

1. INTERPRETATION

This agreement shall be subject to the provisions of the Competition and Consumer Act 2010 (CCA) and any statutory amendment or re-enactment thereof for the time being and currently in force. Unless otherwise inconsistent with the context the word "person" shall include corporation, "Company" shall mean AMCCS Pty Ltd and its agents, servants and employees, and any of its subsidiaries as defined in Section 7 of the Companies Acts & Codes (if such subsidiary is named as the party making or accepting the order), "goods" shall include services, and "Purchaser" shall mean and include the person to whom any quotation is made and shall include any person offering to contract with the Company on these terms and conditions. Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.

2. OFFER AND ACCEPTANCE

Any quotation made by the Company is not an offer to sell or to provide services and no order given in pursuance of any quotation shall bind the Company until accepted by it in writing or by the commencement of supply or the provision of services. Unless otherwise agreed in writing all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order and these terms and conditions shall be deemed to be incorporated in any agreement between the Company and the Purchaser. Any terms and conditions contained in any order offer acceptance or other document of the Purchaser and all representations statement terms and conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law. Insofar as goods or services supplied by the Company are not of a kind ordinarily acquired for personal, domestic or household use or consumption, and unless the Purchaser establishes that reliance provision would not be fair and reasonable, the liability for breach of a condition or warranty implied into this contract is limited:

(a) in the case of the goods to any one of the following as determined by the company:

- (i) the replacement of the goods or the supply of equivalent goods; or
- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having goods repaired;

(b) in the case of services to any one of the following as determined by the Company:

- (i) the supplying of services again, or
- (ii) the payment of the cost of having the services supplied again.

3. DELIVERY

(a) Any date quoted for delivery is an estimate only and unless a guarantee shall have been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date the Company shall not be liable to the Purchaser for any loss or damage howsoever arising even if arising out of the negligence of the Company for failure to deliver on or before the quoted date. The Purchaser shall accept and pay for goods if and when tendered notwithstanding any failure by the Company to deliver by the quoted date. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.

(b) The warranties therein implied that services will be rendered with due care and skill and that any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied, the Company shall not be liable to any Purchaser or other party for any direct or indirect or consequential injury loss or damage whatsoever by reason of any delay in delivery whether the same is due to the negligence of the Company or any other party, strike or any other industrial action be it the Company or other party, or any other cause whatsoever.

(c) The Company reserves the right to deliver by instalments. If delivery is made by instalments the Purchaser shall not be entitled:

- (i) to terminate or cancel the contract; or
- (ii) to any loss or damage howsoever arising from the failure by the Company to deliver any instalments on or before the quoted date.

(d) It is agreed that the Company shall not be responsible for delay in manufacture or delivery caused by, or in any way incidental to an act of God, war, fires, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond the Company's reasonable control.

(e) Any quotation containing a provision to supply goods "ex-stock" is subject to fulfilment of prior orders at the date of receipt of the Purchasers order.

4. CANCELLATION

Without limiting the entitlement of a consumer to rescind a contract as provided, any order may be cancelled, varied or suspended with the written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for all its cost's, including but not limited to work in progress, unpaid invoices, expenses or charges incurred by the Company in preparation for and in the execution of an order which, without limiting the generality thereof, in addition shall include an amount equal to 50 per centum of the net profits to the Company of the order had the order not been cancelled, varied or suspended.

5. QUANTITIES

No claim for shortage of delivery or shortfall or excess in capacity or performance of less than 10 per cent of that ordered will be made by the Purchaser and in any event shall not exceed the invoiced unit price of the goods in respect of which the claim is made. Excess delivery of up to ten per cent of quantities ordered will be accepted by the Purchaser and payment made for such excess quantities. This condition 5 does not apply when the Purchaser is a consumer for the purpose of the Competition and Consumer Act 2010.

6. DESCRIPTION AND SPECIFICATIONS

(a) Whilst every effort is made to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue price list brochures, leaflets or other descriptive matter provided by or on behalf of the Company represent the general nature only of the items described therein and, save where the Company reserves the right to modify the design of goods without notice.

(b) The Purchaser warrants that any goods manufactured, constructed or supplied by the Company which are based in whole or in part of designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser shall not infringe any letters patent of registered designs. The Purchaser shall indemnify and keep indemnified and hold harmless the Company against any action, loss, cost, claim or damage that may be brought against or suffered by the Company for any breach of this warranty by the Purchaser.

(c) The Company does not warrant or guarantee and it shall not be a term of any agreement between the Company and the Purchaser that any goods manufactured, constructed or supplied by the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgement of the Company for the for any purposes of any goods so manufactured, constructed or supplied.

7. ACCESS

In respect of any work done on the Purchaser's premises or elsewhere other than the Company's premises it shall, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of different parts of the subject matter being worked upon or handled and other material circumstances shall be suitable to the Company failing which the Company shall be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

8. MINIMUM CHARGE

The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company at the date of the invoice.

9. WAIVER

Failure by the Company to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Company may have and shall not, and nor shall any express waiver, be deemed to be a waiver of any subsequent terms and conditions.

10. GUARANTEE AND WARRANTY

(a) Except when the Purchaser is a Consumer for the purpose of the ACT 2010 and the conditions warranties and rights implied by that statute cannot be excluded, and subject always thereto, representations, promises, statements and warranties and conditions [whether (subject and aforesaid) statutory express or implied] regarding any goods or services supplied by or on behalf of the Company are expressly excluded. The Company shall not be liable for any loss or damage whatsoever and howsoever arising whether direct, indirect or consequential or in respect of any claim whatsoever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods manufactured, works executed or services provided by or on behalf of or any arrangement with the Company or occasioned to the Purchaser of any third or other party to his or their property or interest and whether or not due to the negligence of the Company its servants or agents.

(b) As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the Purchaser, the Purchaser shall within fourteen days notify the Company in writing of the same.

(c) The Company's liability shall be limited in all circumstances to the repair or replacement or monetary compensation at the option of the Company of any goods manufactured by it which are returned only upon the written authority of the Company.

(d) The Company shall not be liable in any circumstance for any:

- (i) defects or damage caused in whole or in part by misuse, abuse, neglect, electrical or other overload, non-suitable lubricant, improper installation, repair or alteration (other than by the Company) or accident.
- (ii) Any transport, installation, removal, labour or other costs.
- (iii) Goods manufactured by it but the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer of such goods under a warranty given by the manufacturer provided that nothing contained in this subparagraph shall limit the rights of the Purchaser to proceed against the Company pursuant to the Act 2010
- (iv) Technical advice or assistance given or rendered by it to the Purchaser whether or not in connection with the manufacture construction or supply of goods for or to the Purchaser provided always that the Company has rendered such services with due care and skill and that any materials supplied in connection with those services are reasonably fit for the purpose for which they are supplied.

11. CONTAINERS

Containers (which expression shall include but shall not be limited to, stillages, formers and pallets) in or on which goods are delivered and for which a deposit charge is made, remain the property of the Company. On the containers returned in good order and condition the deposit will be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in good order and condition shall only be refunded in part having regard to their actual condition. Containers will be deemed to be not returned by the Purchaser until received into the Company's stores.

12. INSOLVENCY & DEFAULT

If

- (a) the Purchaser makes default in any payment due hereunder;
- (b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;
- (c) a receiver or receiver and manager is appointed of the property or any part of the property of the Purchaser;
- (d) the Purchaser makes or proposes to make any arrangements with its creditors;
- (e) the Purchaser is placed under official management;
- (f) execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and it not within seven days satisfied, then, and in any such event the Company may at its option withhold further deliveries or cancel the contract without prejudice to its rights thereafter to rely upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

13. RETENTION OF TITLE

The Seller and the Buyer specifically agree that the Seller retains ownership of the Goods and such ownership shall not pass to the Buyer until payment in full has been received by the Seller in respect of all the Goods supplied by the Seller at any time. The Buyer accepts delivery of the Goods on the basis and accordingly it is agreed that:

- (i) The Buyer shall stand in a fiduciary relationship with the Seller.
- (ii) The Buyer will at all times store the Goods separately and in such a way that they remain identifiable from goods supplied by any other supplier.
- (iii) The Buyer shall have the power to sell the Goods as agent for and on behalf of the Seller provided that (a) all proceeds of the sale shall be paid into and kept in a separate account: (b) separate records shall be maintained by the Buyer in respect of that account: (c) the Seller shall be entitled to maintain a claim against the proceeds of sale of any other Goods into which the Goods have been manufactured.
- (iv) The Seller shall be entitled to enter upon to the Buyers premises at any time and without prior notice to re-take possession of the Goods.
- (v) Risk shall pass to the Buyer at the time of delivery of the Goods and the Buyer shall insure against that risk.
- (vi) Each of the above provisions is severable to the extent that if they shall, taken together be adjudged to go beyond what is reasonable in all the circumstances, but would be adjudged reasonable with any one or more of such provisions deleted, then those provisions shall be deemed to apply as if such provisions as are adjudged unreasonable were deleted.

14. INSURANCE

In the event that the goods are covered by insurance taken out by the Company, the Company shall only be liable to the extent of any of the indemnity provided.

15. RISK

Unless otherwise agreed in writing all goods shall be at the Purchaser's risk upon delivery to the Purchaser, his carrier or agent.

16. PAYMENT

- (a) Unless otherwise agreed in writing, payment terms are either COD or approved company credit account net cash 30 days from date of invoice in which the goods are delivered to the Purchaser, his carrier or agent. Payment for services or labour provided by the Company to the customer shall be paid within 30 days of the date of invoice.
- (b) If the Company does not receive notification of an invoice error within seven days we will consider the invoice fully payable. If the company does not receive instructions sufficient to enable despatch of the goods within 14 days of notification that such goods are ready, the Purchaser shall be deemed to have taken delivery of the goods and the terms of payment shall apply from such date; in this event, the Purchaser shall also be liable for storage charges payable monthly on demand, storage being of the Purchaser's risk.
- (c) The part of the payment due is retained by the customer must be agreed in writing with the company.
- (d) The Company shall be entitled to impose an interest charge of 4.5% per month on any payment on any amount that is overdue by thirty days.
- (e) Unless otherwise agreed in writing, the Company shall reserve the right to apply for progress claims within the duration of the contract. Such progress claims shall be paid within 30 days from date of invoice.

17. PRICE

- (a) Unless otherwise expressly agreed in writing the price of the goods shall be that price charged by the Company at the date of delivery plus the amount which the Company is required to pay on account of any excise, or sales taxes or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any part thereof, or the manufacture, use, sale of or delivery thereof.
- (b) Unless otherwise specified any prices quoted do not include transportation costs. Goods shall be supplied ex works.
- (c) The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustment at the option of the Company.

18. ARBITRATION

Should a dispute arise, the parties may elect to refer the matter to the Alternate Dispute Resolution Tribunal or any recognised independent mediation authority such as Office of Small Business Commissioner.

19. LAW

Australian Consumer Law
NSW.