

Terms of sale and contract

1. Interpretation

- 1.1. In the interpretation of this Agreement, unless the contrary intention appears or the context otherwise requires, the following expressions shall have the following meanings:
 - 1.1.1. "Agreement" means Terms of Sale and Purchase of Goods;
 - 1.1.2. "Deposit" means the amount specified to commence the manufacture as described in Paragraph 4 below;
 - 1.1.3. "Goods" means the entirety of the items detailed in the quote;
 - 1.1.4. "Installation" means delivery to Installation Site, installation, freight and commissioning of the Goods;
 - 1.1.5. "Installation Site" means the premises detailed;
 - 1.1.6. "Purchaser" means the party identified above;
 - 1.1.7. "Purchase Price" means the final amount due and payable by the Purchaser to the Seller pursuant to this Agreement;
 - 1.1.8. "Quote" means the estimated amount payable by the Purchaser to the Seller as stated in the quote;
 - 1.1.9. "Seller" means Clockmasters Australia Pty Ltd, being the company identified above.
- 1.2. In this agreement unless the contrary intention appears or the context otherwise requires:
 - 1.2.1. A reference to a party to this agreement as defined in the statement of the names and description of the parties includes that party's undisclosed principal, administrators, successors and permitted assigns;
 - 1.2.2. The singular includes the plural and vice versa;
 - 1.2.3. A word denoting an individual or person includes a corporation, firm, authority, government or government authority and vice versa;
 - 1.2.4. A word denoting a gender includes all genders;
 - 1.2.5. References to a recital, clause, schedule or annexure is a reference to a recital, clause, schedule or annexure of or to this Agreement;
 - 1.2.6. The provision of an index of headings and of clause numbers are for convenience of reference only and shall not affect the construction hereof.
- 1.3. This Agreement is governed by and should be construed in accordance with the laws of South Australia.

2. Quote, Purchase Price and Deposit

- 2.1. The Quote is based on the Goods as described on Page 1 and the Purchase Price may exceed the Quote.
- 2.2. Installation is not included in the Quote unless specifically stated.
- 2.3. Delivery is not included in the Quote unless specifically stated.
- 2.4. The Quote is exclusive of GST unless otherwise expressly stated.
- 2.5. The Quote is valid for a period of 30 days from this Agreement.
- 2.6. The Quote is invalid in the event of all and any changes to or in the Goods ordered by the Purchaser, and or any changes thereto beyond the control of Seller.
- 2.7. The Purchaser agrees to pay the Purchase Price to the Seller without deduction or set off.
- 2.8. The Purchase Price is comprised of the Quote and all and any additional amounts incurred and or raised by the Seller in respect of:
 - 2.7.1 Installation; and or
 - 2.7.2 Other reasonable charges in relation to the sale and purchase of the Goods.
- 2.8 The Deposit is due and payable upon execution of this Agreement.
- 2.9 Goods will not be provided until the Deposit has been paid to Seller.
- 2.10 The Deposit will be forfeited in the event of cancellation of the Goods ordered ie termination of this Agreement by the Purchaser PROVIDED HOWEVER that if the Deposit paid equates to the Purchase Price then 50% of the Deposit will be forfeited.

3. Payment Terms

- 3.1. The balance of Purchase Price is due and payable upon the Seller making the Goods available for collection by the Purchaser, or delivery of the Goods by the Seller where the Seller is performing the Installation, unless credit has been otherwise approved by separate agreement in writing between the parties.
- 3.2. Payments not made as stated a \$30.00 per month administrative fee will be incurred by the Purchaser.
- 3.3. Payment not made within 120 day after date on invoice will include a 16% per week interest charged added the account.
- 3.4. The Seller may engage a collection agency to collect outstanding and or overdue amounts, in which case the Purchaser agrees to indemnify the Vendor in respect of such costs incurred.
- 3.5. The Purchaser shall not retain any monies due and payable to the Seller for alleged defects or malfunction of Goods.
- 3.6. Title of Goods does not pass from Seller to Purchaser until such time as the Purchase Price has been paid in full, notwithstanding the Purchaser has taken possession of the Goods and or the same have been Installed.
- 3.7. Purchaser will be liable for costs incurred in removal of delivered and or installed goods upon default of payment under this Agreement.
- 3.8. The Purchaser hereby authorises the Seller to enter its premise for the purpose of retrieving the Goods pursuant to this clause.
- 3.9. The Purchaser hereby charges all and any real property it/they own with payment of all and any monies due to the Seller hereunder.
- 3.10. Payment for overseas orders:**
- 3.11. 100% on recite of invoice before order is manufacture.
- 3.12. Insurance, packing and freight is not included.
- 3.13. Insurance is 3% of the total cost, excess of \$200. Aust. \$.
- 3.14. Shipments under \$200. Australia will not be insured and is at the purchaser risk.

4. Cancellation

- 4.1. If the Seller cancels or otherwise defaults in providing the Goods the Seller shall refund any monies already paid.

5. Description of Goods

- 5.1. The Goods may vary from the description quoted. In such event, the Purchaser is hereby deemed to accept such Goods where the variation does not significantly alter the substance of the Goods.
- 5.2. In the event that any Goods have been superseded in model or type at time of collection or delivery, the Seller will provide an upgraded and or replacement model at identical cost to the Purchaser.

6. Liability

- 6.1. Where the Seller does not carry out the installation, the Seller will not be liable for damage to Goods caused during freight and or transit and or installation not undertaken by the Seller.
- 6.2. The Seller will not be liable for any indirect, incidental or consequential loss caused by failure to deliver the Goods, failure to deliver the same on time, malfunction and or defect and or the like, insofar as the same can be restricted by law.

7. Insurance

Where the Seller carries out Installation:

- 7.1. The Seller shall remain insured against any damage to the Goods while in transit to the Installation Site.
- 7.2. The seller shall maintain public liability cover up to \$10 Million per claim for loss and or damage caused to the public on the Installation Site, but excluding and any damage to the Goods caused by third parties on the Installation Site, and all incidental loss there from.
- 7.3. Excluded insurances above and all and any further or other insurance/s is the responsibility of the Purchaser.

8. Warranty

- 8.1. The Seller's warranty for the Goods is limited to either repair or replacement of the Goods, at the discretion of the Seller during the Warranty Period ("the **Warranty**").
- 8.2. The Warranty is null and void where Goods have not been applied and or operated for their ordinary and or customary purpose and or usage and or have been misused.
- 8.3. The Warranty does not extend to:
- 8.3.1. Wrongful application of the Goods;
 - 8.3.2. Cost of travel to and from Installation Site;
 - 8.3.3. The provision of access facilities at the Installation Site;
 - 8.3.4. Costs of assembly and or installation;
 - 8.3.5. Incidental and or consequential losses howsoever caused;
 - 8.3.6. Faults caused by external factors beyond control of the Seller, including but not limited to vandalism, improper handling of goods, interference with Goods, power supply, lightning strikes, acidic or salty air or other adverse environmental factors.

9. Installation

- 9.1. Installation is not included in Purchase Price unless expressly stated in Quote.
- 9.2. It is the responsibility of the Purchaser to ensure that the Goods are installed by tradespeople with the relevant licence and or qualifications where installation is not undertaken by the Seller.
- 9.3. It is the responsibility of the Purchaser to ensure that all power supplies connected to the Goods are protected with a filter and dedicated surge protector.
- 9.4. Where the Seller is retained by the Purchaser to carry out the installation then it is the responsibility of the Purchaser to ensure that the Seller has safe and convenient access to the Installation Site and to provide equipment such as ladders, scaffolding or other machinery to allow the Goods to be installed. Down time will be charged at a cost of \$200 per worker per hour.
- 9.5. The Warranty is void where the Seller does not install the Goods, unless a certificate of installation from a qualified trade person can be supplied.

10. Delivery

- 10.1. Delivery is not included in Purchase Price unless expressly stated in Quote.