

## **TERMS & CONDITIONS**

**This agreement** shall be subject to the provisions of the TRADE PRACTICES ACT 1974 (the Statute). Any rights and remedies pursuant to the Statute, which cannot be excluded by this contract, are deemed to apply to this contract notwithstanding any inconsistency with terms and conditions.

**1. OFFER AND ACCEPTANCE** – This quotation is not an offer to sell goods. No order pursuant to the quotation shall bind the company until accepted in writing or by supply of goods. These terms and conditions shall be deemed incorporated in the agreement between the Company and the purchaser. Any terms and conditions in any order and all representations and warranties implied by statute or otherwise contained herein or not confirmed in writing by the Company are expressly excluded to the fullest extent permitted by law. The Company shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect of any claim whenever and however made for any loss, damage, deterioration, deficiency or other fault or harm in the goods manufactured, works executed or services provided by or on behalf of or in any arrangement with the Company or occasioned to the Purchaser or any other party or to his or their property or interest and whether or not due to the negligence of the Company its servants or agents.

**2. DELIVERY** – All reasonable efforts shall be taken by the Company to deliver the goods on the agreed date but the Company shall not be responsible for any consequential indirect or other loss arising as a result of any failure by the Company to deliver the goods by the agreed date. In particular but without prejudice to the generality of the foregoing it is agreed that the Company shall not be responsible for delay in manufacture or delivery caused by, or in any way incidental to, an act of God, war, fire, civil commotion, strikes, breakdown or partial failure of plant or machinery or arising out of any other unexpected or exceptional cause or any cause beyond the reasonable control of the Company.

**3. CANCELLATION** – This contract may only be cancelled or varied with the written consent of the Company upon the terms and conditions set forth in such consent.

**4. DESCRIPTION AND SPECIFICATION** – Descriptive material provided by the Company represent the general nature only of the items described therein and the use of such descriptive material shall not constitute a contract of sale by description. The purchaser warrants that the goods supplied by the company based on designs supplied by the purchaser do not infringe letters patent or registered designs. The Company does not warrant or guarantee the performance fitness or capacity of goods supplied by it and based upon any design supplied by the purchaser, which acknowledges that it does not rely upon the skill and judgment of the Company in respect of such goods.

**5. INSURANCE** – In the event that the goods are covered by insurance taken out by the Company, the Company will only be liable to the extent of any indemnity provided.

**6. RISK** – Unless otherwise agreed to in writing all goods shall be at the purchaser's risk upon delivery to the purchaser, its carrier or agent, whichever shall first occur.

**7. INSOLVENCY AND DEFAULT** – If:

- (a) The purchaser defaults in compliance with a term of, or repudiates this contract;
- (b) A resolution petition or application is proposed presented or filed for the winding up of the Company;
- (c) A receiver or receiver/ manager is appointed to any part of the property of the purchaser;
- (d) The purchaser proposes any assignment with its creditors or is placed under official management; or
- (e) Execution is levied on the assets of the purchaser in excess of \$1,000.00 and remains unsatisfied after 7 days, then the Company may cancel this contract or require payment before or on delivery of the goods or it may repossess and dispose of the same in its own interest without prejudice to any claim it may have for damages resulting from loss on resale.

**8. TITLE LIEN** - Title to the goods will not pass to the purchaser until payment in full for the goods has been received by the Company. Until that date of final payment the purchaser shall store the goods so that they are clearly identified as the property of the Company. In addition to any lien which the Company may, by statute or otherwise, be entitled the Company shall in any of the events set forth in clause 8 hereof be entitled to a general lien on all property or goods belonging to the purchaser in its possession (although such goods or some of them have been paid for) for the unpaid price of any other goods sold and delivered to the purchaser under this or any other contract. In addition to any rights of the Company under the Personal Property Securities Act 2009 (PPS Act), Company is irrevocably authorised to enter any premises where the goods are kept, and to use the name of the purchaser and to act on its behalf, if necessary, to recover possession of the goods.

The purchaser grants to the Company, and acknowledges that the Company has, a security interest (for the purpose of the PPS Act) in all present and after acquired goods and any proceeds derived from the sale of the goods. The security interest secures all moneys owing to the Company under any contract or otherwise. The purchaser acknowledges that each security interest over the goods (or their proceeds) arising under this clause 8 is a 'purchase money security interest' under the PPS Act to the extent that it secures payment of the amounts owing for those goods and may be registered as such. The purchaser must do anything reasonably required by the Company to enable the Company to register these security interests, with the priority the Company requires, and to maintain those registrations. The security interests arising under this clause attach to the goods when the purchaser obtains possession of the goods and the parties confirm that they have not agreed these security interests attaches at any later time. The purchaser waives its right to receive a copy of the verification statement of financing charge statement relating to the Company's security interest.

**9. PAYMENT** – Unless otherwise agreed in writing payment terms are cash net 30 days from the end of the month in which the goods are delivered to the purchaser, its carrier or agent. The Company shall be entitled to charge the purchaser interest on overdue accounts at the rate of 3% above the maximum prime rate of interest charged by the Company's principal bankers on overdraft accounts from the date of such account falling due until the date of payment in full. If the Company does not receive forwarding instructions sufficient to enable it to dispatch the goods within 14 days of notification that they are ready, the purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date. The purchaser shall be liable for storage charges payable on demand, storage being at the purchaser's risk.

**10. PRICE** – Unless otherwise agreed in writing the price of the goods shall be that charged by the Company at the date of delivery plus any tax or charge which may be levied by any governmental authority upon the goods or any part thereof or the manufacture, use sale or delivery thereof. The price of the goods is subject to change by the Company without notice including change to incorporate any increase in the cost of materials. Unless otherwise specified any prices quoted do not include transportation costs. Goods shall be supplied ex works.

**11. TOOLING AND DIES** – All patterns, dies, moulds and other tooling obtained by the Company on behalf of the purchaser shall be at the sole cost of the purchaser. Such items will be retained by the Company at the purchaser's risk and expense for 3 months after delivery and shall thereafter become the property of the Company. The purchaser acknowledges that the Company shall have no liability whatsoever in respect of such items.

**12. JURISDICTION** – The law applicable to this contract shall be the law of the State of origin of this contract.