SOUTH WEST PLANTATION SHUTTERS TERMS AND CONDITIONS OF TRADE

1	Definitions and Interpretation	In the interpretation of these Terms: "Customer" means the Customer. "Goods" means all goods and chattels, all services, all charges for work and labour, hire charges, fees, service charges, repairs, materials or insurance charges associated with the supply, manufacture, construction, installation or repair of the goods and services supplied to the Customer. "Supplier" means South West Plantation Shutters Pty Ltd (ACN 694 189 609), its successors, assigns, related companies (within the meaning of the *Corporations Act 2001* (Cth)), sub-contractors, employees and agents. Headings have been included for ease of reference and it is understood and agreed that the Terms of the Agreement are not to be construed or interpreted by reference to such headings.
2	Measurement, Quotation and Order Process	
2.1		The Supplier will make one (1) visit to the installation location at a time agreed between the Supplier and the Customer to accurately measure the proposed individual shutter locations for the purpose of quotation. If the Supplier deems necessary, one (1) additional visit may be made at a time agreed between the Supplier and the Customer to the installation location to confirm measurements.
2.2		If the Customer or another suitable person is not available to provide access to the installation location at the agreed time; or access to the proposed individual shutter locations is not possible, or is obstructed or impeded in any way due to any action or omission by the Customer, the Customer may incur and be liable to pay a revisit fee of $110 before another visit can be scheduled.
2.3		All shutters are manufactured to order according to measurements made by the Supplier. The Customer agrees to the commencement of manufacture upon signing the Quotation Page of this Agreement. Manufacture commences after the Supplier has received the Quotation Page of this Agreement signed by the Customer and received the Deposit pursuant to 4.1.
2.4		The Supplier undertakes to accurately measure the proposed individual shutter locations and supply such measurements to the manufacturer. The manufacturer deducts 5mm from height and width measurements in order to allow room for leveling of panels to ensure correct operation of the Goods upon installation.
3	Terms of Sale	
3.1		All goods must be paid for as follows:
	3.1.1	Deposit of 60% of Total Price listed upon signing and return to the Supplier of the Quotation Page of this Agreement by the Customer to confirm the order.

3.2	3.1.2	Balance of 40% of Total Price listed on the day of completion of installation. Late payments may incur an additional fee of 5% of the Total Price calculated daily. Unless otherwise specifically stated, all amounts payable under these Terms are expressed on a Goods and Services Tax (GST) inclusive basis.
3.3		The Customer:
	3.3.1	Shall make payment for any Goods pursuant to 4.1, and any other fees and additional charges applied under the Terms of this Agreement.
	3.3.2	Acknowledges and accepts that the Terms of this Agreement constitute the contractual basis for the supply of Goods by the Supplier to the Customer.
	3.3.3	Will forfeit 60% of the Total Price in the event the Customer cancels this Agreement for any reason prior to the installation of the Goods and may incur and agrees to pay a further cancellation fee of 20% of the Total Price pursuant to 6.3.
3.4		All money payable by the Customer under this Agreement shall be paid free and clear of any and all deductions, set-offs or counter-claims.
3.5		If the Customer defaults in the payment of any account, then:
	3.5.1	All monies due to the Supplier shall immediately become dues and payable.
	3.5.2	The Supplier is entitled to charge interest on the overdue amount, at the rate currently applicable pursuant to Section 32 of the *Supreme Court Act 1935* (WA), from the due date for payment to the actual date of payment.
	3.5.3	Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies to the Supplier, or enforcing any of the Terms under this Agreement, or undertaking or exercising any of the rights due to the Supplier under this Agreement or at law, including but not limited to debt collection agency fees and solicitors' costs calculated on an indemnity basis, shall be paid by the Customer.
	3.5.4	The Supplier shall be entitled to terminate, without notice, any credit arrangement with the Customer.
3.6		The Supplier:
	3.6.1	Shall complete the installation pursuant to the details listed on the Quotation Page.

	3.6.2	Reserves the right to cancel the Agreement in writing in the event of the Customer not taking delivery of the Goods within 30 days of the date from which the Goods become available to the Supplier. In the event the Supplier cancels this Agreement in accordance with the provisions of this clause, the Customer acknowledges, accepts and agrees that any deposit paid by the Customer to the Supplier shall be forfeited to the Supplier and the Customer may incur and agrees to pay a further cancellation fee of 20% of the Total Price pursuant to 6.3.
	3.6.3	Accepts no responsibility or liability for any cost associated with power outages at the installation location whilst performing work.
	3.6.4	May assign or sub-contract its rights and obligations under this Agreement without notice to the Customer.
4	Installation	
4.1	Manufacturing and shipping delays	The Supplier directs manufacture of the custom-made Goods to commence within five (5) days of receipt of a signed Quotation Page and Deposit. At this time, the Supplier may give the Customer an estimated date of arrival of the Goods based on the information available, however the Supplier is not responsible for any manufacture and/or shipping delays which subsequently occur, delaying the installation timing. The Supplier will keep the Customer informed about the estimated date of arrival of the Goods.
4.2	Installation date	When the Supplier receives the Customer's Goods, they will contact the Customer to arrange an installation date agreeable to both parties and within 14 days of receipt of the Goods.
4.3	Installation delayed by Customer	In the event an order is placed, and the Customer requests an installation date that exceeds 120 days from the date of receipt of the signed Quotation Page and Deposit, the Supplier may apply any price adjustments to the Total Price in respect to additional costs incurred by the Supplier for labour, storage, or materials.
4.4	Clear working areas	Access to the installation location and to the individual shutter locations sufficient to fit materials and equipment without damage and to allow safe installation must be provide free from obstacles and obstructions. If access as described herein is not provided on the agreed installation date, the Customer will incur and be liable to pay a revisit fee of $330 before installation can be rescheduled.

4.5	Complex installation	If the installation location or individual shutter locations present complexities beyond normal conditions, additional fees for equipment, labour or materials may be added to the Total Price. Wherever possible, the Supplier will include such additional fees on the Quotation Page. If it is not possible to include such additional fees on the Quotation Page, the Customer will be advised of any such charges before installation commences.
4.6	Damage during installation	The supplier will make best efforts not to damage any property of the Customer during installation. If any property is damaged and the Supplier is satisfied they are responsible, the Supplier will arrange for repairs to restore property to the same condition as prior to the damage occurring, but shall not be responsible for painting of walls or window frames.
4.7	Damage to goods left at the installation location	If it is necessary for the Supplier to leave any Goods at the installation location overnight, the Customer will be responsible for any damage which occurs once the Supplier has left the premises. In order for the Supplier to restore the Goods to the same condition as prior to the damage occurring, additional fees for equipment, labour or materials may be added to the Total Price and the Customer agrees to pay any and all such amounts.
4.8	Changes to individual shutter locations	If the Customer makes physical changes to any of the individual shutter locations between the quotation visit and installation date which affect the materials, equipment or labour required by the Supplier to safely install the Goods, additional charges may be added to the Total Price and the Customer agrees to pay any and all such amounts.. The Customer will be advised of any such charges before installation commences.
5	Ownership of Goods	
5.1		Until payment has been made in full by the Customer to the Supplier the Supplier shall remain the sole legal owner of the Goods. The Customer is in possession of the Goods supplied on credit, as bailee for the Supplier.
5.2		The Customer's right to possession of such Goods shall cease, and the Supplier will be entitled to repossession of any Goods not paid for in full, if the Customer does anything or fails to do anything which would result in the following:
	5.2.1	The Customer failing to comply with any of the Terms of this Agreement.
	5.2.2	The Customer filing for bankruptcy.

5.3		The Customer irrevocably authorises the Supplier to take any and all required actions to recover any Goods to which ownership has been retained pursuant to 6.1 and/or 6.2 including but not limited to accessing the installation location by express or implied license to recover the Goods.
5.4		The Customer indemnifies the Supplier in relation to any loss of ownership which occurs if the Goods cannot be recovered by the Supplier, or in the event that there is any change in the ownership of the installation location.
6	Cancellations and Refunds	
6.1	Cancellation by Supplier	In the event that the Supplier is unable to provide the Goods for any reason, the Supplier shall have the right to cancel this Agreement by providing notice of such cancellation in writing to the Customer pursuant to this Agreement. Where the Supplier exercises the right to cancel this Agreement pursuant to this sub-clause, the Supplier will provide a refund of any amounts paid by the Customer to the Supplier under this Agreement within seven (7) days of receiving in writing details of the bank account in which to deposit the refund amount.
6.2	Change of mind refunds	The Supplier directs manufacture of the custom-made Goods to commence immediately upon receipt of a signed Quotation Page and Deposit and incurs the full costs of manufacture at this time. As such no change of mind refunds will be provided.
6.3	Cancellation by Customer	In the event that the Customer wishes to cancel the installation they may do so by advising the Supplier by EMAIL ONLY. In such an event the Customer may incur and agrees to pay a cancellation fee of 20% of the Total Price listed on the Quotation Page in addition to forfeiting the Deposit paid pursuant to 4.1, at the discretion of the Supplier.
7	Variations	
7.1	Request for variation by Customer	If the Customer request variations to the Goods ordered under this Agreement:
	7.1.1	The Customer will incur and be liable to pay a separate quotation fee of $110.
	7.1.2	The Customer shall be liable to pay any and all costs provided for by this Agreement irrespective of any request for variation to the Goods ordered under this Agreement.
	7.1.3	Any variation to the Goods will form the subject of a new Quotation Page and Agreement with installation timing to be adjusted accordingly.
7.2	Variation to Terms	The Supplier may vary these Terms from time to time, by providing written notice of the change to the Customer, and the variation shall take effect from the date of notification of the change.

8	Force Majeure	If the Supplier or Customer is unable to perform in whole or in part any obligation under this Agreement by reason of a force majeure event (including without limitation Acts of God) that party is relieved of that obligation under this Agreement to the extent and for the period of time that it is so unable to perform and is not liable to the other party in respect of such inability.
9	Warranty	
9.1	Mandatory warranty text	The Supplier's Goods come with guarantees that cannot be excluded under Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
9.2	Parts and labour warranty	The Supplier warrants that the Goods will remain in good operational condition for five (5) years from the installation date. This warranty is not transferrable and applies only to the Customer who purchased the Goods from the Supplier at the original installation location.
9.3	Warranty claim	To make a claim under a warranty, the Customer is to:
9.3.1		Cease use of the Goods immediately upon learning of a warranty, operational or other issue with respect to the Goods;
9.3.2		Telephone the Supplier on 0401 622 929 or email sam@swplantationshutters.com.au. At the time of contacting the Supplier, the Customer is to provide the Supplier with proof of purchase.
9.4	Warranty claim costs	The Customer acknowledges and accepts liability to meet any and all costs:
9.4.1		Associated with making a claim under warranty, including but not limited to travel costs and costs associated with gaining safe, clear, and unimpeded access to the Goods; and or
9.4.2		Incurred by the Supplier if the problem for which the Supplier is contacted is deemed by the Supplier to be outside the provisions of any warranty provided under this Agreement or the Customer's Statutory Rights.

9.5	General limitation of warranties	To the extent permitted by law, all statutory and other implied conditions and warrantees relating to the supply of the Goods are negatived and the liability of the Supplier pursuant to any provision of legislation of the Commonwealth or any State or Territory, or pursuant to any other potential liability (whether arising from negligence or not) including consequential loss, is limited at the option of the Supplier to the replacement of the Goods or supply of equivalent Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment of the cost of having the Goods repaired. Without limiting the foregoing, nothing in these Terms excludes, restricts or modifies any condition, warranty or liability, or a consumer guarantee under applicable sections of the *Competition and Consumer Act 2010* (Cth) (CCA), which is implied by the CCA or other applicable laws where to do so is illegal or would render any provision of these Terms void.
9.6	Specific limitation of warranties	The Customer does not have under any circumstances any cause of action against or right to claim or recover from the Supplier for, or in respect of, any loss or damage of any kind whatsoever, cause directly or indirectly by:
	9.6.1	Any breach of these Terms; or
	9.6.2	Any misuse, abuse, neglect, accidental damage or modification of the Goods; or
	9.6.3	Infestation by insects or vermin; or
	9.6.4	Fuel or liquid adhesion, chemical fallout, tree sap, salt, hail, windstorm, lightening, bushfires or unusual environmental conditions, and/or bird or animal excrement; or
	9.6.5	Natural disasters or Acts of God; or
	9.6.6	Rust or damage caused by exposure to the elements; or
	9.6.7	Accessories, components or other equipment not supplier by the Supplier; or
	9.6.8	Improper maintenance by the Customer; or
	9.6.9	Work performed on the Goods by third parties save for properly authorised representatives of the Supplier; or
	9.6.10	Any delay occasioned by the Supplier relating to the supply, delivery or installation of the Goods; or
	9.6.11	Sun damage or light penetration; or
	9.6.12	Incorrect information provided by the Customer or their agents; or
	9.6.13	Normal wear and tear; or

	9.6.14	Continuing to operate the Goods after a known warranty, operational or other issue with respect to the Goods; or
	9.6.15	Caused by the Supplier where installing the Goods at the installation location requires the Supplier to work in the presence of ornate skirting, MDF skirting, lath plaster ceilings, ornate and/or décor ceilings, or asbestos.
9.7		The Customer acknowledges and agrees that the Supplier will not be bound by any warranty in the event the Customer has not paid the Supplier for the Goods, in full, pursuant to the provisions of this Agreement.
10	Arbitration	In the event of a dispute arising under this Agreement:
10.1		Either party may refer the dispute to arbitration. The party wishing to refer the matter to arbitration shall, by notice in writing, advise the other of the matter in dispute and of the intention to refer the matter to arbitration, and shall nominate an arbitrator. The other party shall, within seven (7) days, advise in writing as to whether the party accepts or rejects the nominated arbitrator, and in the event of rejecting the nominated arbitrator, or not responding to the notice within seven (7) days, then the matter shall be referred to an arbitrator appointed by the President of the Law Society. The Arbitrator shall, at the first meeting, determine the procedure for arbitration.
10.2		Either party shall be entitled to be represented by a legal practitioner.
10.3		The parties further agree that the arbitrator shall be entitled to award costs for the arbitration and for the legal representation, and such costs shall be calculated on a solicitor own client basis.
11	Notices	Any notice, invoice or statement to be served by one party on the other under this Agreement must be in writing and is deemed to have been duly served if:
11.1		By email, upon receipt by the receiving party's email server or if applicable upon receipt by the sender of the confirmation receipt; or
11.2		By hand, at the time it is left at the party's last known place of residence or business; or
11.3		By mail, five (5) business days after it is posted where the party's last known address is in the Commonwealth of Australia, and ten (10) business days after it is posted if the party's last known address is outside the Commonwealth of Australia; or
11.4		Such earlier time if acknowledged by the receiving party.
12	Governing Law	This Agreement shall be governed by and construed in accordance with the laws of Western Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

13	Severability	In the event that any of the provisions or conditions of the Terms or any clause or sub-clause of the Terms cannot be given full force or effect by reason of statutory invalidity, uncertainty or otherwise, the said provision or condition, clause or sub-clause, as the case may be, which cannot be given full force or effect shall be severed, ignored or read down restrictively to maintain and uphold so far as possible the remaining provisions and conditions of the Terms.
14	Waiver	The failure of the Supplier to enforce any right or part of a right under the Terms shall not be considered a waiver of that right or part of right, and shall not prevent the Supplier enforcing that right or part of right in the future.
15	Entire Agreement	This Agreement is the entire Agreement between the parties about its subject matter and replaces all previous Agreements, understandings, representations and warranties about that subject matter.