



TERMS AND CONDITIONS

CONDITIONS OF SALE – Effective 17 May 2019

1. Terms of Sale

The products sold and the services supplied by the company are sold and supplied on these Conditions. The company may, at any time, unilaterally vary the Conditions in its absolute and unfettered discretion upon thirty (30) days' written notice to the customer.

2. Orders

- 2.1 It is the customer's responsibility when ordering to ensure the accuracy of the terms of any order or quote (including any applicable specification), and that the products and services ordered conform to the customer's requirements and are suitable and sufficient for the customer's purpose.
- 2.2 It is the customer's responsibility to provide all information necessary to enable performance of any order or quote, and the customer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
- 2.3 All orders are subject to the company's acceptance. We will notify the customer if the order is not accepted.
- 2.4 We reserve the right not to accept or complete an order if we consider the order consists of work that is unsafe for our service technicians or contractors to perform.
- 2.5 Once accepted, orders cannot be cancelled or altered except with our written consent. If (with our written consent) the customer cancels or alters any order with specifications requested by the customer or standard products with non-standard materials at any time after the company has accepted the order, then without prejudice to any other rights the company has against the customer, the company may charge the customer a restocking fee of no less than 50% of invoice value for materials already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alteration.

- 2.6 Where an order is to be collected from the company, the customer agrees:
 - (a) to collect the order/s within 30 days of notification of availability from the company; and
 - (b) that failure to collect the order will result in additional charges being made against the customer by the company for storage and other relevant costs, which the customer must pay.

3. Price

- 3.1 Prices for the products and services are set out in company's price list (as amended from time to time) or as set out in a valid quote.
- 3.2 Unless the company has issued a sales confirmation in respect of an order it may alter the prices for products and services at any time without notice.
- 3.3 Unless otherwise stated, all prices quoted are exclusive of GST.
- 3.4 If any supply by the company under or in connection with these Conditions is a taxable supply, the consideration payable by the company for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.
- 3.5 All taxes and/or import duty payable on any supply referred to and/or included in an order or invoice either received or provided by the company shall be paid by the customer in accordance with the rates as at the date of quotation, or if required by legislation, at the date of invoice. Payment of such amount shall be made at the same time as the payment for the products and services provided in clause 5.

4. Invoicing and Payment

- 4.1 The company will issue an invoice to the customer at the time the product or service is completed and ready for delivery or collection, whether or not the customer wishes to take delivery of or collect the products.



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- 4.2 If the customer disputes the full amount of an invoice sent by the company, the customer must pay the amount of the invoice not in dispute in accordance with these Conditions.
- 4.3 Unless credit terms have been agreed between the parties in writing, the customer must either prepay the company's invoice in full, or provide details of a valid credit card against which the company will process payment once the goods and services have been supplied.
- 4.4 If Credit terms have been agreed, the invoice is payable within 14 days from the date of the invoice. Credit may automatically be stopped if the customer's account is overdue, and the company may refuse to extend credit even if the customer's account is brought within trading terms.
- 4.5 If the customer fails to make any payment to the company on the due date or is in breach of any of these Conditions then the company shall be entitled to cease production of the products and/or services, and/or to stop the delivery or collection of the products or services or any part thereof, and/or stop any products in transit, and/or otherwise cease to perform any of its obligations to the customer.
- 4.6 Any outstanding amounts will accrue interest at the default rate calculated monthly from the due date until paid in full and together, with any legal expenses incurred by us (on a full indemnity basis) in relation to recovering the outstanding amounts, will be payable on demand.
- 4.7 If you make an account payment by an approved credit card, we reserve the right to levy a processing fee, plus GST, to cover the cost of processing and bank credit card charges.
- 4.8 If you wish to establish a credit account you must submit a credit application to us at least 10 working days prior to the date of any order submitted for products and/or services. We will assess your application for a credit account and advise you in writing if your application is accepted. Acceptance of your application for a credit account is at our absolute discretion.
- 4.9 Irrespective of whether you hold an account with us, we may, in our absolute discretion, require you to prepay some of the charges, including, but not limited to, manufacture costs. Such payment, if requested, will be applied against the invoice we raise for the products/services. If you do not pay the charges in accordance with this clause we may, in our absolute discretion, elect not to provide the products/services to you.
- 4.10 You cannot set off any amount against any money that you owe us.
- 4.11 We may at our discretion and in such manner as we determine allocate payments you make against outstanding invoices.
- ## 5. Delivery and Risk
- 5.1 Delivery or collection times made known to the customer are estimates only and the company shall not be liable for late delivery or non-delivery and under no circumstance shall the company be liable for any loss, damage or delay occasioned to the customer arising from late or non-delivery of products or services or both.
- 5.2 If the customer is unable or unwilling to accept delivery of the products as agreed then the customer shall be liable for all storage costs, charges, expenses and additional delivery charges, such amount to be paid on delivery including to where the late delivery or non delivery is caused by or contributed to by the negligence of the company, its contractors or agents.
- 5.3 The customer bears all risk of loss or damage to the products upon and from collection, delivery of the products to the customer or delivery at the customer's direction, as the case may be. The customer shall effect all necessary policies of insurance as it may deem appropriate to insure against any such risk of loss or damage.
- 5.4 The customer must permit (or arrange permission for) us to access the premises where the product is to be delivered.
- ## 6. Security / Charges
- 6.1 The customer charges in favour of the company all its estate and interest in any real property that the customer owns at present and in the future with the amount of indebtedness hereunder until discharged.



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6.2 The customer charges in favour of the company all present and after acquired property, interests, rights and proceeds in respect of which the customer has at any time sufficient rights to grant a Security Interest (as defined in the Personal Property Securities Act 2009) or charge to secure the satisfaction of its obligations under this Agreement and for payment to the company of any money which from time to time is owed or becomes payable to the company under this Agreement and any other agreement with the company.

7. Retention of Title and Personal Property Securities

7.1 In clauses 7.1 to 7.16:

7.1.1 a reference to the PPSA is a reference to the Personal Property Securities ACT 2009;

7.1.2 a reference to "goods" is a reference to the products and services provided by the company; and

7.1.3 a reference to "Security Interest" has the meaning given to that term in the PPSA.

7.2 Whilst the customer has not paid for the goods supplied in full at any time, the customer agrees that property and title in the goods shall not pass to the customer and the company retains the legal and equitable title in those goods supplied and not yet sold.

7.3 Until payment in full has been made to the company, the customer will hold the goods in a fiduciary capacity for the company and agrees to store the goods in such a manner that they can be identified as the property of the company, and shall not mix the goods with other similar goods.

7.4 The customer shall be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the company, the customer shall sell as agent and bailee for the company and the proceeds of sale of the goods shall be held by the customer on trust for the company absolutely.

7.5 The customer's indebtedness to the company, whether in full or in part, shall not be discharged by the operation of clause 7.4 hereof unless and until the funds held on trust are remitted to the company.

7.6 The customer agrees that whilst property and title in the goods remains with the company, the company

has the right, with or without prior notice to the customer, to enter upon any premises occupied by the customer (or any receiver, manager, administrator, liquidator or trustee in bankruptcy of the customer) to inspect the goods of the company and to repossess the goods which may be in the customer's possession, custody or control when payment is overdue.

7.7 The customer will be responsible for the company's costs and expenses in exercising its rights under clause 7.6. Where the company exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the customer against the company, its employees, servants or agents.

7.8 The customer agrees that where the goods have been retaken into the possession of the company, the company has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the customer on those goods, and the customer hereby grants an irrevocable licence to the company to do all things necessary to sell the goods bearing the name or trademark of the customer.

7.9 The customer acknowledges that the company's interest in the goods includes a 'purchase money security interest' pursuant to PPSA.

7.10 The customer agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the company may require for the purposes of:

7.10.1 ensuring that any Security Interest of the company is enforceable, perfected and otherwise effective; or

7.10.2 ensuring that any Security Interest of the company is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA; or

7.10.3 enabling the company to apply for registration or give any notification in connection with a Security Interest so that the Security Interest has the priority required by the company; or



- 7.10.4 enabling the company to exercise any right or power in connection with the Security Interest.
- 7.11 The customer agrees that it will bear all costs and expenses that the customer incurs in complying with clauses 7.9 to 7.16 and any costs and expenses incurred by the company for the purposes set out in clause 7.10.
- 7.12 To the extent permitted by law, and in respect of any Security Interest created by these Conditions:
- 7.12.1 the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA) and also contract out of the application under subsection 116(2) of the PPSA of any provision of Part 4.3 of the PPSA in relation to the goods;
- 7.12.2 the customer waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice can not be excluded.
- 7.13 The parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA. The customer agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if the company approves.
- 7.14 The company's Security Interest attaches to any proceeds (including proceeds within the definition of that term in the PSSA) derived, directly or indirectly from any sale or dealing with the goods or otherwise arising out of or relating to the goods whether or not the sale or dealing is permitted under these Conditions.
- 7.15 The customer will not, without the company's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the goods.
- 7.16 For the avoidance of doubt, pursuant to section 80 of the PPSA, the customer covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person the customer assigns

some or all of its rights and obligations under these Conditions should have the benefit of this covenant.

8. Exclusion of Representations

- 8.1 To the extent permitted by law all representations, warranties, guarantees and conditions regarding products and services are excluded.

9. Inspection and Acceptance

- 9.1 The customer shall inspect the products and services at the time of delivery and shall notify the company in writing of any damage to or defect in the products or services or of any non-compliance with description (if the products or services are supplied by description) within five (5) working days from the date of delivery.

9.2 The customer warrants and acknowledges that:

- (a) 5 working days from delivery is sufficient time and reasonable opportunity for the customer to inspect the products and services; and
- (b) unless it notifies the company as provided in clause 9.1, it shall be deemed to have accepted the products and services.

10. Returns and Warranties

Subject to and to the extent permitted by the Australian Consumer Law (ACL).

- 10.1 Products may only be returned to the company with its prior express written permission.
- 10.2 All accepted returns will be subject to the following charges:
- (a) 15% of the sales value of the products (minimum charge \$20); and
- (b) any other applicable supplier re-stocking fee.
- 10.3 All workmanship is subject to a 60 day warranty period with the following exceptions:
- (a) Movement caused by weather conditions and structural changes to the property
- (b) Evidence of tampering, misuse or any damage (willful or accidental).



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10.4 Product is covered by the manufacturers warranty and is subject to the terms and conditions associated with that manufacturer.

11. Limitation of Liability

11.1 To the extent permitted by the ACL:

- (a) the company is not liable to the customer for any loss or damage suffered or incurred by the customer in respect of products or services supplied under these Conditions including any order or quotation, the products, or their delivery, misdelivery or non-delivery for any incidental damages, consequential damages, special damages, punitive damages, statutory damages, indirect damages, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages;
- (b) the company's liability for damages arising out of or related to these Conditions shall not exceed the amount actually paid to the company for the products from which the claim arose; and
- (c) these limitations and exclusions will apply regardless of whether liability arises from breach of contract, warranty, tort (including but not limited to negligence), by operation of law, or otherwise.

11.2 The company's liability (if any) for breach of any representation, warranty, guarantee, or condition that cannot be excluded is limited to (at the option of the company), the supply of the products and its services again or the payment of the cost of supplying the products and services again.

12. Customer Warranties

- 12.1 You warrant that you are entitled and authorised to enter into and perform your obligations under these Conditions.
- 12.2 If a person enters into these Conditions in their capacity as your agent, both you and the agent agree that your obligations under these Conditions (including, but not limited to, payment of the charges) bind both you and the agent jointly and severally.

13. Termination

13.1 If you:

- (a) breach any term of these Conditions that is capable of remedy, and fail to remedy the breach within 14 days of receiving notice of the breach from us; or
- (b) become subject to the appointment of a liquidator, receiver, manager, trustee in bankruptcy or other form of administration; or
- (c) admit, or we determine that you are otherwise unable to pay your debts as and when they fall due, then, without prejudice to any other rights which we may have, we may immediately cease to provide products and/or services to you and all amounts due or payable to us by you become immediately due and payable.

For the purposes of these Conditions any acts of a related body corporate related to the customer in relation to the provision and/or services shall be deemed to be an act of the customer and any acts of any related body corporate of the company shall be deemed to be an act of the company.

Intellectual Property

Each party retains ownership of any Intellectual Property owned by it prior to the commencement of these Conditions.

To the extent that any Intellectual Property is created in the course of these Conditions which relates to the goods or services supplied by the company, such Intellectual Property will be owned from creation by the company.

Privacy

The customer agrees to the terms of the Privacy Act 1988 authorisation contained in this document. This authorisation allows the company amongst other things, to collect information about the customer from a credit reporting agency.

The company collects information about the customer in order to provide the customer with the goods requested, to assess any credit application made by the customer, or to review any existing credit. If the customer does not provide the information requested, the company will be unable to provide the goods requested or process the customer's application.



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The company may disclose information about the customer to its related companies, or to a credit reporting agency, ratings agency and any business which provides information about the credit worthiness of persons. The company may also disclose information about the customer where the company is permitted by the Privacy Act 1988 to do so.

The customer is able to access the information held by the company, and seek the correction of such information, by contacting the company using the details provided above. Details with respect to accessing and correcting information are also available in the company's Privacy Policy.

Details with respect to how the customer may complain about a breach of the Privacy Act 1988 and how the company will deal with such a complaint are available in the company's Privacy Policy.

General

Force Majeure: Neither party will be liable to the other for any failure to comply with these Conditions (other than your obligation to pay our invoices) where the failure is due to circumstances which are not directly within the party's control, including acts of terrorism, natural disaster, industrial action, or a failure of a supplier, public utility or common carrier, provided the affected party diligently commences and continues its obligations under these Conditions promptly upon the removal of such cause.

Time: Time is of the essence in respect of all the customer's obligations under these Conditions.

Assignment: You must not assign, novate or otherwise deal with any of your rights and obligations under these Conditions (including with respect to the payment of any invoice) without our prior written consent, which will be provided in our absolute discretion. The company may assign any rights or obligations under these Conditions without the prior written consent of the customer.

Waiver: A right created under these Conditions may not be waived except in writing, signed by the party granting the waiver.

Notices: All notices and other communications provided for or permitted under these Conditions or otherwise shall be sent by certified or registered mail with postage prepaid, by hand delivery or by facsimile or email transmission.

Severance: If any term or condition of these Conditions is, or becomes, for any reason wholly or partially invalid, then that term or condition will to the extent of the invalidity be severed without affecting the enforceability and validity of the remaining terms and conditions.

Governing Law: These Conditions are governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of Queensland.

Interpretation

The following terms and conditions between TopLock Pty Limited ABN 80 282 510 424 t/as TopLock (company/we/us/our) and the customer (you/your) apply to the provision of goods and/or services by us to you.

"Conditions" means these terms and conditions.

"Customer" means the purchaser (you) of the products and/or services supplied by us.

"Default rate" means the current unsecured Business Overdraft Indicator Lending Rate (or any replacement of it) published by National Australia Bank.

"GST" means goods and services tax imposed in Australia under New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Intellectual Property" includes subject matter protected by and rights granted under the laws relating to copyright, designs, patents, circuit layouts, confidential information, trade marks, business goodwill and reputation.

"Order" means a request by you to us for the provision of products and/or services.

"Products" means the locks, safes, security cabinets, keys and other products, if any, specified in any order.

"Services" means the delivery, installation and other services, if any, specified in any order.

Nothing in these Conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.