally permissible all dealings between the Customer and The Alarms Corporation Pty Ltd A.C.N. 095 635 993 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as “Alarms Corporation” and/or otherwise [“A Corp”] relating to any goods and/or any services [the “goods” and/or the “services”] are subject to the following terms and conditions [“these Terms”] unless otherwise expressly agreed in writing:

**1. Payment:** a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice. b) The Customer otherwise agrees to pay an administration fee of 2% of each amount paid as the liquidated processing cost.

**2. Interest:** Interest shall be charged on overdue accounts at the *Penalty Interest Rates Act 1983* (Vic) Interest rate plus 2%.

**3. Property:** a) Property in goods shall not pass until payment in full of all monies owed by the Customer. b) A Corp reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to A Corp to enter any property where any goods are stored with force if necessary. c) Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies A Corp for any related losses. d) On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to A Corp notwithstanding that A Corp may have granted any credit facility and/or time to pay. e) Until payment in full the Customer agrees: (i) to keep all goods unpaid for as fiduciary for A Corp and store all goods in a manner which shows A Corp as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for A Corp; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be “in the usual course”. f) Without derogating from any rights of A Corp as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process [“the Process”] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by A Corp UPON TRUST for A Corp until payment in full for those goods and all monies owed to A Corp. g) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. h) The Customer agrees a certificate signed by an officer of A Corp and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

**4. Limitation of Liability:** a) The Customer agrees to limit any claim to the cost of replacement goods or supply of equivalent goods and/or services. b) A Corp shall not be liable for: (i) any claim, loss or expense which is made after 7 days from the date of delivery of goods and/or services (or at all once goods have been unpacked or otherwise used, applied or installed) – after which there shall be deemed to have been unqualified acceptance; (ii) any loss and/or damage in respect of any property and/or premises; (iii) any consequential loss and/or any special and/or punitive damages through any fault of A Corp or otherwise; and/or (iv) any claim in any way caused and/or contributed to by the Customer and/or any third party. c) These Terms shall prevail to the extent of any inconsistency with any other agreement, representation and/or warranty.

**5. Cancellations and Returns:** The Customer agrees: a) not to cancel any order without A Corp’s prior approval; b) not to return goods without A Corp’s prior approval and if goods are not in brand new and unused condition with undamaged packaging and if 3 weeks or more have passed since delivery; c) that A Corp may take back goods in saleable condition on such terms as A Corp considers to be reasonable; d) to pay A Corp on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing A Corp an original invoice as proof of purchase; f) not to return any goods which have been custom made, custom processed or custom acquired; g) that A Corp does not give cash refunds.

**6. Quotations:** The Customer agrees that: a) quotations must be in writing; b) A Corp shall not be bound by any quotation if an order is not placed within 30 days from the date of quotation; c) A Corp may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; d) A Corp shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if A Corp also forms the view that those circumstances have substantially and/or materially changed; e) the Customer shall pay any additional charges A Corp levies for holding any goods referred to in any quotation pending placement of an order.

**7. Placement of Orders:** The Customer agrees that: a) if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of A Corp shall be conclusive evidence of what was ordered; b) each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) when placing any order the Customer shall inform A Corp of any facts which might reasonably affect acceptance of the order by A Corp and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of A Corp and to be unconscionable, misleading and deceptive.

**8. Supply and Delivery:** a) A Corp may supply by instalments and/or withhold or cancel supply without ramification where: (i) A Corp has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; (iv) A Corp has any safety concerns; and/or (v) A Corp considers it appropriate whether because of any minimum invoice policy or otherwise. b) The Customer agrees that: (i) A Corp may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for goods on being notified by A Corp that goods are ready for collection and/or on goods being delivered to a carrier or to the Customer’s business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of A Corp confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) A Corp shall not be liable for delay, failure or inability to deliver any goods. c) The Customer agrees: (i) to pay for so much of any forward order as A Corp invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; and (iii) to pay A Corp for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection.

**9. Purchase Price:** a) In the absence of a binding quotation all sales are made at the price nominated by A Corp at the time of delivery. b) All government imposts (including

any GST or equivalent) shall be to the Customer’s account. c) Prices exclude government imposts (including any GST or equivalent) and/or any fees and/or fines levied by emergency service providers unless A Corp otherwise agrees.

**10. Variations:** To be binding any variation or cancellation of these Terms or any order must be approved by A Corp in writing.

**11. Exclusions:** a) No dealing between A Corp and the Customer shall be or be deemed to be a sale by sample. b) If A Corp publishes material concerning its goods, services and/or prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded. c) The Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for A Corp shall be at the Customer’s risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer. d) All goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer. e) A Corp shall not be responsible nor liable for: (i) paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; and/or (ii) any failure to comply with any special requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any goods and/or services or otherwise). f) A Corp shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party. g) The Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by A Corp and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

**12. Default:** a) On default or breach of any part of these Terms by the Customer A Corp may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against A Corp while the Customer is in default under any part of these Terms or in any of its dealings with A Corp. c) The Customer agrees to indemnify A Corp for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of A Corp in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). d) A Corp may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as A Corp in its discretion deems appropriate. e) The Customer irrevocably authorises the payment directly to A Corp of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to A Corp under these Terms or otherwise.

**13. Indemnity:** The Customer fully indemnifies A Corp against any claim or loss arising from or related in any way to any dealing between A Corp and the Customer and/or arising under these Terms.

**14. Intellectual Property:** The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of A Corp notwithstanding any contribution by the Customer.

**15. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon A Corp shall apply.

**16. Reconditioned Goods:** A Corp shall not be liable for any reconditioning and/or repair of products made and/or supplied by the Customer and/or by any third party.

**17. Customer Restructure:** The Customer shall notify A Corp in writing of any change in its structure or management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies A Corp against all loss (including legal costs on an indemnity basis).

**18. Jurisdiction:** The Customer agrees that all dealings with A Corp shall be governed by the law applicable in the State nominated by A Corp (or in the absence of any nomination – Victoria) and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by A Corp in the capital city of that State.

**19. Credit Limit:** Any credit facility or credit limit is an indication only of the intention of A Corp at the time. A Corp may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party.

**20. Waiver:** An election by A Corp not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of A Corp relating to any other breach.

**21. Notice:** The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by A Corp and whether or not the Customer has actual notice. The Customer shall be deemed to be bound by any terms and conditions of trade which may be adopted by A Corp immediately any change is adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.

**22. Security For Payment:** The Customer hereby grants to A Corp a general lien over all property of the Customer until payment in full of all monies owing to A Corp.

**23. Force Majeur:** A Corp shall not be in default or in breach of any contract with the Customer as a result of *Force Majeur* including any strike or lock-out.

**24. Insolvency:** a) If the Customer commits or is involved in any act of insolvency the Customer shall be deemed to be in default under these Terms. b) An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

**25. Severability:** Any part of these Terms shall be capable of severance without affecting any other part of these Terms.