

# Terms and Conditions of Sale

## 1 Definitions and interpretation

- 1.1 These terms and conditions govern the relationship between the Company and the Customer and apply to all transactions between them, including quotations, offers, orders or sales.
- 1.2 By requesting the supply of Products or Services, the Customer agrees to be bound by these terms and conditions.
- 1.3 These terms and conditions:
- (a) will prevail over the Customer's terms and conditions (if any) to the extent of any inconsistency; and
  - (b) may only be varied or waived by the Company.
- 1.4 In these terms and conditions:
- (a) **Accepted Order** means a quote for Products or Services provided by the Company and accepted by the Customer;
  - (b) **Company** means Industrial Plastics Pty Ltd ACN 078 675 466;
  - (c) **Customer** means the party purchasing the Products or Services from the Company;
  - (d) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and any terms used in clause 4 have the respective meanings given to those terms by the PPSA;
  - (e) **Products** means the products made available by the Company from time to time; and
  - (f) **Services** mean the services provided by the Company from time to time.

## 2 Supply of Products and Services

### Ordering

- 2.1 The Customer may, from time to time, place an order for Products or Services with the Company either verbally, or in writing (by facsimile or email).
- 2.2 The minimum value for an order is \$30 (excluding GST).
- 2.3 Upon receipt of an order from a Customer, the Company may provide a verbal or itemised quote for the Products or Services or elect to refuse the order.
- 2.4 The provision of a verbal or itemised quote for Products or Services by the Company is subject to prior sale.
- 2.5 The Customer may accept a quote provided by the Company either verbally, or in writing; as stipulated by the Company.
- 2.6 The Company reserves the right to adjust prices quoted if and when necessary prior to customer acceptance.
- 2.7 Upon the Customer's acceptance of a quote (**Accepted Order**) subject to payment of the purchase price in respect of the Accepted Order, the Company sells the Customer the Products or provides the Customer the Services, contemplated by that order, and the Customer buys the Products or pays for the Services for the purchase price in respect of that order.
- 2.8 The Customer acknowledges that where a quote for Products provided by the Company to the Customer is for a quantity of Products, the quote may only be accepted by the Customer for that quantity.
- 2.9 The Customer acknowledges that the Company's records in relation to Accepted Orders are true and correct and will not be disputed.

### Working drawings

- 2.10 Where a Customer places an order for Products, the Customer may supply a working drawing for the Products, or the Company may generate a working drawing.
- 2.11 All working drawings generated by the Company must be checked and approved by the Customer in writing before the Product is

manufactured. Once checked and approved by the Customer the Company is not responsible for any errors in such drawings.

- 2.12 While the Company will endeavour to bring to the Customer's attention any obvious errors in working drawings provided to the Company by the Customer, the Customer is responsible for ensuring the accuracy of any such drawings, and the Company is not liable for errors in any such drawings.

### Collection, delivery and instalment deliveries

- 2.13 Unless otherwise agreed, the Customer must collect the Products referred to in an Accepted Order from the Company's address at the date and time nominated by the Company.
- 2.14 Where the Customer postpones a previously agreed Product collection date or delivery date, the Products may be stored by the Company at Customer's cost and delivery will be deemed to have occurred.
- 2.15 Where the delivery of an Accepted Order has been pre-arranged, the Company will endeavour to deliver, or request a third party to deliver, the Products or Services listed in an Accepted Order, at the Customer's cost from the location nominated by the Company at the time nominated by the Company.
- 2.16 The Customer acknowledges that any delivery dates nominated or agreed to by the Company are indicative only, and are not binding on the Company.
- 2.17 While the Company endeavours to keep to estimated delivery dates, any delay of delivery, for any reason whatsoever, will not entitle the Customer to claim for any loss, or damage, or to cancel, rescind or terminate the Accepted Order the subject of these terms and conditions.
- 2.18 Where Products are ordered for delivery by instalments, each delivery will be deemed a separate order. If the Customer fails to request or accept instalment deliveries in accordance with the terms of their Accepted Order, the Company may store the Products at the risk and cost of the Customer and the Customer will be deemed to be in default under these terms and conditions.
- 2.19 A failure by the Company to deliver any instalment shall not entitle the Customer to terminate the Accepted Order the subject of these terms and conditions.
- 2.20 The Customer is responsible for ensuring suitable equipment is available at the Customer's nominated delivery location to allow for safe and responsible unloading of Products. The Company will not be liable for any damage caused to Products during unloading, storage, installation or any other related activities.

## 3 Terms of payment

### Invoice for the purchase price

- 3.1 The Company will invoice the Customer for the purchase price for each Product listed in an Accepted Order after the completion of Accepted Order.
- 3.2 For cash sales, the Customer must immediately pay the deposit required on the acceptance of a quote and pay the remaining order balance prior to collection or delivery of the Products or receipt of the Services.
- 3.3 For Customers with an individual credit agreement in place with the Company, the Customer must pay in accordance with the approved payment terms. The Customer will be advised of the payment terms on acceptance of the credit application and establishment of credit account by the Company.
- 3.4 The Company will accept payment by cash, cheque, credit card, or electronic funds transfer. Payments by credit card will attract an additional amount to cover merchant service fees. The additional amount will be applied to the sale price of the Accepted Order.

**Non-payment**

- 3.5 Without limiting any other remedies available to the Company, if the Customer fails to pay any amount payable in relation to an Accepted Order then:
- (a) the Customer must pay interest on that amount at a rate of 1.5% per month, calculated on a daily basis from the time the unpaid amount became due until the date the Accepted Order is paid in full;
  - (b) the Company may delay completion of any Accepted Order until the outstanding amount is paid; and
  - (c) the Company may declare any amounts owing by the Customer to be immediately due and payable.

**Company's right to suspend, terminate or alter**

- 3.6 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 Accepted Order by written notice to the Customer where the Customer:
- (a) defaults on any payment due under these terms and conditions;
  - (b) commits an act of bankruptcy;
  - (c) is subject to a petition, order or meeting to consider a resolution for the Customer to be wound up, deregistered or dissolved, has a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) appointed to all or any part of the Customer's property, is subject to an undertaking, a scheme of arrangement, other than for the purpose of restructuring, or is subject to any assignment for the benefit of creditors.
- 3.7 The Company reserves the right to terminate an Accepted Order, suspend delivery to the Customer and / or to cancel any obligation it may have to the Customer and the Company will not be liable for loss or damage resulting directly or indirectly from such action where:
- (a) the Products ordered have been discontinued;
  - (b) the Company is unable to secure materials to fulfil the Accepted Order;
  - (c) there are movements of plus or minus 10% or greater in foreign exchange rates, customs duty, shipping costs, clearance costs and wharf charges applicable to Products between the date the quote is accepted and the Accepted Order is fulfilled.

**Set-off**

- 3.8 The Customer agrees that in addition to any general lien or other rights to which the Company may be entitled to at law, the Company may immediately upon the Customer becoming insolvent or the Customer defaulting on a payment to the Company, apply, set-off, or transfer any sums owed by the Company to the Customer towards fulfilment of any Accepted Order or Unpaid Invoice the Customer has with the Company.

**4 Retention of title and risk****Company retains title in the Products**

- 4.1 The Company retains title in any Products delivered in accordance with these terms and conditions until the Customer has paid the full purchase price in relation to any Accepted Order, and all other money owed by the Customer to the Company (if any).

**Company has a PMSI**

- 4.2 The Company and the Customer intend this term to secure the purchase price in relation to an Accepted Order, and create a purchase money security interest in the Products the subject of an Accepted Order.
- 4.3 A security interest in such Products, that is not a purchase money security interest, may also be created.

- 4.4 The Customer agrees that to the extent permitted under the PPSA, the Customer waives its right:
- (a) to receive notice of removal of an accession under the PPSA; or
  - (b) to receive a copy of any verification statement or financing change statement under the PPSA,
- in respect of any security interest in the Products created in accordance with these terms and conditions.

**Company may allocate payments by the Customer**

- 4.5 The Company may allocate payments made by the Customer to the Company to any obligation owed by the Customer to the Company.

**Risk**

- 4.6 Subject to paragraph 4.9 of these terms and conditions, risk in the Products supplied by the Company to the Customer passes to the Customer when the Products leave the Company's premises for delivery to the Customer, or upon collection by the Customer, their agent or courier (as applicable).
- 4.7 Once risk has passed to the Customer, it is the Customer's responsibility to insure the Products that the Company has supplied them, and to keep them insured.
- 4.8 Where, in accordance with these terms and conditions, the Company accepts the return of any Products, risk in those Products will revert to the Company upon delivery of the Products back to the Company or upon collection of the Products by the Company's agent or courier (as the case may be).

**Retention of title and disposal of Products by the Customer**

- 4.9 Despite the delivery of the Products, until the Customer has made full payment, legal title to the Products will remain with the Company.
- 4.10 Once legal title of the Products has passed to the Customer, the Customer may sell, lease, or otherwise dispose of the Products in the ordinary course of the Customer's business.
- 4.11 The Customer is not an agent of the Company in any sale of the goods by the Customer.

**Customer must not grant a security interest in the Products**

- 4.12 While the Products the subject of any Accepted Order remain the property of the Company, the Customer must not grant or allow another to hold a security interest in:
- (a) the Products; or
  - (b) the proceeds of the Products; or
  - (c) any goods to which the Products are installed or affixed.

**Breach of these terms and conditions**

- 4.13 If the Customer fails to comply with any obligation under these terms and conditions, then without limiting the remedies available to the Company:
- (a) upon request by the Company, the Customer must return the Products supplied to the Customer by the Company on which there are outstanding amounts owing;
  - (b) the Customer authorises the Company and any person authorised by the Company to enter premises where the Products may be located to take possession of the Products; and
  - (c) the Company may retain, sell or otherwise dispose of the Products.

**Confidentiality**

- 4.14 Each party must keep the PPSA Information (including any information or documents of the kind mentioned in section 275(1) of the PPSA in relation to a security interest in the Products or the proceeds of the Products) in the strictest confidence and not disclose that information.

- 4.15 Each party must not request PPSA Information or authorise disclosure of the PPSA Information.
- 4.16 However, if a party is required to disclose PPSA Information, that party must give all available notice to the other party to allow the other party to legally challenge the required disclosure and take all available steps to keep that PPSA Information confidential.

## **5 Acceptance of Products and Returns**

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- 5.1 The Customer must inspect the Product immediately upon delivery or upon collection of their order by the Customer's agent or courier (as the case may be).
- 5.2 All claims against the Company regarding the quality, nature, fitness, suitability, conformance with description or defects of the Products must be made in writing to the Company within seven days of delivery. The Company does not accept liability for any such claim not made in accordance with these terms and conditions.
- 5.3 On Product dimensions variation due to standard relevant manufacturing tolerances **are not** considered defects.
- 5.4 In the event of a justified objection notified by the Customer, the Company may, at its option, either:
- (a) reduce the purchase price;
  - (b) accept the return of the Products (excluding custom Products) and provide a credit to the Customer for the value of the goods less a restocking fee; or
  - (c) replace the Products,
- and the Customer agrees to release the Company from any further action or claim of any nature whatsoever.
- 5.5 In the event of the Company agreeing to accept a return of Goods, these shall be returned to the Company at the expense of the Customer.

## **6 Limitation of liability**

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### **Limitation**

- 6.1 The Company is not liable for any loss or damage however caused (including by the negligence of the Company), suffered by the Customer in connection with these terms and conditions.
- 6.2 Any liability of the Company for any loss or damage, however caused (including by the negligence of the Company), suffered by the Customer in connection with a Product supplied by the Company is limited to, at the Company's option, the purchase price paid by the Customer to the Company for that Product, or resupply of that Product.

### **Liability for consumer guarantees**

- 6.3 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any Product or Services supplied by the Company in connection with these terms and conditions and the Company's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 5.3, 6.1, 6.2, and 7.1 do not apply to that liability and instead the Company's liability for such failure is limited to (at the Company's election), in the case of a supply of Product, the Company replacing the Product or supplying equivalent product or repairing the Product, or in the case of a supply of Services, the Company supplying the Services again or paying the cost of having the Services supplied again.

## **7 Indemnity**

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- 7.1 The Customer is liable for, and indemnifies the Company from and against, all loss or damage (including legal costs) incurred or suffered by the Company however caused, in connection with:
- (a) any use of the Products supplied by the Company, other than in accordance with the directions of the Company;
  - (b) any breach of these terms and conditions by the Customer;

- (c) the enforcement of these terms and conditions, including the recovery of an overdue purchase price or other payments in connection with these terms and conditions;
- (d) any claim by the Customer or a third party against the Company in connection with these terms and conditions or a Product supplied by the Company;
- (e) personal injury or death of any person (including any employee of the Company or the Customer) in connection with the provision or use of any Product supplied by the Company; or
- (f) damage to property in connection with the provision, resale or use of any Product supplied by the Company.

## **8 Intellectual property rights**

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- 8.1 Where the Company has designed Products to the Customer's specification and provided working drawings, then all intellectual property rights (including copyright) in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's direction.
- 8.2 The Customer acknowledges and agrees that nothing in these terms and conditions grants the Customer any intellectual property rights or other rights in the Products supplied to it by the Company, or any other intellectual property rights of the Company.
- 8.3 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company, then the Customer represents and warrants and it is a condition of these terms and conditions that the use of those designs or specifications for the manufacture, processing, assembly or supply of the goods shall not infringe the rights of any third party.
- 8.4 The Customer represents and warrants and it is a condition of these terms and conditions that the use by the Company of all working drawings, designs or instructions provided by the Customer to the Company will not infringe any intellectual property rights or other rights of any third parties.
- 8.5 Where the Customer has supplied working drawings, designs or instructions to the Company in relation to an Accepted Order, the Customer is liable for, and indemnifies the Company from and against, all loss or damage (including legal costs) incurred or suffered by the Company however caused in connection within any claim against the Customer in connection with any alleged or actual infringement of a third party's intellectual property rights or other rights in connection with the Products.

## **9 Force majeure**

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- 9.1 The Company will not be in breach of these terms and conditions or liable for any failure or delay in the performance of the Company's obligations under these terms and conditions to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by any occurrence or omission outside a party's control and includes Products not being available, any failure of a third party supplier or service provider, physical natural disaster, war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency, declaration of martial law, epidemic or quarantine restriction, confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency, law taking effect after publication of these terms and conditions, strike, lock-out, stoppage, labour dispute or labour shortage, or any act or omission of the Customer.

## 10 Guarantee

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### Liability of the Guarantor

- 10.1 Where a Customer enters into an individual credit agreement with the Company, the Customer may be asked to provide a guarantee.
- 10.2 Where a guarantee is provided, the guarantor:
- (a) acknowledges and agrees that he or she is jointly and severally liable with the Customer, and each other guarantor (as the case may be) to perform the Customer's obligations in accordance with these terms and conditions, or the terms of the Customer's individual credit agreement with the Company;
  - (b) acknowledges and agrees that he or she is jointly and severally liable with the Customer, and each other guarantor (as the case may be) to pay all amounts owing by the Customer to the Company in accordance with these terms and conditions, or alternatively, the terms of the Customer's individual credit agreement with the Company; and
  - (c) is jointly and severally liable with the Customer, and each other guarantor (as the case may be), for and indemnifies the Company from and against, all loss or damage (including legal costs) however caused suffered or incurred by the Company in connection with:
    - (i) any failure by the Customer to pay the Company any amounts which are owing by the Customer to the Company;
    - (ii) any failure by the Customer to perform any of its obligations in accordance with these terms and conditions, or alternatively, the terms of the Customer's individual credit agreement with the Company, if such an agreement is in place; or
    - (iii) the Company being unable to recover any amounts from the Customer which are owing by the Customer to the Company.

### Lack of guarantor

- 10.3 This clause 10 has no application in relation to Customers who do not have an account with the Company.
- 10.4 For Customers who do not have an account with the Company, the obligations under these terms and conditions are to be read as obligations of the Customer only.

## 11 Taxes

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### GST

- 11.1 Any words capitalised in this paragraph 11 and not already defined have the meaning given to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 11.2 The purchase price for a Supply made under or in connection with these terms and conditions does not include GST.
- 11.3 If a Supply made under or in connection with these terms and conditions is a Taxable Supply, then at or before the time any part of the purchase price for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under these terms and conditions for that Supply; and
  - (b) the GST Act Supplier must give the Recipient a tax invoice for the Supply.

### Other taxes

- 11.4 The Customer must pay all taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed or levied in Australia or overseas in connection with actions taken in order to comply with these terms and conditions.

## 12 General

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- 12.1 The laws of Queensland govern these terms and conditions.
- 12.2 The Company may subcontract the performance of all or any part of the Company's obligations in accordance with these terms and conditions.
- 12.3 Where the Company may exercise any right or discretion or make any decision in accordance with these terms and conditions, the Company may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably.
- 12.4 To ensure Products offered by the Company are fit for purpose, the Customer agrees to seek independent advice before purchasing any Product. Any advice, recommendation, information, assistance or service given by the Company in relation to Products 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 Customer's reliance on such advice, recommendation, information, assistance or service.
- 12.5 Any term or condition, or part of any term or condition, contained in these terms and conditions that is illegal or unenforceable may be severed, and the remaining terms and conditions, or parts of the terms and conditions, remain enforceable.
- 12.6 These terms and conditions supersede the Company's previous terms and conditions, and embody the entirety of the terms and conditions applicable to the parties in respect of any transaction contemplated by these terms and conditions.