

TERMS AND CONDITIONS OF TRADE

1. APPLICATION

- 1.1. These Terms and Conditions of Trade ("**Terms**") apply to all Products sold, by **Deks Industries Pty Ltd** ("**Company**") to a customer of the Company ("**Customer**"). "**Products**" means all products including but not limited to consumables sold and/or delivered to the Customer by the Company from time to time.
- 1.2. No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless agreed to by the Company in writing.
- 1.3. The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Products sold other than as contained in these Terms.
- 1.4. The Company may amend these Terms at any time and from time to time.

2. PRICES

- 2.1. Unless expressly stated otherwise in writing, prices are quoted strictly ex the Company's premises, and do not include costs for packaging, delivery, freight, customs, duties, levies and insurance and are fixed for a period of thirty (30) days from the date of the publication of the quotation as amended from time to time.
- 2.2. Prices are subject to change without notice.
- 2.3. All applicable customs duties, tariffs and levies are payable by the Customer unless otherwise agreed to in writing by the Company.
- 2.4. Goods and Services Tax (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("**GST**") is not included in the quoted price.
- 2.5. If GST is imposed on the Company in respect of the supply of Products then the Customer must pay the amount of such GST to the Company in addition to the quoted price on written demand from the Company.

3. TERMS OF PAYMENT

- 3.1. The Company will invoice the Customer for Products supplied on receipt by the Company of a purchase order containing these Terms (or an acknowledgement of these terms) from the Customer. Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated in these Terms or the relevant invoice.
- 3.2. Payment of invoices is to be made by the Customer within thirty (30) days of the date of the Company's invoice. Where there is more than one outstanding invoice, payments received by the Company will be applied to Products supplied to the Customer in accordance with the date they are supplied, earliest first, as determined by the Company.
- 3.3. Interest is payable on all overdue accounts calculated on a daily basis at the rate of 5% above the base interest rate determined by reference to the monthly average yield of 90-day Bank Accepted Bills as from the due date for payment until payment is received by the Company.

4. SCOPE OF DELIVERY OBLIGATION

- 4.1. The Products to be supplied by the Company will be specified in the Company's written order confirmation/invoice. Extras will be invoiced separately.
- 4.2. Unless otherwise agreed in writing, Products will be delivered to the Customer's premises Ex-Works. Availability or delivery dates for the supply of Products are estimates only, but the Company will use its reasonable endeavours to adhere to any such estimates. If the Company is delayed by any circumstance or event then it may suspend or extend the delivery time for the whole or any part of the Products and will not be liable to the Customer for any loss or damage arising from any such delay.
- 4.3. Any special delivery instructions must be received by the Company in a timely manner to enable the Company to comply with such instructions. Any failure by the Company to comply by reason of non-receipt of special delivery instructions will not entitle the Customer to terminate the contract.
- 4.4. It is the Customer's responsibility to ensure that the Products conform to the Customer's requirements and are fit for the Customer's purposes.
- 4.5. The Company reserves the right to deliver the Products in whole or by instalments, as well as to deliver prior to the date for delivery and in such event the Customer must not refuse to accept delivery of the Products.
- 4.6. Where the Products are delivered by instalments, each instalment is sold under a separate contract.
- 4.7. Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to terminate the contract with regard to the balance remaining undelivered.

5. PROPERTY AND RISK

- 5.1. Legal and beneficial ownership of Products supplied by the Company does not pass to the Customer until the Customer has paid to the Company all amounts owed to the Company under these Terms, such amounts to be paid either in cash or cleared funds and in accordance with these Terms. Until such time that title in Products passes to the Customer, the Customer will hold the Products as consignor or bailee, as the case may be, for the Company and must keep the Products separate from other goods in the Customer's possession and store them in a manner that easily identifies them as belonging to the Company.

- 5.2. In the case of a current invoice, the retained title will act as security for the balance of any outstanding claim. If bills of exchange or cheques are submitted in payment, performance will become effective from the time they are cashed.
 - 5.3. Processing of any Products will be undertaken without liability to the Company. In the event that any Products are mixed with other goods not the property of the Company in such a way that they cannot be separated or identified easily as belonging to the Company, or if they are combined to form a new item, the Customer hereby assigns to the Company co-ownership of such item as security for the Company's claim to an amount equivalent to the value of such Products to which title has been retained, compared with the other processed or mixed goods, and the Customer will hold such goods as bailee for the Company.
 - 5.4. The Customer will be entitled to sell in the ordinary course of business any of its goods that incorporate the goods supplied by the Company and to which the Company retains co-ownership as a result of clause 5.3 or otherwise. In these circumstances, the Customer assigns to the Company any and all claims from any such sale to the amount of the equivalent value of the goods to which the Company retains title, or where the Company is co-owner of the item that is the object of the sales contract with the third party. The Customer will be entitled to recover the debt on behalf of the Company at the Company's discretion. The Customer will not be authorised to sell the goods if the party purchasing the goods from the Customer has effectively excluded the assignment of a claim addressed to it.
 - 5.5. The right of the Customer to dispose of the property to which the title has been retained and to recover the assigned debts will be cancelled if the Customer breaches its contractual obligations under these Terms, in particular in respect of a delay in payment or where the Customer is in financial difficulties. Under these conditions, the Company can exercise its right to recover the assigned debts and demand that the Customer provides all the data required to recover such debts, hand over all relevant documents and notify the debtors of the assignment. The Company will also be entitled to demand the immediate return of the goods to which title has been retained without stipulating an additional period of time or without making a statement to terminate the contract, and to utilise these; the proceeds from this will, after deduction of the relevant costs, be set against the amounts owed by the Customer.
 - 5.6. The Customer will, at its own expense, handle with care the goods that are co-owned with the Company and insure them for their replacement value against fire, water and losses resulting from theft. All events that may prejudice the Company's proprietary right to the goods or any rights to claims which have been assigned to the Company (for example, attachments of property, filings of bankruptcy petitions) must be notified to the Company immediately by the Customer. Any intervention costs that may be incurred will be borne by the Customer.
 - 5.7. The Customer accepts full risk of loss and damage to the Products from the earlier of the time they leave the Company's premises, or the premises of a third party supplier if the Products are shipped from the third party supplier directly to the Customer, or the time of delivery to the Customer.
- 6. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ('PPSA')**
- 6.1. Customer acknowledges that these terms and conditions constitute a security agreement for the purpose of the PPSA. A security interest (including, where applicable, a purchase money security interest as defined in the PPSA) is taken in all Products previously supplied by Company to Customer (if any) and all products that may be supplied in the future by Company to Customer, securing the performance by Customer of Customer's obligations under these terms and conditions.
 - 6.2. Customer must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Products (including any replacement part or other item that is incorporated into any Product), in Customer's possession or control prior to the title to the Products passing to Customer other than a security interest arising under these terms and conditions.
 - 6.3. Customer must assist the Company to complete the registration of any financing statement in respect of the Products, and will do all things and provide all information necessary to enable Company to perfect the Company's security interest in the Products and complete any financing change statement.
 - 6.4. To the extent permitted by law, Customer irrevocably waives any rights Customer may have to receive notices under s121 (4), 130, 132(4) and 135 of the PPSA, or to reinstate a security agreement following termination under s143.
 - 6.5. Customer irrevocably waives any rights Customer may have to receive a verification statement.
 - 6.6. The security interest attaches on the date of delivery of the Products and not at any later date.
- 7. INSPECTION**
- Unless the Customer gives written notice to the Company within three (3) Business Days after collection, delivery or performance, as the case may be, that the Products do not comply with the relevant specifications or descriptions, Products are deemed to have been accepted in good order and condition and properly performed. The Products are also deemed to have been accepted in good order and condition and properly performed, if and when the Customer commences to use the Products.
- 8. INSURANCE**
- From and upon such time that title and risk passes to the Customer, the Customer must take out and maintain insurance with a reputable insurer covering damage to and destruction, loss and theft of the Products for not less than their purchase price. If requested by the Company, the Customer must provide the Company with evidence that such insurance is in place. When the Company takes out such an insurance policy, the Company does so at its own expense.
- 9. INTELLECTUAL PROPERTY**
- 9.1. All intellectual property of the Company including without limitation technical documents such as drawings, illustrations, descriptions are and will remain the exclusive property of the Company. The Company's intellectual

property must not be made available to third parties, or copied, duplicated or used for reproducing any part of the Products.

- 9.2. All technical data given to the Customer by the Company is an approximation unless described explicitly as accurate. This is subject to alteration by the Company without notice.
- 9.3. Unless otherwise agreed in writing, Products are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Products or, if no such specification has been published or issued, subject to such specifications as are normally regarded as being commercially acceptable.
- 9.4. Where any specification for the Products is to be supplied by the Customer, these must be supplied in a timely manner to enable the Company to complete delivery by the date for delivery and any failure by the Company to do so by reason of non-receipt of specifications will not entitle the Customer to repudiate the contract.

10. LOCAL REGULATIONS

The Customer must inform the Company in good time of any applicable local regulations concerning delivery, erection, technical installations, operator safety, etc. Safety devices are supplied in accordance with written agreement between the two parties.

11. DEFAULT

If:

- 11.1. the Products are not paid for in accordance with these Terms or any other written agreement between the Company and the Customer; or
- 11.2. the Company receives notice of, or reasonably believes that a third party may attempt to levy execution against the Products; or
- 11.3. in the opinion of the Company, any other event occurs which is likely to adversely affect the Customer's ability to pay for the Products (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person (each an "**insolvency representative**") to the Customer's undertaking), then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer do any or all of the following:
 - 11.3.1. terminate any contract relating to the Products and the bailment or consignment referred to in clause 5 without incurring any liability at law or in equity;
 - 11.3.2. decline to deliver goods or any balance of goods or services due under a contract of sale;
 - 11.3.3. stop the delivery of any goods in transit;
 - 11.3.4. cease to perform any of its obligations owed to the Customer;
 - 11.3.5. recover from the Customer the contract price of all Products transported and for any expenses incurred by the Company in relation to the sale of Products, such as freight, insurance, handling, storage; or
 - 11.3.6. with or without possession, sell the goods by public auction or private sale in any manner and apply the proceeds after deduction of expenses and enforcement in or towards reduction of all monies due and owing by the Customer to the Company.

12. RIGHT TO ENTER PREMISES

In any of the circumstances referred to clause 11, the Customer authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Products are located in order to collect the Products, without being guilty of any manner of trespass until all the Products are collected and the Customer indemnifies the Company for all expenses it incurs in exercising its rights under this clause.

13. ADMINISTRATION, RECEIVERSHIP ETC.

- 13.1. In any of the circumstances referred to in clause 11, neither the Customer nor its insolvency representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Products in any way inconsistent with the Company's ownership of the Products, without the Company's prior written approval.
- 13.2. The Customer, its insolvency representative or any other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Products to the Company immediately or immediately on such appointment at its expense.
- 13.3. If the Products are returned to or collected by the Company, the Company will, within 28 days, account to the Customer or its legal representative for all monies received for the Products from the Customer less the Company's reasonable administration charges, expenses incurred and loss of profits involved.

14. CUSTOMER AS TRUSTEE

If the Customer carries on business as trustee of a trust then the Customer warrants that:

- 14.1. the Customer enters into the contract as trustee of a trust;
- 14.2. the Customer has all requisite powers to enter into a contract with the Company under these Terms;
- 14.3. the beneficiary of the trust approves the purchase of the Products on the terms of the contract; and
- 14.4. the assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer.

15. COMPANY'S LIABILITY LIMITED

- 15.1. These Terms do not affect the rights, entitlements and remedies conferred by the Competition and Consumer Act 2010 (Cth) or any other Australian Federal or State legislation where to do so would render any part of these Terms void or of no effect.
- 15.2. The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to consequential loss or damage, removal costs or re-installation costs or liability for loss of use or

profit) because of any failure to delivery, delay in delivery or fault or defect in the Products. The Customer acknowledges that the Company is not responsible if the Products do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any claim, cost, damage or demand resulting from such non-compliance.

15.3. If any statutory provisions referred to in clause 15.1 or any other statute(s) apply to these Terms then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:

14.3.1 replacement or repair of the Products or the supply of equivalent products; or

14.3.2 payment of the cost of replacing or repairing the Products or of acquiring equivalent products; and in any case, the Company will not be liable for any consequential or other direct or indirect loss or damage.

16. **WARRANTY**

16.1. The Customer must notify the Company in writing within 3 days of the date of delivery if the Customer receives Products that are damaged or defective, or if the Products delivered do not accord with the relevant Purchase Order.

16.2. If the Customer does not notify the Company pursuant to clause 16.1 then the Products delivered are deemed to have accorded with the relevant Purchase Order for the Products and be accepted by the Customer.

16.3. The Customer must not carry out any remedial work to alleged defective Products without first obtaining the written consent of the Company to do so. The Customer's failure to provide written notice to the Company within the required time of any alleged breach of the above warranty will release and discharge the Company from any obligation or liability for that breach of warranty. The above warranty extends only to the Customer and to no other person.

16.4. To the extent permitted by law, implied terms, guarantees, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the contract between the Company and the Customer in relation to the Products are hereby expressly negated and excluded.

16.5. The Customer expressly acknowledges and agrees that it has not relied on, and the Company is not liable for any advice given by the Company, its servants, agents, representatives or employees in relation to the suitability for any purposes of the Products.

16.6. The Products are supplied by the Company to the Customer for the purpose of re-supply to end users and/or for the purpose of transforming them, in trade or commerce, in the course of a process of production or manufacture. Accordingly, under this agreement, the Customer is not a Consumer as defined in the Competition and Consumer Act 2010 (Cth).

17. **CATALOGUES**

Particulars in leaflets, catalogues, drawings, brochures and other printed material of the Company are illustrations only and form no part of these Terms and are not and will not become binding on the Company.

18. **CONTRACT**

18.1. The terms of contract between the Company and the Customer are wholly contained in these Terms and any other writing signed by both parties.

18.2. The contract is deemed to have been made on acceptance by the Company of a Customer's purchase order containing these Terms at the Company's place of business in Sydney and must be construed and performed in accordance with the laws of New South Wales. Any cause of action is deemed to have arisen in Sydney and is subject to the exclusive jurisdiction of the courts there.

18.3. These Terms override the Customer's terms and conditions. To the extent of any discrepancy between these Terms and any third party (including the Customers) terms and conditions, these Terms prevail.

19. **FORCE MAJEURE**

The Company will not be liable for any breach of these Terms due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

20. **WAIVER OF BREACH**

No failure by the Company to insist on strict performance of any of the terms in these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

21. **FACTORING**

21.1. The Customer acknowledges and agrees that the Company has or may, at any time and at the Company's absolute discretion, enter into factoring arrangements with third parties regarding Products sold by the Company to the Customer and that the Company for that or any other purpose may assign its right to receive payment for such Products.

21.2. The Customer further acknowledges and agrees, if directed in writing by the Company, to make payment directly to a third party and payment made to such third party in accordance with the written direction of the Company will be the only means of satisfying the debt owed to the Company for the relevant Products.

22. **NO ASSIGNMENT**

Neither these terms nor any rights arising under these Terms may be assigned by the Customer without the prior written consent of the Company, which may be withheld at the Company's absolute discretion.

23. **SEVERABILITY**

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.