

SHINDA INTERNATIONAL PTY LIMITED (ACN 074 452 207) TERMS AND CONDITIONS

These terms and conditions govern the supply of goods and/or services ("the Goods") by Shinda International Pty Ltd (we/us/our) to you ("the Customer"). Unless otherwise specifically agreed in writing by us, all orders placed by the Customer for the supply of Goods will be on the following terms and conditions:

1. DEFINITIONS

- 1.1. **Claim** means any action, claim, suit or demand of any nature whatsoever.
- 1.2. **Defect** means an error or defect in Goods due to faulty materials or workmanship and **Defective** has a corresponding meaning.
- 1.3. **Loss** means any costs, losses, penalties, damages, liabilities and expenses and in relation to a Claim, includes amounts payable on a Claim (whether or not the Claim is successful) and legal costs and expenses on a solicitor and own client basis.
- 1.4. **PPSA** means the *Personal Property Securities Act (2009)*, any regulations made under it and any amendments made to other legislation by them.

2. BINDING TERMS AND CONDITIONS

- 2.1. Unless otherwise specifically agreed in writing by us, these terms and conditions are incorporated into every order for the supply of Goods placed by the Customer.
- 2.2. Any provision of a particular order of the Customer which is inconsistent with or additional to these terms and Conditions is excluded from contracts between us and the Customer.
- 2.3. The Customer acknowledges that we may amend these terms and conditions at any time. Amendments to these terms and conditions will apply to any order placed one month after the date on which the Customer is notified of the amendments. The placement of an order by the Customer one month after notification of the amendments will constitute acceptance of the terms and conditions.

3. PURCHASE ORDERS & ACCEPTANCE

- 3.1. Our quoted prices will only become binding on us upon receipt of an unconditional purchase order in such form as we may require (purchase orders may be sent to us in writing to our contact details shown on our Credit Application form or delivered to us electronically).
- 3.2. We reserve the right to accept or reject orders placed by the Customer. If the order is accepted by us, we will notify the Customer of that fact.
- 3.3. All Goods will be as described in the quotation given by us, irrespective of any purported variation in the form of acceptance accepting such quotation.
- 3.4. Orders may only be cancelled by the Customer on terms that indemnify us for all Claims and Loss which we may incur in connection with such cancellation.

4. PRICING & PAYMENT TERMS

- 4.1. We reserve the right to change our prices of the Goods at any time without notice. This will not apply however, to prices quoted for which we receive an unconditional purchase order in accordance with clause 3.1.
- 4.2. Unless otherwise indicated, all prices quoted by us are exclusive of GST.
- 4.3. We will do all things reasonably available to us to assist the Customer to claim, on a timely basis, any input tax credits the Customer may be entitled to claim for the purchase of Goods from us. This includes us maintaining our registered status for GST purposes, and issuing tax invoices for the Goods delivered to the Customer.
- 4.4. Prices quoted will specify whether they are inclusive or exclusive of freight/delivery charges.
- 4.5. Credit terms will only be granted following receipt of an acceptable credit application, with or without security (as may be specified by us). If credit terms are granted, the terms of payment will be strictly as set out as notified by us to the Customer from time to time, and in default of any such notification, 30 days from the date of the invoice (unless otherwise agreed in writing).

4.6. We may vary or withdraw the approved credit limit of the Customer at any time in our absolute discretion. That may include requiring the Customer to pay cash in full prior to delivery if in our opinion the credit worthiness of the Customer becomes unsatisfactory.

4.7. The Customer will pay interest on all overdue payments at the rate of 2% per month from the due date for payment until the date that payment is actually made.

4.8. If the Customer defaults in any payment then:

- (a) the date for payment of all monies owing and outstanding to us, irrespective of whether the due payment as per the invoice has passed, will accelerate and become immediately due and payable;
- (b) we may invoice the Customer for the value of any Goods supplied, and other out of pocket expenses incurred, but not yet invoiced, which amounts will be immediately due and payable upon issue of the invoice;
- (c) we may cancel or suspend any unfilled orders, suspend the supply of further Goods and cancel any rebate, discount or allowance due or payable by the Customer as at the date of the default for non-payment.

4.9. If the Customer commits any act of bankruptcy, appoints an administrator or commits an act which entitles a third party to make an application to wind up the Customer or appoint a receiver or receiver and manager to the Customer or any of its assets, or where the Customer passes a resolution to wind itself up or enters into any arrangement or compromise with any of its creditors ("**Insolvency Event**"), then to the extent permitted by law:

- (a) the date for payment of all monies owing and outstanding to us, irrespective of whether the due payment as per the invoice has passed, will accelerate and become immediately due and payable;
- (b) we may invoice the Customer for the value of any Goods supplied, and other out of pocket expenses incurred, but not yet invoiced, which amounts will be immediately due and payable upon issue of the invoice;
- (c) we may cancel or suspend any unfilled orders, suspend the supply of further Goods and cancel any rebate, discount or allowance due or payable by the Customer as at the date of the default for an Insolvency Event.

4.10. The Customer must pay to us, in full for the Goods delivered even if:

- (a) there was a delay in delivery of the Goods;

4.11. The Customer must pay to and indemnify us against all Claims and Loss suffered or incurred by us in connection with;

- (a) the recovery of any monies due and payable but unpaid by the Customer.

5. DELIVERY ACCEPTANCE AND CHANGE OF MIND

5.1. We will make all reasonable efforts to deliver the Goods to the Customer on the date agreed between us and the Customer as the delivery date, but we will be under no liability to the Customer if delivery is not made on the delivery date.

5.2. Where we arrange the freight carrier, the Goods will be directed to the address nominated by the Customer on its Credit Application form as the Customer's delivery address, unless otherwise agreed in writing.

5.3. Delivery of the Goods will be effected upon delivery to the freight carrier (including couriers) or upon collection of the Goods by the Customer (or the Customer's nominated carrier) from our nominated collection point. Where Goods have origin overseas, then delivery of the Goods will be

deemed effected on a FOB (Incoterms 2010) basis at the named port of shipment.

- 5.4. We will endeavour to deliver to the Customer the quantity of goods ordered.
- 5.5. Deliveries may be totally or partially suspended during any period in which we may be prevented or hindered from delivering by any circumstances outside of our reasonable control, including but not limited to, strikes, lock-outs, stock shortages, accidents, break-downs of plant or machinery, storms, adverse weather, pandemics or epidemics, acts of public authorities, floods and other acts of God. The Customer acknowledges that in such an event, we will be under no liability or obligation to deliver to the Customer, any Goods not delivered during the period of suspension.
- 5.6. If Goods the subject of one order by the Customer is delivered by more than one delivery, each delivery will be deemed to be sold under a separate contract. Our failure to deliver the whole of the order within the time stated on the order form will not entitle the Customer to repudiate the contract for the balance remaining undelivered.
- 5.7. The supply of Goods is subject to availability. We may cancel the order if we determine that we will be unable to deliver the Goods within a reasonable time (in which case we will refund any money already paid on account) or we may deliver the order in instalments and the Customer must pay an amount for each instalment as notified by the us in its invoice. Each separate delivery constitutes a separate contract.
- 5.8. The Customer must inspect the Goods immediately upon delivery, for any obvious physical damage suffered during delivery, and to confirm that the Goods supplied are not different from the Goods ordered.
- 5.9. Subject to applicable laws, any Claim that the goods supplied are physically damaged on delivery or are different from the goods ordered must be given in a written notice within 30 days of delivery. The notice must give sufficient details of the Claim, attach a copy of our invoice and include photographic evidence. If the Customer fails to give such a notice, the Customer will be taken to have accepted the Goods as being free from physical damage and complying with the Customer's order and subject to applicable laws, the Customer will not be entitled to make any Claim against us.
- 5.10. If we are satisfied (acting reasonably) that the Goods are physically damaged on delivery or are different from the Goods ordered, we will provide the Customer with an Inbound Stock Docket and arrange for the return of the Goods at our cost. The Customer must return the incorrectly supplied or damaged Goods with our Inbound Stock Docket. Upon return of the goods, we will, at our option, repair, replace or resupply the relevant goods or refund the Customer the cost of the Goods (including any freight/delivery charges).
- 5.11. We will not consider any Claim that the Goods are physically damaged on delivery or are different from the Goods ordered and disclaim all liability:
 - a. for any damage occurring to the Goods after delivery;
 - b. for any modifications, alterations or changes made to Goods by the Customer or any third party after delivery;
 - c. if the goods have been installed or used after delivery.
- 5.12. Change of mind – the Customer may return any Goods for a change of mind within 30 days of delivery, subject to the following:
 - a. the Goods must be unused, undamaged and in original condition;
 - b. the Customer is responsible for returning the Goods at the cost of the Customer, in their original packaging, accompanied by an Inbound Stock Docket and a copy of our invoice;
 - c. the Customer will be offered a credit to the Customer's account (less any freight or delivery charges);
 - d. the Customer may be liable to pay us a restocking fee of 20% of the original purchase price of the returned Goods.

6. PASSING OF TITLE & RISK

- 6.1. The risk in the Goods purchased from us will pass to the Customer upon delivery by us to the Customer. It is the responsibility of the Customer

to insure the Goods in transit. Where Goods have origin overseas, then the Goods are sold on a FOB (Incoterms 2010) basis.

- 6.2. Property in the Goods does not pass to the Customer but remains with us until such time as full payment is made by the Customer for the Goods and there are no other amounts owing to us by the Customer. The Customer in the meantime takes custody of the Goods and holds the Goods on trust and as a fiduciary bailee for us.
 - 6.3. Where the Customer does not make payment in respect of specific Goods, payment will be treated as having been made first in respect of Goods which have passed out of the possession of the Customer, and then in respect of whatever Goods are still in the possession of the Customer, as we may elect.
 - 6.4. If the Customer makes default in any payment of an amount due to us, or an event of default as set out in clause 4.8 occurs, we may without notice and without prejudice to any of our rights and remedies, recover and/or re-sell the Goods or any part of them and we may enter upon the Customer's premises and do all things necessary in order to take possession of the Goods. The Customer indemnifies us for all Claims and Loss in connection with the exercise of our rights under this clause
 - 6.5. Until the Goods have been paid for in full:
 - a. the Customer must store the Goods in such manner as to show clearly that they are our property;
 - b. the Customer may sell the Goods in the ordinary course of its business, but only as our trustee and fiduciary. Any right to bind us to any liability to a third party by contract or otherwise is expressly negated;
 - c. the Customer must not sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the re-sale of the Goods, other than in our favour.
 - 6.6. If the Customer sells the Goods, the Customer in its capacity as trustee and fiduciary bailee will:
 - (a) hold the proceeds of sale in a separate bank account on trust for us and not mix any other funds with those proceeds of sale; and
 - (b) pay to us from those proceeds of sale, the amount which is owed by the Customer to us at the time the Customer receives those proceeds of sale.
 - 6.7. If the Customer breaches clause 6.6 and mixes other monies with the proceeds of sale being held on trust, then the Customer will continue to hold on trust and as a fiduciary bailee for us, that part of the monies as relate to the Goods supplied by us. That part will be deemed to be equal in dollar terms to the amount which is owed by the Customer to us at the time the Customer receives the proceeds of sale.
 - 6.8. In the event that:
 - (a) the Customer uses the Goods in some manufacturing or processing process of its own or of some third party; and
 - (b) the product resulting from the manufacturing or processing process is sold by the Customer;then the Customer will hold on trust and as a fiduciary bailee, such part of the proceeds of sale as relates to the Goods supplied by us. Such part shall be deemed to be equal in dollar terms to the amount which is owed by the Customer to us at the time the Customer receives such proceeds of sale.
 - 6.9. We may commence a Claim against the Customer if the Goods are not paid for by their due date for payment, even though property in the goods has not passed to the Customer.
- ## 7. DISCLAIMERS, LIMITATION OF LIABILITY AND INDEMNITY
- 7.1. If the Customer is resident in Australia and deemed to be a "consumer" under the *Australian Consumer Law* ("ACL"), then the Customer has the benefit of the consumer guarantees in and warranties implied by the ACL. Nothing in these terms and conditions excludes, limits, restricts or modifies any statutory obligation on us or any rights, entitlements and remedies conferred upon the Customer if that cannot lawfully be done.
 - 7.2. If the Customer is deemed to be a "consumer" under the ACL, then our liability for breach of a consumer guarantee and any warranty implied by the ACL, will subject to applicable laws (including the provisions of the ACL in relation to "major failures"), be limited to, at our discretion:

- (a) In the case of goods - the repair of the goods, the replacement of the goods or the supply of equivalent goods or to the payment of the costs of repair, replacement or supply of equivalent goods; and
- (b) In the case of services - the re-supply of those services or the payment of the costs of having those services re-supplied.
- 7.3. If the Customer is not resident in Australia or is not taken to have acquired the Goods as a "consumer" under the ACL, (including because the price of the Goods sold to the Customer exceeds the prescribed amount as defined by the ACL and the Goods are not goods and/or services which are ordinarily used for personal, domestic or household use within the meaning of the ACL), then all consumer guarantees and implied warranties and conditions contained in the ACL are hereby expressly excluded to the extent permitted by law.
- 7.4. If clause 7.3 applies, we warrant that our Goods supplied will be of merchantable quality and free from Defects. If the Customer claims that a Good is Defective, the Customer must give us written notice within 30 days of first becoming aware of the Defect, time of the essence. The notice must give sufficient details of the Claim and be accompanied by an Inbound Stock Docket and a copy of our invoice. We may require the Customer to send digital photos of the Defect (if visible) or return the goods to us. We will pay the cost of the returning the goods if on examination the Goods are found to be Defective.
- 7.5. We will rectify any Defects which occur, at our discretion, by repair, replacement or supply of equivalent Goods (or by payment of the cost of doing so).
- 7.6. The warranty given in clause 7.4 is conditional upon:
- (a) the Customer, strictly following the return of goods policy set out in clause 7.4;
- (b) the Goods having been properly handled, displayed and cared for;
- (c) no unauthorised repair or alteration to the Goods has been made; and
- (d) such Defects are not caused or contributed to by any act or omission of the Customer.
- 7.7. Nothing in clauses 7.3 to 7.6 is intended to limit or replace any obligations which cannot be lawfully excluded.
- 7.8. Subject to applicable laws, including the ACL:
- (a) If the Customer is not taken to have acquired the Goods as a "consumer" under the ACL, our obligation to rectify Defects in accordance with clause 7.4 will be the Customer's sole and exclusive remedy;
- (a) all representations, warranties and conditions of any kind, implied by statute, general law or custom relating to our Goods are excluded; and
- (b) we exclude all liability for all Claims or Loss in connection with the sale, re-sale, use or re-use of the Goods, however arising including all loss of profits, loss of revenue, loss of business, loss of production, loss of opportunity or goodwill, business interruption and any indirect or consequential Loss.
- 7.9. Subject to applicable laws, including the ACL, our total cumulative liability under or in any way connected with a contract with the Customer or its subject matter is limited in aggregate for all Claims to an amount equal to the total price paid or payable by the Customer for the Goods the subject of that contract.
- 7.10. The limitations and exclusion of liability under this clause 7 do not apply in respect of:
- (a) death or personal injury; or
- (b) damage to third party tangible property;
- to the extent caused by us and then only to such extent that we are not otherwise released from liability under these terms and conditions.
- 7.11. All advices, recommendations, information, assistance or services ("**the Advices**") provided by us in relation to the Goods, is given in good faith and is believed by us to be appropriate, accurate and reliable. However,
- the Customer acknowledges that in purchasing the Goods, it has not relied upon the Advice as provided by us or our agents.
- 7.12. The Customer at all times agrees to indemnify us, our officers, employees and agents against all Claims and Loss which we suffer or incur in connection with:
- (a) subject to clause 7.1, 7.4 and 7.6, the Customer's use or misuse of the Goods;
- (b) failure of the Goods to comply with any consumer guarantee, to the extent such failure is caused or contributed to by any act or omission of the Customer;
- except to the extent such Claim or Loss is caused by us.
- ### 8. PERSONAL PROPERTY SECURITIES ACT
- 8.1. This clause 8 applies if goods are supplied to the Customer before we receive payment.
- 8.2. The Customer agrees and acknowledges that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA, and that this Security Interest will continue until all of the Customer's debts and obligations under these terms and conditions are discharged in full. Capitalised words and phrases used in this clause 8 have the same meaning as in the PPSA.
- (b) clause 6 creates a Security Interest, which attaches as a Purchase Money Security Interest ("PMSI") under the PPSA, in all Goods supplied by us to the Customer under these terms and conditions, including all future Goods that may be supplied by us and in all products into which the Goods are incorporated, processed or comingled;
- (c) this Security Interest applies to all Proceeds of such Goods (including any Accounts); and
- (d) the Collateral is all Goods supplied by us from time to time, being appliances, plumbing, bathroom, bathware, showerware and ancillary products and includes any Accounts in respect of that part of the Proceeds of the Collateral which will be held on trust by the Customer for us as set out in clause 6.
- 8.3. The Customer irrevocably authorises us and its agents and employees to:
- (a) apply for any registration or give any notification, in connection with the Security Interest created under these terms and conditions;
- (b) complete any blanks in any other document associated with these terms and conditions, including any Financing Statement or Financing Change Statement; and
- (c) do anything else required to obtain registration of the Security Interest created under these terms and conditions, including any requisitions concerning lodgement.
- 8.4. The Customer must not without our prior written consent, create or attempt to create a Security Interest in or affecting the Collateral described above, other than as set out in this these terms and conditions and provided that this does not prevent the Customer entering into a general security agreement with any financier in respect of any financial accommodation given to the Customer.
- 8.5. The Customer warrants that the Goods supplied are not intended and will not be used by the Customer for personal, domestic or household use.
- 8.6. The Customer acknowledges and confirms that:
- (a) nothing in these terms and conditions is intended as an agreement that the Security Interest under these terms and conditions, Attaches at a later time than the time specified in s.19(2) of the PPSA; and
- (b) it has not made any other agreement with us to vary the time of Attachment of the Security Interest except in any express written agreement between us and the Customer.
- 8.7. The Customer acknowledges that nothing in these terms and conditions is intended as an agreement to subordinate any Security Interest that we have in the Collateral in favour of any other person.

- 8.8. To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement by us of our Security Interest in the Collateral, the parties agree that the following provisions of the PPSA are excluded:
- (a) to the extent permitted by s.115(1) of the PPSA – sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and
 - (b) to the extent permitted by s.115(7) of the PPSA – sections 129(2) and (3), 132, 133(1)(b) (as it relates to our Security Interest), 134(2), 135, 136(3), (4) and (5) and 137.
- 8.9. The Customer consents to the waiver of the requirements for notice under any other provision of the PPSA, that we may notify to the Customer and waives any rights it has to receive that notice.
- 8.10. The Customer authorises us at our discretion to disclose to any person claiming to be a secured party under any prior or subsequent Security Interest or encumbrance in or over the Collateral, any details of the outstanding and accruing indebtedness, security held or any other particulars in connection with the monies payable to us under these terms and conditions.
- 8.11. Pursuant to section 175(6) of the PPSA, the Customer agrees it will not disclose to an interested person any of the matters described in section 275(1) of the PPSA without our prior written approval.

9. GENERAL

- 9.1. These terms and conditions are incorporated by implication into all agreements between us and the Customer to supply the Customer with Goods, irrespective of other terms appearing in documentation provided by the Customer.
- 9.2. Unless set out in writing to the Customer, any failure or delay by us in exercising any right, power or privilege available to us, will not operate as a waiver or variation of such right, power or privilege, nor will the exercise by us of any other right, power or privilege prevent us from exercising any other rights, powers or privileges available to us.
- 9.3. These terms and conditions are governed by the laws in force in NSW, Australia. We and the Customer submit to the jurisdiction of the Courts of NSW, Australia and all Courts of appeal from those Courts.
- 9.4. If any part of these terms and conditions is held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.
- 9.5. Nothing in these terms and conditions is intended to create an agency, partnership or joint venture relationship between us and the Customer. Neither we nor the Customer has any authority to bind the other to any obligation to any third party unless otherwise agreed in writing.