

## **TERMS AND CONDITIONS OF SALE**

### **1. BUYER'S STATUTORY RIGHTS**

These Conditions of Sale shall not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Buyer or the liabilities imposed upon the Seller, by any condition or warranty implied by the Commonwealth, State or Territory Act or Ordinance, rendering void or prohibiting such exclusion, limitation, restriction, or modification. Insofar as any such condition or warranty can be:

- a) excluded, it is hereby excluded; or
- b) limited, restricted or modified, it is hereby limited restricted or modified to the fullest extent permitted by law.

### **2. WARRANTIES**

Subject to Condition 1 the Seller warrants that the goods supplied shall be of merchantable quality. All goods are supplied subject to this warranty only and any liability arising out of or in respect of the supply, resupply, use or reuse whether singly or otherwise of these goods, howsoever arising and whether for consequential loss or otherwise, and including any liability the Seller may otherwise have had by virtue of any representation, warranty, condition or term, whether express or implied by law is hereby excluded.

### **3. LIMITATIONS OF LIABILITIES**

Any liability incurred by the Seller to the Buyer is limited to the lowest of the cost of:

- a) replacement of the goods;
- b) obtaining equivalent goods or of having the goods repaired (at the option of the Seller);
- c) or refund of the price paid by the Buyer: and does not extend to consequential loss and is conditional upon the Buyer within 30 days of delivery making a written claim to the Seller setting out the full particulars of such claim and where possible returning to it sufficient part of the goods to enable a proper examination.

### **4. ADVICES**

Subject to Condition 1, any advice, recommendation, information assistance or service provided by the Seller in relation to goods sold or manufactured by it or their use or application is given in good faith and is believed by the Seller to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by the Seller in relation to any goods supplied by the Seller is provided without liability or responsibility on the part of the Seller.

### **5. DELIVERY**

The Seller will make all reasonable efforts to have the goods delivered to the Buyer on the date agreed between the parties as the Delivery Date, but the Seller shall be under no liability whatsoever should delivery not be made on this date.

### **6. RISK**

1. Unless otherwise agreed in writing, the risk in the goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.
2. Without in any way limiting the operation of the foregoing, upon delivery of the goods to the Buyer or his agent, or to a carrier commissioned by the Buyer, the Buyer hereby covenants and where appropriate warrants with the Seller that, in the storage and handling of the goods, the Buyer shall comply with all necessary and/or relevant permits and licenses, and the Buyer shall ensure that the Buyer is familiar with and adheres to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the goods.

## 7. PROPERTY

1. Property in the goods shall remain with the Seller and the Seller reserves the right to dispose of the goods until such time as:
  - full payment is made for all amounts owing by the Buyer to the Seller so that the Buyer's total indebtedness to the Seller under these Conditions of Sale is discharged; or
  - the Buyer sells the goods to his customers in the ordinary course of business.
2. If the Buyer fails to pay any amount of the Buyer's total indebtedness to the Seller under these Conditions of Sale when it is due to the Seller, or event of default as specified in sub clause (3) hereof occurs, the Seller may without notice and without prejudice to any of its other rights and remedies recover and/or re-sell the goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.
3. Until full payment the Buyer shall store the goods in a way that clearly manifests the Seller's title.
4. The Buyer acknowledges that until his total indebtedness under these Conditions of Sale to the Seller is discharged he holds the goods as bailee of the Seller and thus a fiduciary relationship exists between them.

## 8. PRICE

Unless otherwise agreed in writing, the price charged shall be the price ruling at the date of delivery. Any price indications or price lists are subject to alteration to price ruling at the Delivery Date.

## 9. FORCE MAJEURE

Deliveries may be totally or partially suspended by the Seller during any period in which the Seller may be prevented or hindered from delivering by the Seller's normal means of supply or delivery by normal route through any circumstances outside reasonable control, including but not limited to strikes, lockouts, raw material shortages, accidents or breakdowns of plant or machinery. However, during the period of total or partial suspension of delivery the Buyer may purchase elsewhere, at its own cost and risk, such quantities of alternative goods as may be necessary to cover its requirements during such period in substitution for the goods not delivered by the Seller. Whether or not the Buyer makes these arrangements the Seller shall not be under any liability in respect of such suspension, and in particular the Seller shall be under no obligation to deliver at any future date any goods not delivered during the period of suspension.

## 10. PAYMENT DEFAULT AND LIMIT

a) Subject to clause 10(b), and unless otherwise agreed expressly in writing, the terms of payment shall be **30 DAYS FROM DATE OF INVOICE**.

If the Buyer makes default in any payment, the Buyer commits any act of bankruptcy or being a company passes a resolution for its winding up, if a company, any of the events referred to in Section 460 of the Corporations Law occur; the Buyer breaches any terms covenant or condition in any other contract, agreement or understanding between the Buyer and the Seller, If there is any contract agreement or understanding between the Seller and any related company (as that term is defined under the Corporations Law) or guarantor of the Buyer, and the related company or the guarantor of the Buyer breaches any terms covenant or condition of such contract agreement or understanding.

1. where the related company or any guarantor of the Buyer does or commits any act, matter or thing which if it, he or she were the Buyer would be a breach of these terms and conditions, or
2. a Receiver or a Receiver and Manager of the Buyer is appointed;
3. then all monies owing and outstanding to the Seller on any account whatsoever and irrespective of whether the due dates as per the Statement of Account has occurred shall become immediately due and payable. In addition the Seller may without prejudice to its other rights either suspend further deliveries, require payment in advance for all such deliveries or terminate any contract or agreement made forthwith by written notice to the Buyer.

b) Notwithstanding clause 10(a) the Seller may at all times at its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore, review, alter or terminate the Buyer's credit limit or terms without notice. Without limiting the generality of Clause 3 above, the decision of the Seller shall be final and the Seller accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

#### **11. FUTURE DEALING**

Unless otherwise agreed to in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer the terms appearing herein shall be incorporated by implication into all agreements by the Seller to supply the Buyer with goods.

#### **12. CONTAINERS**

1. Containers in which goods are delivered and for which a deposit charge is made, remain the property of the Seller and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of the Seller from which the goods were delivered, the full amount of the deposit will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. The Buyer will pay rental charge as determined by the Seller from time to time on all containers which are not received into the Seller's factory or store within one month of date of dispatch by the Seller.
2. Containers, in which goods are delivered and for which a separate price is shown on the face of the invoice are, unless otherwise specified thereon, sold with the goods and their price as shown on the invoice must be paid with the price of the goods, If they are returned in good order and condition by the Buyer at the Buyer's expense to the Seller's or store from which the goods were delivered within three months from the date of invoice the Seller will repurchase the sold containers from the Buyer for their full invoice price. The Seller may offer less than the full invoice price for containers repurchased after the expiration of three months from the date of invoice.
3. In the case of containers which are received at a factory or store of the Seller otherwise than in good order and condition, only such part of the deposit or of their invoice price as in the opinion of the Seller is reasonable, having regard to their actual condition, will be allowed to the Buyer.
4. Rental charges as determined by the Seller from time to time will be applied to drums which are not received into the Seller's factory or store within the period stipulated by the Seller. The value of drums lost, damaged or not returned within 12 months will be payable by the Buyer without refund or any rental paid.

#### **13. PALLETS**

At all times the Seller retains the right of possession of any pallets used for delivery of the goods and the Buyer agrees to indemnify the Seller in respect of any pallets not returned in good order and condition to the Seller within 1 month of delivery of the goods.

#### **14. WEIGHT**

In the absence of a proven defect in the Seller's system of weighing, the weights of goods sold hereunder shall be the last weight determined by the Seller's system of weighing prior to delivery.

## **15. SET-OFF**

The Seller at its sole and unfettered discretion may at any time and from time to time set-off any amount owing by the Seller to the Buyer in respect of goods and/or services supplied by the Buyer to the Seller whether or not that amount has become due and payable or whether that amount shall be due actually or contingently (in this Condition 15 referred to as "the amount owing by the Seller") against any amount owing by the Buyer to the Seller in respect of goods and/or services supplied by the Seller to the Buyer whether or not that amount has become due and payable or whether that amount shall be due actually or contingently (in this Condition 15 referred to as "the amount owing by the Buyer") with the effect that:

1. If the amount owing by the Seller exceeds the amount owing by the Buyer then the Seller may set-off the amount owing by the Seller against the amount owing by the Buyer and pay to the Buyer an amount equal to the difference between those two amounts in full and final satisfaction of the amount owing by the Seller;
2. If the amount owing by the Seller is less than the amount owing by the Buyer then the Seller may set-off the amount owing by the Seller against the amount owing by the Buyer and the amount owing by the Seller shall be deemed to have been satisfied in full without any payment from the Seller to the Buyer, and the net amount owing by the Buyer to the Seller shall forthwith become due and payable.

## **16. JURISDICTION**

This agreement shall be governed by and construed in accordance with the law for the time being in force in the state of South Australia and the parties hereto submit to the non-exclusive jurisdiction of the courts of that state.

## **WEBSITE TERMS AND CONDITIONS**

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