

# TERMS AND CONDITIONS OF TRADE

---

## TERMS AND CONDITIONS OF TRADE

(These Terms and Conditions of Trade supersede all previous Terms and Conditions of Trade)

### DEFINITIONS

“The Company” shall mean Designer Group of Companies Pty Ltd (ABN 28957586476) and its successor and assigns. “The Purchaser” shall mean the individual, partnership or corporation to whom credit may be granted.

“Goods” shall mean Goods supplied by the Company to the Purchaser (and where the context so permits shall include any supply of services),

“Guarantor” shall mean the person(s) or entity who agrees to be liable for and indemnify all monies owing by the Purchaser to the Company.

### RECITALS

The Company agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Company subject to these terms and conditions. Unless otherwise agreed in writing, all quotations are made, and all orders are accepted subject to these terms and conditions notwithstanding anything that may be stated to the contrary on the Purchaser’s enquiries or orders. This document, notwithstanding the time of its signing or delivery, embodies the sole terms and conditions of contract between the Company and the Purchaser, and shall supersede all other conditions and agreements between the parties unless expressly amended in writing. No alteration or variation of its terms and conditions shall be binding on the Company unless authorised by the Company in writing. This document also serves as notice that these terms and conditions shall without further notice apply to all future transactions between the Company and the Purchaser whether or not this document is delivered or executed in the course of such transactions.

### A. QUOTATIONS AND ORDERS

- i. Unless otherwise stated quotations will remain valid for thirty 30 days from the date appearing on the face of the quotation after which date they are subject to alteration or withdrawal without notice. A quotation by the Company shall not be deemed to be an offer to sell.
- ii. An order or an offer to purchase is accepted only when the Company confirms its acceptance in writing; until then the estimates and quotations submitted by the Company are not binding.
- iii. Any modification agreed verbally will be effective only after confirmation by the Company in writing.
- iv. Orders or offers to purchase, if accepted, are subject to the understanding that any orders may be manufactured in whole or in part by any manufacturer in any part of the world.

### B. PRICES

- i. Unless otherwise specified all prices are quoted ex works and are expressed in Australian currency.
- ii. If any charge, duty or impost of any kind not chargeable or applicable at the date of the within quotation is imposed or becomes payable or applicable on or in respect of the Goods or the transportation export or import thereof by or under legislation, regulation or governmental action or other matter whatsoever, beyond the Company's control, it will be added to the Purchaser's account and (to the extent to which it is paid or borne by the Company) be recoverable accordingly.
- iii. If the Purchaser subsequently directs that delivery be spread over more lots at different times or to different addresses from those specified in the original order, then each such delivery will be deemed to be a separate quantity and a novation of the original contract and may be priced accordingly. The Purchaser will be liable for any additional charges incurred by the Company in so doing.
- iv. The price(s) charged shall be the price(s) ruling at the date of delivery unless otherwise agreed in writing. Any price indications or price lists are subject to alteration to price(s) ruling at delivery date.

### C. TITLE

It is the intention of the Company and agreed by the Purchaser that property in the Goods shall not pass until:

- i. The Purchaser has paid all amounts owing to the Company; and
- ii. The Purchaser has met all other obligations due by the Purchaser to the Company in respect of all contracts between the Company and the Purchaser, and that the Goods, or proceeds of the sale of the Goods shall be kept separate until the Company has received payment and all other obligations of the Purchaser are met.

It is further agreed that:

- iii. The Purchaser shall not deal with the money of the Company in any way which may be adverse to the Company
- iv. The property in the Goods remains with the Company and the Purchaser agrees to hold the Goods as bailee for the Company.
- v. If the Purchaser fails to return the Goods to the Company upon demand then the Company or the Company's agent may terminate the bailment and enter upon and into land and premises owned, occupied or used by the Purchaser, or any premises as the invitee of the Purchaser, where the Goods are situated and take possession of the Goods, without being responsible for any damage caused.
- vi. Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership of rights in respect of the Goods shall continue.
- vii. The Purchaser shall not charge the Goods in any way or grant nor otherwise give any interest in the Goods while they remain the property of the Company
- viii. The Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Purchaser to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
- ix. The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Purchaser.

### D. FREIGHT

- i. The Company accepts no responsibility for any delay in transit from point of manufacture to final point of delivery.
- ii. The Company may arrange shipment by vessel on berth terms or on voyage time or part charter.
- iii. Where shipment is on other than berth terms, then unless otherwise specified in the Contract the cost of discharge including stevedoring damage to vessels and/or cargo and any despatch or demurrage at the port of discharge shall be added to the Purchaser's account and the Purchaser shall accept such conditions relating to discharge as are specified in the charter party or in writing by the Company.

#### **E. INSURANCE**

- i. Where material is sold at a price including insurance the Company will arrange at its cost an Open Cover Policy for the invoice value and all such insurance will attach from warehouse to warehouse provided delivery to warehouse is made within sixty (60) days from discharge ex vessel at final port of destination and further provided that during such period of sixty days the Goods, subject to normal delays, are in transit to final warehouse.
- ii. As the insurance is declared under an Open Cover Policy, it does not permit separate policies being issued in respect of any individual shipments, but on the specific request of the Purchaser received not less than fourteen (14) days prior to shipment, the Company attach to the documents a Certificate of Insurance in duplicate under the said Open Cover Policy applicable to the Goods shipped.

#### **F. DELIVERY OF GOODS**

- i. The risk in the Goods purchased shall unless otherwise agreed in writing pass to the Purchaser upon delivery to the Purchaser or his agent or to a carrier commissioned by the Purchaser.
- ii. The Purchaser is deemed to accept delivery of Goods when the said Goods are placed at the Purchaser's disposal at the named place of destination and all subsequent transportation of the said Goods shall be carried out at the expense and risk of the Purchaser, whether carried out under his direction or not.
- iii. If the Goods are delivered by instalment, each such instalment shall be at the Purchaser's risk upon delivery of each instalment.
- iv. The Company shall have the right to charge the Purchaser with all costs incurred due to storage, detention, double cartage, or similar causes, whether or not the costs are incurred at the Purchaser's request, if occasioned by the Purchaser's inability or failure to accept delivery of Goods when delivered or ready for delivery by the Company. Should the Purchaser for any reason be unable or fail to accept delivery of the Goods the Company shall have the right to deposit the Goods in any place of storage nominated by the Purchaser, or failing such nomination in any store determined by the Company. Delivery to such store shall in all respects be deemed to be delivery to the Purchaser.
- v. If, upon taking delivery of the Goods, the Purchaser or his agent signs a receipt for the Goods which states that the said Goods were received in good order and condition or words to that effect, and the Goods are later found to have been damaged in transit, or part of the Goods are found to be missing, and the signing of the said receipt thereby prejudices a possible claim by the Company or the Purchaser against a third party, the Company shall be free from all liabilities with respect to the loss or damage for which the Company does not recover from the third party.

#### **G. UNLOADING**

The Purchaser must pay all expenses incurred in unloading and discharging the Goods on their arrival at the named place of destination and accept full responsibility for the Goods and pay or indemnify the Company for any expenses whatsoever incurred from the time when the said Goods have been placed at the Purchaser's disposal at the named place of destination.

## H. DELIVERY DATE

The Company will make all reasonable efforts to have the Goods delivered to the Purchaser on the date(s) agreed between the parties as the delivery date(s), but the Company is under no liability whatsoever should delivery not be made by the period stated. Any delivery date specified is an estimate and approximate only.

## I. FORCE MAJEURE

The Company accepts no liability where delivery within any time agreed is prevented or hindered by reason of delays in manufacture or transportation arising from any of the following causes or being in any way incidental: Acts of god, wars, insurrection or internal disturbances, fires, floods or accidents, breakdowns of plant or machinery, unavailability of or delays in shipping or other transport strikes or lockouts of workmen, shortages or other default by suppliers of fuel, power or raw material, priority for supplies claimed by the Federal or State Governments of the Commonwealth of Australia or any overseas government, or any unforeseen happenings or events beyond the Company's control. In the event of any occurrence coming within the scope of the aforementioned, then:

- i. any delays in manufacture or transportation shall not give rise to any cause of action by the Purchaser against the Company;
- ii. during the period such delay continues the Company and the Purchaser shall each have the option to suspend or cancel any subsequent obligations or balance of obligations provided that-
  1. written notice shall be given by the party exercising such option;
    1. on any such suspension or cancellation by the Purchaser any Goods appropriated by the Company whether partly or fully processed at the time of such occurrence shall be accepted by the Purchaser if delivered by the Company; and
    2. in the case of cancellation any sums paid by the Purchaser in respect of Goods subject to the cancellation and not subsequently delivered by the Company pursuant to (ii) above shall be refunded by the Company.
- iii. the Purchaser shall not be entitled to cancel unless its interest in the delivery has seriously suffered or has been totally impaired by the delay;
- iv. the Purchaser shall accept and pay for the rates agreed upon any part of the Goods which the Company has delivered or which the Company in its absolute discretion is able to deliver.

## J. ADVICE & SUITABILITY FOR ENDUSE

Any advice, recommendation, information, assistance or service provided by the Company in relation to Goods sold by it or their use or application, is given in good faith. However, any advice, recommendation, information, assistance or service provided by the Company in relation to any Goods supplied by the Company is provided without liability or responsibility on the part of the Company. The Company also makes no express or implied warranty or statement and expressly negates any implied or expressed condition, other than as may be imposed by statute enforced in the Commonwealth of Australia, that the Goods will be suitable for a particular purpose or end use for which the Purchaser may use them. The Purchaser accepts all risk and

responsibility for consequences arising from the use of Goods, whether singly or in combination with other products. The Company will not be liable for any claims for consequential damages or otherwise.

## K. SALE BY SAMPLE

Where a contract is entered into conditional on the Purchaser's approval of a sample provided by the Company, the Company gives no undertaking, express or implied, that the Goods supplied will be exactly the same as the sample, although every effort will be made to supply Goods similar to the sample. The Purchaser is not discharged from its obligations if the Goods are found not to be precisely the same as the sample.

## L. WEIGHTS MEASURES & TESTING

- i. The Company shall be allowed a tolerance of not more than five percent plus or minus, in respect of all weights and quantities, unless otherwise agreed in writing, and payment shall be adjusted accordingly.
- ii. All weights and measures mentioned in catalogues, price lists and quotations are to be considered approximate. The Company's determination in relation to quantities and/or weights shall be final. Where Goods are subject to tests and/or inspection, such tests and/or inspection shall be performed prior to despatch from the manufacturer's factory. Unless otherwise specified, a certificate issued by the manufacturer shall be conclusive evidence that the Goods comply with such tests and/or inspection.

## M. CLAIMS

- i. The Purchaser shall inspect the Goods immediately on arrival and shall, within seven (7) days from receipt of the Goods, give notice to the Company in writing of any matter or thing by reason of which the Purchaser may allege that the Goods are not in accordance with the contract. If the Purchaser fails to give such notice, the said Goods shall be deemed to be in all respects in accordance with the contract and the Purchaser shall be bound to accept and pay for same accordingly.
- ii. No claim shall be made against the Company unless at the time the Goods in question are intact as a whole. The Purchaser hereby covenants to allow the Company access to the Goods and facilities in any way required for the Company's investigation (if any) of the claim. Acceptance or disposal of any part of the consignment of Goods in question is hereby deemed and agreed to constitute acceptance of the whole consignment of Goods and an acknowledgement and acceptance by the Purchaser that it has forfeited any rights whatsoever to make any claim in respect of the said consignment of Goods.
- iii. Any liability incurred by the Company to the Purchaser is limited to the replacement of the Goods, or (at the option of the Company) to refund the price paid by the Purchaser. Any damages recoverable from the Company as a result of any proven breach by it of its contractual obligations, shall not include consequential damages, and shall not extend to loss of profit, resale, storage or other charges. Investigation of any claim by the Company shall not constitute or be constructed as an admission of liability by the Company. It shall be a condition precedent to the making of any claim whatsoever against the Company that the Purchaser has paid in full to the Company all moneys owing by it.
- iv. Compensation for short deliveries shall be limited to refund of an amount not exceeding the value of the agreed shortfall at the selling price. The Company accepts no liability or responsibility for damage to Goods or shipping containers or packages and the like, or for labour charges in the counting or assessing of any claim.

- v. Returns will not be accepted after 14 days from invoice date. Invoice No. and purchase date must be supplied when returning Goods. Goods cannot be returned without the prior written approval of the Company.

## **N. PALLETS**

- i. Any pallets used for the delivery of Goods remain the sole property of the Company and are required to be returned to any of the Company's or its agent's warehouses, stores, factories or offices, upon its request and at the Purchaser's expense.
- ii. Any pallets not returned within 14 days after request are to be paid in full by the Purchaser at a valuation determined by the Company. Such valuation shall be final and binding as between the parties.

## **O. PAYMENT AND DEFAULT**

- i. Unless otherwise specified in writing by a duly authorised officer of the Company, payment shall be made within 30 days of statement date ("the due date").
- ii. If the Purchaser fails to pay any amount on the due date for payment then the Purchaser shall, in addition to that amount, pay interest at the rate of 2.5% per calendar month above the Westpac Banking Corporation Base Lending Rate, calculated from the time such amount falls due until it is received in full by the Company, without prejudice to all or any of the Company's other rights and remedies. Any payment received will be applied first against any interest accrued.
- iii. If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Company from and against all the Company's loss and damage in respect of any recovery action including without limitation all solicitors' fees (on an indemnity basis), commercial agents' commission, bank fees, freight, insurance, loss of profit and interest.
- iv. Without prejudice to any other remedies the Company may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under these terms and conditions. The Company will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Company exercised its rights under this clause.
- v. In addition to any right of lien or other security to which the Company may be entitled by law, the Company shall in the event of the Purchaser's insolvency, be entitled to a general lien on all Goods of the Purchaser's in the Company's possession, even if such Goods or some of them may have been paid for, against any outstanding amount for these or any other Goods sold and delivered by the Company to the Purchaser, under this or any other contract.
- vi. If the Purchaser defaults in any payment or commits any act of insolvency, the Company may, without prejudice to its own rights, suspend further deliveries, require payment in advance for all such deliveries, or terminate any contract forthwith, by written notice to the Purchaser.

## **P. CANCELLATION**

- i. No cancellation or suspension of any order or part of any order by the Purchaser shall be binding on the Company unless accepted in writing by a duly authorised officer of the Company.
- ii. In the event of the Company agreeing to suspend or cancel an order or part of any order, the Company reserves the right to demand what it considers to be a fair and reasonable price and/or compensation, at the Company's option.

## **Q. WARRANTIES**



All warranties guarantees and conditions other than those expressly stated in these Terms and Conditions, and whether implied by statute, common law, custom of the trade, or otherwise, are to the extent the law permits, expressly excluded.

i. R. LAW / INTERPRETATION

Unless the context otherwise requires, whenever in these Terms and Conditions trade terms are used, they shall have the same meaning as in INCOTERMS 1980, International Chamber of Commerce brochure No,350.

## S. SECURITY AND CHARGE

In consideration of the Company having agreed to or agreeing to sell Goods or to extend credit to the Purchaser, the Purchaser charges (as beneficial owner) all freehold and leasehold interest in land and in any assets that the Purchaser has or during the course of this agreement acquires. The Purchaser consents to the Company lodging a caveat or caveats noting its interest pursuant to such charge.

## T. GOVERNING LAW AND JURISDICTION

This agreement is governed by the law of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts and tribunals of Victoria. No party may object to the jurisdiction on the ground that it is an inconvenient forum or that it does not have jurisdiction.

## U. GUARANTOR

- i. I/We agree to indemnify the Company and keep it indemnified from and against all losses, damages, costs, charges and expenses of any kind which the Company may incur because of or arising out of the failure by the Purchaser to pay any monies which are due and payable to the Company or because in or before any liquidation, bankruptcy or insolvency of the Purchaser an amount is paid to the Company which it is subsequently obliged to pay out on the ground that payment of the amount to it was a preference.
- ii. If the Purchaser is in liquidation or is bankrupt, the Guarantor is not entitled to prove in the liquidation or bankruptcy in competition with the Company to diminish any dividend or payment which but for the Guarantor(s) proof the Company would be entitled to receive in the liquidation or bankruptcy or to assert any right of subrogation or indemnity in respect of any monies paid by the Guarantor to the Company hereunder until the Company has actually received 100 per cent in the dollar in respect of all monies due.
- iii. If the Guarantor(s) fails to comply with their obligations then the Guarantor shall, in addition to all monies owing by the Purchaser will also be liable to pay interest on all outstanding amounts at the rate of 2.5% per calendar month above the Westpac Banking Corporation Base Lending Rate, calculated from the time such amount falls due until it is received in full by the Company.
- iv. I/We declare that in consideration of the Company having agreed to or agreeing to sell Goods or to extend credit to the Purchaser, the Purchaser and/or the Guarantor(s) jointly and severally charge (as beneficial owners) all freehold and leasehold interest in land and in any assets that the Purchaser and/or Guarantor(s) now have or during the course of this agreement acquire. The Purchaser and/or Guarantor(s) consent to the Company lodging a caveat or caveats noting its interest pursuant to such charge.

- v. I/We agree this guarantee shall not be affected by any changes in the constitution of the Company or the Guarantor(s) by way of reconstruction, consolidation, absorption, merger or amalgamation.

## **V. GENERAL**

If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.