

FRESH OUTDOOR CARPORT AND PERGOLA PTY LTD

TERMS AND CONDITIONS

The terms and conditions set out below ("the terms") shall apply to all products and services by Fresh Outdoor Carport and Pergola Pty Ltd(650 806 723) and its subsidiary and associated companies (all of which are referred to as ("Fresh Outdoor") to the Customer his employees or agent (all of which referred to as ("the Customer").

Fresh Outdoor is not bound by any variation to its Terms unless expressly agreed upon in writing and signed by a duly authorised Representative of Fresh Outdoor and the Customer. These Terms herein shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by the Customer or any other party. Fresh Outdoor may at any time and from time to time alter these terms and such altered Terms shall apply after notification by the customer.

1. GENERAL

- No quotation given by Fresh Outdoor shall constitute an offer.
- Quotations shall be open for 30 days from the date of the quotation. After this time the quotation is voidable at the option of Fresh Outdoor which may, in its absolute discretion determine this quotation and subsequently revise the price or any other of the conditions quoted.
- If a Customer cancels or alters any order for products after Fresh Outdoor has received the order then Fresh Outdoor reserves the right to charge the Customer additional costs incurred in cancelling or altering any order or part order together with the costs of any labour or handling to the date of such cancellation or alterations.

2. CREDIT ASSESSMENT/PRIVACY CONSENT

- The Customer warrants that the information provided to Fresh Outdoor is true and correct in every detail.
- Fresh Outdoor is hereby authorised in accordance with the Privacy Act to provide such information concerning the Customer to any other parties as Fresh Outdoor may in its sole discretion determine to verify the credit worthiness of the Customer.
- The Customer hereby indemnifies Fresh Outdoor in respect of any claims or actions arising out of the obtaining or providing of information concerning the Customer in the exercise of its discretion as outlined above.

3. PRICES

- Prices are stated in the Fresh Outdoor Contract and the Customer acknowledges its obligation to make the payment as required.
- If the Customer fails to make payment in accordance with this agreement Fresh Outdoor shall be entitled to:
 - Require the payment of cash upon delivery of any further products or services.
 - Charge interest at the rate of one and a half per centum (1.5%) per month on a cumulative basis on all overdue amounts including late payment charges and amounts other than the prices calculated on a day to day basis on any monies due but unpaid, such interest to be computed from the due date for payment AND the parties agree that such charges shall be payable on demand.
 - Claim from the Customer all costs relating to any action taken by Fresh Outdoor to recover monies or goods due from the Customer including any mercantile agents costs and legal costs and disbursements on a solicitor client basis; and
 - Cease any further deliveries to the Customer and to terminate any agreement in relation to products and services that have not been delivered.

4. INSPECTION AND CLAIMS

- The Customer shall examine the products immediately after delivery and Fresh Outdoor shall not be liable for any misdelivery, shortage, defect or damage unless Fresh Outdoor received details in writing within seven (7) days of the date of delivery of the products and services.
- No claim by the Customer for failure to supply products conforming to the Customers orders will be recognised by Fresh Outdoor unless made in writing to Fresh Outdoor within fourteen (14) days after delivery of the goods to the Customer. No claim involving labour charges or product replacement will be recognised by Fresh Outdoor unless Fresh Outdoor' agreement to the value of such claim and Fresh Outdoor has been given sufficient time to investigate and take such action Fresh Outdoor feels necessary to solve the problem. No claims will be recognised by Fresh Outdoor for any loss or damage or injury of any kind whatsoever arising directly or indirectly from the Customers failure to obtain independent professional and or tradesman advice in relation to the suitability of the goods for any specific

purpose. Fresh Outdoor shall not be liable to the Customer for any loss of profits or consequential, indirect or special loss damage or injury of any kind whatsoever arising directly from any defect in the goods or their installation (regardless of any express or implied terms, or by reason of the Company's negligent act or omission or otherwise at common law).

5. PROPERTY AND RISK

- Notwithstanding delivery of the products or their installation, property in any given products shall remain with Fresh Outdoor until the customer has paid and discharged any and all other indebtedness to Fresh Outdoor on any account whatsoever (including all applicable sales taxes and other taxes, levies and duties). Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision shall be deemed not discharged by the Customer's indebtedness and, in such an event the parties are to be restored the rights which each respectively would have had if the payment had not been made.
- The risk in the products shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer.
- The Customer acknowledges that it is in possession of the product solely as a bailee for Fresh Outdoor until payment as defined in Clauses 3 has been made in full to Fresh Outdoor and until such payment:
 - The Customer shall be fully responsible for any loss or damage to the products, whatsoever and howsoever caused following delivery and
 - The Customer shall store the products separately from its own goods and those of any party and in a manner which clearly identifies the products, whether as separate chattels or as components as property of Fresh Outdoor.
 - The Customer hereby irrevocably agents to Fresh Outdoor, its agents and servants an unrestricted right and licence without notice to enter premises occupied by the Customer to identify and remove any of the products the property of Fresh Outdoor in accordance with these Terms without in any way being liable to the Customer or any person claiming through the Customer. Fresh Outdoor shall have the right to sell or dispose of any such products removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

6. WARRANTY

Subject to payment in full being made as defined in Clause 3. Fresh Outdoor shall use its best endeavours to pass on to the Customer the benefit of any warranties or guarantees it received in respect of products or parts thereof supplied to the Customer which are not of Fresh Outdoor manufacture.

7. LIMITATION OF LIABILITY

- These Terms do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which by law cannot be excluded, restricted or modified. Sales to Non-Customers;
- In the case of products supplied by Fresh Outdoor to a Customer who is not a "customer" (as defined in the Trade practices act 1974 as amended from time to time ("the Act") if the products do not correspond with the description of them on the invoice or are defective, then provided that the products are received intact and made available for inspection by a representative of Fresh Outdoor and are returned to Fresh Outdoor in the same order and condition that in which they were delivered, Fresh Outdoor shall at its option replace those products or reimburse the Customer for the amount of the purchase price paid for them, but any claim in this respect must be made in writing within fourteen (14) days of the date of delivery of those products.
 - Should the Customer seek indemnity from Fresh Outdoor in respect of any claim by a consumer on the warranty implied by the Act in a contract for the supply of products by the Customer in that consumer, will not apply and in respect of products that are of a kind ordinarily acquired for personal, domestic or household use or consumption ("consumer goods"), Fresh Outdoor liability is limited to indemnifying the Customer in accordance with the Act, limited to a liability to pay the Customer an amount equal to the cost of replacing the products or the cost of obtaining equivalent products or the cost of having the products repaired, whichever is the lesser amount.
 - Sales to Consumers In the case of products supplied by Fresh Outdoor to a Customer who is a consumer,

to the extent that the products are not consumer product or goods, the liability of Fresh Outdoor to the Customer for breach of any warranty or condition (other than a warranty or condition implied by Section 69 of the Act) or the breach of any duty of care shall in all cases be limited, at the option of Fresh Outdoor to any one or more of the replacement of the products or the supply or equivalent products, the repair of the products, the payment of cost of replacing the products or acquiring equivalent products or the payment of the cost of having the product repaired.

- Except for those conditions and warranties implied by the Act or consumer legislation, which may be excluded, the Consumer agrees that:
 - It has not relied on any inducement, representation or statement made by or on behalf of Fresh Outdoor in purchasing the products and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by a duly authorised representative of Fresh Outdoor) and
 - This Clause sets out the entire liability of Fresh Outdoor in respect of its liability under the Act or otherwise in respect of liabilities to the consumer for a breach of condition or warranty with respect to the sale of products or goods. In no circumstances will Fresh Outdoor incur liability in respect of or arising out of or in connection with any special, consequential, direct or indirect loss, damage, harm or injury suffered or incurred by the Customer.

8. RETURNS

Other than in respect of Fresh Outdoor obligations, Fresh Outdoor shall not be liable to accept any returned product but may in its absolute discretion accept the return of products (other than aviaries, kennels, dog runs or catteries) provided that such products shall only be accepted for credit and with the prior written approval of a duly authorised representative of Fresh Outdoor. Products returned for credit pursuant to this Clause must be returned with packing slip and invoice and will be subject to a handling and administration charge equivalent to fifteen percent (15%) of the invoiced value of the returned products. Return freight and other expenses will be paid for by the Customer and no returns of non standard products will be accepted.

9. STATEMENT OF DEBT

A written Statement of Debt duly signed by an authorised employee of Fresh Outdoor shall be prima facie evidence and proof of the amount of indebtedness by the Customer to Fresh Outdoor at that time.

10. SUBCONTRACTING

Fresh Outdoor reserves the right to subcontract the manufacture and/or supply of any part of the goods quoted or of any materials or services to be supplied.

11. INSTALLATION

- Where Fresh Outdoor agrees to install goods at any premises (the "premises") the following conditions shall apply:
- The Customer will provide reasonable access for Fresh Outdoor, its servants agents and subcontractors to the premises during the period of installation as may be agreed by the parties to enable Fresh Outdoor to carry out its obligations. The Customer will also provide at its own expense, connection for electricity and any other similar services required by Fresh Outdoor for installation of the goods.
 - Fresh Outdoor will be under no liability or responsibility for any loss, damage or expense howsoever incurred, by the Customer as the result of:
 - any failure or delay by the company in performing any of its obligations under the contract due to any reason beyond the control of Fresh Outdoor or
 - any prohibitions or restrictions under any applicable statutes, bylaws or regulations.
 - Any existing defects discovered by Fresh Outdoor in the course of installation shall be the responsibility of the Customer and Fresh Outdoor shall in its sole discretion determine what remedial action is required to rectify the defect. Fresh Outdoor may terminate any contract if the remedial action is not completed or taken as instructed, and within the time specified, by Fresh Outdoor without prejudice to its existing rights. Any additional expense incurred by Fresh Outdoor will be the responsibility of the Customer.
 - The customer acknowledges and accepts responsibility for repairs and any costs associated with rectifying any damage to House Services (including but not limited to water pipes, electricity cables and drainage lines and the like which are not visible to Fresh Outdoor) which have not been identified by the customer and notified to Fresh Outdoor prior to the commencement of any work.