

## TERMS AND CONDITIONS OF SALE

These Conditions do not affect the rights, entitlements and remedies conferred on a Customer who is a Consumer under the Trade Practices Act or any relevant Legislation for the State of South Australia (including but not necessarily limited to the Consumer Transactions Act and Fair Trading Act).

### 1. INTERPRETATION

Unless otherwise inconsistent with the context the following words will have the following meanings:

“C&A” means Chains & Accessories (Sales) Pty. Ltd. trading as C&A Complete Drive Solutions

“Conditions” means these Conditions of Sale, which are printed on the reverse side of the Invoice, as amended from time to time.

“Customer” means the person, firm or entity referred to in the Invoice.

“Price” means the price referred to in the Invoice.

### 2. PAYMENT

Payment of the price for goods sold by C&A to the Customer shall be tendered no later than 30 days from the date of sale, except where otherwise agreed.

2.1 Payment shall be deemed to have been made when

2.1.1 in the case of cash: on the date of its tender or

2.1.2 in the case of a cheque (bank or otherwise) or other negotiable instrument: (electronic fund transfer) on the date upon which such cheque or other negotiable instrument is negotiated and cleared by C&A bankers.

2.2 Time shall be of the essence in relation to the Customer’s obligation to make payment for the goods.

2.3 In the event of non payment by the Customer in accordance with these Terms and Conditions, then C&A may require the Customer to reimburse C&A any expenses, cost or disbursements incurred by the Supplier in recovering any outstanding monies including debit collection agency/solicitor and in any event the commission is not to exceed 18% of the debt value, plus out of pocket expenses.

### 3. G.S.T.

A G.S.T. is imposed on all goods and services supplied by C&A (in accordance with legislation). The customer is obliged to pay C&A the additional G.S.T. amount upon receipt of a valid tax invoice. Payment of the additional amount will be made at the same time as payment for the taxable supply in accordance with Clause 2.

### 4. DELIVERY

Goods will be delivered by the most economical means as determined by us, unless the Customer nominates a specific carrier. All freight charges and other delivery costs including insurance premiums shall be at the cost of the Customer, unless the parties shall otherwise agree. If special delivery methods or specific carriers are nominated by the Customer then the Customer will be liable for such charges.

### 5. RISK

The risk in the goods passes to the Customer upon delivery to the carrier commissioned by the Customer or upon delivery to the carrier commissioned by C&A. The Customer must ensure that adequate insurance protection is obtained.

### 6. CLAIMS

6.1 C&A shall not be obliged to recognise, and otherwise shall have no legal responsibility for any claims unless the Customer has given notice to C&A within 14 days of the date on which the goods in question were delivered to or collected by the Customer. No credit will be given should the Customer return any such goods after that date, except at the discretion of C&A

6.2 Should the Customer consider that it has any claim against C&A it shall:

6.2.1 immediately upon becoming aware of circumstances giving rise to such a claim notify C&A of the nature of the claim, quoting the original Invoice number and date, and

6.2.2 allow C&A, its servants or agents full and free access to the goods in relation to which the claim is made for the purpose of conducting such test as C&A may in its absolute discretion consider necessary to determine whether the claim is justified.

- 6.3 The Customer acknowledges and agrees with C&A that:  
The methods and Conditions of application and use of the goods supplied are beyond the control of C&A, and in particular C&A takes no responsibility for the installation, repair or maintenance of any goods supplied by C&A but which is undertaken by a third party.
- 6.4 Except for the return of faulty or incorrectly supplied goods, a 20% restocking fee will apply to all goods returned (in circumstances where C&A is obliged to accept a return of the goods under Clause 7). Specially manufactured goods, modified goods or "buy in goods" which have been specifically purchased for the customer, will not be accepted for return except at the absolute discretion of C&A. Where applicable, costs incurred by C&A in the return of items to the manufacturer will be passed on to the purchaser. All goods returned shall be in their original containers and should not be shop soiled, obsolete or damaged as such goods may be rejected or credited at a reduced rate.
- 6.5 Goods returned to C&A must be sent F.I.S. with adequate insurance cover.

## **7. TITLE**

- 7.1 Title in the goods will remain vested in C&A and shall not pass to the Customer until payment for the goods has been made in full and until all other sums owing by the Customer to C&A under any other contract for the sale of goods have been paid to C&A.
- 7.2 When C&A has not been paid in accordance with the provisions of these Conditions and the Customer has received delivery of the goods, then, until disposed of by the Customer, the Customer agrees to keep the goods as a fiduciary for C&A and to store the goods in a manner which clearly shows the ownership of C&A.
- 7.3 The provisions of the sub-clause shall apply notwithstanding any agreement whether subsequent to this agreement or not, between the parties under which C&A gives the Customer credit.

## **8. WARRANTY**

All products sold by C&A are warranted to be free of faults and will perform the job for which they have been designed. This warranty does not cover goods which have been misused, modified, abused, used incorrectly, or have been subject to normal wear and tear, nor is any warranty given in respect of any of the matters referred to in Cause 6.3 hereof. C&A's liability is limited to the replacement of the item or refund of the price. Some of the products that we sell have an additional warranty provided by the manufacturer and this should be questioned and clarified at the time of purchase.

## **9. GENERAL**

- 9.1 These Conditions contain the entire understanding of the parties to the exclusion of any and all prior agreements or understandings either oral or written, provided that if in any particular case there are inconsistent terms of agreement then the terms of agreement with prevail over these Conditions to the extent of any inconsistency. No subsequent variation of these Conditions shall have effect unless expressly agreed to in writing by both parties.
- 9.2 These Conditions shall be governed by the laws applicable in the State of South Australia as in force from time to time.
- 9.3 If any of these Conditions, not being of a fundamental nature, is held to be illegal or unenforceable, the validity and enforceability of the remainder of these Conditions shall not be affected.
- 9.4 No waiver, consent or indulgence made or given by C&A in relation to any breach or failure in the Customer's performance shall be constructed as a variation of these Conditions or as a waiver of C&A's rights in the event that such breach or failure continues or recurs.

(EFFECTIVE 1<sup>ST</sup> JULY, 2000)