

## Terms and Conditions of Sale

Our Standard Terms and Conditions of Sale appear below ("Conditions")

The definitions which follow form part of and shall apply to these Terms and Conditions and shall be incorporated in any agreement between Materials Handling and the customer.

### 1. Definitions and Interpretations

"Materials Handling" and "Us" and "the Company" and "Seller" means Materials Handling Pty Ltd and any business conducted under any registered business name of which Materials Handling is a proprietor.

"Customer" or "Buyer" means any natural person or persons, partnership, corporation, joint venture or association (whether or not incorporated) to whom Materials Handling provides good and/or services pursuant to this agreement and in addition to any purchaser of goods and/or services which may include any person requesting same to be manufactured or supplied as agent for the ultimate recipient of the goods and/or services, a consignor or consignee of goods.

"Consignor" means and includes any natural person, partnership, corporation, joint venture or association (whether or not incorporated) which sends goods on behalf of the customer or has a claim, entitlement or interest of any kind in the goods and any person signing a request for authorisation for carriage of goods is deemed to be the authorised agent of the consignor.

"Goods" or "Product" includes any manufactured or processed item of any description whatsoever, and specifically includes any device, machine, receptacle, container, packing material, pallet or the other item attached to or delivered with the goods.

"Services" means anything done or to be done by Materials Handling in its capacity as supplier or manufacturer or vendor or servicer including the whole operation by Materials Handling.

"Clear Funds" means cash or bank cheque or the receipt of clear funds to Materials Handling's bank account which has been verified by Materials Handling's bank as being clear funds or an order for payment or negotiable instrument which has been approved by Materials Handling's bankers as one upon which Materials Handling can immediately draw as cash without further recourse.

### 2. General

These Terms and Conditions (which may be subject to change or variation without notice) apply to all goods submitted to Materials Handling for repair or to the supply or manufacture of goods requested of Materials Handling and prevail over any conflicting or inconsistent work order, request or condition submitted by the customer and apply to the exclusion of any terms or conditions (whether written, verbal or to be implied) provided by the customer. The instruction by the customer of any detail to supply, manufacture, repair or deliver goods and the acceptance by the customer of delivery of goods (whether in part or whole) and any payment or promise to pay by the customer subsequent to Materials Handling's acceptance of the purchase order request constitutes an unqualified acceptance by the customer of these Terms and Conditions and unless expressly acknowledged by Materials Handling in writing, no variation to these Conditions will be accepted or bind Materials Handling in any manner whatsoever. These Terms and Conditions shall apply to all sales by Materials Handling whether or not expressly referred to in any documents of sale, purchase, invoices or delivery dockets issued by Materials Handling or Buyer.

### 3. Quotations

Any quotation or tender is open for acceptance by the customer provided such acceptance is communicated in writing to Materials Handling within thirty (30) days after the date of the quotation or tender or within such other period of time as Materials Handling may agree to in writing. If not accepted in writing by the customer within 30 days the quotation or tender will be deemed to have been withdrawn. Any contract arising from the acceptance by a customer of a quotation or tender is subject to approval by Materials Handling (whose decision is final) and any contract arising following approval by Materials Handling is subject to these Terms and Conditions. If the buyer issues his own purchase order containing conditions of purchase these conditions of sale shall be deemed to be incorporated in such purchase order and will over ride any conflicting provision of the purchase order. All prices quoted shall remain valid for a period of 30 days and thereafter subject to any fluctuation. Where prices are quoted subject to currency fluctuations, we shall nominate the rate of exchange at time of offer. A verbal or written budget estimate is not an offer (quotation) and does not bind Materials Handling. All official written quotations shall be marked as a quotation and are valid for a period of thirty (30) days.

All prices are quoted in Australian Dollars unless otherwise specified.

### 4. Price Variations

Invoice prices quoted are for supply of the goods from Materials Handling's premises unless otherwise agreed in writing. Any price quoted does not include any of the following items which (if incurred by Materials Handling) will be paid by the customer to Materials Handling upon demand and are in addition to the price quoted:-

(4.1) Freight, insurance and other charges borne by Materials Handling or for which Materials Handling is liable by reason of or arising out of Materials Handling's compliance with any request by the customer or which results in delivery other than to the place specified or initially contemplated;

(4.2) Storage and packing costs;

(4.3) All increases in direct and indirect costs to Materials Handling after the date of the quotation without limitation and including rates of exchange, taxes, levies and imposts, licence fees and the like, and expenses incurred as a result of any delay by the customer or the customer's obligation to obtain any licence, permit, authority or other document required by law, any insurer or good commercial practice.

A certificate in writing by a person duly authorised by Materials Handling will be conclusive evidence of any increase in the contract price.

## 5. No Cancellation

(5.1) Orders cannot be countermanded, terminated or cancelled under any circumstances except with Materials Handling's prior written consent and only upon terms that the customer guarantees and indemnifies Materials Handling against all loss and damage of whatsoever nature and howsoever caused;

(5.2) Materials Handling may cancel any order, agreement or the like or suspend manufacture or completion at Materials Handling's sole discretion and Materials Handling reserves all rights to recover any loss or damage consequent upon any such cancellation or suspension due to any of the following circumstances or events:-

(5.2.1) in the case of death, incapacity, bankruptcy, administration or liquidation of customer;

(5.2.2) in the event that the customer suspends or delays payment including any part payment, progress payment or installment payment required pursuant to the agreement;

(5.2.3) in the event that the customer makes any agreement with creditors of the customer in circumstances where the customer is unable to pay its debts as and when those debts fall due;

(5.2.4) in the event the customer fails to make any payment in respect of any licence, permit, authority, sales tax, tax of any other nature, levy, charge or fee, storage, handling, packing, freight or insurance fee or charge of and incidental to the manufacture or on site installation.

## 6. Buyers Property

(6.1) Repair: The customer agrees and warrants that the goods submitted to Materials Handling for repair are:-

(6.1.1) not dangerous or hazardous goods within the meaning of any legislation currently in force or applicable from time to time or as amended;

(6.1.2) not subject to any requirement of any environmental protection agency or similar organisation, body, authority or Government Department such as would impose any duty or obligation upon Materials Handling in respect of handling, storage, movement, disposal or the like;

(6.1.3) free from patent defects or hazards which would constitute a risk to the health and safety of persons likely to handle or come into contact with the goods;

(6.1.4) the customer's sole unencumbered property; in the event that the customer is not the sole unencumbered owner then the buyer acknowledges that it remains the bailee of the goods to the lawful owner (or person or persons having the best claim to title and immediate possession) and acknowledges that the goods are accepted for repair by Materials Handling on the understanding that the customer has the full authority of the lawful owner notwithstanding any prior statement or representation made by the customer, and that the customer is liable for payment;

(6.1.5) at all times at the customer's sole risk and that Materials Handling is not obliged to insure the goods in any respect against any risk (including public liability) and accepted for repair on the understanding that the customer indemnifies and keeps Materials Handling indemnified against all loss, damage and injury including all consequential and incidental loss.

(6.2) Retention of Title

(6.2.1) the customer agrees and warrants that the goods supplied and/or manufactured by Materials Handling are its sole property and title of the goods does not pass to the buyer until full payment is made, and received by Materials Handling. In the meantime the buyer takes custody of the goods as Materials Handling's agent and bailee, but at the customer's risk, the seller may at any time (and without prejudice to its other rights) recover or resell the goods or any part of them and may enter on the buyers premises for this purpose. The buyer may not resell the goods to which the seller retains title unless he informs his buyer of this condition of sale prior to such resale.

(6.2.2) the customer may resell the goods, but only as Materials Handling's agent, and any right to bind Materials Handling to any liability to any third party is expressly prohibited. The resale is to be at arms length and on market terms. Pending resale or utilisation in any manufacturing process, the customer must keep the goods separate, properly secured and insured.

(6.2.3) the customer will hold part of the proceeds of any sale to a third party in trust for Materials Handling and retain them in a separate bank account, such part being equal to the amount owing by the customer to Materials Handling at the time, until the liability to Materials Handling has been discharged.

## 7. Return of Goods

(7.1) The customer acknowledges that it is responsible for examining the goods supplied and/or manufactured by Materials Handling at the time of their delivery and satisfying itself about them, including but not limited to:-

(a) their compliance with their description; and

(b) their condition, suitability and fitness for purpose; and

(c) any damage or short delivery must be notified to both the seller and the carrier in writing within three (3) days and the carrier's notes should be endorsed accordingly.

(7.2) Any claims for credit and/or refund must be made within three (3) days of delivery, after which Materials Handling reserves the right to reject such claims.

(7.3) Materials Handling reserves the right to charge a return and restocking fee of the costs of goods returned along with all transport charges paid or incurred by Materials Handling as a result of the returns.

(7.4) If Materials Handling has manufactured goods in accordance with the customer's specification, Materials Handling reserves the right to reject any claim for refund and/or credit. Materials Handling's liability is limited to any repairs necessary to ensure the goods are good condition and fit for their purpose.

(7.5) Non-delivery of any consignment within 14 days of the date of the Seller receiving the Buyer's invoice must be notified to the seller in writing.

(7.6) Goods may not be returned to the seller for any reason whatsoever without the seller's prior agreement in writing.

Note: Failure to observe the proper claims procedure will invalidate the seller's contractual liability under these conditions of sale.

## 8. Payment

Non-Account Customers

Payments on orders will be as per the quoted terms.

- Deposit Invoices are payable within 7 days
- Progress Invoices are payable within 7 days
- Balance invoices are payable upon completion of the order.

Where no quoted terms are written, payment is due within 7 days of receiving the pro forma invoice and goods will not be shipped without this payment

Account Customers

Payments on orders will be as per the quoted terms.

- Deposit invoices are payable within 7 days
- Progress Invoices are payable within 7 days
- Balance invoices are payable 30 days EOM after the completion of the order.

Where no quoted terms are written, payment is due within 30 days EOM.

The buyer must not assume they are an approved account holder, and contact Materials Handling to confirm. No set off for any reason will be allowed. Materials Handling reserves the right to charge a late payment fee of 1% of the amount outstanding for each month or part thereof during which it is overdue until payment has been made in full. Certain products may carry special terms, please refer to quote for any clarification required. Payment is not considered to be made until clear funds are received.

If any Buyer credit account purchase is not paid in accordance with Seller's credit payment terms, in addition to any other remedies allowed in equity or by law, Seller may refuse to make further shipments without advance payment by Buyer. Nothing contained herein shall be construed as requiring Seller to sell any Products or Services to Buyer on credit terms at any time, or prohibiting Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for Seller.

## 9. GST

All prices quoted by Materials Handling exclude goods and services tax, which the customer will pay to Materials Handling in addition to and at the same time as the price of the goods.

## 10. On Site Installation

In addition to the provisions, if any, in the quotation or tender relating to onsite installation by Materials Handling both inside and outside Australia the following provisions apply:-

(10.1) the customer will at its sole expense be responsible for securing any necessary permits and approvals of work to be performed by Materials Handling pursuant thereto;

(10.2) the customer will have the site clear and available and have the necessary utilities available, prior to the arrival of Materials Handling's employees, agents or contractors;

(10.3) if delays are encountered through no fault of Materials Handling, its employees, agents or contractors any extra costs involved will be borne by the customer;

(10.4) if the contract cannot be finalised because of any delays in making available the site area for installation or arranging for the completion of any necessary preliminary works or providing any other materials or equipment necessary for the completion of the installation this does not affect Materials Handling's right to payment as if the delays had not occurred;

Buyer shall maintain safe working conditions at the worksite, including, without limitation, implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems. Buyer shall immediately remedy any unsafe working condition at the worksite. Seller shall be entitled to suspend or terminate the Services in the event it determines that the worksite is unsafe. Seller shall have no responsibility or liability for any pre-existing condition of the worksite including, without limitation, violations of safety rules, building codes, zoning ordinances or other laws or regulations ("Regulations"). In the event that any unsafe working condition or failure of the worksite to comply with a Regulation results in an increase in the Seller's cost of, or the time required for, performance of the Services, Seller may make an equitable adjustment in price and schedule. Buyer authorizes Seller to perform the disassembly and inspection of any equipment necessary to provide the Services, including provision of all necessary Parts and labor, and agrees that Seller is not responsible for any damage or loss due to causes beyond Seller's control. Unless expressly agreed in writing, Services do not include architectural/engineering services or structural changes to Buyer's premises.

The customer together with its agents and representatives will indemnify Materials Handling and keep Materials Handling indemnified against all claims and proceedings arising from injury to persons or damage to property or resulting in loss of profits or economic loss arising from any accident, incident, defective or incomplete works occurring during on site installation at any site whether or not involving any employee, agent or subcontractor of Materials Handling to whom this indemnity extends and the provision of goods and services or Materials Handling's

promise to provide same (subject to these terms and conditions) will constitute sufficient consideration for the customer, its agents and representatives providing this indemnity and the customer is deemed to have obtained the consent and agreement of its agents and representatives to this provision.

### 11. Force Majeure

All reasonable efforts will be made by Materials Handling to complete supply or manufacture goods or provide services but in respect of Materials Handling's performance time is not of the essence and the customer agrees and warrants that Materials Handling is not liable for any penalty or damages for late manufacture, late delivery, suspension of order or failure to provide goods and/or services or any part thereof due to:-

(11.1)

- (11.1.1) acts of god;
- (11.1.2) lock outs, strikes or any other industrial disputes;
- (11.1.3) fire or explosion;
- (11.1.4) break downs or accident/incidents within Materials Handling's or their manufacturer's premises;
- (11.1.5) inability to obtain goods, materials or services;
- (11.1.6) interruption of transport;
- (11.1.7) inclement weather;
- (11.1.8) government action policy or direction;
- (11.1.9) or any cause outside Materials Handling's control; or
- (11.2) any acts, omissions, neglect or default of the customer, its servants or agents;
- (11.3) war, riots, sabotage, inability to obtain fuel/power/raw materials/labour; or
- (11.3) any breach by the customer, its servants or agents of any term of these Terms and Conditions.

If because of any such event, Seller is unable to supply part or total of the goods or render part or total of the services contracted hereunder, Seller shall be exempted to such extent from his obligations hereunder with respect to the particular delivery or performance involved upon giving prompt notice of such event to Buyer, but this contract shall otherwise remain in force.

### 12. Workmanship

The work will be executed in a proper and workmanlike manner and in accordance with the details, plans and specifications set out in the work order request, quotation or tender except that where such details, plans or specifications are of a type which appear to Materials Handling to be inadequate or incorrect, Materials Handling may, but is under no obligation to, make minor amendments thereto. Materials Handling will not be responsible for any defects or inaccuracies resulting from inadequate or incorrect details, plans or specifications provided by the customer or prepared by a third party on the customers behalf.

### 13. Warranty

(13.1) This warranty agreement is between you as the original owner of the product and Materials Handling as the seller of the product. This warranty is not transferrable.

(13.2) The warranty applies from the invoice date of the final invoice created for the order.

(13.3) Materials Handling hereby warrants that all goods supplied and/or manufactured by it are suitable and fit for their purpose at the time of delivery. In the event that a defect in the material or workmanship relating to the supply and/or manufacture of the goods arises within a period of 12 months from the date of supply and/or manufacture, or for a period as otherwise specified in the manufacturer's warranty terms and conditions, faulty parts will be replaced, repaired or refunded. Any faulty parts will become the property of Materials Handling at the discretion of Materials Handling.

(13.4) The warranty is conditional on the products being used in accordance with the manufacturer's instructions, and that the items are installed or serviced by Materials Handling or their agents in accordance with the relevant Australian Standards and local government legislation.

(13.5) This warranty does not cover defects or damage as a result of:-

- (a) improper installation of the goods;
- (b) negligent, accidental or intentional misuse, maintenance or transport of the goods;
- (c) damage from misuse, abuse or operations in excess of working limits or capacities;
- (d) repairs, service, alterations, modifications or damage to the goods or any part thereof performed by anyone other than Materials Handling personnel;
- (e) only operated while the unit is in complete working condition; and
- (f) normal wear and tear.
- (g) Materials Handling has absolute discretion to determine whether the product has been supplied to, performs to, complies with or has been maintained to specification.

(13.6) Additional warranty terms:

- (a) this warranty does not cover damage to other equipment
- (b) any costs or lost profit associated with the product being out of order
- (c) inability to use or operate the product
- (d) using the product for an unintended or unauthorised application.
- (e) This warranty shall not cover any item on which serial numbers have been altered, defaced or removed.
- (f) Any warranty will need to be assessed by Materials Handling prior to acceptance of a warranty claim. The customer is responsible for returning the item to the premises of Materials Handling and shall bear all costs associated with the return.
- (g) Any warranty which is accepted by Materials Handling covers parts and labour only. Any additional costs including travel, access hire or transport shall be borne by the customer.

(13.7) Materials Handling makes no other express or implied warranty

(13.8) Materials Handling shall not be liable for any indirect or consequential loss or for punitive or exemplary damages or for any loss of profit, loss or revenue or loss of opportunity.

#### **14. Delivery or Completion**

Unless expressly agreed in writing all deliveries are from Materials Handling's or their manufacturers premises and in the event that the delivery is to take place other than from Materials Handling's or their manufacturers premises, Materials Handling accepts no responsibility for any loss or damage howsoever arising during the course of loading, transit, unloading and during the course of any installation period.

Delivery times are quoted in good faith and are as accurate as we are able to estimate but are not guaranteed. The period quoted for delivery and completion commences after the receipt by us of the deposit as stipulated in the payment terms and all particulars, specifications, drawings, technical data, approvals or information affecting the execution of the order.

Delivery times quoted may be subject to adjustment due to prior sale of equipment before receipt of order.

With regard to items quoted that are not of our manufacture, the delivery times indicated are based on the manufacturers promised delivery to Materials Handling or upon our estimate of delivery time. Materials Handling will not accept liability for penalties or damages (either direct or indirect) for failure to delivery within the time, or by the dates quoted, unless expressly agree otherwise in writing. Notwithstanding the fact that we do so agree, in no event will Materials Handling be liable for any delay or failure in delivery if any act, matter or event beyond our control causes such delay or failure. Materials Handling shall in no event be liable for any consequential, incidental or other damages resulting from delayed delivery or performance, short shipment, handling, storage, use, imperfection or otherwise of goods supplied as well as from delayed or imperfect services rendered hereunder.

Upon acceptance by the Buyer's carrier or upon delivery to Buyer's premises (or specified delivery location), whichever comes first, Buyer assumes all risks and responsibility and liability for loss and damage resulting from the transportation, handling, storage or use of the goods supplied. Buyer agrees to inspect the goods supplied or the services rendered hereunder immediately after delivery or performance and to give notice in writing of any claim within thirty (15) days of delivery or performance. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the goods or services and a waiver of all claims with respect thereto.

#### **15. Limitation of Liability**

The customer agrees that it has not relied on any inducement, representation or statement made by or on behalf of Materials Handling, its employees or agents in respect of the goods or services supplied by Materials Handling. Notwithstanding any other provision of these Terms and Conditions, Materials Handling is not liable for any claim for defective goods or services, or for any loss or damage to property (whether to property belonging to the client or another) or for death or personal injury (whether sustained by personnel of the client, a member of the public or another) caused or contributed to by any act or omission (negligent or otherwise) by Materials Handling, its employees or agents. To the extent that any such liability cannot lawfully be wholly excluded, the liability of Materials Handling is limited to supplying the relevant goods or services again or (at Materials Handling's option) paying the cost of replacing the relevant goods or supplying the relevant services again. The client will indemnify Materials Handling and save Materials Handling harmless in respect of all claims of liability of the kinds mentioned above brought against Materials Handling or any Materials Handling employee or agent. The limit of all and any liability shall be limited to the purchase price of the goods or services in respect of which damages are claimed.

#### **16. Design and Drawings (Intellectual Property and Confidential Information)**

Materials Handling gives no undertaking or warranty that its specifications are exact and final and the customer acknowledges that variations may occur from time to time in the course of concept design, improvement, product development, implementation and manufacture which may result in a change from any initial or concept design in the ultimate construction of the goods. All plans, drawings, specifications, technical information, testing procedure, test results, data and the like is confidential and the sole property of Materials Handling and may not be disclosed, reproduced or communicated to any person or used in a manner inconsistent with Materials Handling's rights of ownership, use or licence and commercial interests generally unless prior written authority is provided by a duly authorised officer of Materials Handling.

Technical data, dimensions, colours, weights, etc given in this catalogue are a guide only and no guarantee is given or implied that goods will conform in absolute detail to the descriptions and illustrations. The seller reserves the right to amend specifications and to withdraw goods from the catalogue without prior notice.

Other than expressly stated in the catalogue, the seller makes no representation as to the fitness or suitability of any goods for any purpose whatsoever.

#### **17. Applicable Law**

These terms and conditions are in all respects governed by and construed in accordance with the Laws in force in the State of QLD and the parties to these terms and conditions submit to the non-exclusive jurisdiction of the Courts of the State of QLD in respect of any dispute whatsoever arising out of these terms and conditions.

#### **After Sales Customer Service Department**

If you are not happy with any purchase from us, our Customer Service Department is committed to respond efficiently to resolve the matter quickly to your complete satisfaction.

Whenever necessary they will issue authority to return unused and unmarked goods, provided they have not been specifically made to order. Goods being returned are liable to appropriate transport, restocking and handling charges. We reserve the right to refuse goods returned without prior authority from our Customer Service Department.