

CONDITIONS OF SALE OF GOODS

Interpretation

- In these conditions:
 - 'Seller' means Bogaard Distributors Pty Ltd ACN 088 121 448 of PO Box 22, Mt Colah NSW 2079 which is the seller of the goods/services.
 - 'Buyer' means the purchaser of the goods/services specified overleaf.
 - 'Goods' means the products and, if any, services specified overleaf.
 - Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying 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.

General

- These conditions (which shall only be waived in writing signed by the seller) shall prevail over all conditions of the buyer's order to the extent of any inconsistency.

Terms of sale

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

Seller's quotations

- Unless previously withdrawn, seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 5 days only after its date. The seller reserves the right to refuse any order based on this quotation within 5 days after the receipt of the order and the right to change the prices for goods and services at any time thereafter.

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 5) days from the date of receipt of goods by the buyer.

Drawings, etc

- All specifications, drawings, and particulars of weights and dimensions submitted to 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.
- 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.
- 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 seller and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

Performance

- Any performance figures given by the seller are estimates only. The seller is under no liability for damages for failure of the goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognized tolerances applicable to such figures.

Delivery

- The delivery times made known to the buyer are estimates only and the seller is not liable for late delivery or non-delivery.
- The seller is not liable for any loss, damage or delay occasioned to the buyer or its customers arising from late or non-delivery or late installation of the goods.
- The seller may at its option deliver the goods to the buyer in any number of installments unless there is an endorsement overleaf to the effect that the buyer will not take delivery by installments.
- If the seller delivers any of the goods by installments, and any one of those installments is defective for any reason:
 - it is not a repudiation of the contract of sale formed by these conditions; and
 - the defective installment is a severable breach that gives rise only to a claim for compensation.

Loss or damage in transit

- 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).
- The seller shall provide the buyer with such assistance as may be necessary to press claims on carriers so long as the buyer:
 - has notified the seller and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
 - lodges a claim for compensation on the carrier within 3 days of the date of receipt of the goods.

Guarantee

- The seller's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at the seller's option by replacement, within a period not exceeding 24 calendar months after the goods have been dispatched so long as:
 - defects have arisen solely from faulty materials or workmanship;
 - the goods have not received maltreatment inattention or interference;
 - accessories of any kind used by the buyer are manufactured by or approved by seller;
 - the seals of any kind on the goods remain unbroken; and
 - the defective parts are promptly returned free of cost to the seller.
- If 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 made by the buyer 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.
- 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 unless such design has been wholly prepared by the seller and the responsibility for any claim has been specifically accepted by the seller in writing. In any event the seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with clause 10.1 of these conditions.
- 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, layout, assembly, installation or operation of the goods or arising out of the seller's negligence or in any way whatsoever.
- 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:
 - in the case of goods, any one or more of the following:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - the payment of the cost of having the goods repaired; or
 - in the case of services:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.
- The seller's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the purchaser an amount equal to:
 - the cost of replacing the goods;
 - the cost of obtaining equivalent goods; or
 - the cost of having the goods repaired, whichever is the lowest amount.

Prices

- Unless otherwise stated all prices quoted by the seller are net, exclusive of Goods and Services Tax (GST) and any other statutory charges.
- 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, rate of water, cost of materials and other charges affecting the cost of production ruling on the date is made.
- The buyer will bear all liability for GST and shall not require the seller to pay to the buyer any amount on account of GST. In addition the seller will be entitled to recover from the buyer any GST paid or payable by it in respect to the sale of the goods.

Payment

- The purchase price in relation to goods is payable net and payment of the price of the goods must be made on or before the thirtieth day of the month next following the delivery of the goods unless other terms of payment are expressly stated in these conditions in writing.
- Should the buyer default in the payment of any moneys due to the seller then all moneys shall immediately become due and payable, shall be paid by the buyer within 7 days of demand and shall attract interest at the rate of 2% flat per month to be calculated on all overdue amounts from the date of due payment until the date of actual payment.
- Any expenses costs or disbursements incurred by the seller in recovering any outstanding moneys, including all reasonable debt collection fees and solicitors costs and legal disbursements shall be paid by the buyer.
- The seller shall be entitled without notice to terminate any credit arrangement with the buyer in the event of the buyer defaulting in any of the terms and conditions contained in this agreement or for any other reason which the seller need not make known to the buyer.
- The seller shall be entitled at any time to request such security or additional security as it shall in its discretion think fit and shall be entitled to withhold supply of the goods or any credit arrangement until such security or additional security is provided.

Accounts with line of Credit (if applicable)

- If we agree to provide you with credit, it is subject to the following:
 - You warrant that all information given to us is true and correct.
 - You agree to notify us within seven (7) days of any change affecting your legal entity, structure, management or control.
 - You agree that our Terms and Conditions of sale as in force from time to time apply to the supply of goods by us to you to the exclusion of all other terms and conditions of sale or purchase and that any variation must be agreed by us in writing.
 - You acknowledge that we may:
 - refuse your application for credit facilities;
 - withdraw or vary credit facilities at our absolute discretion without prior notice;
 - withhold supply irrespective of whether an order has been accepted or not if for any reason we determine in our absolute discretion that no further credit is to be extended by us.
 - You consent and agree that we may:
 - obtain a credit report from credit reporting agencies or other credit providers for the purpose of assessing this and any other application which you may make for commercial credit;
 - obtain information from any other credit providers from time to time for the purpose of reviewing and assessing your commercial credit worthiness;
 - disclose or discuss with any credit providers or any credit reporting agencies, any prospective guarantor and any person or body agreeing or considering whether to agree to be liable for any credit to be made available to you, any information maintained or in your possession relating to your application and the administration of our credit facilities.
 - We acknowledge that the consents referred to in paragraph 15(a) to (c) above will continue to remain in full force and effect until all credit facilities cease to be made available to you by us.
 - The signatory warrants that where there is more than one Applicant/ Grantor, or the Applicant/ Grantor is a corporation that he or she is authorised to sign on behalf of all Applicants/ Grantors or the corporation as appropriate.
 - The guarantors agree to perform the obligations pursuant to this Agreement should the Applicant/ Grantor default.

Reservation of Title

- You acknowledge that the ownership of goods delivered by us to you ("the goods") is only transferred to you when have paid all sums owing to us on any account whatsoever under this Agreement and until such time we have the right to call for or recover the goods at our option (for which purpose our employees for agents may enter your premises) and you are obliged to deliver up the goods if so directed by us, in accordance with the enforcement procedures outlined in Chapter 4 of the *Personal Properties Security Act 2009* (Cth) or any applicable legislation from time to time.

Registration of Security Interest

- You acknowledge that we may register, at our discretion our interests in the goods as a Security Interest and such registration fees will be payable by you. We will provide a copy of the Verification Statement once the Security Interest has been registered.

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, the buyer's assigns agents or employees.

Returned goods

- The seller is not be 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. The seller will not accept the return of used, unpacked or damaged goods.
- If the seller agrees to accept returned goods from the buyer under clause 19.1, the buyer must return the goods to the seller at the seller's place of business referred to at the head of these conditions. Any return of goods shall be at the buyer's entire risk as to loss or damage. Where the seller agrees to accept goods for return a pre-negotiated re-stocking and re-packing charge may be made.
- Acceptance of goods delivered by the seller shall be deemed for all purposes to have taken place at the expiration of 5 days from the date of each delivery.

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.

Cancellation

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

Place of contract

- The contract for sale of the goods is made in the state of New South Wales, Australia.
- The parties submit all disputes arising between them to the courts of such state and any court competent to hear appeals from those courts of first instance.

Legislation

- This Agreement is governed by the *Personal Property Securities Act 2009* (Cth) as amended from time to time. Any capitalised words used in this Agreement but not defined herein shall take on the meaning of such defined words in the Act and if not defined in the Act, then its ordinary meaning.