

Terms & Conditions of Sale

1. Buyers 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, 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 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; or
- b. obtaining equivalent goods; or
- c. having the goods repaired (at the option of the Seller); or
- d. 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 is given in good faith and is believed by the Seller to be appropriate and reliable. However, any information, assistance advice, recommendation, or service provided 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

- a. 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.
- b. 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 relevant environmental laws and regulations, and does or on the acquisition of the goods will possess and comply with all necessary and/or relevant permits and licences, 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

- a. Property in the goods shall remain with the Seller and the Seller reserves the right to dispose of the goods until such time as:
 - i. 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;
 - ii. or the Buyer sells the goods to his customers in the ordinary course of business;
- b. 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 subclause (c) 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.
- c. Until full payment the Buyer shall store the goods in a way that clearly manifests the Seller's title.
- d. 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 that a fiduciary relationship exists between the Buyer and Seller.

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 or product 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 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 cash with order. The Seller may at its discretion allow the Buyer to purchase goods on account in which case the Seller will be advised the terms of payment in writing.
- b. If:
 - i. the Buyer makes default in any payment,
 - ii. the Buyer commits any act of bankruptcy or being a company passes a resolution for its winding up.
 - iii. if a company, any of the events referred to in Section 460 of the Corporation Law occur,
 - iv. the Buyer breaches any terms covenant or condition in any other contract agreement or understanding between the Buyer and the Seller
 - v. 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.
 - vi. 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
 - vii. a Receiver or a Receiver and Manager of the Buyer is appointed: then all moneys owing and outstanding to the Seller on any account whatsoever and irrespective of whether the due dates have 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.
- c. 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 therefor, 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. Contra

The Seller at its sole and unfettered discretion may at any time and from time to time contra 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 12. 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 12. referred to as "the amount owing by the Buyer") with the effect that:

- a. If the amount owing by the Seller exceeds the amount owing by the Buyer then the seller may contra 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;
- b. if the amount owing by the Seller is less than the amount owing by the Buyer then the Seller may contra 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.