

# freedom won AUSTRALIA

Unit 220, 17 Partridge Ave, Castle Hill, 2154, NSW  
ACN: 132 808 694 / T: + 61 (0)422 251 938 / E: sales@freedomwonaustralia.com

May 2023

## FREEDOM WON AUSTRALIA : STANDARD TERMS AND CONDITIONS OF TRADE

In these terms and conditions the goods mean the goods as indicated on any company forms, price list, quotation orders, delivery notes or invoices.

### 1. PRICES AND QUOTATIONS

- 1.1. The price of the goods sold or services rendered shall be the usual price as set out in the Freedom Won Australia price list at the time of the sale of the goods.
- 1.2. Freedom Won Australia has the right to change the prices of the goods from time to time on at least 2 (two) weeks' prior notice to the customer. Such amended prices shall not affect the price of any products which are the subject matter of any order which has already been placed by the customer with Freedom Won Australia, and which has been accepted in writing by Freedom Won Australia.
- 1.3. All quotes remain valid for 2 (two) weeks from the quote date unless otherwise stated on the quote. The validity of any quote is subject to availability.
- 1.4. Unless otherwise expressly stated, prices are exclusive of GST and freight, which shall be for the account of the customer.

### 2. PAYMENT

- 2.1. Payment is due immediately upon receipt of invoice, save if alternative payment arrangements have been agreed to in writing by Freedom Won Australia.
- 2.2. An order may only be considered firm and confirmed for the purposes of securing availability and lead times once the required payment has been made, save if alternative payment arrangements have been agreed to in writing by Freedom Won Australia.
- 2.3. The payment terms applicable are as noted on the quote and invoice, save if alternative payment arrangements have been agreed to in writing by Freedom Won Australia.
- 2.4. The customer has no right to withhold payment or make set offs or deductions from any payment due by it for any reason whatsoever. No extension of payment of any nature will be granted unless reduced to writing and signed by the customer and a duly authorised representative of Freedom Won Australia.
- 2.5. If any amount owed is not settled in full (a) on due date (b) on demand, Freedom Won Australia is entitled to, without prejudice to any of its rights to exercise its rights in terms of clause 6;
- 2.6. Should any amount not be paid by the customer on due date, the full outstanding amount in respect of all purchases by the customer shall become due and payable, and the customer shall be liable to pay interest in respect of amount unpaid at the rate of a 5% (five percent) above the prime overdraft rate of National Australia Bank Ltd on all overdue amounts nominal annual compounded monthly in arrear from due date until date of payment, calculated and payable monthly in advance.
- 2.7. Freedom Won Australia reserves the right to suspend service and repairs of goods including warranty services to a customer if any amount due by the customer is unpaid or overdue.

### 3. ORDERS

- 3.1. The customer accepts within 30 (thirty) calendar days of receipt of the goods at its premises that the services and goods were inspected and that the customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects<sup>1</sup>. For the purpose of clarity, International customers will have the right to notify Freedom Won Australia of any defects within 7 days from the date of unpacking such product at the installation site in the overseas country.
- 3.2. Orders may be sent to Freedom Won Australia in writing and/or verbally. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written

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<sup>1</sup> A "defect" is an abnormal imperfection in a product that (i) destroys or substantially impairs its utility or effectiveness for the purpose for which it is generally used; or (ii) renders it unfit for the special purpose for which it was intended to be used by the ultimate purchaser, provided that Freedom Won Australia had actual knowledge of that special purpose, such that a reasonable person with knowledge of the defect would not have purchased the product, taking account of (a) the class, category or type of product, where the abnormal attribute is one that a reasonable person would not expect to find in that class, category or type of product; and (b) the purpose for which it is generally used or a specific purpose for which it is sold and of which both the customer and Freedom Won Australia are or are deemed to be aware.

consent from Freedom Won Australia. Freedom Won Australia will not be responsible for any errors or misunderstandings occasioned by the customer's failure to make the order in writing. Freedom Won Australia may require the customer to confirm verbal orders in writing before acceptance of such orders by Freedom Won Australia.

- 3.3. Orders shall constitute irrevocable offers to purchase the goods in question at the usual prices of Freedom Won Australia as at the date when the customer places the order of the goods, and shall be capable of acceptance by Freedom Won Australia by the delivery of the goods, written acceptance or confirmation of the order. For the avoidance of doubt, Freedom Won Australia will accept or reject an orders within 5 (five) business days of receipt of such order. Should Freedom Won Australia fail to accept or reject any order within the aforementioned 5 (five) Business Day period, it will be deemed to have accepted this placed order.

#### **4. COLLECTION/DELIVERY**

- 4.1. Any collection note (copy or original) signed by the customer and/or its authorized representative and/or its nominated agent and held by Freedom Won Australia, shall be prima facie proof that the customer collected the product/s and accordingly that delivery was made to the customer. Freedom Won Australia shall not be obliged to establish the authority of any person sent by the customer, or purporting to be sent by the customer, to collect the products from Freedom Won Australia.
- 4.2. Freedom Won Australia shall be entitled to split the collection batches of the goods ordered in the quantities and on the dates it decides, with the prior consent of the customer, which consent shall not be unreasonably withheld.
- 4.3. The estimated lead time applicable to an order is as per that noted on the quote or invoice.
- 4.4. The customer shall be responsible for transport of the goods and indemnifies Freedom Won Australia against any claims of any nature that may arise after Freedom Won Australia has loaded the goods. Where Freedom Won Australia has loaded the goods onto the customer arranged transport, all handling and transport risks, revert to the customer the moment the goods have been placed onto the customers vehicle. In cases where Freedom Won Australia is unable to load the goods for reasons of weight – i.e. containers that require a crane – the customer is required to make all arrangements for loading. In such cases all handling risks transfer to the customer the moment the goods first leave the ground for the loading process.
- 4.5. Freedom Won Australia does not guarantee that the goods will be available for dispatch on any particular date and time, and the customer shall have no claim against Freedom Won Australia in respect of any loss occasioned by any reasonable delay in availability for collection of any goods ordered and/or services rendered, nor may the customer cancel any order by reason of such reasonable delay.
- 4.6. Freedom Won Australia will provide frequent updates to the customer on the status of the orders which it has placed, including the estimated completion dates for such orders on request, but no more frequently than every 2 (two) weeks.
- 4.7. All goods taken on an evaluation, approval or demonstration basis or all goods taken on consignment by the customer are deemed sold to the customer within 7 (seven) days of issue if not returned to Freedom Won Australia in a perfect condition in the original packaging and with all accessories and manuals intact.
- 4.8. The customer shall, and shall procure that its customers shall, comply with and conform to all applicable laws relating to the possession, use and maintenance of the products.

#### **5. OWNERSHIP AND RISK**

- 5.1. All possession of, and risk in and to all goods sold by Freedom Won Australia to the customer shall pass to the customer on collection thereof by the customer. Ownership in all goods sold and delivered shall remain vested in Freedom Won Australia until the full purchase price has been paid.
- 5.2. The customer shall fully insure the goods purchased from Freedom Won Australia under a product liability insurance policy for an insured amount which is acceptable to Freedom Won Australia, against loss or damage until the customer has paid the full purchase price for such goods. Pending payment to Freedom Won Australia for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods, shall be ceded to Freedom Won Australia and/or Freedom Won Australia shall be named as co-insured in this insurance policy/ies. The customer shall furnish Freedom Won Australia with a copy of the product liability insurance policy, so that Freedom Won Australia can provide the customer with its confirmation that it is satisfied with the insurer/s, the nature of the cover, the levels of the cover and the terms of the insurance policy. If an insured event occurs under the aforementioned insurance policy/ies, the customer shall notify Freedom Won Australia of such event within 5 business days of the occurrence thereof and will afford Freedom Won Australia an opportunity to participate in the claims process. The customer must not do or pursue any act, or permit or suffer any circumstances, by which the insurance policy may at any time become void or voidable, and the customer must always and at its own expense comply with the conditions of the insurance policy, including the requirements of the insurer to prevent the invalidation of the insurance policy or the prejudice of the rights of any of the insured parties thereunder.
- 5.3. The customer shall inform the landlord of the premises at which the goods are kept that such goods are the sole and absolute property of Freedom Won Australia until such time as the customer has paid the full purchase price to Freedom Won Australia.

## 6. BREACH OF CONTRACT

- 6.1. Save as specifically provided for in these terms and conditions, (i) in the event of a breach of these terms and conditions by the customer, should the customer fail to remedy such breach within 30 (thirty) calendar days after receipt of notice to that effect from Freedom Won Australia, or (ii) should the customer repeatedly breach this agreement in such manner that the customer's conduct is inconsistent with the intention or ability of the customer to carry out the terms of the agreement, or (iii) if the customer fails to pay any amount to Freedom Won Australia which is due and payable in terms of this agreement on the due date for such payment, or (iv) if the customer is sequestrated or placed under liquidation or enters into business rescue or performs any act of insolvency or enters into a compromise with its creditors or (v) fails to satisfy a judgement granted against it within 30 (thirty) calendar days of the date of judgement or within such longer period as may be permitted in terms of the judgement; or (vi) there is a change of control<sup>2</sup> in respect of the customer without notification to Freedom Won Australia in terms of clause 13.7, Freedom Won Australia shall be entitled without prejudice to its rights in law or in terms of this agreement:
- 6.1.1 to terminate any agreement between Freedom Won Australia and the customer; and
  - 6.1.2 to cancel any outstanding sales of products and the customer is obliged to return to Freedom Won Australia as soon as reasonably possible, or Freedom Won Australia shall be entitled to take possession of, any products delivered to the customer, and Freedom Won Australia is hereby irrevocably authorised to enter upon the customer's premises to take delivery of such products without a court order. The customer shall be obliged to ensure that in each contract which it concludes for the disposal of the products, provision is made for the assignment of the customer's rights and obligations thereunder to Freedom Won Australia at Freedom Won Australia's option in the event of a cancellation or termination of an agreement between Freedom Won Australia and the customer; or
  - 6.1.3 if Freedom Won Australia does not exercise its right to cancel outstanding orders in terms of clause 6.2, Freedom Won Australia shall provide the customer with a reasonable period of time (which period shall be no longer than 90 (ninety) days) within which to sell the customer's remaining stock of the products (and to comply with any obligations, the due date for performance of which falls during the aforementioned period from termination date). Should the customer wish to sell any such stock of the products to Freedom Won Australia, Freedom Won Australia shall be entitled to purchase such products at a price which is equal to the price at which the customer purchased such products from Freedom Won Australia, plus 5% (five per cent) of such price, as well as any reasonable shipping costs applicable to the transport of any such products to Freedom Won Australia, provided that such products are in the same condition as at the date on which they were sold by Freedom Won Australia to the customer.

## 7. LEGAL PROCEEDINGS

- 7.1. The laws of New South Wales and the Commonwealth of Australia govern this agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia and courts competent to hear appeals from those courts.
- 7.2. A certificate issued and signed by any director, member or manager of Freedom Won Australia, whose authority need not be proved, in respect of any indebtedness of the customer to Freedom Won Australia or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such goods were sold and delivered, shall be prima facie proof of any amount payable by the customer to Freedom Won Australia and the customer's indebtedness to Freedom Won Australia, including (but not limited to) provisional sentence and summary judgment and prima facie proof of delivery of the goods in terms of this contract.
- 7.3. A print out of computer evidence tendered by Freedom Won Australia shall be admissible evidence and the customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 7.4. The customer's address which appears in the Business Partner Application form shall be recognized as the customer's domicile for all purposes in terms of this contract whether in respect of the serving of any court process, notices that payment of any amount or communications of whatever nature.
- 7.5. In the event of the customer breaching any of its obligations and/or failing to make payment of any amount to Freedom Won Australia in time, the customer agrees to pay, and shall be liable to pay, all legal costs incurred by Freedom Won Australia in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees and air fares.
- 7.6. The customer agrees that neither Freedom Won Australia nor any of its employees will be liable for any negligent or innocent misrepresentations made to the customer, nor shall the customer be entitled to resile from these terms and conditions on those grounds.

## **8. ARBITRATION**

- 8.1. Freedom Won Australia may refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on the customer and Freedom Won Australia.
- 8.2. Resolution of dispute by negotiation
  - During the five (5) Business Days after the date the Dispute Notice is given each party must:
  - prepare, and exchange with the other parties, a brief statement setting out its own position on the dispute and its reasons for adopting that position; and
  - give to the other parties any information they may reasonably require to consider the issues relevant to the dispute.
  - Within 10 Business Days after the date the Dispute Notice is given, the chief executive officer of each party (or the party in person, if the party is a natural person) must meet and use their best endeavours to resolve the dispute, each having full authority to do so.
  - In the absence of agreement between the parties as to the time and venue for the meeting, the meeting must take place at the offices of the Supplier at 8.30am on the last Business Day of the time period referred to in clause 13.3(b).
- 8.3. Resolution of dispute by expert
- 8.4. If the dispute is not resolved under this clause 8 it must be submitted to an expert operating in accordance with, and subject to, The Resolution Institute Expert Determination Rules.

## **9. RETURNED GOODS**

- 9.1. Freedom Won Australia is under no obligation to accept the return of goods, but the customer may apply to Freedom Won Australia for permission to return goods to Freedom Won Australia and if written permission is given - such goods must be returned to the offices of Freedom Won Australia at the customer's own cost. Where the return of goods to the offices of Freedom Won Australia is not feasible taking into account considerations such as the distance between the location of the goods and the offices of Freedom Won Australia and the fact that the goods have been installed and/or the weight of the goods, Freedom Won Australia may arrange, at the customer's cost, for the goods to be investigated and inspected by Freedom Won Australia at the place at which the goods are located. Freedom Won Australia shall reimburse the customer for Freedom Won Australia's investigation and inspection costs, including travel, if the customer's claim under the warranty for such goods is approved by Freedom Won Australia. Freedom Won Australia undertakes after investigation and inspection to replace such goods with items of the same or similar specification, or to refund the customer the price paid by the customer for such goods, should the warranty requirements be met.
- 9.2. Upon approval of a warranty claim Freedom Won Australia will refund the customer for transport expenses according to standard tariffs.
- 9.3. Freedom Won Australia reserves the right to offset the value of any goods accepted for return against any amounts due by the customer.
- 9.4. In the event of a cancellation of an order by the customer or goods accepted for return by Freedom Won Australia, Freedom Won Australia reserves the right to charge a handling fee on the value of the order cancelled or goods returned

## **10. WARRANTIES AND INDEMNITY**

- 10.1. Freedom Won Australia branded products may be guaranteed under the Freedom Won Australia product specific warranties only (available on request), and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Freedom Won Australia.
- 10.2. Products branded by other parties shall carry only the applicable manufacturer's warranty and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Freedom Won Australia.
- 10.3. Freedom Won Australia will not be liable to the customer for any loss, damage or expense of any nature, whether direct, special, indirect or consequential, including but not limited to loss or profits arising out of Freedom Won Australia's performance or customers' use of the goods or services rendered.
- 10.4. The customer indemnifies and holds Freedom Won Australia (including its employees, subcontractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against Freedom Won Australia by any third party arising from or in connection with any defect, latent or otherwise on any goods supplied and/or services rendered by Freedom Won Australia.

## 11. REPAIRS

- 11.1. Freedom Won Australia's liability in terms of a manufacturer's warranty is restricted to, in Freedom Won Australia discretion, the cost of repair or replacement of defective goods or services or the granting of a credit in respect of goods which are proved by the customer (i) not to conform to the technical specifications for those goods or services or (ii) to contain latent defects<sup>3</sup> in material and workmanship, during the period which is provided for in the specification sheet applicable for the relevant product, which specification sheet shall be available on Freedom Won Australia's website.

## 12. DISCLOSURE OF PERSONAL INFORMATION

- 12.1. The customer understands that the personal information given in the Business Partner Application form may be used by Freedom Won Australia for the purposes of assessing credit worthiness.
- 12.2. Freedom Won Australia has the customer's consent at all times to contact and request information from any persons, credit bureau or businesses including those mentioned in the Business Partner Application form and to obtain any information relevant to the customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time customer has dealt with each supplier; type of goods purchased and manner and time of payments.
- 12.3. Information given in confidence to Freedom Won Australia by a third party on the customer will not be disclosed to the customer.
- 12.4. The customer hereby consents to and authorises Freedom Won Australia at all times to furnish credit information concerning the customers dealing with Freedom Won Australia to a credit bureau and to any third party seeking a trade reference regarding the customer in his dealings with Freedom Won Australia.

## 13. GENERAL

- 13.1. Freedom Won Australia reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the customer from the time that the amended or varied terms are published by Freedom Won Australia.
- 13.2. This contract represents the entire agreement between Freedom Won Australia and the customer, unless, in addition, a separate distributor agreement has been concluded between Freedom Won Australia and the customer, and shall govern all future contractual relationships between Freedom Won Australia and the customer.
- 13.3. No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of Freedom Won Australia. No agreement, whether consensual or unilateral or bilateral, purporting or obligating Freedom Won Australia to sign a written agreement to amend, alter, vary, delete, add to or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of Freedom Won Australia.
- 13.4. No relaxation or indulgence with Freedom Won Australia may grant the customer shall prejudice or be deemed to be a waiver of any of Freedom Won Australia's rights in terms of these terms and conditions.
- 13.5. The customer shall not cede its rights nor assign its obligations under these terms and conditions without the prior written consent of Freedom Won Australia (which consent shall not be unreasonably withheld).
- 13.6. Freedom Won Australia shall at any time in its sole discretion be entitled to cede all or any of its rights, or delegate any of its obligations, under these terms and conditions to any third party without prior notice to the customer.
- 13.7. The customer undertakes to notify Freedom Won Australia within 7 (seven) days of any change of address or change of control<sup>4</sup> in respect of the customer.
- 13.8. The headings in this document included for convenience and are not to be taken into account for the purpose of interpreting this contract.
- 13.9. Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 13.10. The customer undertakes to inform Freedom Won Australia in writing at least 14 (fourteen) days prior to the intended selling or alienating of the whole of or any part of the customer business and failure to do so will constitute a material breach of this contract entitling Freedom Won Australia to cancel the contract without further notice to the customer, and if the result of such sale or alienation is such that the customer ceases to function as a going concern, or to conduct its operations in the ordinary course, Freedom Won Australia shall be entitled to terminate this agreement.

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<sup>3</sup> "latent defect" means a defect which is not discoverable (i) on careful and reasonable external inspection by a normally intelligent person or (ii) by a normal trial run, and of which the customer was, at the relevant time, not aware.

DATED AT [INSERT] ON THIS [ INSERT ] OF [INSERT ] 2024.

Signature: \_\_\_\_\_

For and on behalf of the Customer, namely, [INSERT]

Company Registration number: [INSERT]

Duly represented by:

Name: [INSERT]

Designation: [INSERT]

E-mail: [INSERT]

Contact number: [INSERT]