

# TERMS AND CONDITIONS OF SALE

## Standard Terms & Conditions

### 1. Interpretation

Nothing in these conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974*) and which by law cannot be excluded, restricted or modified.

### 2. General

These conditions prevail over all conditions of the buyer's order to the extent of any inconsistency.

### 3. Terms of sale

The goods and all other products sold by the seller are sold on these terms and conditions.

### 4. Packing

The cost of any special packing and packing materials used in relation to the goods are at the buyer's expense notwithstanding that such cost may have been omitted from any quotation.

### 5. Shortage

The buyer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with the seller within seven (7) days from the date of receipt of goods by the buyer.

### 6. Drawings, etc.

6.1 All specifications, drawings, and particulars of weights and dimensions provided by the seller are approximate only and any deviation from any of these things does not vitiate any contract with the seller or form grounds for any claim against the seller.

6.2 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods.

6.3 Where specifications, drawings or other particulars are supplied by the buyer, the seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the seller and set out in a quotation, then any such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

### 7. Delivery

7.1 The delivery times made known to the buyer are estimates only and the seller is not to be liable for late delivery or non-delivery.

7.2 The seller is not to be liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery of the goods.

7.3 The seller may at its option deliver the goods to the buyer in any number of instalments unless there is an endorsement overleaf to the effect that the buyer will not take delivery by instalments.

7.4 If the seller delivers any of the goods by instalments, and any one of those instalments is defective for any reason:

- (a) it is not a repudiation of the contract of sale formed by these conditions; and
- (b) the defective instalment is a severable breach that gives rise only to a claim for compensation.

### 8. Loss or damage in transit

8.1 The seller is not responsible to the buyer or any person claiming through the buyer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the seller is legally responsible for the person who caused or contributed to that loss or damage).

### 9. Guarantee

9.1 As the goods are not manufactured by the seller the guarantee of the manufacturer of those goods is accepted by the buyer and is the only guarantee given to the buyer in respect of the goods. The seller agrees to assign to the buyer on request the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

9.2 The seller is not liable for and the buyer releases the seller from any claims in respect of faulty or defective design of any goods supplied. In any event the seller's liability under this paragraph is limited strictly to the replacement of defective goods.

9.3 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of the goods or arising out of the seller's negligence or in any way whatsoever.

### 10. Liability

10.1 The seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the *Trade Practices Act 1974* (other than s 69) is limited to (at the option of the seller) any one or more of the following:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired.

10.2 The seller's liability under s 74H of the *Trade Practices Act 1975* is expressly limited to a liability to pay to the buyer an amount equal to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired, whichever is the lowest amount.

### 11. Prices

11.1 Unless otherwise stated all prices quoted by the seller are exclusive of Goods and Services Tax (GST).

11.2 Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on the date is made.

11.3 If the seller makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the buyer's account.

### 12. Payment

The purchase price in relation to goods is payable net and payment of the price of the goods must be made within 30 days of delivery of the goods unless other terms of payment are expressly stated in these conditions in writing.

### 13. Rights in relation to goods

13.1 In connection with the goods while they remain the property of the seller, the buyer agrees with the seller that:

- (a) the buyer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation the seller owes to the buyer;
- (b) the buyer cannot claim any lien over the goods;
- (c) the buyer will not create any absolute or defeasible interest in the goods in relation to any third party except as may be authorised by the seller;
- (d) where the buyer is in actual or constructive possession of the goods
  - (i) the buyer will not deliver them or any document of title to the goods to any person except as directed by the seller; and
  - (ii) it is in possession of the goods as a bailee of those goods and owes the seller the duties and liabilities of a bailee.

13.2 The seller and the buyer agree that:

- (a) the property of the seller in the goods remains with the seller until the seller has been paid in full for the goods under all individual contracts for the supply of the goods between the seller and the buyer;
- (b) the buyer is a bailee of the goods until such time as property in them passes to the buyer and that this bailment continues in relation to each of the goods until the price of the goods has been paid in full;
- (c) pending payment in full for the goods, the buyer:
  - (i) must not supply any of the goods to any person outside of its ordinary or usual course of business;
  - (ii) must not allow any person to have or acquire any security interest in the goods;
  - (iii) must insure the goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the buyer carries on business;

13.3 Despite clause 13.2, if the buyer supplies any of the goods to any person before all moneys payable by the buyer have been paid to the seller (and have not been claimed or clawed-back by any person standing in the place of or representing the buyer), the buyer agrees that:

- (a) it holds the proceeds of re-supply of the goods on trust for and as agent for the seller immediately when they are receivable or are received;
- (b) it must either pay the amount of the proceeds of re-supply to the seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the seller;
- (c) any accessory or item which accedes to any of the goods by an act of the buyer or of any person at the direction or request of the buyer becomes and remains the property of the seller until the seller is paid in accordance with clause 13.2(a) when the property in the goods (including the accessory) passes to the buyer;
- (d) if the buyer fails to pay for the goods within the period of credit (if any) extended by the seller to the buyer, the seller may recover possession of the goods at any site owned, possessed or controlled by the buyer and the buyer agrees that the seller has an irrevocable licence to do so.

### 14. Buyer's property

Any property of the buyer under the seller's possession, custody or control is completely at the buyer's risk as regards loss or damage caused to the property or by it.

### 15. Storage

The seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the buyer within fourteen days of a request by the seller for such instructions. The parties agree that the seller may charge for storage from the first day after the seller requests the buyer to provide delivery instructions.

### 16. Returned goods

The seller is not under any duty to accept goods returned by the buyer and will do so only on terms to be agreed in writing in each individual case.

### 17. Goods sold

All goods to be supplied by the seller to the buyer are as described on the purchase order agreed by the seller and the buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the buyer.

### 18. Cancellation

No order may be cancelled except with consent in writing of the seller and on terms which will indemnify the seller against all losses.

### 19. Place of contract

The contract for sale of the goods shall be governed by and construed in accordance with the laws for the time being in force in the State of Queensland and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.