

Terms and Conditions

1. INTERPRETATION

1.1 In these Terms and Conditions:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (CT) (as amended or replaced from time to time).

Buyer means the person named as the Buyer in the Order Form and includes any Related Entity of the Buyer that places an order with the Supplier for the manufacture of Goods.

Delivery Date means the date of delivery of the Goods as notified by the Supplier to the Buyer which may be varied by the Supplier at any time.

Goods means goods which the Supplier has agreed to supply to the Buyer as described in the Order Form and the Specifications in accordance with these Terms and Conditions.

Order Form means the form attached to these Terms and Conditions or any other order submitted by the Buyer and accepted by the Supplier under condition 2.1.

PPS Act means the Personal Property Securities Act 2009 (CT) and any regulation made at any time under the PPS Act (each as amended and replaced from time to time).

PPS Register means the national online register established under the PPS Act.

Purchase Price means the tax inclusive amount the Buyer must pay to the Supplier for the Goods as set out in the Order Form.

Related Entity, in the case of a Buyer that is a company, means a related entity as defined in the Corporations Act 2001 (CT) and, in the case of a Buyer that is an individual, means a company controlled by that individual or of which that individual is a director and each related entity as defined in the Corporations Act 2001 (CT) of the companies.

Specifications means the specifications of the Goods as described in the Order Form.

Supplier means Hansa Precision Equipment Pty Ltd ABN 74 604 059 485 trading as Hansa Precision Equipment.

Terms and Conditions means the terms and conditions of sale and supply set out in this document and includes any additional terms and conditions agreed in writing between the Supplier and the Buyer. Terms used in these Terms and Conditions which are defined in the PPS Act have the same meaning given to them in the PPS Act.

2. ORDERS AND SPECIFICATIONS

- 2.1 Any order submitted by the Buyer must be accepted in writing by the Supplier's authorised representative before it will bind the Supplier. Each order confirmed or accepted by the Supplier will incorporate these Terms and Conditions. Where the Buyer places an order for Goods which contains terms and conditions inconsistent with these Terms and Conditions, the Buyer's terms and conditions are excluded to the extent of the inconsistency.
- 2.2 The Buyer is responsible for verifying the accuracy of any quotation supplied to the Buyer by the Supplier or any order (including any applicable Specification) submitted by the Buyer and must ensure that it discloses in writing all information regarding the intended use of the Goods and any other information relevant to the manufacture of the Goods to the Supplier.
- 2.3 The Supplier may make any changes to a Specification which are required to conform to any applicable safety or other statutory requirements, or which do not materially affect the quality or performance of the relevant Goods.
- 2.4 If the Goods are supplied by the Supplier in accordance with the Specifications, the Buyer will indemnify the Supplier and keep the Supplier indemnified against all losses, damages, costs and expenses awarded against or incurred by the Supplier in connection with or paid or agreed to be paid by the Supplier in settlement of any claim for infringement of any intellectual property rights of any other person which results from the Supplier's use of the Specifications.

3. PRICE AND PAYMENT

- 3.1 Subject to condition 3.2, the Buyer agrees to pay the Supplier the Purchase Price less any discount applicable, as invoiced by the Supplier to the Buyer, in accordance with the terms of payment set out in the Order Form.
- 3.2 The Supplier may, where it has reasonable grounds to believe that the Buyer may fail to pay an invoice within the period provided in condition 3.1, require the Buyer to pay the Purchase Price prior to the Buyer collecting the Goods from the Supplier.
- 3.3 The Supplier reserves the right to increase the Purchase Price to reflect any increase in the cost to the Supplier due to any factor beyond the Supplier's control, any change in delivery dates, quantities or specifications for Goods the Buyer requests or any delay caused by the Buyer's instructions or failure to give the Supplier adequate information or instructions.

4. CANCELLATIONS AND DEFERRALS

- 4.1 When an order is accepted by the Supplier, the Buyer is bound by the order, and will, at the Supplier's discretion, pay all costs, losses, charges and expenses incurred by the Supplier associated with any cancellation or deferral of the order or failure to collect or pay for the Goods under condition 6.2, including but not limited to, the Supplier's costs of:
 - (a) purchasing the materials to manufacture the Goods;
 - (b) manufacturing the Goods;
 - (c) reworking the Goods in order to re-sell the Goods;
 - (d) selling the Goods at a lower price than the price in Supplier's quote to the Buyer as set out in the Order Form;
 - (e) disposing of the Goods; and
 - (f) Any combination of these costs.
- 4.2 The Supplier will provide the Buyer with an invoice setting out the costs associated with the cancellation or deferral and the Buyer will pay the amount set out in the invoice on the day the invoice is received.

5. CHANGES TO SPECIFICATIONS

- 5.1 The Buyer may request a change to the Specifications by submitting to the Supplier a Sales Change Order Form available from the Supplier (**Requested Change**).
- 5.2 The Supplier will review the Requested Change and, if the Requested Change is approved by the Supplier, will inform the Buyer of any changes to the Purchase Price, Delivery Date and/or Specifications of the Goods (**Requested Change Proposal**).
- 5.3 If the Buyer accepts the Requested Change Proposal, the Order Form will be deemed to have been amended in accordance with the Requested Change Proposal.

6. DELIVERY

- 6.1 The Supplier will deliver the Goods to the Buyer by the Buyer collecting the Goods at the Supplier's premises on the Delivery Date or, if some other place for delivery is agreed by the Supplier, by the Supplier's delivery to that place.

- 6.2 If the Buyer does not collect the Goods, or the Buyer does not provide the Supplier with forwarding instructions sufficient to enable it to deliver the Goods on the Delivery Date or the Buyer does not make a payment required under condition 3 when it is due, the Buyer is deemed to have taken delivery of the Goods. The Buyer will reimburse the Supplier for any storage charges for the Goods within 14 days of receiving an invoice from the Supplier. If the Buyer fails to pay for and/or collect the Goods within 30 days of the Delivery Date, the Supplier will be entitled to sell the Goods.
- 6.3 Where the Supplier agrees to deliver the Goods other than at the Supplier's premises, the Buyer is liable to pay the Supplier's charges for transport, packaging and insurance.
- 7. TITLE**
- 7.1 Title to the Goods will not pass to the Buyer until the Purchase Price is paid in full.
- 7.2 Until title to the Goods has passed to the Buyer in accordance with this condition 7, the Buyer holds the Goods as fiduciary bailee of the Supplier and the Buyer agrees to store the Goods separately so that the Goods are identifiable as the Supplier's property. The Buyer has the right to sell the Goods in the ordinary course of trade if the Buyer accounts to the Supplier for all payments, including payments by third parties, in accordance with the Buyer's fiduciary relationship.
- 7.3 The risk of loss or damage to the Goods passes to the Buyer on the Delivery Date.
- 8. ACCEPTANCE**
- 8.1 Unless a supply under these Terms and Conditions is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, the Buyer must examine the Goods. Unless the Buyer gives written notice to the Supplier of any defects in the Goods or their failure to correspond with the Specifications within 7 days of the Delivery Date, the Buyer is deemed to have accepted the Goods as being of merchantable quality, corresponding with the Specifications and free of defects.
- 9. EXCUSABLE DELAYS**
- 9.1 The Supplier is not liable for any delay in, or failure to comply with, these Terms and Conditions where the failure was due to any cause beyond the Supplier's reasonable control.
- 10. EXCLUSIONS AND LIMITATIONS**
- 10.1 Nothing in these Terms and Conditions operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute, where to do so would contravene that statute, or cause any part of this condition to be void (**Non-excludable Obligations**).
- 10.2 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from these Terms and Conditions.
- 10.3 Except in relation to Non-excludable Obligations, the Supplier will have no liability for any loss, harm, damage, cost or expense (including legal fees), or any special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data) arising directly or indirectly under or in connection with the supply of the Goods, whether by way of indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.
- 10.4 Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability to the Buyer for a failure to comply with any Non-excludable Obligation (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law) is limited to the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 11. WARRANTIES**
- 11.1 Subject to condition 11, the Supplier warrants that the Goods will correspond with the Specifications at the time of delivery, subject to the following:
- (a) the Supplier is under no liability in respect of any defect in the Goods arising from any drawings, designs or specifications supplied by the Buyer; and
- (b) the Supplier is under no liability:
- (i) in respect of any defect arising after delivery to the Buyer from wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions, misuse or alteration or repair of the Goods without the Supplier's approval;
- (ii) for any defect caused during transportation; and
- (iii) Under the above warranty (or any other warranty, condition or guarantee) if the total price for Goods has not been paid by the due date for payment.
- 12. TERMINATION**
- 12.1 The Supplier may terminate this agreement with immediate effect if:
- (a) the Buyer breaches any of these Terms and Conditions; or
- (b) the Buyer ceases to carry on a business, is unable to pay its debts as they become due, is presented with a winding-up petition or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to the Buyer's assets, operations or business.
- 12.2 On termination of this agreement under condition 12.1:
- (a) if any Goods have been delivered or have been deemed to have been delivered under condition 6.2 but not paid for, the price will become immediately due and payable despite any previous agreement or arrangement;
- (b) the Supplier has the right to recover and resell any Goods in which title remains with the Supplier; and
- (c) The Buyer grants to the Supplier a licence for access to the Buyer's premises for the purpose of the recovery under this condition 11 and to examine the Goods.
- 12.3 Termination of this agreement does not affect any accrued rights or remedies of the Supplier.
- 13. FAILURE TO PAY**
- 13.1 If the Buyer fails to pay any amount under this agreement on the day it is due (**Amount Overdue**):
- (a) the Buyer will pay interest on the Amount Overdue at the rate fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic) for the period from the day the amount fell due until the date of payment;

- (b) the Buyer will pay all of the Supplier's costs of recovering payment of the Amount Overdue as invoiced by the Supplier to the Buyer;
 - (c) the Supplier may appropriate any payment made by the Buyer on any other account in payment of the Amount Overdue; and
 - (d) Unless otherwise specified by the Supplier, all payments by the Buyer are to be applied in accordance with section 14(6)(c) of the PPS Act.
- 13.2 The Supplier claims a general lien over all of the Buyer's property in its possession to cover the Amount Overdue and all other amounts due.

14. INTELLECTUAL PROPERTY

- 14.1 All patents, trademarks, copyrights, designs, know-how, trade secrets, improvements and any other intellectual property (**Intellectual Property**) in the Goods remain the sole property of the Supplier at all times and the Buyer agrees that it will not infringe any of the Supplier's Intellectual Property rights.
- 14.2 All drawings, technical specifications and Intellectual Property supplied or made available to the Buyer by the Supplier are subject to copyright and strictly confidential. The Buyer must not:
- (a) communicate any details of any drawings or technical specifications to any third party without the Supplier's prior written consent; or
 - (b) Make any copies of or use the drawings or technical specifications for any purpose other than expressly authorised in writing.

15. TAXES

- 15.1 In this condition 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that act.
- 15.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this condition 15.2 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 15.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with condition 15.2.
- 15.4 Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.

16. PRIVACY

- 16.1 The parties agree to be bound by all applicable Australian privacy legislation. The Supplier may use and disclose personal information of the Buyer or any of the Buyer's directors, officers, principal, guarantors, employees or agents for the purposes of obtaining and/or maintaining a commercial and/or consumer credit report and for registering and amending financing statements under the PPS Act.

17. PPS ACT

- 17.1 These Terms and Conditions constitute a security agreement and the Buyer grants to the Supplier a security interest in the Goods and their proceeds, as security for payment of the Purchase Price and all other amounts payable by the Buyer to the Supplier and for the Buyer's performance of its other obligations to the Supplier.
- 17.2 The Buyer agrees:
- (a) at the Supplier's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that the Supplier has a perfected first ranking security interest enforceable against third parties in all Goods (and the proceeds of those Goods) supplied by the Supplier; and
 - (b) That the Supplier may register a financing statement or financing change statement at the Buyer's cost and do anything else required to perfect its security interest in the security interest granted under these Terms and Conditions.
- 17.3 To the extent permitted by law, the Buyer waives its right to receive notice from the Supplier of any verification statement.
- 17.4 The following provisions of the PPS Act do not apply: section 95 (notice of removal of accession); subsection 121(4) (enforcement of liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 17.5 To the extent permitted by law, the Buyer will indemnify the Supplier on demand, for all costs and expenses incurred in connection with registering or maintaining a financing statement or financing change statement relating to the security interest created by these Terms and Conditions.
- 17.6 The Supplier reserves all rights and powers it may have in addition to those conferred under the PPS Act.
- 17.7 The Buyer must not create, or permit to be created, any security interest over, or respect of its rights in, the Goods (other than that created under these Terms and Conditions [and in all its assets in favour of a bank or similar financial institution]) including any replacement part or other item that is incorporated into or attached to any Goods, and must not change its name without notifying the Supplier at least 10 business days prior to doing so.
- 17.8 Despite condition 17.7, if the Buyer permits a security interest to be registered over the Goods [(other than an all asset security interest in favour of a bank or financial institution)], the Buyer must do, at its own expense, everything reasonably necessary to remove the security interest from the PPS Register.

18. GENERAL

- 18.1 The Supplier may sub-contract the supply or delivery of the Goods.
- 18.2 No waiver by the Supplier of any breach of these Terms and Conditions by the Buyer will be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 18.3 A term or part of a term of these Terms and Conditions that is illegal or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms of these Terms and Conditions continue in force.
- 18.4 The Buyer must not assign these Terms and Conditions, or any rights under these Terms and Conditions, without the prior written consent of the Supplier.

- 18.5 These Terms and Conditions and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.
- 18.6 These Terms and Conditions are governed by the law applicable in Victoria and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.