



DRAGON VENT

## Standard Terms and Conditions of Trade of

### Dalzara Pty Ltd (ACN 613 456 947) trading as Dragon Vents Australia (DVA)

The following standard terms and conditions (**Standard Terms**) apply to all supplies of goods and/or services by DVA to you, unless DVA's Authorised Representative agrees (in writing) to the contrary.

#### 1. CONTRACT

- 1.1 By placing an order with DVA (whether through DVA's website at <http://dragonventsaustralia.com.au> or other means) (**Order**), you are making an offer to enter into a binding contract with DVA to purchase the Goods (**Offer**).
- 1.2 If DVA accepts the Offer, a legally binding contract (**Contract**) between DVA and you is formed.
- 1.3 The Contract comprises the following:
- (a) Standard Terms;
  - (b) The Order;
- 1.4 Any terms and conditions that you include in the Order (or in any other written communications to DVA) will be of no legal effect and do not form part of the Contract, unless DVA's Authorised Representative expressly agrees in writing that your terms and conditions will override these Standard Terms.

#### 2. PRICE

- 2.1 Subject to clause 2.3, the Price is the price of the Goods as indicated by DVA in the Order or in DVA's invoice to you.
- 2.2 Unless otherwise stated, the Price does not include:
- (a) GST;
  - (b) bank or credit card transaction costs;
  - (c) delivery charges.
- 2.3 The Price is based on your requirements in the Order. The Price is subject to increases at DVA's discretion in any of the following situations:
- (a) You propose to vary or change the Order;
  - (b) DVA varies the Order due to inaccurate or incomplete information or requirements that you had provided to DVA.

#### 3. PAYMENT

- 3.1 You must pay DVA for the Goods before DVA processes the Order.
- 3.2 You may pay using credit card, Paypal or any other payment method specified by DVA.
- 3.3 DVA will not deliver the Goods before it receives full payment from you.
- 3.4 You must make all payments to DVA free from any deductions, set-off or claim of any kind whatsoever.

#### 4. DELIVERY

- 4.1 DVA will deliver the Goods to the Delivery Address.
- 4.2 DVA may at its sole discretion subcontract the delivery of the Goods to a contractor or agent.
- 4.3 You will bear all delivery and freight costs.
- 4.4 Delivery of the Goods is effected when DVA (or DVA's freight carrier or agent) hands the Goods over to you or to

your representative. You also authorise DVA (or DVA's freight carrier or agent) to leave the Goods unattended at the Delivery Address if you or your representative are not present at the Delivery Address at the time of delivery. If you request for a re-delivery, you agree to bear any additional delivery cost or freight cost that DVA incurs.

4.5 DVA (or its freight carrier or agent) may, but is not obliged to obtain a written acknowledgement of delivery from you or your representative when that person takes delivery of the Goods.

4.6 You must inspect the Goods on delivery or within 3 days after the delivery. You must notify DVA in writing within 3 days from the date of delivery of any damage, defect or non-compliance of the Goods with the Contract. If you fail to notify DVA within the specified time, you are deemed to have accepted the Goods.

4.7 If the Goods do not comply with the Contract, DVA will at its sole discretion elect whether to replace or to rectify the Goods.

#### 5. DELAYS

5.1 DVA will use best endeavours to deliver the Goods within 5 to 10 Business Days from the date of the Order or the date on which DVA receives full payment for the Goods, whichever is later.

5.2 DVA will use reasonable endeavours to notify you if it becomes aware of any possible delay in the delivery of the Goods.

5.3 Any time or date for delivery given by DVA (including the estimated timeframe in clause 5.1) is intended only as an estimate, and may be subject to delays caused by DVA's suppliers, freight carrier, or any other cause beyond the reasonable control of DVA. DVA will not be liable to you for any loss or damage resulting from late delivery of the Goods. DVA's delay will not entitle you to treat the Contract as repudiated or to terminate this Contract.

#### 6. VARIATIONS

6.1 If at any time before DVA delivers the Goods to you, you request DVA to vary the Goods or your requirements (whether as to the nature, quality or quantity of the Goods) (**Proposed Variation**), DVA may but is under no obligation to accept the Proposed Variation. If DVA agrees to consider the Proposed Variation, it will:

- (a) confirm with you whether the Proposed Variation is feasible and the effect of the Proposed Variation on the Delivery Date and the Price; or
- (b) notify you that the Proposed Variation is not feasible and DVA's reasons.

6.2 DVA is entitled to be paid the agreed amount for performing the Proposed Variation. You must comply with

clause 3.1 before DVA is obliged to perform the Proposed Variation.

## 7. INSTALLATION

- 7.1 DVA will provide a list of preferred installers for each State and Territory of Australia who can assist you in the installation of the Goods.
- 7.2 You must contact the installers yourself and organise the installation of the Goods.
- 7.3 You are liable to the installer for the installation fees.
- 7.4 The installer is responsible to you for the proper installation of the Goods or any warranty issues.

## 8. WARRANTY

- 8.1 Subject to clauses 8.3 and 8.4, DVA warrants that the Goods supplied will be of acceptable quality for a period of 24 months from the date of delivery.
- 8.2 The warranties in clause 8.1 do not apply in the following situations:
- (a) Defects or damage to the Goods through:
    - (i) accident, misuse or abuse whether caused or partly caused by you or by any other person;
    - (ii) wilful act by you or any other person;
    - (iii) normal wear and tear;
    - (iv) exposure to external conditions that are not suitable to the Goods;
    - (v) acts of God or fire;
    - (vi) modification, alteration or interference with the Goods without DVA's approval;
    - (vii) failure to properly maintain the Goods;
    - (viii) repairs, servicing, modification or other works carried out on the Goods by a third party without DVA's approval;
    - (ix) use of parts or components for the Goods which are not approved by DVA;
    - (x) incorrect use of the Goods or failure to follow DVA's (or the original manufacturer if relevant) operating guidelines, instructions or manual; or
    - (xi) continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.

8.3 If you have grounds to believe that the Goods do not comply with the warranties given in clause 8.1, you must within a reasonable time (in any event within 14 days) after discovering the alleged defect, notify DVA in writing of the nature of the defect. DVA will investigate and determine the cause of the alleged defect or fault.

- 8.4 If DVA determines that the alleged defect or fault is under warranty, DVA's liability will be limited, at DVA's option, to one or more of the following:
- (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (d) the payment of the cost of having the Goods repaired.

8.5 If the alleged defect or fault is not under DVA's warranty, DVA will charge you to rectify the defect at its then current rates or to supply a replacement Good to you at DVA's prevailing prices.

## 9. RETURN OF GOODS

- 9.1 Other than a breach of warranty by DVA under clause 8, DVA may but is under no obligation to accept the return of the Goods.

9.2 If DVA accepts the return of the Goods, it is conditional upon the following:

- (a) You return the Goods to DVA's premises at your expense;
- (b) the Goods are:
  - (i) undamaged;
  - (ii) unsoiled;
  - (iii) in its original packaging;
  - (iv) in a condition which DVA considers satisfactory for resale;
  - (v) subject to any other terms that DVA requires.
- (c) the Goods are not custom made goods; and
- (d) the Goods have not been installed.

9.3 If DVA accepts the return of the Goods, it will either give you the refund, a credit note or allow you to exchange the Goods for some other goods. DVA reserves the right to charge you a **restocking fee of 15%** of the Price of the relevant Goods.

9.4 The Goods are not returnable after they have been installed.

## 10. INTELLECTUAL PROPERTY

- 10.1 DVA owns all Intellectual Property Rights in the Goods and in DVA's Technical Materials.
- 10.2 You must not, and must not procure or permit any person to re-engineer, de-compile, reproduce, copy any of DVA's Intellectual Property that subsists in the Goods or otherwise exploit DVA's Intellectual Property or deal with DVA's Intellectual Property in a manner that is not contemplated by this Contract.

## 11. TITLE & RISK

- 11.1 Title and risk in the Goods passes to you from the time you, representative or agent takes custody, possession or control of the Goods from DVA.

## LIMITATION OF LIABILITY

- 11.2 Subject to any warranties which are implied by law and cannot otherwise be excluded, DVA excludes all other conditions, warranties or guarantees or liability in connection with this Contract or DVA's supply of the Goods.
- 11.3 Subject to clause 11.1, to the extent DVA's liability cannot be excluded, DVA's liability will be limited to the express warranties in clause 8.1 and DVA's maximum liability under this Contract (including negligence claims) is capped at the price of the specific Goods and/or Services that gave rise to your loss or damage.
- 11.4 Under no circumstances will DVA be liable to you for any Consequential Loss, damage to property or injury to persons.
- 11.5 If you allege DVA's Goods have caused any loss or damage to your property, you agree that DVA may appoint an independent building inspector to carry out an inspection, at your expense. The inspector's findings and report will be final and binding on the Parties.

## 12. INDEMNITY

- 12.1 You will indemnify DVA against any claim, loss, damage or expense (including legal costs on a full indemnity basis) that DVA incurs or suffers directly as a result of your breach of any term or warranty in this Contract.

## 13. ACCESS TO SITE

- 13.1 If DVA requires access to the site or your premises for the purposes of this Contract, you must provide DVA, its employees, contractors or agents (**Personnel**), reasonable and safe access to the site or premises.

- 13.2 You indemnify DVA for any loss or damage suffered by DVA (and DVA's Personnel) arising from or in connection with DVA or DVA's Personnel's attendance at the Site or your premises, to the extent caused or contributed by your wilful acts or negligence.
14. **DEFAULT ON PAYMENT**
- 14.1 If in the event DVA has delivered the Goods to you and you default in payment of DVA's invoice, without limiting DVA's rights and remedies, you agree to the following:
- (a) You grant DVA (and DVA's employees, agents or contractors) access to your premises (or to procure access for DVA to the site where the Goods are located) to seize the unpaid Goods;
  - (b) You agree that DVA may do whatever is reasonably necessary for DVA to seize the unpaid Goods (including but not limited to dismantling, disassembling or detaching the unpaid Goods from other goods or equipment to which the unpaid Goods are installed or affixed);
  - (c) You agree to pay all the enforcement costs incurred by DVA and also indemnify and hold DVA harmless against any claims by any third party as a result of DVA's exercise of its right pursuant to this clause 14.1.
- 14.2 DVA may apply any monies received from you (including any proceeds of sale from the disposal of any Goods that DVA seized from you through enforcement actions) towards any unpaid invoice, DVA's enforcement costs or any other claims against you (e.g. indemnities) in accordance with this Contract, as DVA determines at its absolute discretion.
15. **PRIVACY ACT**
- 15.1 You consent to receive regular communications (whether mailers, electronic mails, electronic text messages or via any other media including social media) from DVA in relation to product information, marketing materials or information about DVA's goods and services.
- 15.2 If you wish to opt out from receiving these communications, please contact DVA (please refer to DVA's website at <http://dragonventsaustralia.com.au> for its contact details).
16. **PPSA**
- 16.1 If DVA agrees to supply you the Goods on a retention of title arrangement, to secure your payment obligations under clause 3, you grant to DVA a Purchase Money Security Interest in the Goods (and in any other goods that DVA supplies to you from time to time). DVA's Security Interest will attach to any Proceeds or any Accessions.
- 16.2 DVA may register its Security Interests under this Contract pursuant to the PPSA and you consent to the Registration.
- 16.3 You agree that this Contract constitutes a Security Agreement for the purposes of the PPSA.
- 16.4 You agree to sign any documents and provide necessary assistance and information to DVA to enable DVA to perfect its Security Interest by Registration.
- 16.5 You waive the right to receive notice of any financing statement registered by DVA.
- 16.6 You must not dispose of the Goods to which DVA has a Security Interest other than in the ordinary course of your business.
- 16.7 While DVA retains title to the Goods, you must not subject the Goods to any person's Security Interest or to permit a third party from registering a Security Interest over the Goods, unless you have received DVA's prior written consent.
- 16.8 DVA may apply any amounts that you have paid under this Contract to any of your outstanding invoices in DVA's absolute discretion.
- 16.9 You agree to notify DVA in writing of any change to your details set out in this Contract, within 5 days from the date of such change.
17. **GENERAL**
- 17.1 **Governing Law and Jurisdiction**
- (a) The Parties agree that this Contract shall be governed by and construed in accordance with the Laws of Western Australia.
  - (b) The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.
- 17.2 **Notices**
- Any notice shall be given by sending the notice by registered mail, courier, fax or by email to the address of the Party as stated in the Contract or to such other address as such Party may have notified in writing to the other for such purposes.
- 17.3 **Assignment and Subcontracting**
- DVA may assign or subcontract any or all rights and obligations under this Contract to another person.
- 17.4 **Severability**
- In the event that any provision of this Contract is declared invalid or unenforceable by any court or body of competent jurisdiction or under any law, regulation or order that may be applied to the Contract as well as for any other reason, such provision shall be void and unenforceable only in this respect and the validity and enforceability of any other provision of this Contract shall not be affected.
- 17.5 **Amendments**
- DVA may amend, vary or modify these Standard Terms at any time. Any variation will take effect from the date on which DVA gives notice of the variation to you.
- 17.6 **Entire Agreement**
- This Contract constitutes the entire agreement and understanding of the Parties, and supersedes all prior negotiations, understandings and representations, whether written or oral, of the Parties with respect to the subject matter of this Contract.
- 17.7 **Waiver**
- The waiver by a Party at any time, for non-compliance by the other Party with a provision of this Contract, shall never be construed as a waiver by such Party of any subsequent execution of that provision or a waiver by such Party of the execution of any other provision of the Contract.
- 17.8 **Further Assurances**
- Each Party must do all things, and must ensure that its officers, employees or representatives do all things reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Contract and the rights and obligations of the Parties.
- 17.9 **Counterparts**
- This Contract may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- 17.10 **Force Majeure**
- (a) DVA is not liable for failure to perform the Contract during the time and to the extent that such

performance is prevented, wholly or substantially, by Force Majeure.

- (b) DVA may terminate the Contract by giving a written notice to you if the Force Majeure event continues for more than 60 days. DVA is not liable to you for any loss or damage that you suffered as a result of a Force Majeure event or DVA's termination of the Contract under this clause 17.10(b).
- (c) Upon DVA's termination under clause 17.10(b), you must immediately pay for any Goods that DVA has supplied to you prior to the date of termination.

## 18. DEFINITIONS

For the purposes of this Contract, the following terms in this document have the meanings below:

**"Consequential Loss"** means any one or more of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the preceding types of loss arising from an interruption to a business or activity.

**"Delivery Address"** means the address that you nominate for DVA to deliver the Goods to.

**"Delivery Date"** means the date of delivery of the Goods as agreed or specified by DVA.

**"DVA"** means Dalzara Pty Ltd (ACN 613 456 947) trading as Dragon Vents Australia, a corporation registered in Australia.

**"DVA's Authorised Representative"** means a director, officer or chief executive officer of DVA.

**"Force Majeure"** means any event or circumstance beyond the reasonable control of a Party including but not limited to acts of God, wars, riots, strikes, lock-outs, embargos, trade disputes, labour disturbances, breakdown of plant or machinery, accidents, storm, fire, floods, difficulties in obtaining materials, unavailability of communications network or infrastructure from third party network providers, transport or labour or any other circumstances affecting the supply of the Goods.

**"Goods"** mean the goods to be supplied by DVA pursuant to this Contract.

**"Intellectual Property"** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**"Intellectual Property Rights"** means all copyright and analogous rights, all rights in relation to patents, inventions, registered and unregistered trademarks, registered designs, source code, Confidential Information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.

**"Personnel"** means DVA's directors, officers, employees, agents or contractors.

**"Price"** means the prices of the Goods.

**"Purchase Money Security Interest", "Proceeds", "Register", "Registration", "Security Agreement" and "Security Interest"** have the meanings given by the PPSA.

**"Site"** means the site or place where the Goods will be installed.

**"Standard Terms"** means DVA's general terms and conditions of sale in this document.

**"Technical Materials"** include designs, drawings, plans, product manuals, installation manual, DVA's operating manual for the Goods.

## 1. INTERPRETATION

In this Contract, unless the context indicates a contrary intention:

- (a) Headings are for convenience only and do not affect the interpretation of this Contract;
- (b) An obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) A reference to "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) A reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) A reference to a document (including this Contract) is to that document as varied, novated, ratified or replaced from time to time;
- (f) A reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) A word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) A reference to a Party, clause, schedule, exhibit, attachment or annexure is a reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Contract, and a reference to this Contract includes all schedules, exhibits, attachments and annexures to it;
- (i) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation;
- (k) The currency for the purposes of this Contract is the Australian dollar (AUD) unless DVA's quote or proposal indicates otherwise.