

HORISO TERMS AND CONDITIONS OF SALE

These are the entire Terms and Conditions of Sale for all window covering products supplied by Horiso to all customers on or after October 2019 except as otherwise expressly agreed upon in writing between a duly authorised officer of Horiso® and the customer, the Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any customer.

General

1. No quotation given by Horiso® shall constitute an offer. Until we receive the reply, quotations are without engagement, unless otherwise expressly agreed. The offers are based on the specifications provided by Customer, which must precisely describe the conditions that they affect the products we are to deliver.
2. All orders placed with Horiso® shall only be accepted subject to these Terms and Condition of Sale. Horiso® reserves the right to amend the terms and conditions of sale without prior notice. Any alterations will be notified by Horiso® to the customer.
3. If a customer cancels or alters any order or part order for special products or standard products with special materials, paints or finishes at any time after Horiso® has received the order then Horiso® reserves the right to charge to the customer the costs of any special products, materials, paints or finishes already acquired for the order together with the cost of any labour and tooling expended to the date of such cancellation or alterations.
4. Horiso® reserves the right to correct errors in its sales brochures, price lists, offer documentation without our being held liable for these errors.
5. The Customer is aware that the products manufactured are individually made-to measure and therefore cannot be exchanged or returned. If the ordered goods are not accepted by the Customer, the Customer shall be charged for any costs already incurred by Horiso® with the order that we can document, any incurred extra expenses and any loss in profit.
6. Placement of the order is a declaration that the Customer will buy the ordered product/item. Changes to the order are no longer possible after order confirmation.

Prices

7. Prices do not include any GST or other applicable tax or duty payable and all GST and other such taxes or duties to the extent that they are applicable shall be paid by the customer as an additional charge.
8. The purchase price is the price specified in the order confirmation. If the price is not specified, the purchase price is the price specified in our current price list that is valid at the time of the order placement or the price send as an offer.
9. If a change to the scope and type of work is provided after order confirmation, the expenses supported by Horiso® will be charged separately from the quoted price.
10. We reserve the rights to provide price changes after timely notification of the customer and prior to deliver the goods due to general price trends that are beyond our control (e.g. fluctuation in currency exchange rates, currency regulations, and changes in custom duties) or changes in wages, material cost and changes in the delivery data.
11. The right of retention is excluded if the customer knew the defect or any reason for complaint without reserving his rights in writing or if it remained unknown to customer due to negligence. This does not apply if Horiso® released a guarantee for the product sold.

Terms of Payment

12. The terms of payment are:

- A:** All orders, a fifty per centum (50%) of the selling price must be paid by the customer as a deposit at the time of acceptance of the quotation and placement of the order. The remaining fifty per centum (50%) of the selling price is payable by the customer immediately prior to dispatch of the ordered products;
- B:** if Horiso® advises the customer that the ordered products are ready for dispatch and the customer refuses to accept the products or fails to make arrangements for installation, of if Horiso® is unable to contact the customer after making reasonable endeavours to do so, the remainder of the selling price shall immediately become payable. Horiso® shall be entitled to treat an amount equal to the remainder of the selling price as a judgment debt and such debt shall be capable of enforcement as judgment debt without Horiso® taking any further action to obtain a judgment debt against the customer;
- C:** the only exception that can be made to the Terms of Payment is a separate payment agreement made with the customer between Horiso® and the customer;
- D:** Notwithstanding the other provisions of this clause, Horiso® reserves the right to require the customer to pay the whole of the selling price in advance at the time of placement of the order.
13. If the customer fails to make payment in accordance with clause 5, Horiso® shall be entitled to:
- A:** Require the payment of cash upon delivery of any further products;
- B:** Charge default 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 price) 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 default interest is not a penalty but is a true measure of damages incurred by Horiso®, payments received from the customer will be credited first against any default interest and all such charges shall be payable on demand;
- C:** Claim from the customer all costs relating to any action by Horiso® 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
- D:** Cease any further deliveries to the customer and to terminate any agreement in relation to products that have not been delivered.

Delivery

14. Any date or time quoted for delivery is an estimate only and Horiso® shall endeavour to effect delivery at the times or times requested by the customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the customer or render Horiso® liable for any loss or damages directly or indirectly sustained by the customer as result thereof.
15. The customer shall not be relieved of any obligation to accept or pay for products by reason of any delay in delivery caused by Force Majeure as described in clause 26.

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Inspection

16. The customer shall examine the products immediately after delivery:

A: Horiso® shall not be liable for any mis-delivery, shortage, defect or damage unless Horiso® receives details in writing within seven (7) days of the date of delivery of the products;

B: The customer acknowledges that variations of shade can occur in the manufacture of different materials;

C: While Horiso® will take every care to obtain the best effect, Horiso® cannot assume responsibility for variations in colour or grain structure; and

D: Horiso® accepts no responsibility for changes in length, shrinkage or dropping of material and Horiso shall not be liable in any way for loss or damage suffered as a consequence thereof.

Property and Risk

17. Notwithstanding delivery of the products or their installation, property in any given products shall remain with Horiso® until the customer has paid and discharged any and all other indebtedness to Horiso® on any account whatsoever (including applicable GST and other taxes, levies and duties). Any payment made by or on behalf of a customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the customer's indebtedness and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

18. The risk in the products shall pass to the customer upon delivery.

19. The customer acknowledges that it is in possession of the products solely as a bailee for Horiso® until payment as defined in clause 14 has been made in full to Horiso® and until such payment:

A: the customer shall be fully responsible for any loss or damage to the goods whatsoever and howsoever caused following delivery; and

B: the customer shall store the products separately from its own goods and those of other party and in a manner which clearly identifies the products, whether as separate chattels or as components, as the property of Horiso®.

20. The customer thereby irrevocably grants to Horiso®, its agents and servants, an unrestricted right and license, without notice, to enter premises occupied by the customer to identify and remove any of the products of Horiso® in accordance with these Terms and Conditions of Sale without in any way being liable to the customer or any person claiming through the customer. Horiso® 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.

Warranty and Defects Notice

21. A: The warranty period shall be ten years, unless particularly agreed otherwise.

B: When a defect, an apparent fault or hidden defects is notified by Customer, it has to be immediately reported within 14 days calendar days after receiving the goods.

C: Horiso® will agree to repair, replace, refund or compensate wholly or partially of the defect products/ or defective parts which fail to comply with Clause 3 set out in the Conditions of Warranty.

i notification of the defects by the Customer within the warranty period specified in Scope of Warranty

ii defective products have been taken off by authorised Horiso® Installers

iii the products have been not altered, modified, or subject of misuse, incorrect installation, maintenance, neglect accident or damage or used with incompatible parts;

iv replacement warranty shall have the benefit of the applicable warranty for the remainder of the applicable warranty;

D: All defects reported will be analysed based on Customer required description and specification; horiso responsibility does not extend to parts, material or equipment that are manufactured by the Customer or contracted by him and are made available to Horiso®. The Customer is responsible for checking the quality and load-bearing capacity of the installation substructure and to select appropriate fixing materials; horiso does not take the responsibility for defects that are due to incorrect selection.

E: For checking and inspecting the defects an adequate time must be given by the Customer. Horiso® has the rights to rectify the defects by removing the defect at our own discretion.

F: This warranty will not include any liability for damage caused by improper or faulty installation, improper use and storage, unintended use, negligence, incorrect commissioning, alteration or repairs, normal weathering or wear and tear, natural fading and natural chalking, faulty electrical connection, operation with unsuitable control components.

G: Marketing advertisement does not represent a contractual specification of the quality of the goods. Horiso® guarantees that all Horiso® products are free from material and assembly defects.

H: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation or any other reasonably foreseeable loss or damage. You are 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.

22. Subject to payment in full being made as defined in clause 12, Horiso® shall use its best endeavours to pass on to the customer the benefit of any warranties or guarantees it receives in respect of products or parts thereof supplied to the customer which are not of Horiso's® manufacture.

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Limitation of Liability

23. These Terms and Conditions of Sale 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

24. A: Sale to Non-Consumers.

i in the case of products supplied by Horiso® to a customer (as defined in the Trade Practises 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 preserved intact and made available for inspection by a representative of Horiso® and are returned to Horiso® in the same order and condition as that in which they were delivered, Horiso® 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.

ii Should the customer seek indemnity from Horiso® in respect of any claim by a consumer on the customer as a result of a breach of condition or warranty implied by the Act in a contract for the supply of products by the customer to that consumer, sub-paragraph (i) 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), Horiso's® liability is limited to indemnifying the customer in accordance with the Act, limited to a liability to pay to the customer in accordance with the Act, limited to a liability to pay to 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.

B: Sale to Consumers. In the case of products supplied by Horiso® to a customer who is a consumer, to the extent that the products are not consumer products or goods, the liability of Horiso® to the customer for breach of any warranty or condition (other than a warranty or condition implied by Section 69 of the Act) or for breach of any duty of care shall in all cases be limited, at the option of Horiso®, to any one or more of the replacement of the products or the supply of equivalent products, the repair of the products, the payment of the cost of replacing the products or acquiring equivalent products or the payment of the cost of having the product repaired.

C: Except for those conditions and warranties implied by the Act or other sale of products or consumer protection legislation which may not be excluded, the customers agrees that:

i It has not relied on any inducement, representation or statement made by or on behalf of Horiso® 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 person representative of Horiso®) and

ii This clause sets out the entire liability of Horiso in respect of its liability under the Act or otherwise in respect of liabilities to the consumer for a breach of a condition or warranty with respect to the sale of products or goods. In no circumstances will Horiso® incur any 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.

25. Claims for damages of the goods' shall be submitted only if damages are at Horiso® fault. Claims for damages under non fundamental breaches of contract are excluded.

Force Majeure

26. Horiso® shall not be liable for failure or delay to the supply or deliver of products due to any cause or circumstance whatsoever outside the reasonable control of Horiso® including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.

Termination

27. If the customer fails to comply with any of these Terms and Conditions or being a natural person or persons commits any act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of re-organisation or reconstruction) or enters into any composition or arrangement with creditors or if a Receiver and / or Manager and / or Administrator is appointed for any property or assets of the customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a liquidator or provisional liquidator is appointed, Horiso® may in addition to exercising all or any of its rights against the customer, suspended any further deliveries and immediately recover possession of any products not paid for in accordance with these Terms and Conditions.

Supply

28. Horiso reserves the right to decline any order for products when the size of the order or the requested delivery date inhibits or prejudices Horiso's® ability to fulfil its contractual commitments or other commitments to its franchisees, licensees, other customers or any other person or corporation. Horiso® also reserves the right to rescind any orders within five (5) working days of the date of acceptance of the quotation / placement of the order, and if Horiso® does do so, it shall have no liability to the customer other than refunding any deposit paid.

Governing Law

29. The customer agrees that these Terms and Conditions of Sale shall be construed according to the Laws of the State or Territory as Horiso® may in its sole discretion determine. Proceedings may be instituted in such State or Territory as Horiso® may in its sole discretion determine. Failing such determination the customer consents to the non-exclusive jurisdiction of the Courts of the State of New South Wales applying the laws of the State of New South Wales.

Service Documents

30. The customer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address or facsimile number of the customer.

Interpretation

31. If any matter, thing, act or omission arising or occurring under or pursuant to these Terms and Conditions constitutes a taxable supply then the party making the supply shall have the right to recover any GST payable in respect of that supply from the recipient of the supply in addition to any other amounts that it has a right to receive in respect of the supply provided that the party making the supply gives to the recipient of the supply a tax invoice.

32. An italicised term or expression has the same meaning in these terms and conditions as it has in the A New Tax System (Goods and Services Tax) Act 1999.

33. A reference to the GST is a reference to the tax imposed from time to time by any one or more of the following Acts, A New Tax System (Goods and Services Tax Imposition Customs) Act 1999, A New Tax System (Goods and Services Tax Imposition Excise) Act 1999 and A New Tax System (Goods and Services Tax Imposition General) Act 1999.

34. Where the context permits, a reference to a party includes the representative member of any GST group to which that party belongs.

FOREST DRAPERY HARDWARE - WARRANTY STATEMENT AGAINST DEFECTS

Horiso guarantees that all products are free from material and assembly defects provided the products are used in the manner for which they were designed. This warranty will not include any indemnity relating to any other consequential or economic damages or loss of any nature whatsoever that may have arisen from defective item.

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Horiso manufacturers warranty is given by:

Horiso - ABN 66 097 049 477
22-24 Vincent St Marrickville
NSW 2204, Australia
T: +612 8755 4500

What does our 10 year warranty cover?

- Shuttle Motor Warranty
- All genuine components

What our Warranty does not cover:

- Service Warranty of total removal of product for repair
- Installation & re-installation of product
- Charges for hire of access equipment (even when product is under warranty)
- Consequential damage or loss

The period in which this warranty applies:

This warranty applies to defects which appear and are notified to Horiso (via the procedure listed below) from date of installation within warranty time frames listed for items covered under this warranty.

Conditions of warranty

1. Product has been paid in full. Property in good supplied will not pass to purchaser until they or other goods supplied by Horiso® have been paid in full. Warranty is also void under this circumstance.
2. Warranty does not cover any damage or material failure resulting from, but not limited to: normal weathering or wear or tear, adverse exposure, corrosion or mildew, accidental and / or intentional damage, wind blown objects, fire / flood / wind / rain / hail storm, physical factors, structural defects, negligent installation, maintenance, misuse or abuse.
3. Warranty is void or not valid if damage is caused by (but not limited to): installation of incompatible or non recommended components / accessory items, failure to follow size recommendation, measurements, cleaning and maintenance instructions, installation by a third party (ie unauthorised installer or Do It Yourself installation) or any occurrences beyond the control of Horiso®, electrical wiring / work carried out by an unlicensed person, harmful cleaning compounds to clean the products, product being altered or adapted in any way.
4. Warranty is limited to the repair or replacement of the defective material or component at Horiso's® option. The following shall not be considered defects in material workmanship: Stitching coming apart (this is considered wear and tear after two years, variation in gloss factor of paint, variation in powder coating colours, veins or white traces on acrylic fabric.
5. Should warranty service be requested and subsequently found NOT to be covered under the terms of this warranty, Horiso® reserves the right to charge a service / labour fee plus parts and travel.

This guarantee shall be interpreted and applied subject to the operation of all applicable statute (the provisions of which cannot be excluded by the parties), including, if applicable, the Trade Practises Act 1974 and similar State legislation. With the exception of the matters outlined in this document, all other implied terms, guarantees and conditions are hereby excluded. To obtain warranty service, please contact the Horiso® agent or reseller from whom you purchased the product and provide proof of purchase.

This warranty statement has been prepared according to ACL (Australian Consumer Law) Amendment Regulation required from the 9th June 2019

How do we honour this warranty

Horiso will either repair or replace items with new ones, at our discretion, if:

- The items in question have a defect, or fails to operate as intended.
 - A claim is made under this warranty within the specified warranty time periods.
- The Warranty period starts from date stipulated on the invoice, not from the date of any subsequent service.

Procedure to make a claim under this warranty:

If a defect appears in the goods within the stated period, to make a claim under this warranty you must, before the warranty period expires, and at your cost:

- Submit details of your claim to, in the first instance, the address of the original place of purchase (or if you do not know or you are not able to find the address of the original place of purchase, to Horiso at the address above) including:
 - » your name, address and phone number;
 - » what you consider to be the defect and the circumstances in which the defect appeared and that you wish
 - » to claim under this warranty; and
 - » proof of your purchase of the product and details of the date and place of purchase; and
- provide us with all other information we reasonably request about the circumstances