

## Terms and conditions of trading

### 1 Definitions

In these conditions:

**“Agreement”** means any written contract entered into for the provision of goods and/or services by the Seller to the Buyer;

**“Terms”** means these Terms and Conditions of Sale;

**“Buyer”** means a person, company, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from the Seller;

**“Seller”** means Cubus Concepts Pty Ltd (ACN) 118 402 574 ;

**“Goods”** means goods supplied by the Seller to the Buyer;

**“Services”** means services supplied by the Seller to the Buyer; and

**“Intellectual Property”** means all copyright, trade marks, designs, confidential information, owned or licensed by the Seller in respect of the goods and services.

### 2 Basis of Agreement

- 2.1 Unless otherwise agreed by the Seller in writing, the Terms apply exclusively to every contract for the sale of goods or services by the Seller to the Buyer and cannot be varied or supplanted by any other conditions, including the Buyer's terms and conditions of purchase (if any).
- 2.2 The Seller may amend or vary these Terms by notice in writing to the Buyer at any time.

### 3 Quotations

- 3.1 All prices contained in Quotations are current for a period of 30 days from the date noted on that Quotation and subject to the Buyer offering to enter into an Agreement and accepting these Terms and Conditions.
- 3.2 Prior to acceptance the Buyer may amend vary or withdraw same.
- 3.3 Written acceptance must be received by the Buyer before a quotation expires if the terms of such acceptance are inconsistent with the terms and conditions herein then these terms and conditions shall entirely supersede any terms that may be a part of the Buyers order or acceptance and the Buyer shall be deemed to have consented to these terms and conditions without reservation unless expressly accepted by us in writing.
- 3.4 Only the work specified therein is covered by quotations and any additional work requested by the Buyer or resulting from drawings samples or specification authorisations or any other variation whatsoever will be charged extra and may be subject to a revised delivery date.
- 3.5 The Terms may include additional terms in the Seller's quotation, which are not inconsistent with the Terms.
- 3.6 The Agreement is accepted by the Seller when the Seller confirms its acceptance of an offer from the Buyer in writing or electronic means or provides the Buyer with the goods or services.
- 3.7 The Seller may vary or amend these Terms by notice in writing to the Buyer at any time. Any variations or amendments will apply to orders made by the Buyer after the date of notice.

### 4 Specifications

- 4.1 All specifications, drawings, illustrations descriptive matter and particulars contained in the Seller's catalogues, website and marketing documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Buyer to rescind this Agreement or seek compensation or damages.
- 4.2 The Buyer must not modify or provide samples to anyone for the purposes of replicating any goods provided to it by the Seller.
- 4.3 All drawings, descriptive matter and particulars supplied, remain the Seller's property and are to be returned to the Seller on demand. The Buyer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without the Seller's prior consent in writing.

### 5 Pricing

- 5.1 Prices quoted by written quotation or verbally, for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Buyer must pay any GST and any other taxes or duties imposed on the goods and services.
- 5.2 Where there is any change in the costs incurred by the Seller in relation to the goods or services, the Seller may vary its price for the goods or services. All deliveries to the Buyer on or after the Nominated Date will be at the revised prices. If quotations include imported materials, any variation to the duty rate (including by-laws) and overseas shipping rates will adjust the contract price. Any variation in the rate of the Australian dollar to the currency of purchase on the imported material will adjust the contract price accordingly.

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## 6 Materials supplied to Seller

- 6.1 Property and materials supplied by or for and on behalf of the Buyer (including property or materials in transit) are at the Buyer's risk and the Seller shall not be liable in any way whatsoever for loss or damage to such property or material and it shall be the responsibility of the Buyer to insure such property or material.
- 6.2 Where the Buyer supplied materials or property adequate quantities shall be supplied to cover spoilage. The Seller shall not be required to check or count materials or property when received by it unless requested by the Buyer in writing and acknowledged by the Seller in writing. The Seller shall be entitled to charge for such counting or checking requested by the Buyer, for which charge shall be additional to any price specified.
- 6.3 The Buyer shall not without the consent of the Seller move or in any way interfere with the property and materials left with Seller whilst in the Seller's possession and control. The Seller shall be entitled to retain any property or materials supplied for and on behalf of the Buyer for as long as any moneys are owing by the Buyer whether in relation to the property retained or otherwise.
- 6.4 The Seller shall not be liable in any way whatsoever where materials, equipment, goods, plans, or specifications supplied for or on behalf of the Buyer are defective or unsuitable.
- 6.5 The Seller may in addition to the price quoted therein charge for handling and storage of property materials or equipment supplied for or on behalf of a Buyer.

## 7 Payment

- 7.1 Unless otherwise agreed in writing, payment for the goods and/or services is 50% deposit to commence processing order and balance prior to dispatch unless otherwise agreed in writing by the Seller. Payment by cheque is not deemed made until the proceeds of the cheque have cleared the Seller's bank account.
- 7.2 Payment terms may be revoked or amended at the sole discretion of the Seller immediately upon giving written notice to the Buyer.

## 8 Delivery

- 8.1 Unless otherwise agreed in writing to the contrary –
  - (a) Part deliveries can be made by the Seller.
  - (b) The Seller shall not be liable for delay in delivery or failure to deliver due to circumstances beyond its' reasonable control, nor for consequential loss or damage and the Buyer shall accept and pay for good notwithstanding late delivery.
  - (c) Notwithstanding that the Seller may agree to defer delivery at the request of the Buyer, payment for goods shall be made within 14 days of invoice.
  - (d) The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the buyer within 14 days of a request by the seller for such instructions. The parties agree that the seller may charge for storage from the first day after the seller requests the buyer to provide delivery instructions.
- 8.2 The goods will be at the Buyer's risk from time of delivery.
- 8.3 The Seller will, at its discretion, arrange for the delivery of the goods to the Buyer and shall designate the route and the means of transportation for the delivery of goods or services. In the event that the Buyer requires a more expensive route and/or means of transportation the Seller will invoice the Buyer any extra freight charges incurred by the Seller.
- 8.4 The Buyer must provide reasonable and proper access to the location specified for delivery, including elevators, loading docks and street access.
- 8.5 If the Seller does not receive forwarding instructions sufficient to enable it to dispatch the goods within 14 days of notification that the goods are ready, the Buyer shall be deemed to have taken delivery of the goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.
- 8.6 Where it is necessary for the Seller to deliver the goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost and responsibility of assembly will fall to the Buyer.
  - (a) The Buyer must advise the Seller in writing within 48 hours of receipt:
  - (b) of the non arrival of any or all of the goods;
  - (c) if there is damage to the goods;
  - (d) that the wrong goods have been received;
  - (e) that the quantity of the goods is incorrect;
  - (f) or the goods do not meet specifications.
- 8.7 Any period or date for delivery of goods or provision of services stated by the Seller is intended as an estimate only and is not a contractual commitment. The Seller will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Buyer or any third party for failure to meet any estimated date.
- 8.8 A completed driver's manifest or delivery docket whether signed by the driver or by the Buyer or its employee or agent will be proof of delivery of goods invoiced.
- 8.9 Unless otherwise stated herein or agreed in writing the Seller shall not be liable for any loss damage or non receipt of any product goods or equipment whether or not cartage freight or insurance have been charged and the Buyer shall indemnify and hold the Seller harmless against all loss, damage, claims, suits, demands or actions arising out of the shipment of such products

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goods or equipment via or on behalf of the Buyer.

(a) From the time of delivery or tender of delivery within Australia.

(b) In respect to F.O.B. deliveries outside Australia from the time the products, goods or equipment are on board ship or aircraft.

(c) With C.I.F deliveries outside Australia from the time products, goods or equipment are placed in port warehouse.

**9 Rights in relation to Goods**

9.1 Until full payment in cleared funds is received by the Seller for all goods and services supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer:

(a) Title and property in all goods remain vested in the Seller and does not pass to the Buyer;

(b) The Buyer must keep the goods separate from its goods and maintain the labeling and packaging of the Seller;

(c) The Buyer is required to hold the proceeds of any sale of the goods on trust for the Seller in a separate account however failure to do so will not affect the Buyer's obligation to deal with the proceeds as trustee;

(d) The Seller may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of the Seller, and for this purpose the Buyer irrevocably licenses the Seller to enter such premises and also indemnifies the Seller from and against all costs, claims, demands or actions by any party arising from such action.

**10 Risk and Insurance**

10.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Buyer immediately on the goods being received at the Buyer's premises or its nominated delivery point.

10.2 The goods are sold to the Buyer on the basis that the Buyer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

10.3 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use or possession of any of the goods sold by the Seller, whether such goods are used singularly, or in combination with other goods.

**11 Acknowledgments**

11.1 The Buyer acknowledges that :

(a) It has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Seller in relation to the goods or services or their use or application;

(b) It has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Buyer or any contemplated use by the Buyer, whether or not such use is known by the Seller; and

(c) Any description of the goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

**12 Liability**

To the extent permitted by law all implied conditions warranties and undertakings are expressly excluded. The Buyer's liability for the breach of condition warranty or undertaking which is not excluded is limited in the manner and to the extent permitted by Section 68A of the Trade Practices Act 1974.

12.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

12.2 Replacement or repair of the goods or resupply of the services is the absolute limit of the Seller's liability. The Seller is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

12.3 The Seller will not be liable for any loss or damage suffered by the Buyer where the Seller has failed to deliver goods or services or fails meet any delivery date or cancels or suspends the supply of goods or services.

12.4 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

**13 Cancellation**

Suspension or cancellation of any order or part thereof will not be accepted unless agreed to in writing by the Seller. All work done material used or expenses incurred by the Seller to the date it may agree to suspension or cancellation will be paid for by the Buyer within 14 days of invoice.

13.1 If, through circumstances beyond the control of the Seller, the Seller is unable to effect delivery or provision of goods or services, then the Seller may cancel the Buyer's order (even if it has already been accepted) by notice in writing to the Buyer.

13.2 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on the Seller after that order has been accepted.