



# COLOURLOCK.COM.AU | BUSINESS & WEBSITE TERMS AND CONDITIONS

## TERMS AND CONDITIONS

### § Definitions

1. Any reference to "Company, Seller, We, Us, contractor" shall mean COLOURLOCK Australia, 87H Briggs Street, Carlisle, WA 6101.
2. Any reference to "You, Buyer, Purchaser, principal" shall mean any person, sole trader, partnership, business, body corporate or other entity detailed in the appropriate section of the sales invoice/order form and shall include all successors, heirs and assigns. Where the Buyer purchases in the course of a trade, profession, vocation or sport (where the buyer is a specialist or enthusiast), it is agreed that such a buyer shall mean a trade buyer. Where a person deals entirely as a consumer, statutory rights shall remain unaffected. Where the term buyer appears within these terms it shall mean both trade and consumer buyer/purchaser unless specified as relating to a trade buyer or consumer buyer individually.
3. Goods or equipment ordered shall mean the items detailed in the appropriate section of the sales/order form and it shall be a core term of this agreement that all additional parts, connecting components or ancillary items, not detailed within the sales order form, shall be additional to this agreement.
4. "Price" shall mean the consideration due for purchase.
5. "Working day" shall mean any day excluding Saturdays, Sundays and public holidays.
6. "Order" includes telephone, facsimile transmittal, postal and internet orders.

### § 1. Application and place of Jurisdiction

These terms of business are applicable for all offers, deliveries and contracts. Consumer buyers' and trade buyers' conditions which vary from this are not binding on us unless we have expressly acknowledged this in writing. Exclusive place of jurisdiction is the registered office of the seller for all present and future claims arising from commercial dealings with traders in the course of business, including claims from cheques or bills of exchange. The same place of jurisdiction is applicable where the buyer either has no place of jurisdiction in Switzerland, changes his location after conclusion of the contract, transfers his habitual residence abroad or, at the time of instituting proceedings, his location or habitual residence are not known. Swiss law and Swiss jurisdiction is exclusively applicable for all legal questions arising from the business relationship.

### § 2. Prices

Our offers are always subject to contract. Contracts are made only with our written confirmation of the order. Prices are valid for 30 days from the date of this confirmation. Where longer terms of delivery are agreed, the prices pertaining at the date of delivery will be invoiced. Prices and technical data in catalogues, brochures, advertisements and price lists are subject to change.

Quotations are given on the assumption that no variation in the price will be made by the manufacturer/sole importer and that Government levies remain unaltered. In the event of such changes, the trade buyer shall be liable for the full cost of any change without notice from the Company.

A Consumer Buyer shall be contacted by the Company and consent for any price increase obtained. Where no such consent is obtained, the Consumer Buyers agreement to purchase shall be treated as cancelled and no party shall be allowed to claim damages.

Buyers are hereby informed that calling down of smaller quantities of material than ordered may increase the overall price per unit, there being reduced economies of scale in order. The resultant additional cost shall be the buyers.

### § 3. Delivery policy, cost, insurance, complaints

Delivery dates or terms of delivery, whether binding or not binding, must be confirmed by us in writing. Where a binding delivery date is not expressly agreed, the purchaser can, six weeks after a non binding delivery date has been exceeded, require the seller in writing to deliver within a reasonable period of time.

Delivery and packing prices indicated within the Companies Brochures and Websites are subject to change and will be confirmed at the time of order. If required the Company shall quote for delivery and packing in such instances and confirmation of acceptance shall be required from the Buyer prior to acceptance of order.

Shipping includes insurance if it is arranged by us.

The customer pays all costs that are related to importing the products to his country (eg. customs clearance service, customs, VAT, etc.)

The Buyer is required to notify the company, in writing, of any shortage, miss-delivery or other discrepancy immediately, or at the latest within seven days of such shortage, miss-delivery or failure, thereafter the buyer shall be liable for any such discrepancy. Where delivery is effected to the buyers own independent delivery contractor, loss or damage in transit claims should be made directly to the carrier. The company will assist purchasers in making their claim. Buyers should retain all packaging in the event of a claim or return within the terms of this agreement.

### § 4. Payment

Invoicing is made in AUD\$ at the price pertaining at the date of the order, the wire transfer normally has to be processed in AUD\$ to an Australian bank account. Packing and transport costs will, unless otherwise agreed, be invoiced in addition.

Dispatch to private customers is only undertaken against cash on delivery or payment in advance.

Interest on delayed payments is calculated for private customers at 5% and for business customers at 8% p.a. over the discount rate of the European Central Bank together with statutory VAT in addition. Purchaser may only set off against claims of the seller counterclaims that are not in issue or are the subject of an enforceable judgment.

### § 5. Risk passing

Deliveries and return deliveries are undertaken on the purchaser's account and at his risk. Unless agreed otherwise, the seller will select the means of transport. The risk passes to the purchaser at the point where goods are handed to the transport firm etc. If the goods are collected by the purchaser in his own vehicle, the risk passes at the point of loading.

### § 6. Retention of title

The receipt of goods takes place subject to the retention of title by the seller until all obligations of the purchaser under the contract have been fulfilled. As long as retention of title exists, no alteration to our disadvantage, disposition, pledging, transfer by way of security or any other transfer to a third party without our written consent is permitted. The purchaser must treat all goods delivered with care for the duration of retention of title, store these diligently and maintain them in perfect condition. Any destruction, damage or seizure of the goods delivered together with any alteration in the purchase address or change of place where the goods are located must be notified to us forthwith. In event of seizure, the enforcement official must be notified immediately of our retention of title. All costs arising from having

to assert retention of title will be borne by the purchaser.

#### § 7. Information and Advice

Brochure descriptions, Web Site information and samples on display are indicative only and any specifications, weights, measurements and technical data (whether relating to performance or otherwise) have been prepared by manufacturers and are for guidance only. Additionally, parts or components pictured or described within brochures or websites are for illustration purposes only and may vary in size, specification, colour and fitment dependent upon the make and model of your vehicle. Buyers are therefore required to check current specification, colours, weights and measurements with manufacturers or the Company, prior to order. Manufacturers also allow tolerances within the manufacturer of their products and also reserve the right to amend specifications, without notice, in order to improve products or where amendment becomes necessary and the Company shall endeavour to inform the Purchaser of any such amendment or change.

The company reserves the right to amend technical or clerical errors in any order without notice.

In addition, the buyer shall ensure that all details contained within the order are correct prior to submission to the Company. Subsequent to delivery, the Company shall accept no liability for any error or inaccuracy in order unless notified of such error within seven days of delivery/receipt of any document containing the said error.

Advice given by agents or servants of this company during telephone/Internet orders is based entirely upon information given by the purchaser with no inspection undertaken. As such, all advice given is indicative only and all such advice should be checked by the purchaser prior to order. Where advice is given after visual inspection by agents or servants of this company, such advice shall amount to an opinion only. Additionally, goods supplied are supplied only to correspond to the purpose for which goods of that kind are commonly supplied and not alternative uses to which they may be put. No liability for failure can be accepted by this company for such alternative use, amendment or modification.

#### § 8. Liability

If the contractor, within the context of these conditions, is liable for damage occasioned negligently then, provided there is no injury to life, body or health, this liability is limited. The liability arises only from substantial duties under the contract and is confined to such typical damage foreseeable at the conclusion of the contract. Where the damage is covered by insurance taken out by principal for the relevant event, contractor is only liable for related detriment to principal e.g. higher insurance premiums, or interest payments until the damage is dealt with by the insurers. Liability in simple negligence for money or other matters of value which are not expressly taken into keeping as well as damage occasioned through a defect in the subject of the order is not accepted. Regardless of fault on the part of contractor possible liability remains where a defect is deliberately concealed, a guarantee is taken over or a risk in acquisition is accepted and in accordance with the provisions of the law on product liability. Personal liability for the authorised representative, agent and staff members for contractor is excluded in relation to damage occasioned through his simple negligence.

Where goods are defective, incorrectly supplied, delayed or otherwise in breach of the implied terms of the buyers statutory rights, all losses which result from loss of competition points, awards, loss of entry fees or other similar losses, are excluded and shall not be reclaimable from the Company. In addition, the company shall accept no liability for death or personal injury unless caused directly by the Companies own negligence.

No liability is accepted by the company where purchasers attempt to modify or install components supplied where it is known or ought reasonably to be known to the Purchaser that the part supplied is incorrectly supplied or otherwise not in accordance with the order.

The Buyer confirms that he shall comply with any or all rules and instructions relating to installation and use of the product concerned and fully accepts that any loss which results from forced, misdirected, inappropriate or unqualified installation or use shall not be accepted by the Company.

The company accepts no liability in respect of failure to supply or other interruptions caused by matters beyond the reasonable control of the company, including but without limitation, strikes, lockouts, civil disputes, acts of God, war or actions by third parties.

Notwithstanding any other provision of this Agreement, nothing in this Agreement shall confer a benefit on any person or persons not named as the purchaser herein.

#### § 9. Guarantee

Where defective parts are delivered by the seller, the purchaser can require either the defects to be remedied or the delivery of an item free from defects. If the parts have been manufactured by ourselves, the purchaser has to contact us, if the parts have been manufactured by third parties, he has to contact them. The seller can decline the method of performances selected by the purchaser where this is only possible with disproportionate cost. Guarantee, unless otherwise agreed in writing, is limited to twelve months from delivery.

Natural wear and tear, or damage attributable to wrongful or inappropriate usage are not covered by our guarantee. Claims for repair of defects will not be recognised by us when we are not notified of these within fourteen days of their discovery.

Where goods purchased by the buyer are alleged to be defective, the purchaser agrees to return such goods to the seller for inspection and report (without the seller replacing the said goods prior to such inspection). The purchaser also accepts that it is reasonable to inform the seller of any interruption, defect or other failure prior to contacting independent third parties or incurring expense and, in addition, to allow the seller to remedy the defect, failure or interruption. Parts modified or adapted by the purchaser shall no longer be warranted by the manufacturer nor shall the Company be liable for any failures resulting subsequent to modification as a result of such modification.

All guarantees for third party products are provided entirely by the manufacturers/ZA importers and are subject to terms contained therein. Purchasers are reminded to complete and return all warranty cards/documents upon receipt of goods where appropriate.

#### § 10. Cancellation of orders

##### **For other consumer buyers and all trade buyers**

Goods purchased and delivered to the buyer may be returned to the Company in original packaging (and without being installed or used and with all relevant seals and enclosures intact) for credit within 7 working days of receipt by the buyer, subject to a restocking charge of 10% of the value of the order. Credit shall be subject to the buyer producing proof of purchase and returning goods carriage paid. Special order goods shall not be returnable by virtue of this clause.

#### § 11. Business dealings

For trade buyers, the company is hereby excluded from any liability, howsoever arising, in respect of any express or implied condition, warranty or term, statement, representation whether statutory or otherwise, relating to the goods supplied. The trade buyer accepts that he is best placed to insure against losses which arise by virtue of any breach of this agreement and warrants that he carries adequate insurance in this respect.

The Trade Buyer shall indemnify the company against all actions, claims, demands, penalties and cost brought by or incurred by third parties or this company in tort, contract, infringements of or alleged infringements of patents or registered designs or otherwise arising in connection with the goods or their delivery or unloading or with work done by the company in accordance with the buyers specifications.

#### § 12. Severability clause

The invalidity of any particular term does not affect the validity of the contract or other terms.

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