

Terms & Conditions of Sale

1 OUTLINE

1.1 **Terms:** These terms and conditions apply to the supply of all goods by us to you from the date you accept these terms.

1.2 **Acceptance:** You accept these terms when:

1.2.1 You submit an order;

1.2.2 You accept delivery of, or any part of, the goods pursuant to an order; or

1.2.3 You make payment, or partial payment any goods supplied to by us, whichever occurs first.

2 QUOTES AND ORDERS

2.1 **Request a quote:** You may request a quote from us relating to the potential supply of goods.

2.2 **Providing a quote:** We may provide to you a Quote relating to the potential supply of Goods, which may include the price and quantity of the goods proposed to be supplied by us and other relevant details as necessary.

2.3 **Validity of Quote:** A quote is valid for 30 days only. We reserve the right to withdraw a quote at any time before you place an order.

2.4 **Placing an order:** If our quote is acceptable to you, you may place an order for each supply of Goods. An order is not binding until we have provided you with written acceptance or confirmation of the order, which we may withhold in our absolute discretion.

2.5 **Additional Conditions:** Unless otherwise agreed by us in writing, these terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you, whether in an order or otherwise.

2.6 **Tests:** All goods manufactured by us are quality inspected during manufacture and, where applicable, submitted to standard tests prior to dispatch.

3 PRICE

3.1 **Price:** Unless otherwise agreed to in writing by us or by our authorized representative, subject to clause 3.2, the price charged and payable for the goods shall in the price in Australian dollars at the date we provide the quote, together with any applicable charges, delivery costs and other costs indicated by us in relation to the goods.

3.2 **Variation of price:** Prices contained in any quote for the supply of goods are based on the costs prevailing and specification supplied at the time of the quote. Subject to your rights under law including the ACL, we reserve the right to vary the price if between the time of the quote and the time of your order:

3.2.1 there is any movement in the input cost of the supplying the goods specified in your order, including without limitation any change in charges, transportation, freight, import and insurance costs;

3.2.2 the goods specified in your order are varied from the goods specified in our quote; or

3.2.3 Otherwise provided in these terms, and we provide you reasonable notice of any such variation of price.

3.3 **Quantity tolerances:** Subject to clause 11, where we have agreed to produce goods which are other than our standard range of goods, due to the difficulty in product exact quantities, we reserve to the right to:

3.3.1 Vary the final quantity of goods delivered to you by a margin of up to 10% in excess of the quantity specified in your order; and

3.3.2 Charge you the price for any excess quantity of goods on a pro-rate basis.

4 PAYMENT

4.1 **Invoice on Delivery:** Unless otherwise agreed in writing, we will issue you an invoice upon delivery of the goods specified in your order.

4.2 **Payment terms:** All payments shall be made in full by the date of delivery of the goods to you. If you have a credit account with us, payment shall be made in full by the 30th day of the month following the date of the invoice. No cash discount will be allowed.

4.3 **Payment method:** All payments are to be made to us in cash, by direct credit to the bank account nominated by us, by cheque or as otherwise indicated by us in writing.

4.4 **Credit card payments:** Payment via credit card is for cash sale accounts only. 30 day accounts paying via this method will incur a 1.5% additional fee.

4.5 **International Purchases:** All New Zealand accounts will have the same trading terms as our domestic customers.

4.5.1 If we deliver goods to you outside Australia and New Zealand and you have a credit account, payment is due 60 days from Bill of Lading. No extension of payment will be granted for delays with shipping lines or port of origins.

4.5.2 If we deliver goods to you outside Australia and New Zealand and you DO NOT have a credit account, payment must be made prior to the goods leaving our store.

4.6 **Discounts:** Discounts for on time payment will be pre-arranged via our quotation process. Any variation to this agreed time line for payment will result in the discount becoming void and the full amount of the invoice becoming due, refer to clause 4.5.1

5 PAYMENT DEFAULT

5.1 **Default interest:** in addition to your rights under these Terms, we may at our discretion in the event of your failure to make a payment in accordance with clause 4 (payment) charge default interest at the rate of 2% per calendar month.

5.2 **Payment of default interest:** Default interest pursuant to clause 5.1 shall be:

5.2.1 Payable on demand; and

5.2.2 Calculated daily from the date the payment due to the actual date that the payment is made in full.

5.3 **Cost of Enforcement:** We may recover from you any costs we incur in the collection of payment of any invoice.

5.4 **No Set off:** You may not set off against any payment, at law or in equity, any claims which you may have against us.

5.5 **Default interest amount credited first:** Any payment you make to us shall first be credited against any default interest accrued pursuant to this clause 5 to the actual date of payment.

5.6 **Revocation of credit:** We reserve the right to revoke at any time any credit extended to you because of your failure to make any payment when due or for any other reason.

6 CUSTOM TOOLING

6.1 **Creation of Tools:** If we agree to produce goods which are other than standard items of our production or are of your own design or configuration which require us to create new dies, tools, molds, cutters or jigs (Tools), you will be responsible for a portion of the total cost of such tools and the amount of this portion shall be specified by us in our quote.

6.2 **Possession of Tools:** Unless we otherwise agree in writing, all tools we manufacture or supply shall remain in our possession upon the completion or determination of your order. We may in our absolute discretion produce for you further articles from such tools at prices to be quoted by us from time to time and subject to these terms.

6.3 **Maintenance of tools:** We shall be responsible for maintaining at our own expense all tools we manufacture on your behalf in reasonable order and condition during their economic production life. Where the condition of such tools ultimately renders it beyond economic or practical repair or where additional tools are required to cater for increase demand, then all of the cost of creating new tools will be charged to you. We will advise you of the cost via our quotation system.

6.4 **Tools supplied by you:** If tools are supplied by you, reasonable care will be taken to ensure that they remain in the condition as supplied but we accept no responsibility for any loss or damage to such tools or for insuring such tools. Any cost to modify or adapt such tools to suit our plant or production process and to maintain and repair such tools required under normal usage will be charged to you.

6.5 **Obsolete tools:** All tools will be considered obsolete if no further orders have been placed with us for production within 3 years of the date of the last supply to you. We accept no responsibility for the continued existence or usability of the tools after that 3 year period.

7 DELIVERY, RISK AND INSURANCE

7.1 **Delivery:** Delivery of the goods (Delivery) shall take place:

7.1.1 If the goods are delivered within Australia – at the time that the goods are delivered by us to you or any agent, carrier or person who takes delivery of the goods for the transmission of them to you as agreed by the parties; or

7.1.2 If the goods are delivered outside Australia – at the time that goods pass the ship's rail at the port of shipment as agreed by the parties.

7.2 **Forwarding Instructions:** If not already provided in your order, you shall provide to us any forwarding instructions at least 7 days before the date set for delivery of the goods.

7.3 **Risk passes on delivery:** The risk of any loss, damage to or deterioration of the goods shall pass to you from the time of delivery of the goods.

7.4 **Cost of Delivery:**

7.4.1 If the goods are delivered within Australia – goods are delivered CPT. We may charge you the cost of unloading the goods at your designated delivery location if you do not have a forklift and hand unloading is required.

- 7.4.2 Delivery costs will be added to your invoice at the time of dispatch from our warehouse unless you have specified your nominated carrier and your account with said carrier on your purchase order with us.
- 7.4.3 Delivery costs will be calculated by us using the pricing tables provided to us by our nominated carriers. Costs will be charged either by the weight of the consignment or the cubic measurement, whichever is the greater.
- 7.4.4 FIS: Free into store will only apply if negotiated at time of initial quotation.
- 7.4.5 Collection from our store: Goods may be collected directly from our store with prior arrangement with us and within our store working hours.
- 7.4.6 If the goods are delivered outside Australia – Goods are delivered FOB (Free on Board), EX-works, CPT (Carriage paid to), CFR (Cost and Freight) as per our initial quotation.
- 7.4.7 FOB – Goods will be delivered free from our premises to the destination port of discharge.
- 7.4.8 Ex-Works – You will be liable for all costs associated with the collection and transport of goods from our warehouse premises on your own account with your designated transport company.
- 7.4.9 CPT – You will be liable for all air costs associated with the collection and transportation of your goods from our prior agreed location and final destination point as per your purchase order with us. These charges will be included on your commercial invoice.
- 7.4.10 CFR – You will be liable for all local, sea costs and destination charges associated with the collection of your goods from our location to the designated final collection point as per your purchase order with us. These charges will be included on your commercial invoice.

7.5 **Insurance over goods:** You shall from delivery until we have received payment for all goods in full, have sufficient insurance in respect of the goods to protect us against any and all loss or damage by fire, theft or any other cause whatsoever are provide to us upon our request evidence of such insurance.

7.6 **No liability for delay:** We will use reasonable efforts to deliver the goods to you by the date and to the place specified by you. Without limiting clause 10 (exclusions and limitations), if the delivery of the goods is delayed:

- 7.6.1 We shall not be liable for late delivery or delay in delivery; and
- 7.6.2 The delay does not give you the right to cancel an order or terminate these terms.

7.7 **Goods supplied by you:** If we process or use goods or materials supplied by you, the responsibility for delivery and insurance of those goods or materials to us shall be borne by you.

8 SUSPENSION AND CANCELLATION

8.1 **Suspension of order:** If as a consequence of an instruction from you, we delay or suspend (but not cancel) an order or any part of an order for a period of 60 days or more, we may:

- 8.1.1 Request the payment in full for all work in progress relating to the relevant order at the time of suspension; and / or
- 8.1.2 Vary the price for the uncompleted portion of the relevant order.
- 8.2 **Cancellation by you:** You may not cancel an order, or any part of it, unless:
- 8.2.1 We give our written consent; and
- 8.2.2 You pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us in relation to the cancelled order or the cancelled part of the order to the date of cancellation, which may include by way of deduction from any advance payment you have made to us.
- 8.3 **Cancellation by us:** We may in writing cancel an order or delivery without liability to you (save as required by relevant laws) if:
- 8.3.1 We reasonably form the opinion that you are insolvent or at material risk of insolvency;
- 8.3.2 You fail to pay any amount for the goods on the due date; or
- 8.3.3 We reasonably form the opinion that supplying goods to you may have a negative impact upon our business or commercial reputation or image.
- 8.4 **Consequence of Cancellation:** Subject to your rights at law, if we cancel an order pursuant to clause 8.3, we may at our option;
- 8.4.1 Sell or otherwise dispose of the goods for our own benefit; and / or
- 8.4.2 Claim damages from you and retain on account of such damages any payments that we may have received from you.

9 DEFECTS AND RETURN OF GOODS

- 9.1 This clause 9 is subject to clause 10 (Exclusions and limitations), clause 11 (statutory rights) and any other statutory or legal rights whether under these terms or otherwise.
- 9.2 **Returns:** You should inspect the goods immediately upon delivery and may only return the goods if:
- 9.2.1 They do not materially comply with the order: or
- 9.2.2 If permitted by law, including the ACL.
- 9.3 **Notification:** If you wish to return any goods delivered to you, you must give to us:
- 9.3.1 Notice within 7 days of your receipt of goods for shortages and;
- 9.3.2 Notice within 60 days of faults.
- 9.3.3 You must supply us with the original invoice number.
- 9.4 **Replacement or Credit:** If we accept the return of goods from you, we will at our option either:
- 9.4.1 Replace the returned goods: or
- 9.4.2 Give a credit or a refund for such goods.
- 9.5 **Costs to return goods:** You shall bear any expense of transport of goods returned to us, unless you have a statutory or other legal right that permits otherwise.
- 9.5.1 If we determine that the goods are faulty prior to their departure from your premises, we will cover the freight costs associated with the transport costs to return the goods to our premises.

9.6 **Payment for other goods:** You may not withhold any payment due to us in respect of any goods pending the resolution of acclaim for a defect.

9.7 **Non-payment of account:** We will not accept notifications under clause 9.4 in the event of your non-payment of an account.

9.8 **Goods damaged in transit:** If the goods are damaged in the course of being delivered to you:

- 9.8.1 You must notify us of any claim for goods damaged in transit immediately upon receipt of goods into your store; and
- 9.8.2 Subject to our acceptance of your claim under this clause 9, we will replace the relevant goods.
- 9.8.3 Goods delivered by your own chosen transport company are not covered by clause 9.8.

10 EXCLUSIONS AND LIMITATIONS

10.1 **ACL exception:** The exclusions and limitations in this clause 10 are subject to clause 11 (statutory rights).

10.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these terms, that are not contained in it, are excluded to the fullest extent permitted by law

10.3 **Limitation of Liability:** Any liability arising in relations to goods the subject of your order or that we supply to you, however arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.

10.4 **Limitations:** No warranty is given and we will not be liable for:

- 10.4.1 Alterations to goods for which we are not responsible;
- 10.4.2 Defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;
- 10.4.3 Damage or failure caused by unusual or non-recommended use, misuse or application of the goods;
- 10.4.4 Loss or damage to goods occurring during transit or loading/unloading from carrier; or
- 10.4.5 Loss caused by any factors beyond our control.

10.5 **Indirect Loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us (including breach, termination or non-observance of the terms of an order or agreement which incorporates these terms).

10.6 **Total Liability:** Our total liability for breach of these terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

- 10.6.1 The replacement of the goods or the supply of equivalent goods;
- 10.6.2 The repair or rectification of the goods;
- 10.6.3 The payment of the cost of replacing the goods or of acquiring equivalent goods; or

- 10.6.4 The payment of the cost of the repair or rectification of the goods.
- 10.7 **No Reliance:** You acknowledge and agree that:
- 10.7.1 You have and will make your own assessment of the fitness for purpose and suitability of any goods supplied to you;
- 10.7.2 You do not and will not rely on our skill or judgment nor that of any person by whom any prior negotiations or arrangements in relation to the acquisition of any goods were conducted or have been or will be made; and
- 10.7.3 You have not made nor will make known to us or a manufacturer of goods (directly or via any person and whether expressly or impliedly) the particular purpose for which you acquire goods.
- 10.8 **Performance figures:** You acknowledge and agree that all figures and data supplied by us relating to the performance within specific tolerances which can be expected of the goods under normal circumstances. Except where performance figures are specifically guaranteed in writing by us, all conditions, warranties and representations as to the performance of the goods are excluded and we shall not be liable for any liability however arising to the fullest extent permitted by law.
- 10.9 **Third Party work:** If we obtain goods or services from a third party in order to carry out your instructions or complete an order:
- 10.9.1 We will not be liable for any breach of these terms if that breach is as a result of or is connected with the supply by a third party of such goods or services;
- 10.9.2 We acquire such goods or services as agent for you not as principal and will have no liability to you in relation the supply of these goods or services;
- 10.9.3 Any claim by you in relation to the supply of such goods or services must be made directly against that third party; and
- 10.9.4 You must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not). You do not require us to account to you for any commissions or benefits we may receive from such a third party supplier in connection with the supply of such goods or services to you and authorize us to contract on your behalf as we think fit.
- 10.10 We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an order. Any warranties, statutory guarantees or other rights will be governed by terms of supply by that provider to you and relevant laws.

11 STATUTORY RIGHTS

11.1 **Statutory rights:** In circumstances where you are acquiring goods from us as a "consumer" for the purposes of (and as defined in section 3 of schedule 2 of) the ACL or as a "buyer" for the purposes of the SGA, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.

11.2 **No Restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL, the SGA and any relevant State or territory legislation containing implied terms and / or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

11.3 **Unfair Contract:** If section 23 of the ACL applies to any provisions in these terms, any such provisions shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

12 TITLE

12.1 **Subject to the PPSA:** The provisions of this clause 12 are subject to the provisions of PPSA and clause 13 (security interest)

12.2 **Possession as Bailee:** After delivery of the goods, until the full payment has been made you shall possess the goods as Bailee only.

12.3 **Title:** We will retain absolute title over the goods until:

12.3.1 We have received payment in full in respect of the goods; or

12.3.2 The goods are disposed of in the manner prescribed under clause 13.12

12.4 **Identification:** Until full title in the goods has passed to you, you will ensure that:

12.4.1 Any identifying plate, mark or packaging number on any of the goods is not removed, defaced or obliterated; and

12.4.2 The goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular invoice of goods.

13 SECURITY INTEREST

13.1 **Security Agreement:** This clause 13 sets out the security agreement between you (grantor) and us (secured party)

13.2 **Creation of Security interest:** The Grantor grants to the Secured Party a Security Interest in the goods supplied by us to you, including all related proceeds (collateral), as security for all or part of the payment of any amount relating to the goods in accordance with these Terms or otherwise. For the avoidance of doubt, this security interest is also a purchase money security interest (PMSI) in the collateral.

13.3 **Ranking:** Subject to the priority rules set out in the PPSA, this security interest ranks in priority ahead of all other security interests in the collateral.

13.4 **Continuing obligation:** This security interest is a continuing security and the grantors obligations under this security agreement continue until it has been terminated in accordance with this security agreement.

13.5 **Attachment:** The security interest attaches to the collateral by virtue of the grantors possession of the goods as Bailee under clause 12.2

13.6 **Perfection:** The grantor irrevocably gives authority to the secured party to register a financing statement with respect to the security interest on PPSR. Despite this provision, the secured party may perfect this security interest by any other means in accordance with the PPSA.

13.7 **Information:** The grantor shall provide the secured party with any information required for the secured party to register a financing statement or a financing change statement with respect to this security interest on the PPSR.

13.8 **Identification:** Until this security interest in the collateral has been extinguished, the grantor will ensure that, as far as is reasonably practicable:

13.8.1 Any identifying plate, mark or packaging number on any of the collateral (including goods) is not removed, defaced or obliterated; and

13.8.2 The collateral is identifiable and distinguishable from any other goods or products that may be in the grantors possession and as to each particular invoice of goods comprising the collateral.

13.9 **Accessions:** The grantor acknowledges that this security interest continues to apply to collateral that becomes an accession to other goods.

13.10 **Remedies:** Until this security interest in the collateral has been extinguished, if:

13.10.1 A Default event occurs in respect of the grantor; or

13.10.2 The grantor is in breach of these terms, the secured party may as it sees fit and without notice to the grantor, seize, retain or redeem the collateral, or seek any and all remedies provided under chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 13.11.

13.11 **Right of Entry:** In addition to any rights given to the secured party under chapter 4 of the PPSA, the Grantor irrevocably

13.11.1 Grants the secured party the right to:

- A. demand the immediate return of the goods to the secured party;
- B. enter the grantors premises to search for and seize the goods without notice or liability; and
- C. retain, sell or otherwise dispose of those goods in any manner it sees fit;

13.11.2 Indemnifies, and keeps indemnified, the secured party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the grantor or any consequential loss caused by another party arising relating to searching for and seizing any goods in accordance with this clause 13.11

13.12 **Permitted use and sale:** the grantor may only sell or deal with any of the collateral (including accessions) in respect of which full payment has not been received if

13.12.1 The secured party has not exercised a remedy under clause 13.10;

13.12.2 The proposed transaction is a bona fide transaction to a third party at market value conducted in the ordinary course of business of the grantor;

13.12.3 The proposed transaction does not create a security interest in the collateral that ranks above this security interest;

13.12.4 All proceeds of the proposed transaction is;

- A. immediately paid to the secured party; or

- B. held on trust for the secured party in a separate account, payable to the secured party on demand; and
- 13.12.5 Unless otherwise obligated by law, the grantor does not disclose to a third party that the proposed transaction is subject to this security agreement or that the proceeds will be immediately paid to the secured party or held on trust for the secured party.
- 13.13 **Costs:** the grantor shall pay all costs incurred by the secured party (including costs on a solicitor client basis and debt collector's costs) arising out of this security agreement, including costs in relation to:
- 13.13.1 Seizure, retention, redemption or any other remedy exercised pursuant to clause 13.10; and
- 13.13.2 The enforcement of its rights under this security agreement (including matters incidental to it).
- 13.14 **Extinguishment:** the security interest is extinguished only if:
- 13.14.1 One of the following applies:
- all amounts payable in relation to the collateral have been paid in full;
 - the collateral has been dealt with by the grantor pursuant to clause 13.12; or
 - a third party has taken free of this security interest as provided by the PPSA;
- 13.14.2 The parties agree that no further goods shall be supplied by the secured party to the grantor pursuant to these terms which shall become the subject of this security interest; and
- 13.14.3 All obligations under this security agreement have been satisfied by the grantor, including the obligation to pay costs as set out in clause 13.13
- 13.15 **Removal:** The secured party acknowledges its obligations to lodge a financing change statement to remove this security interest from the PPSR upon the extinguishment of this security interest in accordance with clause 13.14
- 13.16 **Waiver:** Sections 95, 118 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on the secured party.
- 13.17 **Waiver of receipt of statements:** The grantor irrevocably waives its right to receive from the secured party a copy of any financing statement, financing change statement or verification statements that is registered, issued or received at any time in relation to this security agreement.
- 13.18 **Change of Name:** The grantor shall immediately notify the secured party in writing of any change of name of the grantor.
- 13.19 **Acknowledgement:** the Grantor acknowledges due notice of this security agreement with acceptance of these terms.
- ## 14 INTELLECTUAL PROPERTY
- 14.1 **Your intellectual property:** If you provide us with material to be used in the supply of the goods:
- 14.1.1 You warrant and represent to us that any goods supplied to you based on the material you provide to us will not infringe the intellectual property rights of any third party; and
- 14.1.2 You indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or in connection with the representation or warranty in clause 14.1.1 being untrue or breached.
- 14.2 **License over Materials:** You grant to us a non-exclusive royalty-free license worldwide to use all Intellectual property rights in all materials for so long as necessary or convenient for the production of the goods and the matters contemplated in relation to the delivery of the relevant goods.
- 14.3 **Our intellectual property:** All of our intellectual property rights in and relating to the production development and supply of the goods, terms including but not limited to drawing, illustrations, specifications, and other literature (excluding materials licensed to us pursuant to clause 14.2) remains our property and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by you without our prior written consent. You may only use our intellectual property rights in the goods for the purposes specified at the time the goods are supplied to you.
- 14.4 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.
- ## 15 GST
- 15.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.
- 15.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the goods.
- 15.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST law, to claim a credit for GST paid by you.
- 15.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.
- ## 16 GENERAL
- 16.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these terms.
- 16.2 **Termination:** If a default Event occurs:
- 16.2.1 We may, without limited any other right we have under these terms, terminate any outstanding order and any contract for the supply of goods to you; and
- 16.2.2 All payments and any other money under these terms become immediately payable.
- 16.3 **Lawful Purpose:** You shall ensure that the goods are used only for lawful purposes and in accordance with any applicable laws.
- 16.4 **Binding:** These terms shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its successors, administrators and permitted assigns.
- 16.5 We may without notice to you assign, transfer and / or sub-contract our rights and / or obligations (in whole or in part) under these terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these terms without our prior written consent.
- 16.6 **Time of the essence:** Time shall be of the essence in relation to any date or period under these terms.
- 16.7 **New Terms:** If we adopt new terms and conditions for the sale of goods:
- 16.7.1 You will be given written notice (if you are a customer at the relevant time); and
- 16.7.2 Unless otherwise agreed, they will apply to the supply of goods after you accept such new terms and conditions.
- 16.8 **Variation:** We may vary these terms by providing you 7 days written notice. You may not vary these terms without our prior written agreement.
- 16.9 **Force Majeure:** If a force Majeure event occurs, we may:
- 16.9.1 Totally or partially suspend any order, any part of an order or any deliveries relating to an order during any period in which we may be prevented or hindered from delivery by our normal means of supply or delivery due to that Force Majeure event: and
- 16.9.2 Elect to extend at our discretion the period for performance of an obligation under these terms as is reasonable in all the circumstances.
- 16.10 **Severability:** Each clause in these terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.
- 16.11 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.
- 16.12 **Governing law:** These terms shall be governed by the laws of the state of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the state of New South Wales.
- ## 17 INTERPRETATION AND DEFINITIONS
- 17.1 **Personal pronouns:** Except where the context otherwise provides or requires:
- 17.1.1 The terms we, us or our refers to the company; and
- 17.1.2 The terms you or your refers to the customer.
- 17.2 **Defined Terms:** In these terms, unless otherwise provided, the following terms shall have their meaning as specified:
- ACL** means the Australian Consumer Law under the Consumer and Completion Act 2010 (Cth) as amended.
- Charges** means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the goods.

CIF has the meaning given to it in incoterms 2010 issued by the international chamber of commerce.

Collateral means property that is subject of a security interest.

Company means Derby Rubber Products Pty Ltd (ABN 18 000 452 102) CPT has the meaning given to it in incoterms 2010 issued by the international chamber of commerce.

CPT (or CFR) has the meaning given to it in incoterms 2010 issued by the international chamber of commerce.

Customer means any person or entity that places an order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these terms, including any related party, related party, officer and authorized person of the relevant person.

Default Event means any one of the following events:

- a) you fail to make any payment when due, whether for the goods or otherwise;
- b) winding up commences against you;
- c) a receiver is appointed to you;
- d) you become insolvent, bankrupt or commit an act of bankruptcy;
- e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or
- f) a mortgagee or their agent enters into possession of your assets.

Default Interest means as defined in clause 5.

Delivery means the delivery of the goods in accordance with clause 7.1

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to goods in transit or instructions or lack of instructions from you.

Goods means goods sold by the company from time to time.

Grantor means the person who has the interest in property to which a security interest is attached.

GST, GST Law and Taxable Supply have the meaning set out in the A new Tax System (goods and services tax) Act 1999 (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and / or are recognized in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the goods specified in your order.

Material means any material in which you have intellectual property rights provided by you for use by us in the production, development and supply of the goods to you.

Order means an order for goods received by us in writing.

Payment means payment of any amount relating to goods in accordance with these terms.

PMSL means a purchase money security interest as defined by section 14 of the PPSA

PPSA means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular goods containing details as specified in clause 2.2

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security set out in clause 13 (Security interest)

Security Interest means the security interest created in Clause 13 (Security interest)

SGA means the sale of goods act 1923 (NSW) as amended.

Tools has the meaning given to it in clause 6.1

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.