

**1. Definitions**

- 1.1 "Agent" shall mean Hugh Meagher & Associates Pty Ltd and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client if a Limited Liability Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Agent to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Agent to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Agent and the Client subject to clause 4 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by the Agent from the Client for the supply of Goods and/or the Client's acceptance of Services and/or Goods supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Agent.
- 2.3 None of the Agent's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Agent in writing nor is the Agent bound by any such unauthorised statements.

**3. Goods**

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Agent to the Client.

**4. Price And Payment**

- 4.1 At the Agent's sole discretion;
  - (a) The Price shall be as indicated on invoices provided by the Agent to the Client in respect of Goods supplied; or
  - (b) The Price shall be the Agent's current price at the date of delivery of the Goods according to the Agent's current Price list; or
  - (c) The Price of the Goods shall, subject to clause 4.2, be the Agent's quoted Price, which shall be binding upon the Agent provided that the Client shall accept in writing the Agent's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications, will be charged for on the basis of the Agent's quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.
- 4.3 At the Agent's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.
- 4.4 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods/Service.
- 4.5 At the Seller's sole discretion, payment for approved Buyers shall be made by instalments in accordance with the Sellers delivery/payment schedule.
- 4.6 At the Sellers sole discretion, for certain approved Buyers payment will be due thirty (30) days following the date of the invoice.
- 4.7 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (plus any charges that maybe applicable), or by direct credit or by any other method as agreed to between the Client and the Agent.
- 4.8 The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Agent.

**5. Delivery Of Goods / Services**

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Sellers address.
- 5.2 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.4 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.

**6. Risk**

- 6.1 If the Agent retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Agent is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.

**7. Defects/Returns**

- 7.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Agent of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be conclusively presumed to be

in accordance with the terms and conditions and free from any defect or damage.

- 7.2 For defective Goods which the Agent has agreed in writing that the Client is entitled to reject, the Agent's liability is limited to either (at the Agent's discretion) replacing the Goods or repairing the Goods provided that:
  - (a) the Client has complied with the provisions of clause 8.1;
  - (b) the Agent will not be liable for Goods which have not been stored or used in a proper manner.

**8. Warranty**

- 8.1 Subject to the conditions of warranty set out in Clause 9.2 the Agent warrants that if any defect in any workmanship manufactured by the Agent becomes apparent and is reported to the Agent within twelve (12) months of the date of delivery (time being of the essence) then the Agent will (at the Agent's sole discretion) repair the defect or replace the workmanship.
- 8.2 The conditions applicable to the warranty given by Clause 9.1 are:
  - (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - i) Failure on the part of the Client to properly maintain any Goods; or
    - ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Agent; or
    - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
    - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - v) Fair wear and tear, any accident or act of God.
  - (b) The warranty shall cease and the Agent shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Agent's consent.
  - (c) In respect of all claims the Agent shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Clients claim.
- 8.3 For Goods not manufactured by the Agent the warranty shall be the current warranty provided by the manufacturer of the Goods. The Agent shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

**9. Default & Consequences Of Default**

- 9.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 15% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 9.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all the Agent's costs and disbursements including on a solicitor and own Client basis and in addition all of Debt collection costs of collection.
- 9.3 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent exercised its rights under this clause.
- 9.4 In the event that:
  - (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
- 9.5 then without prejudice to the Agent's other remedies at law
  - (i) the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
  - (ii) all amounts owing to the Agent shall, whether or not due for payment, immediately become payable.

**10. Title**

- 10.1 It is the intention of the Agent and agreed by the Client that property in the Goods shall not pass until
  - (a) The Client has paid all amounts (in cleared funds) owing for the particular Goods, and
  - (b) The Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Agent shall have received payment and all other obligations of the Client are met.
- 10.2 It is further agreed that
  - (a) Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
  - (b) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.

**11. Cancellation**

- 11.1 The Agent may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.