

Standard Terms & Conditions

Metalcraft [SA] Pty Ltd ABN 69 093 987 707

1. Definitions

Buyer means the Buyer of the Goods and/or Services. **Contract** means these Terms & Conditions, the Tax Invoice, and (if an order placed by the Buyer pursuant to a Quotation is accepted by the Seller), the Quotation. **Delivery** is defined in clause 8.1. **Goods** means the goods specified in the Tax Invoice. **Insolvency Event** is defined in clause 9.4(b). **Quotation** means a numbered quotation issued by the Seller to the Buyer for the goods and/or services. **Seller** means the supplier of the Goods and/or Services described on the Tax Invoice/Quotation. **Services** means the service specified in the Tax Invoice/Quotation. **Tax Invoice** means an invoice for the purchase of Goods and/or Services prepared by the Seller. **Terms & Conditions** means these terms and conditions of sale (as amended from time to time by the Seller in its absolute discretion).

2. Goods or Services Sold.

2.1 By ordering, or being supplied with, Goods and/or Services, the Buyer acknowledges that

- a. the Goods and/or Services are to be, or have been, supplied on and subject to, these Terms & Conditions; and
- b. no terms and conditions contained in or deemed to be incorporated by any purchase order (or any other document of the Buyer) will apply to, override or amend in any way the Contract; and
- c. the Contract is the only terms on which the Goods and/or Services are supplied.

2.2 To the extent that any provision in these Terms & Conditions is inconsistent with the details contained in the Quotation or Tax Invoice, The Quotation or Tax Invoice (as applicable) will apply.

3. Quotation

A Quotation given by the Seller does not constitute an offer by the Seller. An order placed by the Buyer pursuant to a Quotation constitutes an offer to purchase by the Buyer and is not binding on the Seller unless or until accepted by the Seller.

4. Purchase Order

4.1 When making an order for Goods and/or Services, The Buyer must submit to the Seller an Official written order showing an order number and a full description of the Goods and/or Services required. If the order is made pursuant to a Quotation, The Quotation number must be clearly identified on the order.

4.2 Any information supplied to the Seller in any format being for manufacture, and found to be incorrect, not enabling completion to the Quote's intention will place the project/order in suspension, thus removing the Original Quote from offer. Until such time that the corrections to the information are made by the Buyer, on receipt of the new information from the Buyer the Seller will revise the Quote/Offer based upon the new information supplied. These corrections may also be made by the Seller although they will be made under a revised Quotation/Offer to the Buyer fully disclosing the revised Goods and/or Services.

5. Returned Products

Subject to clause 12, the Seller will not be under any obligation to accept any Goods returned by the Buyer and may do so only on terms to be agreed in writing in each individual case and at the total discretion of the Seller.

6. Cancellation

No order for, or purchase of, Goods and/or Services may be cancelled by the Buyer unless there is prior written consent by the Seller (and written agreement by the Buyer to fully indemnify the Seller against all losses and costs).

7. Performance

The Seller will not be responsible for any failure to meet any of its obligations that arises from any fact, circumstance, matter or thing beyond the reasonable control of the Seller, and will be relieved of its obligations to the extent, and for the period, that it is so unable to perform.

8. Delivery

8.1 Goods will be deemed to have been delivered to the Buyer by the Seller (Delivery):

- a. where transportation and loading is arranged or provided by the Buyer - when the Goods are made available for loading at the Seller's premises
- b. where transportation is arranged or provided by the Buyer but loading is carried out by the Seller - upon completion of loading of the Goods onto the relevant transportation vehicle provided by the Buyer.
- c. where transportation is arranged or provided by the Seller - upon delivery of the Goods to a location nominated by the Buyer.

8.2 The seller will make all reasonable efforts to effect Delivery of Goods, or to provide Services to the Buyer, on the date(s) agreed between the parties (or as set out on the relevant tax invoice, quotation or order acknowledgement), but if for any reason whatsoever, Delivery does not occur or the Services are not provided, on that (or those) date(s), then;

- a. the Seller will not be liable to the Buyer;
- b. the Buyer will not be entitled to cancel any order for, or purchase of, Goods and/or Services; and
- c. the Buyer must accept and pay (in full and on time) for the Goods and/or Services despite the delay.

9. Rights in Relation to Goods and/or Services (Romalpa Clause)

9.1 Risk of loss, or damage, to Goods passes to the Buyer on delivery.

9.2 Property and full legal ownership in the Goods remains 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 the Contract is discharged.

9.3 The Buyer acknowledges and agrees that until the total indebtedness under the Contract is discharge;

- a. the Buyer holds the Goods as Baillie of the Seller;
- b. a fiduciary relationship exists between the Seller and the Buyer for the purpose and
- c. the Buyer will ensure that the Goods are adequately separated from other goods so that they are clearly identifiable as the property of the Seller.

9.4 If;

- a. the Buyer fails to pay any amount of the Buyer's total indebtedness to the Seller under the Contract when it is due to the Seller;
- b. a receiver and manager, liquidator, provisional liquidator or other insolvency administrator is appointed in respect of the Buyer or a scheme of arrangement is proposed or approved in respect of the Buyer or a mortgagee enters into possession of any of the Buyer's assets or an application is made for the winding up of the Buyer (Insolvency Event); or
- c. the Buyer is otherwise in default under the Contract,

then 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 at any time upon the Buyer's premises by its employees and/or agents for that purpose.

9.5 If the Goods are resold, or products manufactured using the Goods are sold by the Buyer (prior to the Seller having been paid in full for the Goods), the Buyer must hold (in a separate identifiable account as the beneficial property of the Seller) such part of the proceeds of any such sale as represents the Tax Invoice price of the Goods Sold or used in the manufacture of the Goods sold, and must pay that amount to the Seller immediately upon request, Despite the prevision above, the Seller will be entitled to maintain and action against the Buyer for the Purchase price.

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10. Loss or Damage in Transit

10.1 Subject to any applicable laws, the Seller will not be responsible for any loss or damage to the Goods in transit whether for Goods delivered or collected.

10.2 Unless otherwise agreed in writing by the Seller, the Buyer must arrange for insurance of the Goods in Transit for their full insurable value.

11. Price and Payment

11.1 Unless otherwise stated, all prices set out in the Quotation and the Tax Invoice are exclusive of GST. If GST is or becomes payable in respect of any supply made by the Seller to the Buyers, The payment for that supply will be increased by an amount equal to the GST payable so that the Seller retains the amount it would have retained but for the imposition of GST, provided that no additional amount will be payable under the clause until the Seller has issued a Tax Invoice to the Buyer for that supply. Words or expressions used in this clause have the same meaning as defined in the A new Tax System (Goods and Services Tax) Act 1999 (Cth)

11.2 Prices for;

- a. Goods are those current at the date of Delivery; and
- b. Services are those current at the date on which those Services are rendered,

unless otherwise agreed upon in writing, and are based on rates of freight, insurance, duties, sorting and stacking charges, cost of materials and other charges affecting the cost of production. Any variations in such costs and charges before acceptance of the Contract will be to the Buyer's account.

11.3 The prices charged by the Seller for Goods and/or Services are subject to alteration without notice.

11.4 Payment of the full amount set out in a Tax Invoice must be made within 30 days nett of the date of the Tax Invoice, unless otherwise stipulated in writing by the seller.

11.5 Without in any way limiting the Seller's right to require payment in full on the due date, the Seller may;

- a. charge interest on overdue accounts at the rate of 2.5% above the overdraft rate charged by the Seller's bankers; and
- b. suspend any further deliveries to the Buyer or terminate any contract in relation to any undelivered Goods or unperformed Services.

11.6 any collection charges, legal expenses and commissions incurred in attempting to recover payment will be payable by the Buyer.

12. Warranties, Exclusions and Limitation of Liability.

12.1 in addition to any written express warranty that may be given by the Seller in relation to the Goods or Services, The Seller acknowledges that State and Federal Legislation implies certain conditions and warranties into agreements for the Supply of goods and services, which cannot be excluded, restricted or modified (Non-Excludable Warranties). The Seller does not exclude, restrict or modify the Non-Excludable Warranties.

12.2 To the extent permissible by law, the liability of the Seller under any of the Non-Excludable Warranties (including those contained in Section 74H and Division 2 of Part V of the Trade Practices Act 1974) is limited to, at the Seller's discretion;

- a. in the case of Goods, replacing the Goods, repairing the Goods or payment or the cost of replacing or repairing the Goods; and
- b. in the case of Services, re-supplying the Services, having the Services re-supplied or payment for the cost of having the Services re-supplied.

12.3 Except for the Non-Excludable Warranties, the Seller excludes all other conditions and warranties implied by custom, the general law or statute

12.4 To the extent permissible by law, the Seller will not be liable for any personal injury, incidental damages, consequential losses, loss of profit or any like claims whatsoever arising from any use of , or incidental to , the Goods and/or Services, or arising out of the Seller's negligence in any way whatsoever.

12.5 To the extent that the Goods and/or Services are, or any component part of the Goods and/or Services is, supplied to the Seller by a third party, any warranty offered by the Seller in relation to the Goods and/or Services or component part of the Goods and/or Services will be limited to the Sellers right of redress (if any) against the third party supplier arising out of any alleged fault/defect in the Goods and /or Service.

13. Indemnity

Without prejudice to any other rights the Seller may have, the Buyer must indemnify the seller for any loss, cost, damage or expense incurred by the Seller if the Buyer breaches any term of the Contract or cancels any order (in whole or in part) after acceptance by the Seller.

14. Insolvency Event

if the Buyer becomes, or resolves to become subject to any insolvency event, then;

- a. all amounts outstanding by the Buyer to the Seller will immediately become due and payable; and
- b. the Buyer's right to possession of any Goods supplied by the Seller which have not been paid for in full by the Buyer ceases, and the Seller will be entitled to recover possession of those Goods under clause 9.4

15. Jurisdiction

Despite any implication of law to the contrary, all contracts between the Buyer and the Seller will be deemed to be made and construed and to be enforceable in and according to the laws of South Australia, and to the subject to the jurisdiction of the Courts of that State.

16. Waiver

the waiver by the Seller of any provision, or any breach of any provision, of the Contract, will not be construed as a waiver of any other provision, or a breach of any of the provision, or subsequent breach of the same or any provision of the Contract.

17. Entire Contract

The Contract contains the complete and final agreement between the Buyer and the Seller, and no other document purporting in any way to modify the Contract will be binding on the Seller unless made in writing and signed by the Seller's authorised representative.

18. Variation

The seller may vary these Terms & Conditions at any time by notice to the Buyer.

19. Severance

If any terms or part of these Terms & Conditions is illegal or unenforceable it may be severed from these Terms & Conditions and the remaining terms or parts will continue in full force and effect.