

Standard Terms and Conditions of Sale

1. DEFINITIONS

- 1.1 "TS GLOBAL" means TS GLOBAL PTY LTD ABN 30 306 644 748 and all related companies or assigns.
- 1.2 "Contract" means the contract entered into between TS GLOBAL and the Customer and includes any purchase orders submitted by the Customer, whether verbal or written and approved by TS GLOBAL.
- 1.3 "Customer" means the Customer purchasing or offering to purchase Goods from TS GLOBAL (including any successors, nominees and any Insolvency Administrator appointed to take control of the Customer's business), and where there is more than one Customer, the Customer's covenants and obligations are joint and several.
- 1.4 "Date of delivery" is the date on which the Goods leave the premises of TS GLOBAL.
- 1.5 "Goods" includes Goods manufactured, imported, supplied and/or delivered by TS GLOBAL to the Customer or as the Customer may direct.
- 1.6 "GST" means the tax imposed or to be imposed by the GST Act.
- 1.7 "GST Act" means the New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.
- 1.8 "Invoice" includes tax invoice.
- 1.9 "Intellectual Property Rights" means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.
- 1.10 "Purchase Price" means the amount invoiced by TS GLOBAL for the Goods ordered by the Customer.

2. SALE

- 2.1 TS GLOBAL has agreed to sell and the Customer has agreed to buy the Goods for the Purchase Price on the terms and conditions set out herein.

3. ORDERS, PURCHASE PRICE AND PAYMENT

- 3.1 Payment for Goods supplied by TS GLOBAL to the Customer shall become due on the date of delivery of the Goods or otherwise on the date specified in TS GLOBAL'S invoice.
- 3.2 All prices quoted by TS GLOBAL shall unless stated otherwise be exclusive of any GST and the Customer shall pay the Purchase Price plus any GST when payment for the Goods is due. Any quotation by TS GLOBAL is valid for a period of 30 days unless otherwise specified, and is not to be construed as an obligation to sell any Goods but an invitation to the Customer to make an offer to purchase the Goods subject to this agreement.
- 3.3 All prices quoted are, unless expressly stated in the purchase order to the contrary, exclusive of freight, which will be added to the price of any order.
- 3.4 Time for payment shall be of the essence of the Contract.
- 3.5 If payment is not made on the due date then TS GLOBAL shall without prejudice to any other remedy be entitled to charge interest and administration charges of 2% above the overdraft rate charged to TS GLOBAL by its Bankers from time to time on the monies outstanding. The Customer will also be liable for any legal or other costs incurred by TS GLOBAL in attempting to recover the outstanding amounts owed by the Customer.
- 3.6 If the Customer delays making payment under the terms of the Contract, TS GLOBAL may, without prejudice to any other remedy, suspend supply or delivery of any Goods to the Customer until such payment is made and TS GLOBAL shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Customer's default.
- 3.7 Purchase orders will only be accepted by email or written orders sent by post. Verbal orders will not be actioned until written authorisation is received.
- 3.8 Each purchase order agreed between TS GLOBAL and the Customer constitutes a separate contract for the supply of Goods, and unless otherwise permitted in these Terms and Conditions, the breach of any one such contract will not be grounds for the termination of any other contract so formed between TS Global and the Customer.

4. DELIVERY OF GOODS

- 4.1 TS GLOBAL shall make all reasonable efforts to deliver the Goods on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by TS GLOBAL to deliver the Goods at any agreed time or within a reasonable period. Where no date for delivery has been agreed upon, TS GLOBAL shall deliver the Goods within a reasonable time. Where delivery is to be made during a certain period, TS GLOBAL may at its option, deliver the Goods in instalments during that period.
- 4.2 Where delay in delivery or non-delivery is due to the Customer failing to obtain any necessary approvals, clearances or other prerequisites to delivery or arises as a result of any occurrence reasonably beyond TS GLOBAL'S control, TS GLOBAL shall within 30 days of becoming aware of any such occurrence notify the Customer in writing of TS GLOBAL'S inability to deliver and may terminate the contract if TS GLOBAL shall so determine.
- 4.3 Unless otherwise agreed, Goods supplied shall be of ordinary commercial quality and all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as TS GLOBAL generally applied to such type of Goods. TS GLOBAL shall not be liable for over or under delivery of bulk Goods provided that such delivery does not exceed 10% of the ordered quantity.
- 4.4 Any measures requested by the Customer to protect the goods in storage or transit shall be at the Customer's expense.

5. PROPERTY IN THE GOODS

- 5.1 "Insolvency Event" shall occur when
- (a) the Customer is late or fails to make any of the payments to TS GLOBAL in accordance with TS GLOBAL'S payment terms;
- (b) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for amalgamation or reconstruction purposes);
- (c) the Customer enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of them;
- (d) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
- (e) the Customer is deemed unable to pay its debts as and when they fall due, or stops or suspends payments of its debts;
- (f) a receiver and manager, administrator, liquidator, or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the Goods, or the Customer (being a natural person) commits an act of bankruptcy.

5.2 Title to the Goods delivered by TS GLOBAL to the Customer will not pass to the Customer until such time as TS GLOBAL has received payment in full of the Purchase Price of the said Goods ("the Debts").

5.3 Notwithstanding anything in this clause, Risk in the Goods shall pass to the Customer at the date of delivery.

5.4 The Customer shall have the right to sell the Goods (in its own name and not as an agent for TS GLOBAL) by way of bona fide sale at full market value and in the ordinary course of its business.

5.5 Until the Debts have been paid:

- (a) The Customer shall hold the Goods as bailee and fiduciary agent for TS GLOBAL and shall safely and securely store the Goods separately from other goods of the Customer in such a manner as to show clearly that the Goods are the property of TS GLOBAL;
- (b) The Customer shall indemnify TS GLOBAL against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by TS GLOBAL arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession by TS GLOBAL;
- (c) Any sale of the Goods under sub clause 5.4 shall be affected as fiduciary agent for TS GLOBAL and the proceeds of such sale and the rights against its Customers arising from such sales shall be held in trust for TS GLOBAL. The proceeds of such sale must be held in a separate account until the liability to TS GLOBAL has been fully discharged.

5.6 In the event that:

- (a) The Debts are not paid in accordance with this agreement and any other agreement between TS GLOBAL and the Customer;
- (b) TS GLOBAL received notice of or reasonably believes that a third person may attempt to levy execution against the Goods; or
- (c) An Insolvency Event occurs,
- then TS GLOBAL may at any time, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any Contract relating to the Goods and the bailment/agency referred to in sub clause 5.5 and enter upon the Customer's premises or any site owned, possessed or controlled by the Customer where TS GLOBAL reasonably believes the Goods may be stored, repossess the Goods without being liable for any damage caused, and subsequently dispose of the Goods at TS GLOBAL'S discretion.
- 5.7 If an Insolvency event occurs, the Customer shall bear the onus of proving that Goods supplied by TS GLOBAL in the Customer's possession (whether mixed with other Goods or not) have been paid in full by the Customer. If the Customer is unable to prove to the satisfaction of TS GLOBAL, that the Goods identified as TS GLOBAL Goods have been paid in full by the Customer, then those Goods shall be deemed to relate to unpaid invoices outstanding from time to time and such Goods are deemed to be the property of TS GLOBAL and may be repossessed by TS GLOBAL.
- 5.8 The Customer grants an irrevocable licence to TS GLOBAL or its agent to enter the Customer's premises or any site owned, possessed or controlled by the Customer in order to recover possession of Goods pursuant to this clause. The Customer indemnifies TS GLOBAL in respect of any damage to property or personal injury which occurs as a result of TS GLOBAL entering any premises or site pursuant to this clause.
- 5.9 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for TS GLOBAL in a separate account until the liability to TS GLOBAL has been fully discharged. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to TS GLOBAL at the time of the receipt of such proceeds.

6. WARRANTIES AND INDEMNITIES

6.1 Subject to these conditions of sale, TS GLOBAL warrants that the Goods are free of defects both in material and workmanship and are of merchantable quality. The liability of TS GLOBAL pursuant to this warranty or any other warranty implied by operation of any statute including the Competition and Consumer Act 2010 (Cth) (as amended) shall be limited to the cost of replacing defective Goods, the cost of obtaining equivalent Goods, or the cost of repairing the Goods at TS GLOBAL'S discretion provided that in all such cases any costs of dismantling and reassembly shall be borne by the Customer.

6.2 The warranty set out at clause 6.1 is subject to the following:

- a) the warranty applies for a period of 12 months commencing on the date of invoice of the Goods;
- b) the warranty does not apply to consumable components that are subject to normal wear and tear;
- c) the Customer must provide TS GLOBAL with either an invoice number or purchase order number referencing the defective Goods;
- d) the defects to the Goods must have arisen solely from faulty materials or workmanship; and
- e) the damage to the Goods must not arise from:
- incorrect installation of the Goods contrary to the instructions contained within TS Global's Installation and Operation Manuals;
 - improper adjustment, calibration or operation by the Customer;
 - the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by TS GLOBAL;
 - any contamination or leakages caused or induced by the Customer;
 - any modifications of the Goods which was not authorised in writing by TS GLOBAL;
 - any misuse of the Goods by the Customer;
 - any use or operation of the Goods outside of the physical, electrical or environmental specifications of the Goods;
 - inadequate or incorrect site preparation;
 - inadequate or improper maintenance of the Goods;
 - incorrect handling of the Goods; or
 - incorrect storage of the Goods.

6.3 If the Goods are not manufactured by TS GLOBAL the guarantee of the manufacturer of those Goods is accepted by the Customer and is the only guarantee given to the Customer in respect of the Goods. TS GLOBAL agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to TS GLOBAL under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

6.4 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. TS GLOBAL 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 TS GLOBAL'S negligence or in any way.

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6.5 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 Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

6.6 The Customer hereby indemnifies and keeps indemnified TS GLOBAL, its servants and agents in respect of any claim or demand made or action commenced by any person (including but not limited to, the Customer) against TS GLOBAL or, for which TS GLOBAL is liable, in connection with any loss arising from or incidental to the provision of Goods, any order or the subject matter of this agreement including but not limited to any legal costs incurred by TS GLOBAL in relation to meeting any claim or demand or any party/party legal costs for which TS Global is liable in connection with any such claim or demand. This provision remains in force after the termination of this agreement.

6.7 The Customer hereby indemnifies and agrees to hold TS GLOBAL harmless against all costs, claims, expenses or other liability arising out of or in connection with the delivery to the Customer of the Goods prepared, manufactured or dispatched in accordance with drawings, models, descriptions, analyses, prescriptions or other specifications submitted to TS GLOBAL by the Customer.

6.8 TS GLOBAL shall take all reasonable steps to care for and maintain any tools or models supplied to it by the Customer, provided that all such tools and models shall be insured by, and, where necessary repaired at the expense of, the Customer.

7. ADVICE

7.1 Subject to clause 6, any advice, recommendation, information, assistance or service provided by TS GLOBAL in relation to goods supplied or manufactured by it in respect of their use of application is given in good faith and shall be accepted without liability on the part of TS GLOBAL and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.

8. HAZARDOUS MATERIALS

8.1 Where TS GLOBAL sells potentially hazardous material to the Customer, TS GLOBAL shall endeavor to provide a Safety Data Sheet ("SDS") applicable to those hazardous materials. If not provided, the onus is on the Customer to request the SDS from TS GLOBAL.

8.2 The Customer agrees to follow the instructions for use and handling of the hazardous materials, and accepts it is the Customer's responsibility to ensure that its employees, contractors, agents or customers comply with the instructions for use and handling as stipulated in the SDS and/or Warning Labels supplied by TS GLOBAL.

8.3 The Customer hereby indemnifies and agrees to hold TS GLOBAL harmless against losses, damages, claims or other liability arising out of or in connection with the supply of the hazardous materials by TS GLOBAL, to the Customer and the use and handling of the hazardous materials by the Customer, its employees, contractors, agents or Customers.

8.4 The information supplied by TS GLOBAL in the SDS or Warning Labels is often obtained from TS GLOBAL's own suppliers or other sources, and TS GLOBAL will not be held liable in contract and/or in tort for any reliance placed on such information.

8.5 TS GLOBAL reserves the right to withdraw further supply of any hazardous materials if the Customer, its employees, contractors, agents or Customers fail to comply with the conditions of use and handling as stipulated in the SDS and/or Warning Labels.

9. CANCELLATION

No purchase order may be cancelled except with the consent in writing of TS GLOBAL and on terms which will indemnify TS GLOBAL against all losses.

10. NOTICES

Any notice to be given to the Customer shall be deemed to be given upon its being posted or emailed to the address or email address of the Customer set out in the Contract or to the Customer's registered office or to the Customer's last known address.

11. ASSIGNMENT

Neither party may assign any right under this document without the other party's written consent.

12. APPLICABLE LAW

This Contract shall be deemed to have been made in New South Wales and is governed by the law of New South Wales. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

13. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

13.01 Expressions defined in the Personal Property Securities Act 2009 (Cth) ("PPSA") have the same meaning when used in this clause.

13.02 This Agreement is a Security Agreement and creates a Security Interest in the Goods all proceeds from the sale of the Goods by the Customer to a third party.

13.03 The Customer consents to TS GLOBAL registering its Security Interest in the Goods on the Personal Property Securities Register and agrees to provide all assistance reasonably required by TS GLOBAL to facilitate registration of its Security Interest, or registration of any other document on the PPS Register which is necessary to perfect TS GLOBAL's Security Interest. The Customer agrees to indemnify, and upon demand reimburse, TS GLOBAL for all expenses incurred in relation to the registration of its Security Interest in the Goods.

13.04 Until such time as title in the Goods has passed to the Customer, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a Security Interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.

13.05 Without limiting any other right that TS GLOBAL may have, the Customer must immediately return all Goods if requested to do so by TS GLOBAL following non-repayment of any amount owing by the Customer to TS GLOBAL or following the breach of any other obligation of the Customer.

13.06 The Customer waives its rights to receive any notice under PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

13.07 TS GLOBAL and the Customer agree that this Agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. TS GLOBAL and the Customer agree that TS GLOBAL will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

13.08 TS GLOBAL and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.

13.09 TS GLOBAL and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of TS GLOBAL's Security Interest in the Goods or of this Agreement:

- any requirement for TS GLOBAL to give the Customer a notice of removal of accession;
- any requirement for TS GLOBAL to give the Customer a notice of TS GLOBAL's proposed disposal of the Goods;
- any requirement for TS GLOBAL to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- any requirement for TS GLOBAL to give the Customer a statement of account if TS GLOBAL does not dispose of the Goods;
- any right the Customer has to redeem the Goods before TS GLOBAL exercises a right of disposal; and
- any right the Customer has to reinstate this agreement before TS GLOBAL exercises a right of disposal of the Goods.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise TS GLOBAL to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to TS GLOBAL for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified TS GLOBAL against all Losses incurred by TS GLOBAL in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.

14.2 Unless specifically agreed in writing between TS GLOBAL and the Customer, all Intellectual Property Rights in any works created by TS GLOBAL on behalf of the Customer vest in and remain the property of the TS GLOBAL.

14.3 Subject to payment of all invoices due in respect of the Goods, TS GLOBAL grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by TS GLOBAL in connection with the provision of Goods under these Agreement for the purposes contemplated by the Order.

15. FORCE MAJEURE

15.1 If circumstances beyond TS GLOBAL's control prevent or hinder its provision of the Goods. TS GLOBAL is free from any obligation to provide the Goods while those circumstances continue. TS GLOBAL may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

15.2 Circumstances beyond TS GLOBAL's control include, but are not limited to strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

16. EXISTING CONTRACTS

16.1 This agreement applies to all transactions between TS GLOBAL and the Customer relating to the provision of Goods, including all quotations, contracts and variations. Subject to clause 16.2, this agreement shall apply to the exclusion of any agreement or conditions of sale contained in any document of the Customer or elsewhere.

16.2 If this agreement is issued under the terms of an existing contract with TS GLOBAL, the terms of the existing contract will apply to the extent of any inconsistency.