

# Terms & Conditions

## 1. INTERPRETATION

In these terms and conditions:

- 1.1 "Products" means the good(s) and or service(s) described overleaf.
- 1.2 "Seller" means Coolon Pty Ltd (A.C.N 097 249 931).
- 1.3 "Buyer" means the purchaser of the Products specified overleaf
- 1.4 "Order" means any purchase order, change order, subcontract, contract or other document received by the Seller from the Buyer evidencing the Buyer's instruction to the Seller to supply the Products
- 1.5 Nothing in these terms and 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.

## 2. APPLICABILITY OF THESE TERMS AND CONDITIONS

- 2.1 These terms and conditions apply to all sales of goods and services by the Seller to the Buyer and constitute all the terms agreed between them to the exclusion of all other terms and conditions.
- 2.2 These terms and conditions may not be altered, supplemented, or amended without the written agreement of the Seller and, without derogating from the generality of clause 2.1, shall prevail over any conditions contained in any Order or other document submitted by the Buyer. Any conditions contained in any Order or other document submitted by the Buyer are hereby expressly excluded.
- 2.3 The descriptions, illustrations and performances contained in the Seller's catalogues, price lists, other advertising material and 'Technical Specification' documents do not form part of the contract of sale of the Products or of the description applied to the Products (unless any such document is specifically referred to in these terms and conditions, and then only to the extent that the document is stated as being applicable).

## 3. QUOTATIONS AND ORDERS

- 3.1 Any quotation given by the Seller is a mere invitation to treat and does not constitute a contractual offer. All quotations lapse fourteen (14) days after issue but the Seller may vary or withdraw a quotation at any time.
- 3.2 The Seller reserves the right to accept or reject an Order it receives from the Buyer at its sole discretion.
- 3.3 Each Order must specify the Buyer's name, delivery address, invoicing address, description of the Products, the Seller's part number (where available), quantity, requested delivery date(s) and preferred method and carrier for delivery or collection of the Products.

## 4. PRICE AND PAYMENT

- 4.1 Prices quoted by the Seller are subject to change at any time without notice and are not binding on the Seller. If the Seller makes any alterations to the price of the Products or to any of their inputs before delivery or collection of the Products, these alterations are for the Buyer's account.
- 4.2 Unless otherwise stated, all prices are in Australian dollars and exclude any applicable taxes, duties and other imposts, including but not limited to, Goods and Services Tax ("GST").

- 4.3 If the Buyer does not have an approved credit account with the Seller, the Buyer's payment terms are 'cash on delivery' ("COD"). Where the Buyer's payment terms are COD, the Products (plus any applicable GST and any other taxes, duties or imports) must be paid for before the Products are supplied (unless the Seller agrees to alternative payment terms in writing.)
- 4.4 If the Buyer has an approved credit account with the Seller, the Products supplied must be paid for within the approved credit terms. Where the Buyer is overdue with any payment of any approved credit account, the Seller (without prejudice to its other rights) reserves the right to change the Buyer to COD payment terms or to cease supplying further Products to the Buyer.
- 4.5 Payment of the Seller's invoices must be made by credit card, electronic funds transfer, or some other prearranged payment method.
- 4.6 The Seller may issue interim invoices from time to time during the manufacture (and before delivery) of the Products . The payment terms set out above apply to all such invoices.
- 4.7 If any invoices are not paid within the applicable payment terms, the Seller may suspend production and delivery of the Products or any other goods and services ordered by the Buyer until all outstanding invoices are paid.
- 4.8 Without prejudice to any other remedy, the Seller reserves the right to charge interest on any overdue invoices at an annual rate prescribed from time to time under section 2 of the Penalty Interest Rates Act 1983.
- 4.9 In addition to any other rights, entitlements or remedies under these terms and conditions:
  - (a) the Seller may report any failure by the Buyer to pay an invoice issued by the Seller to any credit reporting agency if the invoice has been overdue for more than 60 days;
  - (b) the Seller may refer any outstanding invoice to a debt collection agency for recovery from the Buyer, in which case, the Buyer agrees that in addition to the outstanding invoice, it will also pay all of the costs incurred by the Seller in engaging the debt collection agency on demand.
- 4.10 The Buyer agrees to pay any legal costs incurred by the Seller in pursuing any outstanding invoice or in otherwise enforcing its rights on an indemnity, alternatively solicitor-client, basis.

## 5. WARRANTY

Standard 3 Year Warranty applies unless otherwise agreed at the time of sale.

[Standard 3 Year Warranty](#)

[Premium 5 Year Warranty](#)

## 6. SHIPPING AND DELIVERY

- 6.1 Whilst the Seller will use all reasonable endeavours to meet proposed delivery times, the delivery times made known to the Buyer are estimates only given in good faith 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 Products. Delays in delivery of the whole or part of the Products will not entitle the Buyer to terminate or otherwise cancel this contract of sale for in whole or in part.
- 6.2 The Seller is not be 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 Products.
- 6.3 The Seller may at its option deliver the Products to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- 6.4 If the Seller delivers any of the Products by instalments, and any one of those instalments is defective for any reason:
  - (a) it is not a repudiation of this contract of sale; and
  - (b) the defective instalment is a severable breach that gives rise to a claim for the remedies set out in clause 5.

- 6.5 Unless otherwise agreed in writing by the Seller, delivery terms shall be Ex-Seller's premises.
- 6.6 The Buyer waives any claim for shortage of any Products delivered or collected if a claim in respect of short delivery has not been lodged with the Seller within seven (7) days from the date of receipt of the Products by the Buyer.
- 6.7 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to the Products 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 Products are at the risk of the Buyer as soon as they are dispatched or collected from the Seller's premises.
- 6.8 The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
  - (a) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of the Products; and
  - (b) lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Products.

## 7. PASSING OF PROPERTY AND RISK

- 7.1 In connection with the Products while they remain the property of the Seller, the Buyer agrees with the Seller that:
  - 7.1.1 the Buyer has no right or claim to any interest in the Products to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer;
  - 7.1.2 the Buyer cannot claim any lien over the Products;
  - 7.1.3 the Buyer will not create any absolute or defeasible interest in the Products in relation to any third party except as may be authorised by the Seller;
  - 7.1.4 Where the Buyer is in actual or constructive possession of the Products:
    - 7.1.4.1 the Buyer will not deliver them or any document of title to the Products to any person except as directed by the Seller; and
    - 7.1.4.2 it is in possession of the Products as a bailee of those Products and owes the Seller the duties and liabilities of a bailee.
- 7.2 The Seller and the Buyer agree that:
  - 7.2.1 the property of the Seller in the Products remains with the Seller until the Seller has been paid in full for the Products under all individual contracts for the supply of the Products between the Seller and the Buyer, and the Buyer has discharged all outstanding indebtedness, whether in respect of the Products or otherwise, to the Seller;
  - 7.2.2 the Buyer is a bailee of the Products until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Products until the price of the Products has been paid in full;
  - 7.2.3 pending payment in full for the Products, the Buyer:
    - 7.2.3.1 must not supply any of the Products to any person outside of its ordinary or usual course of business;
    - 7.2.3.2 must not allow any person to have or acquire any security interest in the Products;
    - 7.2.3.3 must insure the Products for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
    - 7.2.3.4 must not remove, deface or obliterate any identifying plate, mark or number on any of the Products.

- 7.3 Without prejudice and in addition to any other right or remedy that the Seller may have:
- 7.3.1 if the Buyer fails to pay all or any part of the purchase price for the Products on the date for making payment in accordance with these terms and conditions, the Seller shall have the immediate right to re-take and resume possession of the Products; or
- 7.3.2 if any one or more of the following events occurs:
- (a) a Receiver, Administrator or Liquidator is appointed over any part of the undertaking, property or assets of the Buyer; or
  - (b) an order is made for the winding up or dissolution without winding up of the Buyer or an effective resolution is passed for the winding up of the Buyer;
  - (c) the Buyer is placed under official management; or
  - (d) the Buyer becomes bankrupt;
- then the Seller shall have the immediate right to conduct a stock take for purposes of identifying the Products, accessing details (i.e. invoices of account) of the Products sold by the Buyer after the event referred to in clause 7.3.2 occurs, re-take and resume possession of the Products so long as payment of the full amount of the Products owing to the Seller has not been made.
- 7.4 For the purposes of conducting a stock take, accessing details of the Products sold by the Buyer, re-taking and resuming possession of the Products, the Buyer hereby irrevocably licenses the Seller to enter upon any premises owned, possessed or controlled by the Buyer, or to the extent permitted by law, any other premises where the Products are located. The Products shall be stored by the Buyer so that they are identifiable as the Products of the Seller at all times.
- 7.5 If the Buyer supplies any of the Products to any person before all moneys payable by the Buyer have been paid to the Seller (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
- 7.5.1 it holds the proceeds of re-supply of the Products on trust for and as agent for the Seller immediately when they are receivable or are received;
- 7.5.2 it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
- 7.5.3 any accessory or item which accedes to any of the Products by an act of the Buyer or of any person at the direction or request of the Buyer becomes and remains the property of the Seller until the Seller is paid in accordance with clause 7.2.1 when the property in the Products (including the accessory) passes to the Buyer.

## 8. CHANGED OR DISCONTINUED PRODUCT

- 8.1 The Buyer acknowledges that over time, the Seller's products may undergo update and revision. As a result, there may be some differences between what is supplied to the Buyer and the specifications and description of the Products at the time the Seller submits its quotation and or the time the Buyer submits its Order. Unless otherwise agreed, the supplied Products will have substantially the same functionality and performance of the Products the subject of the Seller's quotation and or the Buyer's Order. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.

## 9. RETURNS

- 9.1 The seller is not be under any duty to accept Products returned by the Buyer (unless defective) and will do so only on terms to be agreed in writing in each individual case.
- 9.2 If the Seller agrees to accept returned Products from the Buyer under clause 9.1, the Buyer must return the Products to the Seller at the Seller's place of business.

## 10. TERMINATION OF ORDER

- 10.1 The Seller may at its sole discretion terminate an Order or a portion thereof without incurring any liability to the Buyer.
- 10.2 Unless otherwise agreed to in writing by both the Buyer and the Seller, an Order may only be canceled by the Buyer on the proviso that the Buyer pay a fee of 25% of the value of the Order or the cost of any purchased components or parts, whichever is the greater.

## 11. INTELLECTUAL PROPERTY

- 11.1 Nothing in these terms and conditions gives the Buyer any interest or right to the intellectual property in the Products or to the intellectual property which is used to manufacture or create the Products. The Buyer acknowledges that all intellectual property is exclusively owned by the Seller. Without derogating from the generality of the foregoing, all intellectual property rights in any manuals, diagrams, drawings, plans, specifications and any other like documents provided by the Seller to the Buyer with the Products remains the sole and exclusive property of the Seller and may not be reproduced without the prior written approval of the Seller.

## 12. FORCE MAJEURE

- 12.1 Without affecting any of its other rights under these terms and conditions, the Seller shall not be responsible for any default or delay in the performance of any of its obligations hereunder if such performance is prevented or delayed, in part or in whole, by an act of God, or act of government, or the consequences thereof including but not limited to, fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargoes, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, manufacturer's bankruptcy, delays or damage in transportation or any other cause beyond the Seller's control.
- 12.2 The Seller may, at its discretion, fulfil the Order within a reasonable time from the removal of the cause preventing or delaying the performance of any if its obligations hereunder, or rescind unconditionally and without liability such Order in whole or in part.

## 13. GENERAL

- 13.1 The Seller and the Buyer agree that this contract of sale, the sale and purchase of the Products hereunder, or any claim, dispute or controversy (whether in contract, tort, or otherwise, whether pre-existing, present or future, and including statutory, common law and equitable claims) between the Buyer and the Seller arising from or relating to this contract of sale, its interpretation, or its breach, termination or validity shall be governed by the laws of the State of Victoria. The parties submit all disputes arising between them to the courts of the said state and any court competent to hear appeals from those courts of first instance.
- 13.2 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.
- 13.3 The Seller's failure to enforce at any time or for any period of time, any term of any contract incorporating these terms and conditions shall not constitute a waiver of such terms and shall in no way affect its right to enforce it.
- 13.4 These terms and conditions bind the Seller, the Buyer and their respective successors and assigns.
- 13.5 The Seller may assign or transfer all or any part of its right and interest under or in this contract of sale in its absolute discretion. The Buyer may only do so with the prior written consent of the Seller