

**TERMS AND CONDITIONS OF SALE (PART 3)**

We supply all goods to you subject to the following terms and conditions.

**1 Acceptance**

- 1.1 By placing an order with us, you accept these terms and conditions, despite anything stated to the contrary on your order, terms and conditions of purchase or any similar document. In the event that there is any inconsistency between these terms and conditions and your terms and conditions, our terms and conditions shall prevail.
- 1.2 A quotation by us shall remain valid for the period stated in the quotation and if no period is stated, for seven (7) days from the date of the quotation. Any modification to a quotation will be effective only if we provide it in writing.

**2 Price**

- 2.1 All orders will be filled at prices current at the date of delivery of the goods. Prices are subject to change without notice at any time prior to acceptance of an order.
- 2.2 Unless otherwise specified in writing, all prices are exclusive of Goods and Services Tax and any other taxes payable on goods supplied or on any amount payable under clause 11, freight costs, insurance charges and maintenance costs, all of which you must pay unless we agree otherwise with you in writing.

**3 Dimensions, Weights and Measures**

We shall be allowed a tolerance of up to plus or minus 5% in respect of all dimensions, weights and quantities. You acknowledge that all dimensions, weights and quantities mentioned in catalogues, price lists and quotations or assessed from samples are estimates only.

**4 Terms of Payment**

- 4.1 Unless otherwise agreed by us in writing, payment is due on the 30<sup>th</sup> of the month following the date of invoice for the goods
- 4.2 You must make payment of all amounts owing without set-off or deduction of any kind.
- 4.3 We may withdraw any credit facility granted to you in respect of any account at any time and without being required to provide a reason for same and upon such notification by us to you any balance owing by you to us shall become immediately due and payable and we shall then be entitled at any time to amend our terms of sale to a strictly cash only basis.

**5 Delivery**

- 5.1 All costs of freight, delivery and unloading the goods on their arrival at the agreed place of destination shall be borne by you and you further agree to reimburse us for all costs which we incur on your behalf.
- 5.2 You indemnify us against any loss or damage suffered as a result of delivery, except where we have not used due care and skill. All goods are delivered at your risk from the time that we despatch the goods from our premises until delivery.
- 5.3 Any delivery dates specified are approximate only and are not to be treated as a condition of sale. Accordingly no liability whatsoever is accepted for delay from any cause whatsoever. Further, if for any cause or reason beyond our control including but not limited to act of God, war, governmental or semi-governmental enactment, priority or restriction, lock out, labour or materials or any other contingencies which may hinder delivery, the contract shall be voidable at our option with no right given to you to claim for any damage, loss, cost or expense or otherwise.
- 5.4 If you direct that delivery of the goods is to be staggered over different times or to different addresses from those specified in your order, then you will be liable for any additional charges incurred by us in complying with your direction.
- 5.5 We may make delivery by instalments and may cancel delivery of the goods or any instalments of the goods without prejudice to our rights to recover all moneys you owe us for deliveries already made.
- 5.6 Where you do not take delivery of the goods by the delivery date specified or any later date we agree on, you must pay reasonable storage costs until you take delivery of the goods.
- 5.7 We use our best endeavours to deliver the exact quantity of goods as specified by you. However you acknowledge that there may be over-runs or under-runs not exceeding a tolerance of 5% of the quantity of goods ordered and in that event, you shall be obliged to pay for the actual quantity delivered that is within the aforesaid tolerance. We will not accept any larger claims or discrepancy than hereinbefore referred to unless you make written claim to us within two working days of delivery.
- 5.8 Delivery by us to a carrier will be deemed to be delivery to you.

**6 Manufacturing**

- 6.1 Goods may at our sole discretion be manufactured in whole or in part by any manufacturer anywhere in the world.
- 6.2 To the extent that the law permits, we accept no responsibility for any delay in manufacturing.

**7 Ownership and Risk**

- 7.1 Risk in the goods will pass to you on delivery to you or to anyone acting on your behalf even though ownership in the goods may not have passed to you. You must insure the goods in our name and your name for our respective interests from the time of delivery until payment in full.
- 7.2 We will retain legal and beneficial ownership of any and all goods and /or any other goods which the goods have been incorporated into or mixed with ("mixed goods"), until we receive payment in full for them and all other amounts owing to us, and until you have satisfied all obligations you owe us, even though we may have granted you a period of credit.
- 7.3 You hold the goods and/or mixed goods as fiduciary bailee and agent for us and must store the goods and/or mixed goods in such a way that they are clearly identifiable as our property. You must keep separate records in respect of the goods and/or mixed goods, until payment in full has been made.
- 7.4 You will not sell, dispose of or otherwise part with possession of the goods and/or mixed goods except that you may sell them in the ordinary course of your business. Where you do sell or otherwise dispose of the goods and/or mixed goods prior to payment in full you must hold the proceeds of sale in a fund separate from your own money.
- 7.5 You hereby irrevocably authorise and license us at any time to enter into any premises occupied by you to inspect and carry out an inventory of any goods supplied by us.

8 **Warranties and Limitation of Liability**

- 8.1 Except as may be implied by law, we provide no warranty in relation to the goods we supply to you.
- 8.2 Any advice, recommendation, information, assistance or service provided by us in relation to the goods or their use or application is given in good faith, is believed by us to be reliable, but is provided subject to any applicable law, with a disclaimer for any liability or responsibility on our part.
- 8.3 You accept all risk and responsibility for consequences arising from the use of the goods whether singly or in combination with other products.
- 8.4 The specifications for the goods can be found on the specification sheet provided by the manufacturer. You acknowledge that we are not the manufacturer of the goods and further we have not conducted any independent tests on the goods to assess whether the goods meet those specifications. To the extent permissible by law, we do not and cannot provide any warranty or make any representations as to the suitability of the goods for your intended end use.
- 8.5 All warranties, guarantees and conditions implied by statute, common law, custom of the trade or otherwise are to the extent that the law permits, expressly excluded.
- 8.6 Without restricting the limitations of liability contained elsewhere in these terms and conditions, save for a breach of a condition or warranty implied by the *Trade Practices Act 1974 (Cth)* or equivalent law of a State or Territory of Australia which cannot be excluded by these terms and conditions, our liability in relation to the supply of the goods and the goods themselves is limited to either, in our absolute discretion, the provision of replacement goods or the supply of equivalent goods or the purchase price of the goods in respect of which such liability arises. We have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage whatsoever and howsoever arising.

9 **Consumer Credit Code**

- 9.1 Where these terms and conditions would otherwise be subject to the Consumer Credit Code, you represent and agree that you are acquiring the goods for business purposes and not for private or domestic use. You acknowledge and agree that we rely upon this representation in agreeing to provide goods to you on credit.
- 9.2 In granting credit to you, we rely upon any representations made by you as to your ability to pay your debts (including all amounts owing or that will be owing to us) and to comply with these credit arrangements. You must provide us with all financial information requested by us in support of an application for the granting of credit.
- 9.3 We shall have the right to determine credit limits and vary credit limits at any time without notice, to terminate the credit facilities at any time without reason or notice (including but not limited to circumstances where a credit account remains inoperative for a 12 month period), to require immediate payment for all goods supplied or provided without reason upon written notice to you and to require that any person give and execute a guarantee and indemnity.
- 9.4 The credit application gives authority to, and may be used by, us to obtain information available pursuant to the *Privacy Act 1988* and to make whatever other inquiries and obtain such other information it deems necessary in the circumstances to determine the acceptability, and continued acceptability of the Applicant for credit facilities and shall be sufficient authority for that purpose.

10 **Credits for Returned Goods**

We may, at our discretion, give credit for any goods which are surplus to your requirements. Acceptance of any goods for return under this clause will be conditional on you delivering the goods to us at your cost in the same condition and packaging in which they were dispatched, with a copy of our invoice, within seven (7) days of our acceptance.

11 **Default**

- 11.1 Where we consider you may be unable to meet your payment obligations to us, we may, without limiting our other rights and remedies, do all or any of the following:
- (a) Require you to stop selling or otherwise disposing of the goods or mixed goods;
  - (b) Demand payment of all or part of any sums due;
  - (c) Require security for your obligations before we make any further supplies to you;
  - (d) Without notice, withhold deliveries of goods ordered by you.
- 11.2 Where:
- (a) You are in breach of any of these terms and conditions (including failure to make payment on due date); or
  - (b) You become insolvent or are adjudicated bankrupt or an application is made for your liquidation or a liquidator or a receiver is appointed in respect of your assets or you are placed in insolvency administration; or
  - (c) You no longer carry on business or threaten to stop carrying on business; or
  - (d) An arrangement is made or likely to be made with your creditors,
- then, without prejudice to our other rights and remedies, we may do all or any of the following:
- (e) Where you have failed to make payment on due date, require you to make the payment to us immediately and compensate us by making payment to us on demand of interest (as liquidated damages) on the amount due from the due date until the date of payment at a rate equal to eight (8) percent above the current overdraft rate which we have with our principal registered bank (in addition to you remaining liable for the full amount outstanding);
  - (f) Cancel this and any other contract of supply with you;
  - (g) Recover and/or resell any of the goods and/or mixed goods and, subject to any law to the contrary, enter any premises where we believe the goods and/or the mixed goods are stored and you grant us an irrevocable right and authority to do so. We may only recover and resell for our own account sufficient goods or mixed goods to satisfy all unpaid liabilities, the costs of recovery and resale and the costs referred to in clause 11.3. If we recover any excess, we will not be liable in damages to you but must account to you for the excess.
- 11.3 You will pay all costs and expenses (including costs on a solicitor/client basis and debt collectors' costs) we incur in enforcing or attempting to enforce our rights under this clause. We may deduct any costs and expenses incurred from the proceeds of sale of any goods or mixed goods recovered from you.
- 11.4 Your payments will be applied first in reduction of interest, liquidated damages and costs due under this clause, with the balance being applied in reduction of any amounts due under clause 4.

12 **Dangerous Goods**

You warrant to us that after delivery of the goods and whilst we retain any interest in the goods you will comply with all applicable Acts, Regulations and Laws dealing with the transport, unloading and storage of dangerous or hazardous materials.

Initial: .....

- 13 **Manufacturers' Labels Prevail**  
The goods will be delivered to you affixed with labels from both the manufacturer and us. You acknowledge that in the event of a conflict in the whole or any part of the information appearing on any warning or information labels, the warnings and information appearing on the label of the manufacturer(s) shall prevail.
- 14 **Indent Sales**  
These terms and conditions of sale shall apply to all indent sales with the following variations:
- (a) Indent Sales of imported products are chargeable by reference to the estimated date of arrival of the carrying vessel at the port of discharge; and
  - (b) Quotations made by us for indent sales are based on the exchange rate prevailing at the time of the quotations. Any variations in exchange rates between the date of our quotation and the date the indent becomes chargeable to you shall be chargeable to your account.
- 15 **Refusal of Order**  
We reserve the right to accept or decline in whole or in part any order made by you for the supply of goods and you acknowledge that we will not be liable for any loss and damage incurred by you if we so decline in whole or in part any such order.
- 16 **Cancellation**  
If you cancel any order, acceptance of such cancellation by us shall only be by way of written consent from us to you provided that you agree to pay to us any expenditure actually incurred by us as a consequence of our having processed the order together with any loss or profit relating to such cancellation.
- 17 **Acknowledgement**  
You acknowledge that :
- (a) You have not relied on any service involving skill and judgement, advice, recommendation, information or assistance provided by us in relation to the goods or their use or application.
  - (b) You have the sole responsibility of satisfying yourself that the goods are suitable for your use or any contemplated use whether or not such use is known by us.
  - (c) The goods may vary in quantity, quality and specification.
- 18 **Personal Property Securities Act ("PPSA")**
- 18.1 Notwithstanding anything to the contrary contained in these terms, the PPSA applies to these terms.
- 18.2 For the purposes of the PPSA:
- (a) Terms used in Clause 18 that are defined in the PPSA have the same meaning as in the PPSA.
  - (b) These terms are a security agreement and we have a purchase money security interest in all present and future goods supplied by us to you and the proceeds of the goods.
  - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by you at any particular time.
  - (d) You must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by us on the Personal Property Securities Register.
- 18.3 The security interest arising under this clause 18 attaches to the goods when the goods are collected or dispatched from our premises and not at any later time.
- 18.4 Where permitted by the PPSA, you waive any rights to receive the notifications, verifications, disclosures or other documentation specified under Sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 157 of the PPSA.
- 18.5 To the extent permitted by the PPSA, you agree that:
- (a) The provisions of Chapter 4 of the PPSA which are for the benefit of you or which place obligations on us will apply only to the extent that they are mandatory or we agree to their application in writing.
  - (b) Where we have rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 18.6 You must immediately upon our request:
- (a) Do all things and execute all documents necessary to give effect to the security interest created under this agreement.
  - (b) procure from any person considered by us to be relevant to its security position such agreements and waivers (including as equivalent to those above) as we may at any time require.
- 18.7 We may allocate amounts received from you in any manner as we determine, including in any manner required to preserve any purchase money security interest it has in goods supplied by us.
- 18.8 You hereby provide us with a security interest over all your present and after-acquired property to secure payment for the goods.
- 18.9 You hereby provide us with a Power of Attorney under Part XIA of the Instruments Act 1958 insofar as you appoint us to be your attorney and authorise us to do on your behalf anything that you may lawfully authorise an attorney to do in relation to execution of any documents to give effect to our security interest as a secured party under the PPSA and to ensure that our interest is perfected, attached and registered on the register in accordance with the provisions of the PPSA to ensure that we have a valid security interest, a purchase money security interest and that we have the greatest priority available to us under the PPSA. You warrant that the terms have the effect of a deed.
- 19 **General**
- 19.1 You indemnify and shall keep indemnified us against any liability for any direct, indirect or consequential injury, loss, cost, expense or damage arising out of any act, default or omission of, or any representation made by you or your servants or agents.
- 19.2 No waiver by us of any term or condition will constitute a waiver of any other of these terms or conditions.
- 19.3 We may vary these terms and conditions at any time by notice in writing to you. Any such variation will take effect from acceptance of the first order for goods following notice of the variation being given to you.
- 19.4 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria and both you and us submit to the non-exclusive jurisdiction of the courts of that State, and any courts able to hear appeals from those courts.