

**1. APPLICATION OF TERMS, INTERPRETATION, QUOTATIONS AND ORDERS**

1.1 In these Terms:

**"Account"** means each account of the Buyer with the Company under which the Company supplies Goods to the Buyer and in respect of which the Buyer from time to time owes Moneys in respect of the supply of Goods.

**"Buyer"** means the entity named as such in an application for a credit account with the Company and with whom the Company enters into an Account to supply Goods on Credit.

**"Buyer's Land"** means all of the Buyer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Buyer legally and/or beneficially or as trustee of any Trust.

**"Company"** means Cirtex Industries Pty Ltd ACN 650 016 872 and its subsidiaries, associates and assigns.

**"Credit Limit"** means the credit limit notified by the Company to the Buyer from time to time.

**"Goods"** means goods and services supplied or to be supplied by the Company to the Buyer, including Goods manufactured at the Buyer's request.

**"Guarantee"** means any guarantee and/or indemnity given by another person in favour of the Company guaranteeing the obligations of the Buyer to the Company and the payment of all Moneys.

**"Moneys"** means all moneys now or in the future actually or contingently owing by the Buyer to the Company on any Account and includes any part of those moneys and includes all interest accruals and costs, expenses, and disbursements.

**"PPSA"** means the Personal Properties Securities Act 2009 (Cth).

**"Terms"** means these Terms and Conditions of Supply on credit.

Other specific defined terms may be defined elsewhere in these Terms.

If the Buyer is comprised of more than one person then "Buyer" means those persons collectively and each of them individually and the obligations and liabilities on the part of the Buyer in these Terms binds all of them jointly and each of them severally.

A reference to the singular includes the plural and vice versa;

A reference to one gender denotes the relevant gender;

A person denotes an individual or corporation or other legal entity as applicable.

1.2 Subject to any variation in accordance with clause 1.5, these Terms are the only terms and conditions upon which the Company is prepared to deal with the Buyer and they will govern each and every Account between the Company and the Buyer to the entire exclusion of all other terms or conditions. Without limiting the foregoing, no terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, documents, correspondence, receipts, acknowledgements or elsewhere will apply in respect of any Account or the supply of any Goods by the Company to the Buyer and the Buyer waives any right which it otherwise might have to rely on such terms and conditions.

1.3 An Account between the Company and the Buyer will only come into existence when the Company communicates written acceptance to the Buyer of an application for an account for the supply of Goods on credit submitted by the Buyer.

1.4 Orders for Goods:

(a) Where the Buyer wishes to have Goods supplied by the Company, the Buyer will send a Purchase Order to the Company. It is the responsibility of the Buyer to ensure that the content of any Purchase Order is complete and accurate.

(b) Each such Purchase Order, if accepted in writing by the Company and/or by the delivery of the Goods specified in the Purchase Order, forms an agreement between the Company and the Buyer, comprised of the Purchase Order (subject to any amendment of the Purchase Order by the Company in its acceptance) governed by these Terms.

(c) No Purchase Order is binding on the Company until the earlier of its acceptance in writing by the Company or the Company providing the Goods specified in the Purchase Order.

(d) The parties may enter into more than one Purchase Order and the details in each Purchase Order only apply to the Goods to be provided under that Purchase Order.

1.5 Any variation to these Terms will be of no effect unless expressly agreed in writing and signed by a person authorised by the Company.

1.6 Any quotation is given on the basis that no agreement for the supply of any Goods the subject matter of the quotation will come into existence until the Company accepts a commencement payment from the Buyer. Any quotation is valid for a period of the shorter of 30 days from its date or the expiry date in the quotation, provided that the Company has not previously withdrawn it. The Company will not be bound by any error in a quotation and the Company reserves the right to correct any error in a quotation on notice to the Buyer or to withdraw a quotation at any time.

**2. PRICE AND GST**

2.1 The price of any Goods, unless otherwise agreed in writing, does not include:

(a) delivery of the Goods or Services to the Supply Address;

(b) the cost of packaging;

(c) loading and insurance charges;

(d) sales tax (where applicable); and

(e) GST.

2.2 GST:

(a) Any terms defined in the A New Tax System (Goods and Services) Act 1999 (Cth) have the same meaning for the purposes of this clause 2.2.

(b) Unless expressly included, the consideration for any Supply under or in connection with these Terms does not include GST.

(c) To the extent that any Supply made under or in connection with these Terms is a Taxable Supply, the recipient (Buyer) must pay, in addition to the consideration to be provided under these Terms for that Supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the Supply.

(d) The recovery of any amount in respect of GST by the Company in respect of the supply of any Goods under these Terms is subject to the issuing of a Tax Invoice or Adjustment Note.

**3. PAYMENT**

3.1 The Buyer will pay for all Goods immediately and funds cleared on or before the 20th of the month following date of invoice ("**Due Date**"), unless by prior arrangement or agreement with the Company.

3.2 The Buyer shall respond to the invoice by providing a payment schedule to the Company no later than 10 days after receipt of the invoice. The payment schedule should indicate the amount to be paid and the Buyer's reasons for withholding any payment.

3.3 The Buyer may not deduct, set-off, or withhold any amount due to the Company.

- 3.4 The Company reserves the right to reject any cheque other than a bank cheque and to place conditions (including but not limited to requiring identification) on any cheque or credit card payment.
- 3.5 In the event that the Buyer fails to pay for the Goods by the Due Date in accordance with clause 3.1 and/or fails to provide a payment schedule in accordance with clause 3.2, the Company may recover from the Buyer as a debt due the unpaid portion of the invoiced amount together with any amount payable under clause 6 (costs of enforcement) and clause 16 (interest).
- 3.6 The Buyer acknowledges that the Company shall be entitled to review and adjust its price to reflect any change to any initial quantity of Goods indicated by the Buyer.
- 3.7 The Company may increase or decrease or suspend the amount of credit (and the Credit Limit) provided to the Buyer. Any increase or decrease or suspension of credit or exceeding or change of any Credit Limit will be deemed to be consented to by the Buyer and any guarantor(s) and shall not release either the Buyer or the guarantor(s) from any liability under these Terms. It is acknowledged by the Buyer that any Credit Limit that may apply from time to time is for the administrative convenience of the Company and solely for the benefit of the Company and such Credit Limit does not constitute a term upon which Goods are supplied under any Account, or of any Guarantee. The Buyer is liable to pay for all Goods supplied by the Company, notwithstanding that the total price of all unpaid Goods at any time may exceed the Credit limit.
- 4. RISK AND OWNERSHIP OF GOODS AND PPSA**
- 4.1 For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired goods supplied by the Company to the Buyer.
- 4.2 The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Buyer from the time of delivery of the Goods (the carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by the Company). The Buyer warrants and undertakes to the Company to insure the Goods against any loss or damage incurred following delivery until full payment is made for the Goods.
- 4.3 The Company retains full title to and ownership of the Goods until the Company receives payment in full for the Goods and all other amounts owed by the Buyer to the Company.
- 4.4 Until all Moneys have been paid:
- (a) The Company has the right to call for or recover possession of the Goods (for which purpose the Company's employees or agents may enter onto the Buyer's premises) and the Buyer must deliver up the Goods if so directed by the Company;
  - (b) the Buyer:
    - (A) agrees that the relationship between the Buyer and the Company shall be fiduciary and the Buyer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Company;
    - (B) has the right to resell the Goods in the ordinary course of the Buyer's business as the Company's fiduciary agent but must not otherwise dispose of or encumber the Goods;
    - (C) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to the Company in their original state;
    - (D) agrees that if the Goods are incorporated with goods of the Buyer, the resultant product shall become and be deemed to be the sole property of the Company. If the Goods are incorporated in any way with the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by the Company with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials; and
    - (E) will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Buyer) in trust for the Company and shall pay the proceeds into a separate fiduciary account to be held in trust for the Company until accounted for to the Company at the demand of the Company.
- 4.5 To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 4 that there is created for the benefit of the Company a Purchase Money Security Interest in the Goods.
- 4.6 The Buyer agrees that the Company may register any personal property security interest created by these Terms on the Personal Property Securities Register and the Buyer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Company in respect of any personal property of the Buyer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Buyer or place an obligation on the Company, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Company otherwise agrees in writing.
- 4.7 The Buyer will pay the Company all costs, expenses and other charges incurred, expended or payable by the Company in relation to the filing of a financing statement or a financing change statement in connection with these Terms.
- 4.8 Each security interest created under these Terms is a continuing security, notwithstanding any intermediate payments or settlements of accounts or anything else and is in addition to, and is not to be merged with, any other security or Guarantee expressed or intended to be security for any other obligations owing by the Buyer to the Company.
- 4.9 The Company is not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held by the Company at any time or any money or property that the Company at any time holds or is entitled to receive.
- 4.10 The Buyer must not give to the Company a written demand, or allow any other person to give the Company a written demand, requiring the Company to register a financing change statement or lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered in favour of the Company under the PPSA.
- 4.11 Nothing in this clause shall be construed as permitting the Buyer to return the Goods or any part of them because they are surplus to the Buyer's requirements or for any other reason.
- 4.12 The Company may agree to accept the return of Goods at its absolute discretion, subject to the receipt of a Credit Request detailing the Goods and the reason for their requested return. Repayment to the Buyer of any sum relating to the Goods shall be subject to their receipt by the Company in undamaged condition. The Buyer shall be fully responsible for all costs associated with the return of Goods including any restocking fee which the Company may in its discretion apply to the return.
- 5. DELIVERY**
- 5.1 Delivery will be deemed to have occurred when:
- (a) If the Company is delivering the Goods to a Buyer's nominated site address, upon the Goods being delivered to that address;
  - (b) If the Goods are being sold from the Company's premises and the Buyer is to collect, when the Company has placed the Goods at the disposal of the Buyer.
- 5.2 Where delivery is to be made to the Buyer's site address, delivery will be made to the road entrance of the site specified by the Buyer and on the date agreed by the Company and the Buyer for delivery. If requested, the Company will deliver onto the site, but will not be responsible for any damages or incidents that occur on site.
- 5.3 The Company reserves the right to charge reasonable costs of delivery. The Buyer is responsible for any and all additional charges that may be incurred if on site delivery is requested.
- 5.4 All delivery dates are estimates only. The Company will not be liable to the Buyer for any non-delivery or delays in delivery. The Buyer will not be entitled to cancel the order or claim any sum as damages/compensation if estimated delivery dates are not met.

- 5.5 If the Company is holding packaging, moulds, or any other item relating to work done for a Buyer, and that Buyer does not make full payment within the time frame applying under these Terms and Conditions, or if the Buyer is collecting the Goods and does not complete collection of the Goods within 30 days of the Company advising the Buyer that the Goods are available to be uplifted then the Company may in its discretion dispose of the Goods or sell them to another party in order to recover its costs of production, non-payment, or storage, or any other relevant costs.
- 6. COSTS OF ENFORCEMENT**
- 6.1 The Buyer will be liable for, and indemnifies and will at all times keep fully indemnified the Company for:
- (a) all costs (including solicitor/client costs) incurred by the Company in enforcing, or attempting to enforce, its rights under these Terms with the Buyer;
  - (b) any losses suffered, and costs incurred by the Company (whether directly or indirectly) as a result of any act or omission of the Buyer under or in connection with these Terms and Conditions.
- 6.2 Any costs incurred or losses suffered by the Company as referred to in this clause 6 will be payable by the Buyer upon demand.
- 7. LIABILITY OF THE COMPANY**
- 7.1 Subject to clause 7.2:
- (a) Any warranties (other than any express warranty that may be given by the Company in writing to the Buyer) in relation to the Goods are expressly excluded to the fullest extent permitted by law.
  - (b) In the event any Goods supplied by the Company are found to be defective the maximum liability of the Company, whether in contract, tort or otherwise will be lesser of:
    - (A) the cost of the Goods; or
    - (B) the cost of remedying the defective Goods; or
    - (C) the actual loss or damage suffered by the Buyer.
  - (c) The Company will not be liable for any damage, loss of profit or any indirect or consequential loss suffered by the Buyer or any other party as a result of the Company's breach of this contract or any negligence on the Company's part.
  - (d) The Company shall have no liability to the Buyer, whether in contract, tort, breach of statutory duty or otherwise at law arising on or after the date falling 12 months after the Delivery of the Goods.
  - (e) The Company provides no warranty whatsoever as to the suitability of fitness for purpose of the Goods and any implied warranties as to the fitness or quality of the Goods are hereby excluded to the fullest extent permitted by law.
- 7.2 If the Buyer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 8. CHARGING CLAUSE**
- 8.1 To secure payment of all Moneys, the Buyer (or where the Buyer is comprised of two or more persons or other entities then each person and other entities jointly and severally) hereby charges as legal and/or beneficial owner and as trustee of any trust in favour of the Company the Buyer's Land with the due payment of all of those Moneys. The Buyer acknowledges that the Company may register a caveat or caveats over the Buyer's Land in respect of this charge.
- 8.2 If the Buyer is a trustee of any trust:
- (a) it is bound by these Terms and charges the Buyer's Land as trustee;
  - (b) warrants that it is a proper exercise of the Buyer's authority and power under the trust instrument and at law to trade with the Company and to charge the Buyer's Land in accordance with these Terms.
- 8.3 Upon demand by the Company, the Buyer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure the Buyer's indebtedness to the Company and the Buyer acknowledges by reason of this agreement to give a mortgage in favour of the Company that the Company is an equitable mortgagee in respect of the Buyer's Land.
- 8.4 Should the Buyer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Buyer appoints irrevocably the credit manager or a duly authorised officer of the Company to be the Buyer's lawful attorney to execute any such mortgage or other instrument.
- 9. TRUST AND TRUSTEES**
- 9.1 Where the Buyer is a trustee of any trust:
- (a) the Buyer agrees to produce immediately to the Company a stamped copy of the trust deed (including all amendments) upon written notice from the Company demanding a copy of that trust deed;
  - (b) the Buyer warrants that it has full power and authority to enter into these Terms on behalf of the trust and that it shall be bound by these Terms both personally and as trustee and clause 8 extends to any land held by the Buyer as trustee.
- 10. GOODS SOURCED FROM THIRD PARTIES**
- 10.1 The Buyer acknowledges that all or some of the Goods may have been manufactured by or sourced from a party or parties other than the Company or the Company may have obtained information or data about the Goods (or goods the Company may consider comparable or useful as an alternative), from other parties whether by reference to manuals, information available on websites, or otherwise.
- 10.2 The Company supplies Goods based on its understanding of the Buyer's requirements. The Buyer acknowledges and accepts that:
- (a) The Buyer must make its own enquiries to satisfy itself that the Goods are those the Buyer requires for its particular purpose and, in particular, but not in limitation, the Buyer must satisfy itself by taking appropriate advice on any relevant soil or engineering or other site conditions;
  - (b) While the Company will take all reasonable steps to verify that the information it has concerning any such Goods is accurate, specifications may change without notice and information accessed by the Company in respect of any such Goods may not be up to date; and
  - (c) The Company has no responsibility or liability whatsoever in respect of any loss, failure or matter arising out of the Goods not meeting or matching the Buyer's requirements or specifications.
  - (d) The Buyer must not reproduce or distribute any information concerning the Goods sourced from other parties without the express written authorisation of the Company.
- 11. FORCE MAJEURE**
- 11.1 The Company will not be liable for delay or failure to perform its obligations arising from any act of God, or if the cause of the delay or failure is beyond the Company's control.

**12. INTELLECTUAL PROPERTY**

12.1 The intellectual property in the Goods and in any documentation created, prepared or supplied by the Company to the Buyer in connection with the Goods shall remain with the Company.

**13. SEVERANCE**

13.1 If any part of these Terms is deemed to be void, illegal, or unenforceable, that part will be severed, and will not affect the validity and enforceability of the rest of the Terms.

**14. NON-WAIVER**

14.1 Any failure by the Company to exercise any right under these Terms or to insist on strict performance of any part of these Terms does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

**15. GOVERNING LAW**

15.1 These Terms and any Account or agreement subject to these Terms will be governed by and construed in accordance with the laws of the State or Territory in which the Goods are supplied. The Company and the Buyer submit to the non-exclusive jurisdiction of the Courts of Australia and, in particular, those courts in the central business district of the capital city of the State or Territory in which the Goods are supplied.

**16. INTEREST**

16.1 Without prejudice to the Company's other rights and remedies, the Company may charge the Buyer interest on any sum overdue and owing and outstanding under these Terms at the rate of 1.5% per month from the date payment was due until the date of payment.

**17. NO ASSIGNMENT BY BUYER**

17.1 The Buyer shall not be entitled to assign the benefit of these terms or any account without the consent of the Company, the Company acting in its sole discretion.

**18. ENTIRE AGREEMENT**

18.1 These Terms constitute the entire agreement between the parties hereto for the provision of the Goods by the Company. It supersedes all prior negotiations, representations or warranties except where they have been attached to the documentation incorporating these Terms.