

General Terms & Conditions of Sale

1. INTERPRETATION

1.1 "The Company" means Treloar Group Trading Pty Limited or any related corporation within the meaning of the Corporations Act 2001 (Cth) to whom the order or enquiry has been placed.

"Goods" shall mean goods manufactured, sold or distributed by the Company.

2. TERMS

2.1 These terms and conditions of sale apply to all transactions between the Company and the Buyer including all quotations, offers, orders or sales.

2.2 These terms and conditions (which will only be waived or varied in writing signed by the Company) will prevail over all conditions of the transaction to the extent of any inconsistency.

2.3 This quotation is current for thirty (30) days from the date hereof and is not an offer but is subject to confirmation on acceptance of an order.

2.4 If specified by the Buyer or its agent and agreed to by the Company in writing testing and inspection shall be at the Company's premises and shall be final. No claim arising out of any other testing or inspection shall be recognized. The Company shall not be responsible for the costs thereof.

2.5 When work of any kind is being carried out by the Company on the premises of a Buyer or its contractors, the Company shall not be liable for any loss or damage occasioned to the Buyer its contractors or any employees arising from any cause connected in any way with any special hazard or peril attaching to such premises or imported into them owing to the nature or methods of the work being done, or from any other cause whatsoever unless such Buyer or its contractors previously inform a responsible officer of the Company by notice in writing of such special hazard or peril.

2.6 It is the responsibility of the Buyer to determine that the Goods are fit for purpose and, if purchased, will suit the intended application/requirements.

3. PRICES

3.1 Goods & Services Tax (GST) will apply to all prices in line with the current legislation.

3.2 Unless otherwise stated all prices are net exclusive of GST ex the Company premises at Rutherford.

3.3 All prices quoted are based on current operating costs, award rates and conditions, ruling material costs and current exchange rates and all government duties and charges plus a separate charge for GST. Should any increase occur in the price of labour/materials or other expense or charges in exchange rates or duties over those ruling at the date of the quotation then in such case or cases the price and applicable GST shall increase at the proportional rate applicable to the Goods and/or work the subject of the quotation as determined by the Company.

- 3.4 Where Bills of Quantities are issued with invitation to quote these quantities shall be used as a basis of price, but the Company accepts no responsibility for the accuracy of, or omissions from, these Bills and will make charges in accordance with the quantities delivered at the rates for each item. The quoted price is based on the quantity set forth in the quotation. Should the quantity be reduced the Company reserves the right to amend this price. The GST will be levied on the final charge.
- 3.5 Unless specifically specified, crating and packaging charges will be at the Company's discretion and at the cost of the Buyer. GST will apply to crating and packaging charges.

4. DELIVERY

- 4.1 Unless specified, the Buyer will be responsible for collection of Goods from the Company's premises at Rutherford, NSW. GST will apply to freight charges.
- 4.2 Quotations for material to be delivered from stock are subject to prior sales.
- 4.3 While the Company endeavours to keep delivery dates, any delay of delivery, for any reason whatsoever, will not entitle the Buyer to claim for any consequential loss or damage or to cancel, rescind or terminate the contract.
- 4.4 Should circumstances beyond the control of the Company prevent or hinder delivery, the Company will be free from any obligation to deliver Goods while such circumstances continue. For as long as such circumstances exist, the Company may, at its option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond the control of the Company include, but are not limited to: strikes, lockouts, rebellions; fire, acts of God; shortages of raw materials; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.
- 4.5 Deliveries by instalments must be requested by the Buyer within the times stipulated in the contract.
- 4.6 Where the Buyer fails to request or accept instalment deliveries in accordance with the terms of the contract:
- (i) the Company may store the Goods at the risk and cost of the Buyer; and
 - (ii) the Buyer will be deemed to be in default of payment for the delivery.
- 4.7 Where Goods are ordered for delivery by instalments, each instalment delivery is deemed to be a separate order and a separate contract performed by the Company upon delivery of that instalment.
- 4.8 Delivery dates as may be quoted are subject to the availability of necessary materials and information including particularly, agreement as to critical dimensions from the Buyer to enable manufacture to proceed.

5. RISK

- 5.1 Risk in each order will pass to the Buyer upon delivery of that order to the Buyer or upon collection of that order by the Buyer's agent or courier as the case may be.
- 5.2 Subject to clause 4.6 where, in accordance with these terms the Company accepts a return of any Goods, risk in those Goods will revert to the Company upon delivery of the Goods to the Company or upon collection of the Goods by the Company's agent or courier as the case may be.
- 5.3 Any property of the Buyer under the Company's custody or control will be entirely at the Buyer's risk as regards loss or damage caused to the property or by it.

6. INTELLECTUAL PROPERTY

- 6.1 When Goods are ordered which are not of the Company's design the Buyer guarantees that in the making of them the Company shall not be liable for any infringements of intellectual property of third parties and agrees to indemnify the Company for action that may be brought against or suffered by the Company for the said manufacture.

7. DRAWINGS

- 7.1 The Company does not warrant the accuracy of any drawings submitted with quotations. All drawings shall remain the property of the Company. Drawings supplied are confidential and shall only be used for the sole purpose of aiding business between the Buyer and the Company. The delivery of these documents by the Company conveys no property rights therein nor in matters disclosed therein. Permission is expressly withheld to reproduce any part of these documents or to convey to others information contained in such documents.
- 7.2 The Company does not make any guarantee to quality or fitness of any material or component manufactured to buyer's drawings for any particular purpose.
- 7.3 Where applicable all orders include the supply of one set of the Company's standard instructions and prints. Additional copies are available at the expense of the Buyer. GST will be levied on this expense.

8. TOOLS & TOOLING

- 8.1 All drawings, tools, gauges, patterns, made by the Company shall remain the property and in the exclusive custody of the Company and shall be retained for a period of three (3) years calculated from the date of acceptance of the last order.
- 8.2 The Company does not warrant the accuracy of any pattern or tooling to drawings unless the pattern or tooling was made by or under the supervision of the Company. The Company accepts no responsibility or liability for any patterns or tooling supplied for use by the Company and same shall remain at the risk of the Buyer. The Company reserves the right to dispose of any pattern or tooling at the expiration of one (1) year from the date of delivery of the latest order in the event that the Buyer does not collect its property from the Company's premises.

- 8.3 In the event that any modification is required to be made to such pattern or tooling such modification would be made at the Buyer's expense and will be subject to GST.
- 8.4 The cost plus GST of any works started by the Company due to any alteration of any pattern, tool, gauges or drawings or the stopping of any work caused thereby will be charged to the Buyer and shall be included in the moneys payable to the Company as if it appeared in the quotation.

9. RETENTION OF TITLE

- 9.1 Notwithstanding delivery of Goods to the Buyer, until the Buyer has effected full payment for the Goods and any other Goods previously supplied by the Company:
- (a) legal title to the Goods will remain with the Company;
 - (b) the risk in the Goods will pass to the Buyer on delivery to the Buyer or its agent;
 - (c) the relationship between the Company and the Buyer will be fiduciary;
 - (d) the Buyer will:
 - (i) hold the Goods as bailee for the Company;
 - (ii) keep these Goods separate from other Goods; and
 - (iii) label the Goods so that they are identifiable as the Goods of the Company;
 - (e) with the Company's consent (which is given) the Buyer is at liberty to sell the Goods, in the ordinary course of the Buyer's business, provided that the money resulting from the sale will:
 - (i) be held in a separate account in trust for the Company;
 - (ii) not be mingled with other money; and
 - (iii) not be placed into an overdrawn account; and
 - (f) in the event that the Buyer uses the Goods in some manufacturing or construction process of its own or of some third party then the Buyer will hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Company. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to the Seller at the time of receipt of such proceeds.
- 9.2 The Buyer is not an agent of the Company in any sale of the Goods by the Buyer.
- 9.3 After the happening of an event of default specified in clause 12.5, the Company may without demand retake possession of the Goods and may without notice sell the Goods on such terms and in such manner as it determines and will be entitled to deduct all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, the Buyer irrevocably authorises and licenses the Company and its servants and agents to enter any premises where any Goods may be stored and to take possession of the Goods.

10. PPSA

- 10.1 Unless otherwise defined in these terms, the capitalised terms and expressions used in clauses 10.1 to 10.10 have the meanings given to them in the Personal Property Securities Act 2009 (Cth) (**PPSA**).
- 10.2 The Buyer acknowledges and agrees that it will grant to the Company a Security Interest in the Goods and their Proceeds, including any Accounts, Accessions and Commingled Goods.
- 10.3 The Buyer acknowledges that any purchase by it on credit terms from the Company, or any retention of title supply pursuant to these terms, Attaches on delivery of the relevant Goods and constitutes a Purchase Money Security Interest.
- 10.4 The Buyer agrees that:
- (a) these terms or, subject to the Company giving the Buyer at least thirty (30) days' notice, such other terms and conditions as the Company may adopt from to time, apply to the supply of Goods by the Company to the Buyer to the exclusion of all other terms and conditions of sale or purchase to the extent permitted by law and constitute a Security Agreement pursuant to the PPSA;
 - (b) no variation to these terms will be of any effect unless agreed to by the Company in writing;
 - (c) the Goods supplied by the Company secure the payment of the purchase price of those Goods and of any other Goods supplied by the Company with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
 - (d) the Buyer will do all the things necessary in the Company's reasonable opinion, including providing all information the Company requires, to register a Financing Statement or Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest;
 - (e) the Buyer will not change its name or ABN or other details required in respect of registration, or maintenance of registration, of each Security Interest on the Register, without first notifying the Company in writing;
 - (f) the Buyer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of any Security Interest created pursuant to these terms; and
 - (g) the Buyer must pay the Company's costs of any discharge or necessary amendment of any Registration. The Company reserves the right to charge an administration fee for registration, or maintenance of registration, of any Security Interest arising under these terms.
- 10.5 If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, the Buyer agrees that Sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.
- 10.6 To the maximum extent permitted by law, the Buyer contracts out of, and waives any rights the Buyer may have pursuant to, Sections 95 and 96, and if the provisions of Chapter 4 of the PPSA would otherwise apply, Sections 117, 118, 121(4), 123, 129(2) and 130 of the PPSA.

- 10.7 In addition to any other rights under these terms, the Company may exercise any and all remedies set out in the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Buyer, to search for and seize, dispose of or retain those Goods in respect to which the Company has a Security Interest. In this regard, the Buyer acknowledges that Sections 126, 128, and 129(1) of the PPSA relating to seizure of Goods and disposal of seized Goods apply.
- 10.8 The Buyer agrees with the Company that neither will disclose any confidential information of the kind referred to in Section 275(1) of the PPSA and that this clause 10.8 constitutes a confidentiality agreement within the meaning of Section 275(6)(a) of the PPSA.
- 10.9 The Buyer waives any rights the Buyer may have under Section 275(7)(c) of the PPSA to authorise disclosure of any confidential information that is protected from disclosure under clause 10.8.
- 10.10 The Buyer appoints and authorises the Company as the Buyer's attorney to sign in the Buyer's name all documents which the Company reasonably considers necessary to enforce or protect the Company's rights and powers under these terms and to protect, preserve and enforce the Company's rights under the PPSA.

11. PRODUCT AMENDMENT

- 11.1 The Company reserves the right to amend the design of any Goods at any time without notification to any Buyer. GST will apply to all additional charges.

12. PAYMENT

- 12.1 The Buyer will pay the full price of each order to the Company on or before the last working day of the calendar month following the month of supply. If payment is not made on or before the last working day of the calendar month following the month of supply the Company may without demand retake possession of the Goods and may without notice sell the Goods on such terms and in such manner as it may determine and will be entitled to deduct all expenses incurred. For the purpose of recovering possession, and without limiting the generality of the foregoing the Buyer hereby irrevocably authorises and licences the Company and its servants and agents to enter upon any premises where any Goods may be stored and to take possession of the Goods.
- 12.2 All applicable taxes, duties or levies (including GST) on the sale of the Goods will be to the Buyer's account.
- 12.3 The Company reserves the right to charge interest on any amount overdue from the due date for payment until the date payment is received at the rate of 2% per month compounded daily. All payments made by the Buyer will first be applied to any accrued interest.
- 12.4 Payment made by credit card may be subject to a surcharge.

- 12.5 The Company may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Buyer where the Buyer:
- (a) defaults on any payment due under the Contract;
 - (b) being a natural person, commits an act of bankruptcy;
 - (c) being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Buyer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Buyer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); or
 - (iv) any assignment for the benefit of creditors.

13. ACCEPTANCE OF GOODS

- 13.1 The Buyer will inspect the Goods immediately upon delivery to the Buyer or upon collection of that order by the Buyer's agent or courier as the case may be.
- 13.2 All claims against the Company regarding the quality, nature, fitness, suitability, conformance with description or defects of the Goods must be made in writing to the Company within fourteen (14) days of delivery. The Company does not accept liability for any such claim not made in accordance with these terms.
- 13.3 In the event of justified objection notified by the Buyer to the Company in accordance with these terms, the Company may, at its option:
- (a) reduce the purchase price by agreement with the Buyer;
 - (b) accept the return of the Goods and, subject to the Goods being returned in the same condition as when they were delivered to the Buyer, refund to the Buyer the purchase price; or
 - (c) replace the Goods
- and no additional claims of any nature whatsoever may be made against the Company.

14. CANCELLATION OF ORDERS / RETURN OF GOODS

- 14.1 Cancellation of order(s) will be accepted only with the express permission of the Company. A cancellation fee will be charged on the net selling price to the Buyer where non recoverable work and costs have been performed by the Company up to the date of cancellation. GST will be levied on this fee.
- 14.2 For return of Goods, a Return Goods Authority must be issued by the Company prior to any Goods return. Goods that are manufactured to Customer Specification or special order are Non-Returnable. A 20% restocking fee, plus freight costs, will apply for all standard resalable Goods returned in as new condition. The Company reserves the right to reject any returns not considered by it to be in as new condition.

15. PERFORMANCE

- 15.1 Any figures given for performance are based upon experience and are such as the Company expect to obtain on test, but the Company only accept liability for failure to attain figures given when it expressly guarantees such figures within specified margins. The Buyer assumes responsibility for the capacity and performance of the Goods being sufficient and suitable for its purpose.

16. ADVICE AND INFORMATION

- 16.1 Any advice, recommendation, information, assistance or service given by the Company in relation to Goods sold or manufactured by the Company or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and the Company does not accept any liability or responsibility for any loss suffered from the Buyer's reliance on such advice, recommendation, information, assistance or service.

17. WARRANTY

Treloar Group Trading Pty Limited ABN 56 763 038 863
Address: 9 Paddock Place, Rutherford NSW 2320
Ph (02) 4937 6410 Fax (02) 4932 6744.
Email: sales@treloar.com.au Website: www.treloar.com.au.

In addition to all other rights and remedies the Buyer may have at law the Company will repair or replace at its option any Goods which within a period of twelve (12) months from the date of delivery, may prove to be defective through faulty materials or workmanship **PROVIDED THAT** the defective Goods are promptly returned to the Company's premises at Rutherford unless otherwise arranged. Any claim under this warranty must be made within the warranty period in writing to the National Customer Service Manager at the above address. The product for which a claim is being made must be returned with your claim, together with the proof of purchase. No claim will be accepted if the Buyer has misused, modified, damaged the Goods or used not in accordance with its specification, nor if the Goods are returned after the expiration of the warranty period. The company will pay reasonable, direct expenses of claiming under this warranty. The Buyer may submit details and proof of your expense claim to the Company for consideration. The Company accepts no responsibility for the suitability or otherwise of any Goods unless the Company was commissioned to expressly advise upon such suitability. Under no circumstances will the Company be liable for any consequential loss or damage.

18. COMPETITION AND CONSUMER ACT 2010 (CTH)

- 18.1 The terms in these conditions of sale that exclude or limit the owner's liability will apply only to the extent permitted by law. Provisions of the Competition and Consumer Act 2010 (Cth) (as amended) and other statutes from time to time in force cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. These conditions of sale must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the owner is entitled to do so, its liability under those statutory provisions will be limited at its option to:
- the replacement of the Goods or the supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - the payment of the cost of having the Goods repaired.

19. DISPUTES

- 19.1 If any dispute shall arise in connection with the contract which cannot be amicably settled between the Buyer and the Company, either party may give written notice of the existence of such a dispute and the same be referred to the arbitration of a person to be mutually agreed upon or failing agreement of some person appointed by the President of the Institution of Engineers of Australia. The award of such arbitrator shall be final and binding.