

**MONARCH GROUP PTY LIMITED**  
**ABN 80 098 957 549**

**TERMS AND CONDITIONS OF SALE**

1. **INTERPRETATION**

In these Terms:

- 1.1. **“Agreement”** means any agreement between Monarch Group Pty Limited and the Customer for the sale of Goods;
- 1.2. **“Customer”** means any customer of Monarch Group Pty Limited
- 1.3. **“Monarch”** means Monarch Group Pty Limited ABN 80 098 957 549;
- 1.4. **“Monarch’s New South Wales Premises”** means 58 Box Road, Taren Point NSW 2229;
- 1.5. **“Monarch’s Queensland Premises”** means 56-58 Nestor Drive, Meadowbrook Qld 4131;
- 1.6. **“Monarch’s Victoria Premises”** means 39 Nicholas Drive, Dandenong VIC 3175;
- 1.7. **“Consequential Loss or Damage”** means loss of profits, revenue, use or opportunity, re-installation costs, removal costs and any remote or indirect form of damage;
- 1.8. **“Goods”** means all goods sold and/or delivered by Monarch Group Pty Limited to the customer from time to time;
- 1.9. **“GST”** means the Goods and Services Tax imposed by A New Tax System (Goods & Services Tax) Act 1999 and any related act and/or regulations;
- 1.10. **“Specifications”** means particulars of construction, descriptions and specification details particularised in Monarch’s quotation to the Customer, pursuant to which Monarch and the Customer have entered into an agreement for the sale of the Goods; and
- 1.11. **“Terms”** means these Terms and Conditions of Sale.

2. **SPECIFICATIONS**

Monarch will supply Goods to the Customer pursuant to the Specifications.

3. **APPLICATION**

- 3.1. These Terms apply to the sale of Goods to the Customer by Monarch.
- 3.2. No amendment, alteration, waiver or cancellation of these Terms is binding on Monarch unless confirmed in writing by Monarch.
- 3.3. The Customer acknowledges and agrees that:
  - 3.3.1. no employee or agent of Monarch may make any representation, warranty or promise in relation of the Goods other than as contained in these Terms; and
  - 3.3.2. the Customer has determined that the Goods are fit for the purpose for which they are required;
  - 3.3.3. the Customer has not relied on the skill and judgment of Monarch in selecting the Goods; and
  - 3.3.4. the Customer has checked the Goods for suitability, functionality, completeness, and compliance with the Specifications; and
  - 3.3.5. Monarch will not be liable for the provision of goods other than in respect of those specified on the written quotation, pursuant to which Monarch has supplied goods to the Customer.

4. **TERMS OF PAYMENT**

- 4.1. Payments must be made in full, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement to the Customer.
- 4.2. Payments must be made by cash on delivery, except where Monarch and the Customer have agreed in writing to alternative arrangements before Monarch has supplied the Goods.
- 4.3. Monarch may at its discretion, grant credit to Customers by written authorisation.
- 4.4. Payments by Customers who have been granted credit by Monarch must be made within 14 days of the date of invoice in cash or cleared funds.
- 4.5. The Customer cannot set-off from any payment, any counter-claims that the Customer may have against Monarch.
- 4.6. Interest is payable on all overdue accounts calculated on a daily basis at the rate of interest equivalent to the Westpac Banking Corporation’s indicator rate as at the final date of payment plus 2% until full payment is received by Monarch.
- 4.7. Where Monarch has granted credit in respect of the Customer and the Customer fails to make payment within 14 days of the date of invoice in cash or cleared funds, then Monarch reserves its rights against the Customer in relation to all monies outstanding and payable to Monarch at the time that the relevant invoice or statement is due and payable.

5. **PROPERTY IN GOODS / RETENTION OF TITLE**
- 5.1. Legal and beneficial ownership of the Goods will not pass to the Customer until such time as the Goods so supplied have been paid for in full in cash or cleared funds.
- 5.2. Until the amount payable in respect of the Goods has been paid in full in cash or cleared funds:
- 5.2.1. the Customer will hold the Goods as bailee only for Monarch;
- 5.2.2. any monies received or income generated by the Customer (up to the amount owing to Monarch) through the use of such Goods will be deemed to be received on trust for Monarch; and
- 5.2.3. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons, so as to clearly show that they are the property of Monarch; and
- 5.3. The Customer will permit Monarch through its agents, servants and/or assigns or subcontractors to attend upon the Customer's property and premises for the view to removing the goods and returning those goods to Monarch.
6. **GOODS AT CUSTOMER'S RISK**
- 6.1. The Goods are entirely at the risk of the Customer from the moment the Goods leave Monarch's Premises even though property in and title to the Goods has not passed to the Customer.
- 6.2. The Customer must, at its own expense, maintain the Goods and insure them for the benefit of Monarch for their full replacement value against theft, destruction, fire, water and other risks, as from the moment of collection by the Customer until property of and title to the Goods have passed to the Customer.
- 6.3. The Customer must take all reasonable measures to ensure that Monarch's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the Customer, must be paid to Monarch immediately on receipt.
7. **RE-SALE OF GOODS SUBJECT TO A RETENTION OF TITLE**
- 7.1. The Customer has the right to sell the Goods subject to a retention of title in its own name only at full market value and in the ordinary course of business.
- 7.2. Any sale by the Customer of Goods subject to a retention of title, whether in their original condition or incorporated into other goods, will only be effected by the Customer as trustee for Monarch and the proceeds of such sale and the rights of Monarch's Customer against its Customer arising from such sale will be held on trust for Monarch. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.
- 7.3. If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by Monarch to the Customer (oldest to the most recent).
8. **GOODS AND SERVICES TAX**
- 8.1. GST is not included in the quoted price.
- 8.2. Where GST is imposed on Monarch in respect of the supply of Goods then the Customer must pay Monarch the amount of such GST in addition to the quoted price.
- 8.3. Monarch must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.
9. **INSPECTION**
- Unless the Customer has inspected the Goods and given written notice to Monarch within seven (7) days after collection or delivery that the Goods are defective, faulty, damaged or do not comply with the relevant Specifications and provided Monarch with particulars in writing of any defect, fault, damage or non-compliance with Specifications alleged, within seven (7) days after collection or delivery, the Goods are deemed to have been accepted in good order and condition and compliant with those Specifications.
10. **CANCELLATION OF ORDER**
- Monarch will not accept the cancellation of any order from the Customer after Monarch has cut any materials necessary to be provided in order to fulfil the Customer's order.
11. **DEFAULT**
- If:
- 11.1. the Goods are not paid for in accordance with these Terms or any other applicable written agreement; or
- 11.2. Monarch receives notice that, or reasonably believes that a third party may attempt to take possession of the Goods or attach the Goods pursuant to a writ of execution; or

11.3. any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, administrator, liquidator or similar person [each an "insolvency representative"] to the Customer's undertaking), then Monarch may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods and the bailment referred to in clause 5.2.1.

12. **RIGHT TO ENTER PREMISES**

In any of the circumstances referred to in clause 11, the Customer:

- 12.1. authorises Monarch by itself, its agents or representatives at all reasonable times, without notice, to enter onto and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and
- 12.2. assigns to Monarch all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

13. **ADMINISTRATION, RECEIVERSHIP ETC.**

In any of the circumstances referred to in clause 11:

- 13.1. neither the Customer nor its insolvency representative is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with Monarch's ownership of the Goods, without Monarch's prior written approval;
- 13.2. the Customer and its insolvency representative are obliged to return the Goods to Monarch immediately or immediately on his appointment at his expense; and
- 13.3. the insolvency representative will become personally liable to Monarch on a full indemnity basis in respect of any dealings with or use of the Goods by the Customer or the insolvency representative occurring after the date of appointment of the insolvency representative and must account to Monarch or reimburse Monarch for all monies received as a result of such dealings or use of the Goods.

14. **MONARCH'S LIABILITY LIMITED**

- 14.1. These Terms do not affect any rights conferred by the Trade Practices Act (1974).
- 14.2. Monarch is not subject to, and the Customer releases Monarch from any liability (including but not limited to Consequential Loss or Damage) arising from any delay in delivery or fault or defect in the Goods. The Customer acknowledges that Monarch is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that Monarch is not liable for any claim, cost, damage or demand resulting from such non-compliance.
- 14.3. If any statutory provisions under the Trade Practices Act 1974 or any other statute(s) apply to the Agreement then, to the extent to which Monarch is entitled to do so, Monarch's liability under the statutory provisions is limited, at Monarch's option, to:
  - 14.3.1. replacement or repair of the Goods; or
  - 14.3.2. supply of equivalent Goods,and in either case, Monarch will not be liable for any Consequential Loss or Damage or other direct or indirect loss or damage.

15. **DELIVERY**

- 15.1. Subject to clause 21, Monarch will deliver the Goods between 2 and 6 weeks of receiving an order from the Customer in respect of its quotation.
- 15.2. Monarch will not be liable for any failure to deliver the Goods to the Customer on a particular day or days.
- 15.3. If Monarch is unable to deliver or complete the installation of Goods on the day of delivery and/or installation, due to any matter or thing beyond Monarch's control, including but not limited to the events described in clause 21, the Customer will be liable to Monarch for payment of a service charge for Monarch to return to the site to complete the delivery and installation of Goods.

16. **WARRANTY**

- 16.1. Monarch warrants that the Goods supplied will be cut and constructed in accordance with the Specifications.
- 16.2. Monarch warrants that the Goods will be supplied new.
- 16.3. The Customer acknowledges and agrees that:
  - 16.3.1. all technical data supplied by Monarch in relation to the Goods are approximates only unless advised otherwise and are subject to alterations by Monarch without notice; and
  - 16.3.2. it is satisfied from its own enquiries that the Specifications are correct and appropriate for the purpose required by the Customer.
- 16.4. Subject to clause 9, on discovery of any defect, fault, damage or non-compliance with the Specifications, the Customer must immediately notify Monarch in writing of such defect, fault, damage or non-compliance. The Customer must not carry out any remedial work to the Goods that are alleged

to be defective, faulty, damaged or non-compliant without first obtaining the written consent of Monarch to do so.

16.5. The provisions of any act or law (including but not limited to the Trade Practices Act 1974) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the Agreement in relation to the Goods are hereby expressly negated and excluded to the full extent permitted by law.

16.6. The Customer expressly acknowledges and agrees that it has not relied on, and Monarch is not liable for any advice given by Monarch, its servants, agents, representatives or employees in relation to the suitability of the Goods for any purposes.

16.7. Monarch will not be liable for any damage resulting from the incorrect setting of limit switches

17. **COST OF HIRING SCAFFOLDING OR SCISSOR LIFT EQUIPMENT**

The Customer will be liable for the cost of hiring any scaffolding or scissor lift equipment required to achieve suitable installation of the Goods.

18. **RESPONSIBILITY OF CUSTOMER**

18.1. The Customer agrees that it will ensure that the site for delivery of the Goods by Monarch is plumbed square, free of obstacles and suitable for the fitting and installation of the goods by Monarch.

18.2. The Customer will be charged a site attendance fee and/or waiting time if Monarch is unable to deliver or install the Goods due to failure on the part of the Customer to properly prepare the site for the fitting and installation of the goods by Monarch.

19. **CATALOGUES AND TECHNICAL DOCUMENTS**

19.1. Particulars in leaflets, catalogues, drawings, brochures and other printed material other than quotations, pursuant to which Monarch supplies the Goods, are illustrations only, form no part of the contract between Monarch and the Customer, and are not binding on Monarch.

19.2. All technical documents such as drawings, illustrations, descriptions, etc., are the exclusive property of Monarch. They must not be made available to third parties, or copied, duplicated or used to reproduce any part of the Goods.

20. **FORCE MAJEURE**

Monarch will not be liable for any breach of contract due to any matter or thing beyond Monarch's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

21. **WAIVER OF BREACH**

No failure by Monarch to insist on the strict performance of any of the terms in these Terms is a waiver of any right or remedy which Monarch may have, and is not a waiver of any subsequent breach or default by the Customer.

22. **NO ASSIGNMENT**

Neither the Agreement nor any rights arising under the Agreement may be assigned by the Customer without the prior written consent of Monarch which is at Monarch's absolute discretion.

23. **SEVERABILITY**

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

24. **CONTRACT / GOVERNING LAW**

24.1. The terms of contract between the parties are wholly contained in these Terms and any other writing signed by both parties.

24.2. The contract is:

24.2.1. deemed to be made at Monarch's New South Wales Premises, even if the Goods are supplied from Monarch's Queensland Premises or Monarch's Victoria Premises or otherwise the contract has any other connection to a place outside the state of New South Wales; and

24.2.2. subject to the laws in the state of New South Wales and any cause of action is deemed to have arisen in New South Wales.

25. **NO LIABILITY FOR RETENTIONS**

The Customer agrees that no retentions will be held by the Customer in respect of any works done by Monarch.