

# Safety and Mobility Pty Ltd – Terms and Conditions of Sale

## 1. DEFINITIONS

In these terms and conditions, unless the context otherwise requires:-

- 1.1. "GST" means Goods and Services Tax.
- 1.2. "Safety & Mobility" means Safety and Mobility Pty Ltd (ACN 123 981 402 and ABN 52 123 981 402).
- 1.3. "the Customer" means any person, company or business entity to which Safety & Mobility sells or supplies, or proposes to sell or supply, Goods or Services.
- 1.4. "the Goods" means the goods supplied or sold by Safety & Mobility to the Customer from time to time.
- 1.5. "the Services" means services provided by Safety & Mobility.
- 1.6. "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time.

## 2. ACCEPTANCE

- 2.1. Any orders or instructions received by Safety & Mobility from the Customer for the supply of Goods and/or services or the client's acceptance of goods or services supplied by Safety & Mobility shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Despite any other clause, should Safety & Mobility be unable to fulfil an order for whatsoever reason then Safety & Mobility may cancel such order and refund any funds paid with each party having no legal recourse against the other arising from the cancellation.

## 3. PRICES

All prices indicated by Safety & Mobility, unless otherwise stated, are; listed in Australian dollars; include GST where applicable but exclude freight and handling; and subject to change without notice.

## 4. PAYMENT TERMS

- 4.1. Time for payment of goods and/or services purchased from Safety & Mobility is at the time of order unless otherwise agreed in writing.
- 4.2. Payment may be made by credit card, cheque or direct transfer. Where payment is made by Credit card, at our discretion, we may charge a surcharge provided always we will notify you of any surcharge prior to taking a credit card payment.
- 4.3. Safety & Mobility reserves the right to grant credit terms to approved Customers upon such terms and conditions in Safety & Mobility's absolute discretion.
- 4.4. The Customer shall not be entitled to retain or set off any money owing to Safety & Mobility despite any default or alleged default by Safety & Mobility.
- 4.5. If payment of any amount owing in this contract is not paid on time, the Customer shall pay interest to Safety & Mobility on any amount owing at the rate of 2% above the Commonwealth Bank of Australia Business Overdraft Rate.
- 4.6. The Customer must pay to Safety & Mobility without deduction, set-off or counterclaim all monies owing to Safety & Mobility.
- 4.7. Any Customer payment will be applied in order against interest, collection costs, administrative and legal costs then against other amounts owing pursuant to this contract.

## 5. DELIVERY

- 5.1. The Goods shall be supplied subject to availability and will be delivered to the Customer's address as advised at the time of the order or as otherwise notified to Safety & Mobility in writing prior to dispatch.
- 5.2. Unless otherwise agreed in writing, all freight and delivery fees are at the Customer's expense.
- 5.3. Unless otherwise specified by the Customer, Safety & Mobility will use its regular courier, freight company or Australia Post at its sole discretion and will invoice the Customer for all delivery charges.
- 5.4. From the time of dispatch from Safety & Mobility's premises the risk of any loss, damage or deterioration of the Goods for whatever cause shall be borne by the Customer.

## 6. RETURNS

- 6.1. Returns for credit or exchange will only be accepted within 7 days from date of invoice. A restocking fee may apply. Credit or exchange for goods returned after this period is at Safety & Mobility's discretion.

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- 6.2. Returned goods will only be accepted for credit or exchange if the goods are unused, undamaged and in a resalable condition complete with original packaging and with all product documentation included. Due to our infection control policy, we do not accept change of mind returns.
- 6.3. Due to our infection control policy, we do not accept change of mind returns. Change of Mind returns and exchanges will not be provided on the following types of goods unless the product fails to meet a consumer guarantee under Australian Consumer Law. This includes but is not limited to items in the following categories:
- Cushions/Pillows
  - Clothing/Incontinence Wear
  - Slings
  - Daily Living Aids
  - Bathroom/Toilet Aids
  - Bedroom Equipment and Aids
  - Personal Protective Equipment/Disposable Infection Control Products
  - Mobility Aids
  - Fall Prevention Aids
- 6.4. Goods must be returned at the Customers expense and prior to return a "Return Authorisation Number" (RAN) may be required to be obtained from Safety & Mobility and this number should be clearly marked on the returned package.
- 6.5. All goods specifically manufactured or ordered for the Customer will not be returnable except due to defect unless otherwise agreed to in writing.

### 7. **PRIVACY**

Safety & Mobility is committed to providing quality services to you and our Privacy Policy outlines our ongoing obligations to you in respect of how we manage your Personal Information. We have adopted the National Privacy Principles (NPPs) contained in the Privacy Act 1988 (Cth) (the Privacy Act). The NPPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information. A copy of the Australian Privacy Principles may be obtained from the website of The Office of the Federal Privacy Commissioner at [www.privacy.gov.au](http://www.privacy.gov.au).

### 8. **WARRANTY**

- 8.1. Notwithstanding anything herein Safety & Mobility warrants that the Goods and Services provided by Safety & Mobility are free from defective design, materials, and workmanship and are fit for the purpose they are intended for a period from the date of Safety & Mobility's original invoice:
- (a) 12 months in the case of Goods unless otherwise stated; and
  - (b) 3 months in the case of Services ie spare parts and labour.
- 8.2. Acceptance of a warranty claim and decision to repair or replace the damaged or defective Goods or Services is at the sole discretion of Safety & Mobility.
- 8.3. When making a claim, the Customer must provide to Safety & Mobility;
- (a) Safety & Mobility's original invoice;
  - (b) a description of the problem or defect including where able photos or evidence of the problem or defect;
  - (c) the damaged or defective Goods, returned at the Customer's cost.
- Where a claim is accepted, Safety & Mobility will repair or replace the defective Goods and return the goods to the Customer by economy freight at Safety & Mobility's expense.
- 8.4. In the case of Services, Safety & Mobility will provide the equivalent Service again or pay for an equivalent Service to the same cost provided to the customer by a third party nominated by Safety & Mobility.
- 8.5. Warranties given exclude claims for or damage resulting from: fair wear and tear, misuse including incorrect or unapproved accessories or consumables, wilful damage, use beyond specification or design, unauthorised alterations, additions or tampering of the Goods, events beyond the control of Safety & Mobility.

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### 9. LIABILITY OF SAFETY & MOBILITY

- 9.1. Safety & Mobility will not be liable for any indirect, incidental or consequential damages or loss including but not limited to loss of income, loss of use, loss of property, loss of business profits howsoever arising and whether caused by tort (including negligence) breach of contract or otherwise.
- 9.2. To the extent permitted by law, Safety & Mobility will not be liable for any damage or injury caused by the misuse of products purchased from Safety & Mobility.
- 9.3. To the extent Safety & Mobility may be liable for a breach of a condition of the Competition and Consumer Act 2010 Safety & Mobility's sole liability for breach of any such condition, warranty or other obligation, shall be limited to:-
  - (a) the replacement of the Goods or Services; or
  - (b) the supply of equivalent goods or services; or
  - (c) payment of the cost of replacing the Goods or Services or acquiring equivalent goods; or
  - (d) the repair of the Goods or payment of the cost of having the Goods repaired, at Safety & Mobility's discretion.
- 9.4. Safety & Mobility will not be liable for any delay in performing any of its obligations under these terms and conditions if such delay arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other circumstances beyond the control of Safety & Mobility.

### 10. RETENTION OF TITLE TO GOODS AND PPSA

- 10.1. Title to Goods sold by Safety & Mobility to the Customer will not pass to the Customer until full payment in cleared funds is received by Safety & Mobility for those Goods.
- 10.2. Until such time as title to Goods passes to the Customer, the Customer:
  - (a) is responsible for any loss, damage or conversion of the Goods;
  - (b) subject to Clause 10.1, may only use the Goods in the ordinary course of the Customer's business, provided that where the Customer sells Goods, it will do so as principal and will have no power to commit Safety & Mobility to any contract or otherwise or to any liability.
- 10.3. The Customer agrees that Clause 10.1 creates a security interest (including, where applicable, a purchase money security interest, as defined in the PPSA) in Goods (and their proceeds, as defined in section 31 of the PPSA) supplied by Safety & Mobility to the Customer from time to time.
- 10.4. The Customer irrevocably authorises Safety & Mobility to repossess any goods supplied by Safety & Mobility to the Customer without any notice if the Customer fails to make any payment when it is due or if in the opinion of Safety & Mobility the payment of any amount in respect of the goods supplied by Safety & Mobility is in jeopardy or the Customer commences to be wound up or is placed in administration or under official management or in to liquidation or suffers a receiver and/or manager to be appointed in respect of any of its assets. The Customer in consideration of any credit being given irrevocably authorises Safety & Mobility to enter onto any land on which the goods are left and to which the Customer has a right of entry, to enter thereon and remove goods.
- 10.5. Any monies received by the Customer in payment in part or in full for the goods or services supplied by Safety & Mobility to the Customer shall be held by the Customer in trust for the benefit of Safety & Mobility and payable to Safety & Mobility until the Customer has paid for all goods and services supplied by Safety & Mobility.
- 10.6. The Customer releases and indemnifies Safety & Mobility and its servants or agents from all claims for loss or damage caused by Safety & Mobility or its servants or agents in enforcing or attempting to enforce its rights under this clause 10.
- 10.7. The Customer agrees to do all things necessary and execute all documents required by Safety & Mobility to register each security interest in the Goods, and ensure that Safety & Mobility acquires a perfected security interest in the Goods, under the PPSA.
- 10.8. Until title to Goods passes to the Customer under Clause 10.1, the Customer waives its rights under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 135, 142, 143, 157(1) and 157(3) of the PPSA, to the extent that is permitted by law. Safety & Mobility may also contract out of any additional provision of the PPSA as determined by Safety & Mobility from time to time, provided that is also permitted under the PPSA.
- 10.9. Where Safety & Mobility has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.

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- 10.10. The Customer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Customer to Safety & Mobility as is equivalent to Safety & Mobility's estimation of the net realisable value of the Goods, or their cost price (whichever is the lower) as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the Customer has in the Goods.
- 10.11. Until title to Goods passes to the Customer under Clause 10.1, the Customer must not give to Safety & Mobility a written demand, or allow any other person to give to Safety & Mobility a written demand, requiring Safety & Mobility to register a financing change statement under the PPSA in respect of or affecting any Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of or covering the Goods.

### 11. DEFAULT

- 11.1. If the Customer:
- (a) breaches any clause of these terms and conditions;
  - (b) fails to comply with any lawful demand for payment issued by Safety & Mobility;
  - (c) allows any amount payable by the Customer to Safety & Mobility to become overdue for payment;
  - (d) appoints or has appointed a receiver, manager, administrator or controller or any proceedings are instituted for the Customer's winding up;
  - (e) enters into a deed of company arrangement;
  - (f) becomes an externally-administered body corporate or becomes insolvent;
  - (g) commits an act of bankruptcy or becomes an insolvent under administration;
  - (h) changes the ownership of the Customer's business, or its directors; then,
- Without prejudice to Safety & Mobility's other remedies under these terms and conditions or at law:
- (a) all amounts owing to Safety & Mobility by the Customer will, whether or not due for payment, become immediately payable by the Customer;
  - (b) Safety & Mobility will be entitled to cancel all or any part of any of the Customer's orders for Goods and/or Services which remain unfulfilled;
  - (c) Safety & Mobility may charge full list for goods supplied without allowing any discount;
  - (d) the Customer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Customer under clause 6.1 will cease;
  - (e) Safety & Mobility will be entitled to enter any premises where the Goods in respect of which title has not passed to the Customer under clause 10.1 are kept, and remove, repossess and re-sell all or any such Goods. Safety & Mobility is not liable to the Customer if it takes any such action.
- 11.2. The Customer indemnifies Safety & Mobility in respect of any claims or actions, costs, expenses and other liabilities incurred by Safety & Mobility in relation to the removal, repossession, transportation, storage and sale of Goods pursuant to these terms and conditions, including without limitation, any claims brought by third parties.
- 11.3. Without prejudice to any other remedies Safety & Mobility may have, if at any time the Customer is in default of any obligation, Safety & Mobility may suspend or terminate the supply of Goods and Services to the Customer and any of Safety & Mobility's other obligations under these terms and conditions. Safety & Mobility will not be liable to the Customer for any loss or damage the Customer suffers because Safety & Mobility exercises its rights under this clause.
- 11.4. If the Customer is in default pursuant to clause 11.1 then the Customer indemnifies Safety & Mobility against any loss or cost which Safety & Mobility may incur in recovering payment or funds owing from the Customer including but not limited to administrative costs, legal costs (on an indemnity basis) and collection costs.