

Terms and Conditions
ScreenAway Pty Ltd
ABN: 93 600 760 530

1. Background

- 1.1. These Terms and Conditions apply to each contract for the supply of goods (Goods) by or on behalf of ScreenAway Pty Ltd (ABN 93 600 760 530) of 1-3 Commercial Street, Marlestone, South Australia 5033 (ScreenAway) to any customer (Customer).

2. Interpretation

- 2.1. In this agreement, except where the context otherwise requires: (a) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; (b) a rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it; (c) a reference to '\$' is to Australian currency; and (d) the singular includes the plural and vice versa.

3. Terms and Conditions

- 3.1. A contract for the supply and purchase of Goods (Contract) will be formed, on these terms and conditions, immediately when ScreenAway accepts an order from a Customer to purchase Goods (Order).
- 3.2. ScreenAway will be taken to accept an Order, on these terms and conditions, only when ScreenAway confirms the Order by: (a) commencing any action required to supply the Goods; or (b) providing written or verbal notification to the Customer that ScreenAway has accepted that Order.
- 3.3. If a Customer makes an offer by way of an Order or otherwise, and that offer is made on terms other than these Terms and Conditions, unless ScreenAway expressly says otherwise, acceptance of that offer is only on these Terms and Conditions and not otherwise.
- 3.4. These Terms and Conditions together with the relevant requests provided by a Customer within an Order as to the size, quantity, fabric, colour, type, style, brackets, mountings and special requirements of Goods (in each case as may be altered by ScreenAway pursuant to clause 9.3) (Specifications) constitute the entire agreement between ScreenAway and the Customer.
- 3.5. A Customer may only cancel a Contract:
- a) with the prior written consent of ScreenAway; and
 - b) following payment of all costs, expenses and losses (including loss of profit) incurred by ScreenAway as a result of that cancellation, and a cancellation fee of \$40 or as otherwise set by ScreenAway from time to time.
- 3.6. No Order or Contract includes any term, condition, warranty, representation or undertaking as to a date for Completion (as defined below) or other delivery date. Any indication by ScreenAway of an expected date for Completion or delivery does not create any binding term or representation and may not be relied upon by a Customer.

4. Risk and Ownership of Goods

- 4.1. The Customer assumes the risk of loss or damage to Goods from the time at which completion of manufacturing the Goods occurs (Completion), which will occur on the earliest of the following events:
- a) if the Goods are to be collected by or on behalf of the Customer, ScreenAway notifying the Customer that the Goods are available for collection; or
 - b) if ScreenAway has agreed to arrange for collection of the Goods on behalf of the Customer, completion of the loading of those Goods onto a transportation vehicle from the premises of ScreenAway in relation to delivery of those Goods to that Customer.
- 4.2. Title to the Goods passes only on payment in full for the Goods.
- 4.3. For each Order, if a claim in respect of a shortage of Goods has not been lodged with ScreenAway within 10 days of Completion, ScreenAway will be taken to have delivered all of the Goods the subject of the Order.

5. Goods to be Collected by a Customer

- 5.1. Unless a Customer notifies ScreenAway in an Order that the Customer will collect the Goods once manufacture of those Goods is complete, and ScreenAway accepts that Order, ScreenAway will upon formation of a Contract be taken to have been appointed as the Customer's agent to arrange for delivery and insurance of the Goods at the Customer's cost and risk.
- 5.2. A Customer may specify in an Order that it will collect the Goods from the premises of ScreenAway once manufacture of those Goods is complete but if it has not collected those Goods within three weeks of the Completion date, ScreenAway may:
- a) continue to store the Goods on the Customer's behalf (whether onsite or at another location); or
 - b) arrange for the delivery of the Goods to an address provided by the Customer, and in each case all costs incurred by ScreenAway relating to the safe-keeping, transportation, freight, storage, handling, insurance, government, statutory or regulatory charges that relate to the supply of the Goods (if any) (Delivery Costs) will be payable by the Customer together with a storage fee payable to ScreenAway (in an amount set by ScreenAway from time to time) in respect of each day from Completion that the Goods remain in the possession of ScreenAway (Storage Fee).
- 5.3. If no person is available to accept delivery of the Goods as arranged by ScreenAway, ScreenAway may elect to:
- a) leave the Goods (or authorise the transporter of such Goods to leave them) at the address for delivery, in which case risk of those Goods continues to lie with the Customer; or
 - b) have the Goods returned to ScreenAway (at the Customer's cost) for safe keeping, in which case the Customer will be liable for all costs of delivery and return in relation to the unsuccessful delivery as well as for Delivery Costs and the Storage Fee. The risk of Goods subject to this clause continues to lie with the Customer.

6. Price and Payment

- 6.1. Unless otherwise expressly stated, all prices are exclusive of GST. If GST is, or becomes, payable in respect of any supply made by ScreenAway to the Customer, the payment for that supply will be increased by an amount equal to the GST payable.
- 6.2. Subject to clause 6.1, the purchase price payable by the Customer to ScreenAway in respect of the supply of the Goods (Purchase Price) are those set out in ScreenAway's most recent price list (irrespective of whether a Customer has a copy of that price list or not), and may be increased by ScreenAway for any Delivery Costs or Storage Fee.
- 6.3. A non-refundable 50% deposit must be paid in full on acceptance of Order, prior to Order being released for manufacture, unless the Customer and ScreenAway have agreed to the Customer having an account.
- 6.4. Balance of Invoice must be paid in full prior to Goods being released to the Customer, or delivered to the Customer, unless the Customer and ScreenAway have agreed to the Customer having an account.
- 6.5. ScreenAway may issue an invoice to a Customer in respect of Goods (Invoice) at any time after Completion.
- 6.6. An Invoice must be paid by a Customer by the Due Date. The Due Date is the later of:
- a) the date as expressed on the Invoice issued to the Customer; or (b) if the Customer and ScreenAway have agreed to the Customer having a credit account, any later date to which ScreenAway has agreed.
- 6.7. If the Customer fails to pay any Invoice in full on or before the Due Date, the Customer must pay to ScreenAway any costs, expenses or losses which ScreenAway incurs as a result of that failure (including, without limitation, costs associated with the collection of any unpaid amounts) and ScreenAway may (without prejudice to any other rights or remedies that it may have) charge interest at a rate not exceeding the Commonwealth Bank of Australia's overdraft rate plus 2% on the amount of the overdue Invoice.
- 6.8. If delivery of Goods requires extra packaging than ordinarily supplied, the Customer will be liable for a packaging fee as determined by ScreenAway from time to time.

6.9. If a Customer's invoice remains unpaid for more than 7 days after the Due Date, ScreenAway may stop work on all current orders, suspend deliveries to the Customer or terminate any Contract in relation to undelivered Goods until the unpaid amount has been paid in full.

7. Insolvency

7.1. If the Customer becomes, or resolves to become, or takes any steps or has any steps taken in relation to it becoming, insolvent, bankrupt or have a receiver, administrator, liquidator, trustee or similar official appointed, then:

- a) the Customer must notify ScreenAway immediately;
- b) all amounts in relation to an unpaid Invoice and work in progress owed by the Customer to ScreenAway immediately become due and payable; and
- c) the Customer's right to possession of any Goods supplied by ScreenAway which have not been paid for in full by the Customer ceases, and ScreenAway will be entitled to recover possession of those Goods.

8. Warranties

8.1. Except for any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void (Non-Excludable Warranties), ScreenAway excludes all other conditions and warranties implied by custom, the general law or statute.

8.2. Subject to clauses 8.6, 8.7, 9.2 and 9.7, or unless otherwise specified by ScreenAway, ScreenAway warrants that the Goods will remain fit for purpose for two years from their Completion.

8.3. If the Goods are, or any component part of the Goods is, supplied to ScreenAway by a third party, any warranty offered by ScreenAway in relation to the Goods or component part of the Goods will be limited to ScreenAway's right of redress (if any) against that third party.

8.4. If a Customer has insisted that Goods be manufactured with certain Specifications, after ScreenAway has notified the Customer that those Specifications are not recommended by ScreenAway, ScreenAway accepts no liability as to the structure or performance of those Goods or for any structure, infrastructure or other attachment to which the Goods are connected.

8.5. The Customer:

- a) warrants that all information supplied to ScreenAway in connection with the supply of Goods is true and accurate and acknowledges that ScreenAway has relied on that information in supplying the Goods;
- b) acknowledges that ScreenAway has not made any representation or warranty concerning the performance of the Goods or the suitability of the Goods for the site at which the Goods are to be installed;
- c) acknowledges that:
 - i) all descriptive specifications, illustrations, drawings, data dimensions and weights provided by ScreenAway to the Customer or otherwise contained in fact sheets, price lists and other advertising matter of ScreenAway are approximate only and have not been relied upon by that Customer; and
 - ii) ScreenAway's staff are not qualified to give advice in relation to the installation of Goods; and
- (d) must correctly label Goods the subject of a warranty claim with the Customer's name and address and provide to ScreenAway sufficient information in writing for ScreenAway to easily ascertain all particulars of the Customer's request and whether that request relates to a warranty claim or is a modification to the Goods at the Customer's expense.

8.6. The Customer must install Goods in accordance with the specific requirements detailed in the documentation provided with the Goods and have the Goods installed by a person qualified to do that work (if applicable). ScreenAway will not be liable for any costs in relation to Goods that have been improperly installed.

8.7. The provisions of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded from all Contracts.

9. Limitation and Exclusions of Liability

9.1. The liability of ScreenAway under any of the Non-Excludable Warranties is limited to:

- a) replacing the Goods;
- b) repairing the Goods; or
- c) paying for the cost of replacing or repairing the Goods, as ScreenAway decides in its discretion.

9.2. Any warranty provided to a Customer by ScreenAway in respect of Goods does not apply, and ScreenAway has no liability to a Customer in respect of those Goods, if unauthorised repairs or alterations, not specifically authorised by ScreenAway, are made to the Goods, the Customer fails to comply with all instructions of ScreenAway (whether written or verbal) in relation to the fitting, installation and use of the Goods or the Goods are:

- a) subjected to extreme environmental conditions or rapid changes in such conditions
- b) damaged by accident, force of nature or any other acts beyond the reasonable control of ScreenAway;
- c) maintained in a manner contrary to care and cleaning recommendations made by ScreenAway;
- d) otherwise improperly installed, abused or misused;
- e) referred to in any fact sheet, price list or other advertising matter of ScreenAway as being excluded from any warranty;
- f) installed without first obtaining advice from a qualified builder or installed against such advice.

9.3. ScreenAway may use different componentry in the manufacture and supply of Goods to those set out in the Specifications or ScreenAway's most current price list if, in the opinion of ScreenAway:

- a) the replacement componentry is of better or equivalent quality; or
- b) those components set out in the Specifications or ScreenAway's most current price list are not available for supply to ScreenAway within a reasonable time.

9.4. ScreenAway will not be liable for any personal injury, incidental damages, consequential losses, loss of profit, costs of business interruption, loss of opportunities or any other claims whatsoever arising from:

- a) any use of, or incidental to, the Goods or arising out of ScreenAway's negligence or breach of the Contract and, for the avoidance of doubt, ScreenAway will not be liable for the cost of transporting Goods to and from the premises of ScreenAway in relation to a warranty claim (regardless of whether that claim is successful or not); or
- b) a Customer's or end-user's reliance on advice given by ScreenAway in relation to the installation of Goods.

9.5. The Customer acknowledges that it is liable for all costs incurred as incidental damages, consequential losses, loss of profit, costs of business interruption, loss of opportunities or any other claims whatsoever arising from the transportation of Goods to ScreenAway in relation to a warranty claim (regardless of whether that claim is successful or not).

9.6. ScreenAway is not required to clarify any hand-written Order and ScreenAway owes no liability to a Customer in respect of ScreenAway's incorrect interpretation of a hand-written Order.

9.7. Whether or not ScreenAway seeks clarification of Orders, ScreenAway will not be liable for Goods manufactured or supplied otherwise than in accordance with the Specifications of the relevant Order if that Order provided by the Customer to ScreenAway was in written form (including, without limitation, by means of fax, email, typed or hand written), notwithstanding that the Specifications may not be appropriate for the purpose or use of the Goods intended by the Customer.

9.8. If ScreenAway agreed to re-take possession of goods returned to it in relation to a warranty claim, ScreenAway will not be taken to have admitted liability for that claim until it has inspected the Goods and given notice of acceptance of that claim to the Customer.

10. Miscellaneous

10.1. ScreenAway owns (and a Contract does not transfer ownership of) all intellectual property rights (including, without limitation, trademarks, registered designs, patents and know how) in or in connection with or relating to

- a) the Goods; and
- b) any device or program supplied to the Customer for the purpose of ordering Goods.

10.2. ScreenAway may, at any time after acceptance of an Offer and before Completion of the Goods, by notice to the Customer provided verbally or in writing, terminate a Contract (in which case neither party will have any obligations under the Contract).

10.3. ScreenAway may exchange information about its credit arrangements and its Customers' credit worthiness, credit standing, credit history and/or credit capacity with other credit providers.

10.4. The Contracts are governed by the laws of South Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of South Australia.

10.5. If any term or part of a term of these Terms and Conditions is illegal or unenforceable it may be severed, and the remaining terms or parts will continue in force.