



20 June 2017

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## 1. DEFINITIONS

In these Conditions of Sale;

**Conditions** means these Conditions of Sale;

**Contract** means a contract of sale arising out of an Order accepted by the Seller in its absolute discretion;

**Due Date** means in relation to an Invoice, the date on which the price of the Goods supplied by the Seller (the subject of the Invoice) must be paid and being 30 days after the last Business Day of the calendar month in which the Invoice is issued by the Seller;

**Goods** means any of the products supplied to the Purchaser by or on behalf of the Seller;

**GST** has the same meaning as defined in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced from time to time and any associated legislation including without limitation delegated legislation;

**Invoice** means the Invoice issued by the Seller in relation to a Contract setting out certain terms applicable to the Contract;

**Order** means any offer, whether oral or in writing or electronic made by the Purchaser to the Seller to purchase Goods from the Seller;

**PPSA** means the *Personal Properties Securities Act 2009* (Cth) as amended from time to time;

**Purchaser** means the purchaser of the Goods;

**Seller** means Crimsafe Security Systems Pty Ltd ABN 27 069 651 878;

**Terms of Trade** means the payment terms as set out in these Conditions.

**Website** means the website operated by the Seller from time to time and currently being [www.crimsafe.com.au](http://www.crimsafe.com.au).

## 2. CONTRACT

- (a) Every Contract is governed by these Conditions and the terms of the Invoice which constitute the entire agreement between the Purchaser and the Seller in relation to the supply and purchase of Goods.
- (b) The Seller will be entitled to vary these Conditions at any time and from time to time.
- (c) Any variations made to these Conditions will take effect [14/30] days after publication on the Website of:
  - (1) the varied Conditions; and
  - (2) a notification that the Conditions have been varied.
- (d) The Conditions as varied will not apply to any Contracts already in existence.
- (e) If there is inconsistency between the terms of an Invoice and these Conditions, the terms of the Invoice will prevail.

### **3. PRICES**

- (a) Prices set out in all Invoices are (unless otherwise expressly stated) payable in Australian currency on or before the Due Date and do not include GST which is to be added if applicable.
- (b) The Seller is entitled to charge the Purchaser:
  - (1) interest at a rate of one point five percent (1.5%) per annum on any amount outstanding as at the Due Date calculated from the day after the Due Date until the amount in question is paid in full;
  - (2) if the Seller is liable for GST in relation to the sale of the Goods or any other "Supply" as that term is defined in the GST Act, the consideration payable by the Purchaser will be increased by an amount calculated by multiplying the price or the amount of the other "Supply" by the rate of GST;
  - (3) any cost which the Seller has paid associated with the recovery of any amount owed by the Purchaser to the Seller, including but not limited to fees paid to solicitors and debt collectors;
  - (4) an administration charge of \$25.00 where any cheque given to the Seller by the Purchaser is not honoured on first presentation which must be paid to the Seller on demand; and
  - (5) bank fees, merchant fees, commissions or any other bank charges, charged to the Seller as a result of payment being made by the Purchaser by way of credit or debit cards which must be paid to the seller on demand.

### **4. ORDERS**

- (a) All Orders accepted by the Seller will be executed at the Purchaser's sole risk.
- (b) The Purchaser is not entitled to countermand any Order except with the written consent of the Seller and on terms which will indemnify the Seller against any loss or damage resulting from the countermand of the Order by the Purchaser.

### **5. DELIVERY**

- (a) Unless otherwise agreed, delivery will be made at the Purchaser's premises and the Purchaser must pay all the transportation charges for delivery of the Goods (including freight charges) payable within the Payment Terms.
- (b) Time will not be of the essence of each Contract. Any delivery date quoted by the Seller will be approximate only. If no delivery date is quoted then the Seller will deliver the Goods as soon as it can conveniently do so.
- (c) No claim of any nature will lie against the Seller for Goods lost or damaged in transit through whatever cause, including negligence, and any carrier of the Goods will be deemed to be the agent of the Purchaser even where such carrier has been engaged by the Seller.
- (d) All claims in respect of Goods delivered, including a claim for short delivery of Goods for reasons other than those set out in clause 5(c), must be made in writing and delivered to the Seller within 7 days of the delivery of the Goods (whether or not at the Sellers premises), failing such claim the Purchaser will be deemed to have accepted the delivery of the Goods and will be deemed to have waived its right to claim against the Seller.
- (e) Strikes, differences with workmen, accidents to or failure of machinery, failure of usual sources of supply of materials, war, civil commotion, acts of terrorism, commercial exigencies, acts of government or quasi government or legislation, or other contingencies beyond the control of the Seller, will be sufficient excuse for any delay in or suspension of delivery of an Order. The Seller may with the consent of the Purchaser cancel the Order,

after which the Purchaser will have no further claim on the Goods. If the Order is not so cancelled, the Seller will complete delivery as soon as possible.

## 6. RETURNS

- (a) Goods returned without the written consent of the Seller will not be accepted for credit and the Seller will be entitled to:
  - (1) return the Goods at the Purchaser's expense to the Purchaser which expenses will be payable on demand by the Seller; or
  - (2) hold the Goods as a pledge in respect of the Purchaser's indebtedness to it, whether liquidated or not, and sell the Goods and apply the proceeds of sale to the amount owing by the Purchaser.
- (b) If the Seller consents to the return of the Goods, the Seller will be entitled to charge a handling and restocking fee equivalent to 10% of the price of the returned Goods quoted on the relevant Invoice. All transportation charges (including freight charges) must be paid by the Purchaser. The handling and restocking fee and transportation charges will be payable by the Purchaser to the Seller within 7 days from the date of the return of the Goods concerned.

## 7. BREACH

If:-

- (a) the Purchaser fails to make any payment on the Due Date, or
- (b) any cheque, promissory note or other bill of exchange given to the Seller by the Purchaser is not honoured on first presentation; or
- (c) an application or Order is made for the winding-up or sequestration of the Purchaser or an application or Order is made to place the Purchaser under official management; or
- (d) the Purchaser endeavours to or enters into any arrangement, compromise or composition with any of its creditors; or
- (e) the Purchaser fails to satisfy any judgement against it within 7 days after date of judgement; or
- (f) the Purchaser breaches any of the terms of any Contract, all of which are deemed to be material; or
- (g) any of the assets of the Purchaser or any of the Goods in the possession of the Purchaser which have not been paid in full, are seized under legal process issued against the Purchaser; or
- (h) a receiver, receiver and manager, controller, administrator, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Purchaser;
- (i) the Purchaser ceases to carry on business,

the Seller will have the right and option without prejudice and in addition to all rights under these Conditions or a law or in equity to:-

- (1) continue to enforce its rights and recover from the Purchaser such payments and any other amounts owing as and when they fall due; or
- (2) claim immediate payment of all moneys due by the Purchaser in respect of all Contracts which will immediately become due and payable, notwithstanding the Due Date for payment of any Invoice or any extended terms agreed by the Seller; or

- (3) cancel all or some of the Contracts with the Purchaser, upon which event the Purchaser will immediately return the Goods to the Seller and the Purchaser will in addition be liable to the Seller for any loss or damage of whatever nature that the Seller may have suffered or may suffer in consequence of the cancellations.

## 8. WARRANTIES

- (a) The Seller makes no representation whether express or implied as to the merchantability, condition, durability or fitness for the purpose for which the Goods are to be used and any implied warranty as to latent defects is expressly excluded. Without limiting the generality of the foregoing, it is recorded that:
  - (1) the specifications pertaining to the mesh and other Goods are target specifications;
  - (2) the actual specifications for the mesh and any of the Goods may differ taking into account reasonable manufacturing tolerances.
- (b) In no event whatsoever will the Seller be responsible for any loss, damage, cost, charge or expense suffered, incurred or sustained by the Purchaser whether consequential or otherwise of whatsoever nature and kind and howsoever arising including through the negligence of the Seller, its agents or servants.
- (c) These warranties will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any Goods or services pursuant to the Conditions of all or any of the provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) or by any other statute Act of any state or territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified.
- (d) To the extent permitted by the CCA the liability of the Seller to the Purchaser for a breach of a condition or warranty implied by a provision of the CCA will be limited to:
  - (1) the replacement of the relevant Goods or the resupply of equivalent Goods;
  - (2) the repair of the relevant Goods;
  - (3) the payment of the cost of replacing the relevant Goods; or
  - (4) the payment of the cost of having the relevant Goods repaired;and the Seller may in its absolute discretion determine which of the foregoing limits will apply in any case.
- (e) Each of the terms contained in these Conditions which exclude liability on the part of the Seller will be a separate and divisible term, and if any such term becomes unenforceable for any reason whatever, that term is severable from and will not affect the validity of the other terms.

## 9. OWNERSHIP

- (a) Ownership of Goods delivered by the Seller to the Purchaser will not pass from the Seller to the Purchaser until such time as the Goods the subject of any Contract and all other Goods supplied by the Seller to the Purchaser have been paid in full.
- (b) Notwithstanding clause 9(a) all risk of loss, damage or other injury to the Goods will pass from the Seller to the Purchaser on delivery in accordance with clause 5(a) of these Conditions.
- (c) The Purchaser will indemnify and keep indemnified the Seller against loss, damage or other injury to the Goods from the date of delivery of the Goods to the Purchaser until full payment as provided in clause 9(a) has been received by the Seller.

- (d) Until full payment for the Goods is received by the Seller, the Purchaser must keep the Goods as bailee for the Seller. The Purchaser is at liberty to sell the Goods in the ordinary course of business in the name of the Purchaser and as a principal and not as agent for the Seller but the benefit of any such sale and the proceeds of any such sale belongs to the Seller absolutely.
- (e) The Purchaser must not represent to any third party that it is in any way acting for the Seller and the Seller will not be bound by any contract in relation to the Goods which the Purchaser may enter into with any third party.
- (f) The Purchaser must keep separate accurate and current records of all Goods delivered to it by the Seller and the sale of any of those Goods by it to third parties. The Purchaser must keep the Seller's Goods separate from all other Goods in an area designated for that purpose in the Purchaser's premises and must at all times prominently display a notice in such area stating that ownership of the Goods is reserved to the Seller. If at any time required by the Seller, the Purchaser must give notice to the landlord of the premises in which any of the Goods are stored that the Goods is reserved to the Seller. If at any time required by the Seller, the Purchaser must give notice to the landlord of the premises in which any of the Goods are stored that the Goods are the property of the Seller.
- (g) If full payment is not received by the Seller for any Contract by the Due Date specified in the relevant Invoice, the Purchaser irrevocably authorises the Seller to enter any premises where the Goods are kept and retake possession of all Goods in the Purchaser's possession which have not been fully paid for notwithstanding the Due Dates for payment of any of the Goods concerned.
- (h) In the event of a repossession under clause 9(g), the Seller will be entitled to sell the Goods and apply the proceeds of sale to the amount owing by the Purchaser.
- (i) The Purchaser indemnifies and continues to indemnify the Seller against any costs incurred by the Seller and claims arising from the entry into the premises where the Goods are kept retaking possession and selling the Goods.
- (j) If the Goods:
  - (1) become constituents of other products so as not to be separable from those products; or
  - (2) are converted into other products of a distinctly different character,then
  - (A) the Seller has a charge over the other products and each of them to the extent of the unpaid purchase price of any Goods sold to the Purchaser; and
  - (B) if the Purchaser sells those other products or any of them:
    - (i) the Seller has a charge over the rights of the Purchaser to receive the purchase price in respect of those other products or any of them to the extent of the unpaid purchase price of any Goods; and
    - (ii) the Purchaser holds the proceeds of sale on trust for the Seller to the extent of the unpaid purchase price of any Goods.

## 10. PPSA

- (a) Unless otherwise stated, words and expressions defined in the PPSA will bear the same meanings when used in this clause 10.

- (b) The Purchaser acknowledges that the terms of these Conditions creates a security interest under the PPSA. The Purchaser has not agreed to postpone the time for attachment of the security interest granted to the Seller under these terms and conditions.
- (c) Without derogating from any of the other provisions of these Conditions, the Purchaser:
  - (1) must, at the Seller's request, promptly execute any documents and anything required to register the Seller's security interest in the Goods under the PPSA;
  - (2) indemnifies, and upon demand will reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;
  - (3) must keep full and complete records of the Goods;
  - (4) must not without the prior written consent of the Seller create a security interest in or mortgage the Goods or any interest in them (or purport or attempt to purport to do such thing) or permit any lien over the Goods;
  - (5) without limiting any other right the Seller may have, must immediately return the Goods if requested to do so by the Seller following non-payment of any amount owing by the Purchaser to the Seller or following breach of any other obligation of the Purchaser to the Seller;
  - (6) gives the Seller the right to inspect the Goods at all reasonable times;
  - (7) must not change its name, address or contact details without providing the Seller with prior written notice; and
  - (8) must not register a financing change statement or apply to remove or alter the Seller's registration in any way without the prior written consent of the Seller.
- (d) So far as is permitted by the PPSA, the Purchaser waives its right:
  - (1) to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Goods;
  - (2) to receive any notice required under the PPSA, including a notice that the Seller intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to the Seller; and
  - (3) to object to a proposal by the Seller to retain the Goods in satisfaction of any obligation owed by the Purchaser to the Seller.

## **11. GENERAL**

- (a) The Seller's delivery notes will be deemed to be prima facie proof of delivery to the Purchaser of the Goods described in the delivery note. In the event of a dispute as to the quantity of Goods sold and delivered and their value, the onus of proving that the Goods were not delivered and/or the quantity and price thereof is not in accordance with the Seller's Invoices will be upon the Purchaser.
- (b) No concession, latitude or indulgence allowed by the Seller to the Purchaser may be construed as a waiver or abandonment of any of its rights under the Conditions or act as any estoppel against the Seller.
- (c) All payments to be made by the Purchaser must be free and clear, without any set-off, counterclaim or condition.
- (d) If any terms and conditions of these Conditions are invalid, such terms and conditions to the extent of their invalidity may be severed from these Conditions and will not invalidate the remainder of the Conditions.

- (e) The Seller in its sole and absolute discretion may appropriate any payment made by the Purchaser to any cause of indebtedness as may be owned by the Purchaser to the Seller.
- (f) In the event of a breach by the Purchaser of any Contract, the Purchaser will be liable to and hereby indemnifies the Seller against all costs, charges and expenses incurred by the Seller as a consequence of that breach including but not limited to all legal costs, charges and expenses incurred calculated on a solicitor and client basis.
- (g) The Purchaser agrees that a certificate signed by any employee of the Seller setting out the balance owing by the Purchaser to the Seller for Goods sold will be final, binding the conclusive upon the Purchaser.
- (h) The Purchaser irrevocably appoints the Seller its attorney and agent to do all acts and sign all documents in the name of the Purchaser and as the act and deed of the Purchaser to enable the Seller to exercise its rights under these Conditions or any Contract.
- (i) Any notice given under these Conditions must be served on the Purchaser at the last known place of businesses or residence of the Purchaser or on the Seller at 1 Blanck Street, Ormeau, Queensland, 4208.
- (j) All Contracts, Invoices and these Conditions are governed by the laws of Queensland and the Commonwealth of Australia, and the Purchaser submits to the jurisdiction of the Courts of that State.
- (k) Headings are for reference purposes only and do not affect interpretation of these Conditions.