

## TERMS AND CONDITIONS FOR SALE OF PRODUCTS

1. **Parties** - These terms and conditions, as amended from time to time by the Seller, apply to all sales of Product by the Seller to the Customer.
2. **Quotations and orders**
  - (a) Once placed orders may not be withdrawn, or delivery deferred, without the Seller's consent. The Seller reserves the right to refuse any order based on a quotation within 7 days after receiving the order. If the order is not refused it is deemed to have been accepted by the Seller.
  - (b) The Seller reserves the right to vary the date for delivery of an order and will not be liable for any loss or damage (including consequential loss) which arises by reason of a variation to the delivery date.
  - (c) If the Customer defaults under these terms and conditions or the Seller holds a reasonable belief that the Customer intends or is likely to default under these terms and conditions, the Seller may cancel, suspend or vary the terms and conditions of any incomplete order that has been accepted by the Seller without notice to the Customer and without being liable to the Customer.
  - (d) The Seller is not responsible to the Customer for a breach of its obligation to supply the Product pursuant to an order the Seller has accepted, or for any delay in delivery, which includes, but is not limited to, a delay in delivery caused by matters beyond the reasonable control of the Seller such as an unusually high number of orders for the Products, the Seller exercising its rights under these terms and conditions, acts of God, acts of government, war or other hostility, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies at a reasonable price and any other force majeure occurrence).
  - (e) Under no circumstances is the Seller liable for any consequential loss or damage resulting from any breach of contract or warranty, including breach of an essential term.
3. **Prices**
  - (a) Prices quoted in any order accepted by the Seller apply to that order only and do not apply in any other circumstances.
  - (b) All Prices for Products are GST exclusive. The Customer must pay at the time payment of the Product is due, the GST payable in respect of the supply of the Product upon being given a valid tax invoice for the supply. Expressions used in this clause have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* as amended.
  - (c) Unless otherwise agreed to in writing by the parties the cost of freight is not included in the Prices and remains the Customer's responsibility.

- (d) All Prices are subject to change without notice and are not guaranteed unless an order is deemed to be accepted.

#### 4. Payment

- (a) All orders must be accompanied by a deposit equal to 30% of the total invoice value. The deposit paid is not refundable unless the Seller refuses an order or refuses to deliver an order. The Seller does not refuse to deliver an order for the purposes of this clause, if the Seller varies the date for delivery of an order, or if the Seller elects not to deliver the order because the Customer fails to unconditionally pay for the order in accordance with clause 4(b).
- (b) Unless otherwise agreed in writing by the parties all invoices are payable 14 days prior to the expected date of delivery of the Product.
- (c) Time is of the essence for all the Customer's obligations.
- (d) The Seller reserves the right to charge interest to the Customer on overdue accounts from the date such accounts were due, such interest to be compounded daily until the date on which the overdue account and interest is paid in full, at the interest rate fixed under section 2 of the *Penalty Interest Rate Act 1983*.
- (e) The Customer agrees to pay the Seller any and all expenses (including legal costs on a full indemnity basis and out of pocket expenses) incurred in collecting any amounts that are not paid by the Customer to the Seller when due.

#### 5. Credit

- (a) Credit terms (if any) must be confirmed in writing by the Seller and may not be transferred, assigned, or otherwise dealt with without the prior written consent of the Seller;
- (b) Notwithstanding any credit previously granted by the Seller, all accounts become due and fully payable if:
  - (i) the Customer is a company and its directors change without the Seller's prior written consent; or
  - (ii) the Customer is a company and 30% or more of the shares in that Company are transferred without the Seller's prior written consent; or
  - (iii) the Customer is a partnership and the members of that partnership change without the Seller's prior written consent; or
  - (iv) an Insolvency Event occurs in respect of the Customer; or
  - (v) the Customer is in breach of these terms and conditions.

For the purposes of this clause an Insolvency Event means, any one or more of the following events or circumstances occurring in relation to the Customer:

- (i) being in liquidation or provisional liquidation or under administration;
- (ii) having a Controller or analogous person appointed to it or any of its property;
- (iii) being taken under section 459F(1) of the *Corporations Act 2001 (Cth)* to have failed to comply with a statutory demand;

- (iv) being unable to pay its debts or being otherwise insolvent;
- (v) becoming an insolvent under administration, as defined in section 9 of the *Corporations Act 2001 (Cth)*;
- (vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (vii) any analogous event or circumstance under the laws of any jurisdiction; or
- (viii) taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the Seller;

For the purposes of this clause an **Controller** means, in relation to a person:

- (i) a receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or
  - (ii) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an encumbrance;
- (c) The Seller reserves the right at all times to amend or withdraw any Credit (ie payment terms) terms on 24 hours written notice without liability to the Customer or any other party.

6. **Risk in the Product** - The risk of loss or damage to the Product passes to the Customer on the date and at the time that the Product is removed from storage for the purpose of delivery to the Customer. Products picked up by carriers or delivered by the Seller to any other transport authority for dispatch, cease to be the Seller's responsibility, once the Seller has obtained a receipt for them.

## 7. Delivery

- (a) Any delivery times notified to the Customer are estimates only and the Seller is not responsible for late or non-delivery. The Seller may vary the delivery times at any time.
- (b) If the Customer requests the Seller to postpone delivery of the Product beyond the delivery date or dates specified in the order, the Seller may, at its option, agree to do so if the Customer pays an additional fee for such postponement and for storage charges.

## 8. Retention of title

- (a) It is expressly agreed and declared that the Product delivered by the Seller to the Customer remains the sole and absolute property of the Seller as legal and equitable owner until all money due to the Seller has been paid to the Seller, but such Product will be at the Customer's risk from the time of delivery of the Product to the Customer.
- (b) The Customer undertakes to store the Product on its premises separately from its own goods or those of any other person and in a manner which makes the Product readily identifiable as the Seller's Product, until delivery of the Product to a third party.

- (c) The Customer may resell the Product, but only as fiduciary agent of the Seller.
- (d) The Customer must keep an amount from the proceeds of sale which is equal to the debt owed to the Seller in a separate identifiable account as the beneficial property of the Seller and must immediately pay such amount to the Seller upon request.
- (e) The Customer's right to possession of the Product ceases if it does anything or fails to do anything which would entitle a receiver, a receiver and manager, an administrator or a trustee to be appointed in respect of the Customer, its undertaking or property or any part thereof, or entitle a person to present a creditor's petition for winding up the Customer.
- (f) These provisions apply notwithstanding any arrangement under which the Seller provides credit to the Customer. To the extent that there is any inconsistency these provisions prevail. The Customer grants to the Seller permission and authority to enter any premises where the Product is stored or kept, or where it is reasonably thought to be stored or kept for the purpose of examination and recovery of the Product, with such force as is necessary

## 9. Defaults

- (a) Notwithstanding anything contained herein and without limitation thereto the Customer acknowledges and agrees that upon any breach of these terms or default in any dealing with the Seller by the Customer the Seller may (inter alia) retain all monies paid and / or cease further deliveries & recover any losses from the Customer and or take possession of any Product not paid for, without prejudice to any of its other rights and without liability to any other party.
- (b) The Customer agrees not to commence or continue or permit to be continued through it any action against the Seller until such time that such a breach is remedied.

## 10. Claims and liabilities

- (a) Any claim by the Customer as to incorrect performance or breach of these terms and conditions must be made to the Seller in writing within 3 days of delivery, for which time is of the essence.
- (b) The total liability of the Seller, its employees, servants and agents for breach of any warranty (statutory or otherwise) or other provision of these terms is limited to one or more of the following at the option of the Seller:
  - (i) replacement of the Product supplied or supply of equivalent Product;
  - (ii) payment of the cost of replacing the Product or of acquiring equivalent Product;
  - (iii) payment of the cost of having the Product repaired; and does not extend to consequential loss or damage.
- (c) No claims will be recognised by the Seller as being damaged in transit unless the Products which are the subject of the claim are duly noted on the carriers consignment note (which note must be forwarded to the Seller together with any claim made by the Customer).

- 11. **Warranties** - No warranties are provided by the Seller in regards to defects in the Product workmanship and material as the Product is not manufactured by the Seller.

12. **Intellectual Property** - The Customer agrees that all intellectual property or the like used to fulfil any order or provide any service remains the property of the Seller despite any contribution by the Customer.
13. **Waiver** - No waiver by the Seller of any breach of these terms and conditions operates as a waiver of any other breach, and the doing and/or omission of any act, matter or thing whatsoever by the Seller, its employees or agents (which but for this clause ought or might amount to a waiver of the Seller's rights in respect of any such breach or default) does not operate as a waiver in any way of the Seller's rights and powers in respect of such breach or default.
14. **Notices** - Any notice required under this agreement must be in writing and given by post, facsimile or hand to the Seller or the Customer at the address set out in the schedule or at such other address or facsimile number as is notified in writing by one party to the other.
15. **Governing law** - This contract is governed by the laws of the Victoria, Australia , notwithstanding the place in which the Product or any of them are to be delivered. The Customer and the Seller irrevocably submit to the exclusive jurisdiction of the Courts of that State.
16. **Contracts and Quotation** - Any quotation given by the Seller to the Customer (subject to the Seller's right to withdraw the same) and any order given by the Customer to the Seller (which is accepted in writing by the Seller) shall incorporate these terms by reference. If there is any discrepancy between such quote and/or order and these terms, the said quote and/or order shall prevail to such an extent to resolve such a dispute, but otherwise the terms will continue to apply.
17. **Whole agreement** - These terms and conditions and the express 3 year warranty given to the Customer by the Seller and any warranties implied by law which are not capable of being excluded or modified embody the whole agreement between the parties and, subject to the express terms contained in any written order and written acceptance thereof (which will only apply to that particular order), all previous negotiations, representations, other warranties, arrangements and statements (if any), whether expressed or implied, including any collateral agreement regarding the subject matter or the intentions of either of the parties are merged in these terms and conditions and otherwise are hereby excluded and cancelled. The Customer acknowledges that it has not been induced to enter into this agreement by any representation, advice or information given or made by or on behalf of the Seller.
18. **Privacy authority** - For the purposes of assessing the credit-worthiness of the Customer from time to time and the collection of payments, the Customer authorises the Seller, its employees and agents to make such enquires as they deem necessary including, without limitation, making enquires of and obtaining reports (as may be allowed by law) from persons nominated by the Customer as trade referees, the Customer's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies ("the information sources"). The Customer consents to the information sources providing to the Seller such information as is requested by the Seller and permitted to be given by law. The Customer also consents to the Seller disclosing personal information or the contents of any credit report to a credit reporting agency for the purpose of that credit reporting agency creating or adding to any credit information file in relation to the Customer.
19. **Assignment** - The Customer shall not assign its order nor any of its rights or obligations thereunder, without the prior written consent of the Seller.
20. **Indemnity** - The Customer hereby indemnifies and shall keep the Seller indemnified against all actions, claims, demands, summons, suits, proceedings, judgements, orders or decrees made against the Seller resulting from the use of the Seller of the Customer's special tools, dies, machinery and other equipment and without limiting the generality hereof

in particular any matter arising from an allegation or infringement of rights in any registered design patent or copyright.

21. **Set-Off** - Complaints in respect of alleged faulty Products shall not entitle the Customer to withhold payment of any sum which has become payable to the Company and shall not give rise to any right of set-off unless and until any amount to be allowed by the Seller has been admitted and ascertained.
22. **Proof of Delivery** - Proof of Delivery will not be supplied unless requested within 30 days of delivery.