

1. Definitions

- 1.1 "S.W.S" refers Summit Window Systems, its successors and assigns or any person acting on behalf of and with the authority of Summit Window Systems.
- 1.2 "Client" refers to the person/s or company buying the goods as outlined in any invoice, quote, document or order. Where there is more than one, Client refers to each individual Client jointly and severally.
- 1.3 "Goods" refers to any and all Goods or Services supplied by S.W.S to the Client at the Client's request from time to time (where the context so permits the referencing to 'Goods' or 'Services' can be interchangeable for the other).
- 1.4 "Price" refers to the Price payable for the Goods as agreed between S.W.S and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 It is understood by S.W.S that the Client is taken to have exclusively accepted and is therefore immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts delivery of, the Goods.
- 2.2 These terms and conditions may only be amended with S.W.S's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and S.W.S.
- 2.3 All literature, samples and specifications submitted with any quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. While being as accurate as possible, any descriptions contained in catalogues and other advertising material may not necessarily be identical with the Goods S.W.S is to supply. S.W.S will not accept liability to the Client for quality of Goods which comply with accepted industry standards.

3. Change in Control

- 3.1 The Client is required to give S.W.S no less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to name, address, contact phone numbers or business practice). The Client is liable for any loss incurred by S.W.S as a result of the Client's failure to comply with this clause

4. Price and Payment

- 4.1 At S.W.S's sole discretion the Price shall be either
 - (a) as indicated on any invoice from S.W.S to the Client; or
 - (b) S.W.S's quoted price (subject to clause 4.2) which is valid for the period as outlined in the quotation, or otherwise for a period of thirty (30) days.
- 4.2 S.W.S reserves the right to change the Price if a variation to S.W.S's quotation is requested by the Client. Any variation from the initial plan of scheduled works or specifications (including but not limited to, any modification as a result of further works required to hidden or unidentifiable difficulties, inaccurate measurement provided by the Client, or as a result of increases in the cost of materials or labour to S.W.S) will be charged for on the basis of S.W.S's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at the time of completion.
- 4.3 At S.W.S's sole discretion a deposit may be required. The deposit amount or percentage of the Price due will be outlined at the time of ordering by the Client and shall become immediately due and therefore payable.

- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on date/s determined by S.W.S, which may be:
- (a) on delivery of the goods
 - (b) by way of instalments through progress payments in accordance with S.W.S's payment schedule
 - (c) where a customer account is granted, thirty (30) days following the end of the month in which a statement is sent to the Client's specified address for notices
 - (d) the date outlined on any invoice or other form as being date for payment; or
 - (e) failing any notice to the contrary, the date which is seven days following the date of any invoice given to the Client by S.W.S.
- 4.5 Payment may be made by cash, cheque (where previous approval by S.W.S is granted to the Client for this payment method), bank cheque, electronic/online banking, or by any other method as agreed to between S.W.S and the Client.
- 4.6 Unless otherwise declared, Price does not include GST. The Client must pay S.W.S an amount equal to any GST S.W.S must pay for any supply by S.W.S under this or any other agreement for the sale of the Goods in addition to the Price. The Client must GST in full, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. Any other taxes and duties that may be applicable in addition to the Price must be paid by the Client, excepting where such taxes and duties are expressly included in the Price.
- 5. Delivery of Goods**
- 5.1 Delivery (Delivery) of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at S.W.S's address; or
 - (b) S.W.S or S.W.S's nominated carrier delivers the Goods to the Client's nominated address even if the Client is not present at the address provided.
- 5.2 At S.W.S's sole discretion the cost of delivery is included in the Price
- 5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the even that the Client is unable to take delivery of the Goods as arranged, S.W.S shall be entitled to issue a reasonable fee for redelivery and/or storage.
- 5.4 S.W.S may need to deliver the Goods in separate instalments. Each instalment shall be invoiced and paid in accordance with the provisions within these terms and conditions
- 5.5 Any time or date provided to the Client by S.W.S is an estimate only. While S.W.S will endeavour to adhere as closely as possible to indications provided, the Client must still accept delivery of the Goods even in late. S.W.S will not be liable for any loss or damage incurred by the Client as a result of the delivery being late. Processing and manufacturing will commence once the quotation has been signed and necessary deposit payments paid if applicable.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods is passed onto the Client on Delivery and the Client must insure Goods on or before delivery
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, S.W.S is entitled to receive all insurance proceeds payable fo the Goods. The production of these terms and conditions by S.W.S is sufficient evidence of S.W.S's rights to receive the insurance proceeds without the need for any person dealing with S.W.S to make further enquiries.
- 6.3 The Client acknowledges that Goods supplied may:
- (a) fade or change colour over time

- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 6.4 S.W.S shall not be liable if the Client does not adhere to S.W.S's care and maintenance recommendations
- 6.5 The Client agrees to indemnify S.W.S against any claims howsoever arising from the provisions in clause 6
- 6.6 The Client acknowledges and agrees that it shall be the Client's own responsibility to organize the installation of the Goods. S.W.S may at their own discretion perform installation of the Goods at the Client's request. S.W.S shall not be responsible to undertake any residential building works as defined in the Residential Building Work Contracts and Dispute Resolution Act 2016 (Tas) (RBWCDR Act).
- 7. Access**
- 7.1 The Client shall ensure that S.W.S has clear and free access to the work site at all times to enable them to undertake the works. S.W.S shall not be liable for any loss or damage to the site (including, without limits to, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of S.W.S.
- 8. Title**
- 8.1 The Client and S.W.S agree that ownership of the Goods shall not pass until:
(a) all amounts owing by the Client have been paid to S.W.S; and
(b) the Client has met all of its other obligations to S.W.S.
- 8.2 Any form of payment other than cash payment to S.W.S shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized.
- 8.3 It is additionally agreed that:
(a) until ownership of the Goods passes to the Client in accordance with clause 8.1, the Client is only a bailee of the Goods and must return the Goods to S.W.S on request.
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for S.W.S and must pay to S.W.S the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Client must not sell, dispose, or otherwise part with the possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with the possession of the Goods then the Client must hold the proceeds of any such act on trust for S.W.S and must pay or deliver the proceeds to S.W.S on demand.
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so, then the Client holds the resulting product on trust for the benefit of S.W.S, and must sell, dispose of or return the resulting product to S.W.S as it so directs.
(e) The Client irrevocably authorises S.W.S to enter any premises where S.W.S believes the Goods are kept and recover possession of the Goods.
(f) S.W.S may recover possession of the Goods in transit whether or not delivery has occurred.
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of S.W.S.
(h) S.W.S may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 9. Personal Property Securities Act 2009("PPSA")**
- 9.1 In this clause, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

- 9.2 Upon assenting to these terms and conditions in writing, the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by S.W.S to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which S.W.S may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse S.W.S for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of S.W.S;
 - (d) no register, or permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of a third party without the prior written consent of S.W.S;
 - (e) immediately advise S.W.S of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 The Client and S.W.S agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by S.W.S, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10. Security and Charge**
- 10.1 In consideration of S.W.S agreeing to supply the goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including but not limited to the payment of any money).
- 10.2 The Client indemnifies S.W.S from and against all S.W.S's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising S.W.S's rights under this clause.
- 10.3 The Client irrevocably appoints S.W.S and each director/partner of S.W.S as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
- 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Client must inspect the Goods on delivery and must notify S.W.S in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote within seven (7) days of delivery.

- 11.2 Under the applicable State, Territory and Commonwealth Law (including without limitation to the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 S.W.S acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions, or in respect of the Non-Excluded Guarantees, S.W.S makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. S.W.S's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, S.W.S's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If S.W.S is required to replace the Goods under this clause or the CCA, but is unable to do so, S.W.S may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, S.W.S's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by S.W.S at S.W.S's sole discretion;
 - (b) limited to any warranty to which S.W.S is entitled, if S.W.S did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted by S.W.S provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) S.W.S has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, S.W.S shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by S.W.S;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 Notwithstanding anything contained in the clause if S.W.S is required by law to accept a return then S.W.S will only accept a return on the conditions imposed by that law.
- 12. Default and Consequences of Default**
- 12.1 Overdue invoices will incur interest daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at S.W.S's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment. Should the Client owe S.W.S any money, the Client shall indemnify S.W.S from and against all costs and disbursements incurred by S.W.S in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, S.W.S's collection agency costs, and bank dishonour fees).

- 12.3 Without prejudice to any other remedies S.W.S may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, S.W.S may suspend or terminate the supply of Goods to the Client. S.W.S will not be liable to the Client for any loss or damage the Client suffers because S.W.S has exercised its rights under this clause.
- 12.4 Without the prejudice to S.W.S's other remedies at law, S.W.S shall be entitled to cancel all or any part of any order the Client which remains unfulfilled and all amounts owing to S.W.S shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to S.W.S becomes overdue, or in S.W.S's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 13. Cancellation**
- 13.1 S.W.S may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice, S.W.S shall repay to the Client any money paid by the Client for the Goods. S.W.S shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods, the Client shall be liable for any and all loss incurred (whether direct or indirect) by S.W.S as a result of the cancellation (including, but not limited to, any loss of profits).
- 13.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 14. Privacy Act 1988**
- 14.1 The Client agrees for S.W.S to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by S.W.S.
- 14.2 The Client agrees that S.W.S may exchange information about the Client with those credit providers either name as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Client consents to S.W.S being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(10)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by S.W.S for the following purposes (and for other purposes as shall be agreed between the Client and S.W.S or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by S.W.S, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or

- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 14.5 S.W.S may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about that Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, gender, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that S.W.S is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of S.W.S, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by S.W.S has been paid or otherwise discharged.
- 15. Building and Construction Industry Security of Payment Act 2009**
- 15.1 At the sole discretion of S.W.S, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2009 may apply.
- 15.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2009 of Tasmania, except to the extent permitted by the Act where applicable.
- 16. General**
- 16.1 The failure by S.W.S to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect S.W.S's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Tasmania in which S.W.S has its principal place of business, and are subject to the jurisdiction of the courts in that State.
- 16.3 Subject to clause 11, S.W.S shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by S.W.S of these terms and conditions (alternatively, S.W.S's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

- 16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by S.W.S, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 S.W.S may license or subcontract all or any part of its rights and obligations at any time.
- 16.6 The Client agrees that S.W.S may amend these terms and conditions at any time. If S.W.S makes a change to these terms and conditions, then that change will take effect from the date on which S.W.S notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for S.W.S to provide Goods to the Client.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates a binding and valid legal obligations on it.