

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale are incorporated in any contract for the sale of Goods by EMA International Pty Ltd ABN 99 133 128 159 (“the Seller”) and the party named on the payment form as the purchaser of the Goods (“the Buyer”), constitute the agreement for the sale of the Goods & Services as the case may be (“the Agreement”).

1. Disputes under the Agreement.

1.1. This agreement shall be governed by and construed in accordance with the laws of the State of Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts in and of that State.

2. Delivery Dates.

Delivery dates are approximate only and the Seller agrees to use its best endeavours to make delivery of the Product on or about the dates agreed but the Seller shall not be liable for any loss or damage caused directly or indirectly by any delay or failure to deliver the Goods. Any delay in delivery by the Seller shall not relieve the Buyer of its obligation to accept that delivery and/or any subsequent delivery.

3. Risk of Loss.

3.1. If this agreement requires or authorises the Seller to deliver the goods by carrier, then risk of loss shall pass to the Buyer when the goods have left the Seller’s premises. If the Buyer collects the Goods from the Seller’s warehouse or plant, risk of loss shall pass to the Buyer on tender of delivery at the Seller’s warehouse.

3.2. Notwithstanding anything to the contrary in this agreement, risk of loss shall pass to the Buyer upon the occurrence of any of the following events:

3.2.1. the Buyer is unable or refuses to accept delivery on the Delivery Date;

3.2.2. the Goods are ready for delivery and the Buyer has failed to furnish the Seller with delivery instructions; or

3.2.3. the Buyer has paid the entire purchase price for the ordered goods prior to delivery.

3.3. Under no circumstances shall the Seller be obliged to obtain insurance for the Buyer.

4. Credit.

Any credit terms extended to the Buyer under this Agreement are subject to alteration by the Seller at any time, in its sole discretion. If the Buyer fails to make any payment by any such revised terms, the Buyer shall be deemed to have breached and repudiated this Agreement.

5. Warranties & Disclaimer.

5.1. The Seller provides a twelve month guarantee against defects in workmanship and materials from the date of purchase and warranties that the Goods are in conformance with any description and specifications in this Agreement, with fair wear and tear excluded. The Seller makes no other warranties, express or implied. Without limiting the generality of the foregoing, the Seller makes no warranty of merchantability and no warranty of fitness or suitability for a particular purpose with respect to the Goods.

5.2. Any claim for breach of this warranty shall only be valid if the Buyer notifies the Seller in writing of the breach.

5.3. Unless specifically stated, no products provided by the Seller are warranted against wind or storm damage

- 5.4. The Buyer's sole remedy for the breach of the warranty shall be the repair or replacement of the defective Goods or refund of the purchase price thereof, and the form of the remedy shall be at the Seller's sole discretion.
- 5.5. The Buyer acknowledges that the Seller's obligation to replace the Goods under this Clause extends only to the Goods supplied and in no circumstances includes any products into which the Goods have been incorporated.

6. Limitation of Liability.

- 6.1. The terms and conditions in this Agreement that exclude or limit the Seller's liability shall apply only to the extent permitted by law. Provisions of the *Trade Practices Act 1974* (as amended) and other statutes from time to time in force in Australia may imply warranties or conditions or may impose obligations on the Seller which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read and construed subject to those statutory provisions.
- 6.2. If any such statutory provisions apply, then to the extent that the Seller is permitted to do so, it's liability under those statutory provisions shall be limited to its option to:
- 6.2.1. in the case of the supply of the Goods:
- 6.2.1.1. the replacement of the Goods or the supply of equivalent goods;

7. Indemnification.

The Buyer shall defend, indemnify and hold harmless the Seller, its officers and agents (indemnitees) from and against any and all claims, demands, losses, liabilities, expenses or damages which any indemnitee may suffer or incur as a result of claims, demands or actions against any indemnities by third parties which arise from the Buyer's sale, delivery, failure to deliver installation or servicing of the Goods sold or delivered to the Buyer hereunder. The Buyer's obligations under this Clause shall survive the expiration or termination of this Agreement.

Default.

- 7.1. The Buyer shall be in default hereunder upon the occurrence of any of the following events:
- 7.1.1. the Buyer refuses to accept delivery of Goods properly tendered or fails to make any payment under this Agreement, or fails to comply with any other terms of the Agreement;
- 7.1.2. the Buyer becomes insolvent or unable to pay its debts as they mature or is generally not paying its debts as they mature;
- 7.1.3. the Buyer makes a general assignment for the benefit of its creditors;
- 7.1.4. a trustee, receiver or other custodian is appointed for any of the Goods or all or a substantial portion of the Buyer's property; or
- 7.1.5. a proceeding under insolvency laws is instituted by or against the Buyer.
- 7.2. If the Buyer is in default hereunder, the Seller, in addition to any other rights it has under applicable law, shall have the right to do any one or more of the following:
- 7.2.1. cease or suspend its performance under this Agreement;
- 7.2.2. cancel delivery of any Goods not delivered;
- 7.2.3. declare, without demand or notice of any kind, the entire outstanding balance owing by the Buyer for the Goods already delivered to be immediately due and payable;
- 7.2.4. recover damages from the Buyer arising from its default; or
- 7.2.5. recover all costs of collection including reasonable legal fees.
- 7.3. The Buyer hereby waives any and all rights to notice and hearing prior to seizure of the Goods upon the Buyer's default. The Seller's rights hereunder shall be cumulative and in addition to any and all other rights available to the Seller under applicable law.

8. Passing of Property.

- 8.1.** Should the Seller deliver the Goods to the Buyer prior to full payment then, until the Seller recovers full payment, the Buyer shall hold possession of the Goods as the Seller's bailee only. Title and property in the Goods shall not pass to the Buyer until full payment is received by the Seller and in the case of payment by cheque, bill of exchange or note until the instrument has been honoured. During such period of bailment, the Buyer shall take reasonable care of the Goods.
- 8.2.** If the Buyer incorporates the Goods into composite products absolute title to such composite product shall vest in the Seller until full payment of all monies in accordance with Clause 4.
- 8.3.** The Buyer shall maintain records of the Goods and composite products which belong to the Seller and produce them to the Seller on demand. Failing such identification, the Goods supplied by the Seller and composite products incorporating the Goods in the Buyer's possession shall be deemed to belong to the Seller to the extent of all Sums due to the Seller. If the Buyer sells or otherwise disposes of the Goods, (including any composite products incorporating the same) or make any insurance claim in respect of the same prior to making payment in full to the Seller, he shall not enter into any commitment or give any warranties or make any representations on behalf of the Seller; and the proceeds of any such sale or other disposition (or claim thereto) or any insurance proceeds (or claims thereto) shall belong to the Seller to the extent of all sums due to the Seller.
- 8.4.** If the Buyer fails to make all payments when due, becomes subject to bankruptcy laws, enters into any scheme of arrangement with his, her or its creditors, enters into liquidation or has a receiver or manager appointed to manage his, her or its assets, the Seller shall have the right, without prejudice to any other of its lawful remedies, to repossess to Goods and any composite product incorporating the same without prior notice and to enter any premises for the purpose of such repossession and/or to insist that the Buyer pay all proceeds of sale, disposition, or insurance of the Goods and composite products belonging to the Seller or deemed to belong to the Seller in accordance with this clause into a separate bank account in trust in the name of and for the Seller.
- 8.5.** Nothing in this clause shall give the Buyer any right to return the Goods. The Seller may sue the Buyer for the price notwithstanding that property in the Goods may not have passed to the Buyer. The Goods and composite products shall, once the risk has passed to the Buyer in accordance with Clause 3 or otherwise, be and remain at the Buyer's risk at all times unless the Seller has taken possession of the same.

9. Force Majeur.

- 9.1.** The Seller shall not be liable for any delays in delivery or any other failures under this Agreement caused by contingencies beyond the Seller's control including materials being out of stock, suppliers not delivering on time, acts of God, civil insurrections, wars, sabotage, fires, floods, accidents, labour disputes and shortages, governmental laws, ordinances, rules and regulations (where valid or invalid), inability to obtain material, equipment or transportation, any other like contingency. In event of delay due to any such contingency, the delivery date shall be extended for a period of time equal to the time lost by reason of the delay.
- 9.2.** If due to any such contingency, the Seller is unable to supply the total demand for any Goods specified in this Agreement, the Seller shall have the right to allocate its available supply among its customers in a fair and equitable division.

10. Miscellaneous.

- 10.1. Wherever possible, each of the terms and conditions of this Agreement is to be interpreted in such a manner as to be effective and valid under applicable law, but if any such term or condition is prohibited or invalid under such law, then it is to be ineffective only to the extent of such prohibition and invalidity.
- 10.2. These terms and conditions may not be modified, amended, changed or terminated and no term or condition thereof may be waived, unless such waiver, modification, amendment, change or termination is express, in writing and signed by the duly authorised representatives of the Seller and the Buyer.
- 10.3. No delay or omission of the Seller in exercising any right or remedy shall be a waiver thereof of any other right or remedy, and no single or partial waiver thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- 10.4. All notices and other communications under the Agreement are to be in writing are deemed to have been duly given and to be effective upon delivery to the party to whom they are directed.
- 10.5. As used herein “Goods” and “Services” means the goods and services described on a order form.
- 10.6. **The Buyer acknowledges that it has read and understood these terms and conditions of sale and acknowledges that they constitute the entire agreement with the Seller irrespective of any other representation made.**