

Dear Purchaser

TERMS AND CONDITIONS

Please carefully read these terms and conditions as they apply to the sale of all products and the provision of all services by CEM International Pty Ltd and by all of its divisions and subsidiaries ("CEM") to you. By accepting the quotation enclosed/attached with these terms and conditions you agree to be bound by these terms and conditions.

1. **Applicability**

These terms and conditions supersede all terms and conditions previously issued by CEM.

2. **Terms of Supply**

- 2.1 CEM will supply the goods set out in the order pursuant to which they are supplied (the "**Goods**") to the party named as the buyer therein (the "**Purchaser**").
- 2.2 CEM will supply the services set out in the order pursuant to which they are supplied (the "**Services**") to the Purchaser.
- 2.3 The Goods will be supplied in the quantity and will be delivered to the location as specified in the Purchaser's order form.
- 2.4 Any order placed by the Purchaser is deemed to incorporate these terms and conditions. CEM and the Purchaser are bound by these terms and conditions from the date set out on the order.
- 2.5 CEM may amend in writing these terms and conditions at any time. Any amended terms and conditions will be deemed to be binding and effective immediately.

3. **Quotations and Prices**

- 3.1 All prices quoted are based on CEM's estimated cost of production, manufacture or supply of the Goods ordered and are subject to alteration without notice to the Purchaser if the alteration is due to any increase in CEM's costs between the date of the quotation and the date or dates of delivery. Such costs may include but are not limited to changes in wages and staff conditions, materials costs, freight charges, taxes and insurance, import duties, other Government imposts and exchange rate fluctuations.
- 3.2 Unless otherwise expressly agreed by CEM in writing, the price of Goods ordered will be that amount charged by CEM at the date or dates of delivery.
- 3.3 All prices for Goods are exclusive both of sales tax and of freight and other delivery charges (unless otherwise agreed) which, if applicable, will be payable by the Purchaser at the rate applicable at the date of delivery.

4. **Terms of Payment**

CEM may, in its unfettered discretion, invoice the Purchaser for the supply of Goods and/or, where relevant, the cost of materials, labour and/or overheads which CEM incurs, or will incur, in the process of manufacturing Goods, before delivery of such Goods by CEM to the Purchaser. The Purchaser must, within seven (7) days of the date of any such invoice rendered by CEM to the Purchaser, pay to CEM the amount specified in such invoice. All other invoices must be paid within thirty (30) days of the date of invoice, unless otherwise agreed.

5. **GST**

- 5.1 All prices charges taxes and expenses ("**the amounts**") payable by the Purchaser to CEM do not include any goods and services tax ("**GST**").
- 5.2 If any GST is incurred or payable by or collectable from CEM in respect of supplies by CEM to the Purchaser, the Purchaser must pay or reimburse CEM for any GST, in addition to the amounts.
- 5.3 The GST must be paid or reimbursed by the Purchaser to CEM at the same time as when the amounts required to be paid by the Purchaser to CEM.
- 5.4 CEM shall promptly provide the Purchaser with an invoice or receipt which is in an approved form for GST purposes.

6. **Interest on Overdue Accounts**

- 6.1 If the Purchaser fails to pay any sum of money owing to CEM for the supply of Goods or Services by the due date for payment, the Purchaser will on demand pay to CEM interest at a rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic.), computed on the sum of money overdue during the period of default and without prejudice to any other rights CEM may have against the Purchaser.
- 6.2 Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment if any shall be applied in reduction of the outstanding balance of the purchase price.
- 6.3 The Purchaser will pay on demand the reasonable expenses incurred by CEM as a result of late payment for Goods and Services supplied by CEM, including the cost of service of notices or demands and any legal costs incurred by CEM.

7. **Specification**

In accordance with CEM's policy of continued improvement it reserves the right to modify, re-design and revise any specifications for improvement of the Goods at any time and in particular it may make substitutions during

manufacture where the approximate capacity and operation of the Goods is not affected and where no additional cost is imposed on the Purchaser.

8. Description

Any description of the Goods is given by way of identification only and the use of a description shall not constitute a contract of sale by description.

9. Delivery and Quantities

- 9.1 Delivery dates given by CEM are bona fide estimates and are based upon prompt receipt of all necessary information regarding the order made by the Purchaser. CEM will use its best efforts to meet the scheduled dates and deliver the Goods when requested and in the quantities requested by the Purchaser.
- 9.2 CEM reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract and if the Purchaser defaults in making payment for any instalment invoiced under clause 4, CEM may elect to treat the default as a breach of contract relating to each other instalment. However, failure of CEM to deliver any instalment shall not entitle the Purchaser to cancel the balance of the order.
- 9.3 The Purchaser authorises CEM (if CEM should think fit) to arrange with an independent contractor or sub-contractor the cartage, delivery, storage, handling, installation, removal, assembly or erection of the Goods required by the Purchaser.
- 9.4 CEM will not be responsible for loss or damage to Goods after delivery and freight insurance will not be arranged by CEM except with the express instructions in writing of the Purchaser and then only at the Purchaser's expense and on lodgment of a declaration by the Purchaser as to value of the Goods prior to delivery.
- 9.5 If the Purchaser is not in attendance at the delivery address specified on the Purchaser's order during normal trading hours when delivery is attempted, an additional charge may be made by CEM at the rate specified on the Purchaser's order for each call until delivery is accomplished.
- 9.6 In the event that at the request of the Purchaser or due to the Purchaser's lack of instructions or attention to its original order the commencement or progress of any work to be provided by CEM is delayed or suspended or the date of delivery of the Goods is postponed, then the Purchaser shall be liable for all costs or expenses suffered or incurred by CEM as a result of the work being so delayed or suspended or delivery of the Goods being so postponed.
- 9.7 The Purchaser has seven (7) business days from the delivery of Goods to inspect the Goods. If the Purchaser fails to notify CEM within that period of any defects in the Goods or inadequate or wrongful delivery of the Goods, then the Purchaser is deemed to have accepted those Goods. The Purchaser waives any right to reject or revoke acceptance of the Goods after such time.
- 9.8 CEM reserves the right to withhold delivery if CEM in its sole discretion considers that the financial position of the Purchaser so warrants and such action is necessary to protect CEM's interests or the terms of payment for Goods or Services are not strictly adhered to by the Purchaser.

10. Installation and Site Requirements

- 10.1 CEM reserves the right to increase the charge specified in any quotation for installation and/or commissioning of Goods if, due to causes beyond CEM's reasonable control, it is unable to complete such work in the time allowed.
- 10.2 The Purchaser will at its own cost and expense arrange for suitable electrical power, hoisting and toilet facilities to be provided to the CEM personnel performing any work for the Purchaser.

11. Risk and Title

- 11.1 The Purchaser shall not acquire any right, title or interest in Goods until the Purchaser pays to CEM the purchase price of the Goods in full.
- 11.2 Until Goods sold are paid for in full the Purchaser is a bailee of those Goods for CEM and will keep the Goods separate and identifiable from all other goods that the Purchaser may hold unless the Goods are incorporated into or are a component part of a finished product produced by the Purchaser and must not encumber the Goods.
- 11.3 If any Goods in which CEM retains title are resold or incorporated into products manufactured or finished using the Goods and resold, the Purchaser shall hold such part of the proceeds of any sale as represents the invoice price of the Goods sold in a separate identifiable bank account as trustee for CEM as beneficial owner and shall pay such amount to CEM immediately on demand.
- 11.4 If the Purchaser has not paid for particular Goods when payment falls due, CEM may at any time thereafter enter the Purchaser's premises where those Goods are or are reasonably suspected of being situated, without liability for trespass or any resulting damage, and retake possession of those Goods using reasonable force to do so.
- 11.5 CEM is entitled to keep or re-sell any Goods re-possessed pursuant to clause 11.4.
- 11.6 The risk of loss or of damage to the Goods shall pass to the Purchaser on delivery or on the date upon which they are put into store by CEM either pursuant to a request by the Purchaser or because the Purchaser has failed to take delivery of the Goods on a specified completion date.
- 11.7 The Purchaser indemnifies and will keep CEM indemnified against any claim, action, damage, loss, liability, cost, expense or payment which CEM suffers, incurs or is liable for in respect of CEM's exercise of its rights under this clause 11 including all costs and expenses of recovery of the Goods and any losses for resale of those Goods.
- 11.8 To protect CEM's security interest in the Goods until payment CEM may choose to register the contract governed by these terms and conditions under the *Personal Properties Securities Act 2009* ("PPSA"). The Purchaser consents to CEM effecting a registration on the PPSA register (in any manner CEM considers appropriate) in relation to any security interest contemplated by these terms and conditions and the Purchaser agrees to do all things necessary to facilitate such registration. The Purchaser agrees to

sign all documents and do all things necessary to protect the rights of CEM under the contract governed by these terms and conditions and appoint CEM as its attorney to enforce its rights on default by the Purchaser.

- 11.9 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms and conditions the Purchaser agrees that the following provisions of the PPSA will not apply to the enforcement of these terms and conditions: section 95 (notice of removal of accession), to the extent that it requires CEM to give a notice to the Purchaser; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires CEM to give a notice to the Purchaser; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 11.10 Notices or documents required or permitted to be given to CEM for the purposes of the PPSA must be given in accordance with the PPSA. The Purchaser waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.
- 11.11 In this clause 11, the following words have the respective meanings given to them in the PPSA: accession, account, collateral, proceeds, purchase money, register, registration, security interest and verification statement.

12. **Sub-contracting**

CEM reserves the right to sub-contract the production, manufacture, supply or installation of the whole or any part of the Goods or of any Services or works to be supplied in relation to the Goods.

13. **Warranty**

- 13.1 Subject to clause 13.2, CEM warrants to make good free of charge all defects in Goods of CEM's manufacture within a period of twelve (12) months after delivery and which arise from faulty material or workmanship in the course of manufacture, provided that the Goods have been properly used and maintained and the defect is not caused by the Purchaser's failure to follow CEM's instructions for usage, installation and maintenance of the Goods. The warranty is contingent on the Purchaser notifying CEM in writing of the defective Goods within seven (7) days of becoming aware of the defect and promptly returning, free of charge to CEM, those defective parts and CEM accepting such defect.
- 13.2 Where the Goods supplied form part of a complete product of the Purchaser's manufacture, the Purchaser must inspect the Goods supplied and make all claims prior to the Goods being incorporated into the Purchaser's product.
- 13.3 In the case of Goods not of CEM's manufacture, the Purchaser is entitled only to such benefits as CEM may receive under any guarantee or warranty given to CEM in respect of those Goods from the manufacturer.

14. **Implied Terms**

Subject to clause 13, all conditions and warranties expressly included or implied by statute the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law. The liability of CEM for a breach of a condition or warranty that cannot by law be excluded is limited at CEM's option to the replacement or repair of the Goods or the supply of equivalent goods or the cost of acquiring equivalent goods.

15. **Representations**

The Purchaser acknowledges that neither CEM nor any person purporting to act on CEM's behalf has made any representation or given any promise or undertaking which is not expressly set out in these terms and conditions or in any specification delivered by CEM whether as to the fitness of the Goods for any particular purpose, merchantability, warranty, liability or any other matter.

16. **Limitation of Liability**

- 16.1 In no event shall CEM, its servants, agents or contractors be liable for any special, incidental, indirect or consequential damages whatsoever including damages for loss of business profits, loss of goodwill or loss of opportunity, business interruption or loss of information which may be suffered or incurred or which may arise directly or indirectly out of or in any way attributable to the Goods or Services, or the delivery or use of the Goods or the performance of the contract for the sale of the Goods or the supply of the Services on these terms and conditions by the Purchaser and without limitation CEM shall not bear any liability for any loss of or damage to the Goods or non-delivery, delay in delivery, concealed damage, deterioration, contamination or evaporation of Goods held in CEM's care, custody or control or any consequential loss however caused apart from loss caused or occasioned by any criminal acts of the servants, agents or employees of CEM.
- 16.2 Except in the case of fraud on the part of CEM, CEM is not liable for any loss or damage caused or contributed to by CEM, its officers, employees, agents or other persons to any property (including but not limited to motor vehicles or trailers):
- (a) brought by the Purchaser, its officers, employees, agents or contractors on to premises occupied by CEM; or
 - (b) left in the possession or control of CEM, whether or not such loss or damage is caused by CEM, its officers, employees, agents or other persons acting negligently, or outside the scope of any authority to hold property conferred on CEM by the Purchaser, or otherwise.

17. Cancellation of Orders

An order accepted by CEM cannot be cancelled by the Purchaser, unless otherwise agreed in writing by CEM.

18. Termination by CEM

18.1 Without prejudice to any of its other rights, powers or remedies, CEM may cancel any order for the delivery of Goods and/or Services and may terminate any contract governed by these terms and conditions if:

- (a) the terms of payment for Goods or Services delivered to the Purchaser have not been strictly adhered to by the Purchaser;
- (b) the Purchaser defaults under any of its obligations under these terms and conditions; or
- (c) the Purchaser becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Purchaser, a mortgagee goes into possession of the Purchaser's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Purchaser is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Purchaser, and CEM will be released from all liability under the contract governed by these terms and conditions.

18.2 CEM will be entitled to payment for all Goods and Services delivered up to the date of termination. Termination of any contract governed by these terms and conditions is without prejudice to the rights of CEM accruing up to the date of termination.

19. Intellectual Property

The supply of Goods to the Purchaser does not constitute a transfer of any intellectual property rights in the Goods or any part thereof. The Purchaser must not do any thing inconsistent with or in infringement of such intellectual property rights. CEM does not warrant that the supply by it and/or the use by the Purchaser of the Goods does not and will not infringe the intellectual property rights of any third party.

20. General

- 20.1 CEM shall not be bound by any agreement purporting to vary these terms and conditions unless that agreement is in writing and signed on behalf of CEM by an authorised officer of CEM.
- 20.2 CEM and the Purchaser shall not be liable for any delay or failure to perform their obligations apart from a failure to pay monies owing, if that failure or delay is due to any cause or condition beyond the control of that party and in particular, without limitation, any delay, failure, damage or loss due to fire, flood, act of God, industrial disturbance, failure of electrical or telecommunications networks, acts of vandalism, sabotage, civil services disruption, war, changes in legislation or regulations of any government, or refusal or revocation of any licence or consent by the government or any other authority. CEM may at its option at any time give the Purchaser notice in writing cancelling the contract between them or any portion thereof upon the happening of any such cause without being liable for damages.
- 20.3 These terms and conditions shall be binding on the legal representatives, successors, substitutes or permitted assigns of CEM and the Purchaser.
- 20.4 The failure or omission of a party at any time to enforce or require the strict observance of or compliance with any provision of these terms and conditions or exercise any election or discretion shall not operate as a waiver of those rights whether express or implied arising under these terms and conditions.
- 20.5 If any part of these terms and conditions is or becomes illegal or invalid then, provided that the illegality or invalidity is not fundamental to the contract, the legality validity or enforceability of the remainder of these conditions shall not be affected and the terms and conditions shall be read as if that part of them has been deleted.
- 20.6 Notwithstanding any other clause of this document, if the Purchaser breaches these terms and conditions CEM is not bound to perform its obligations until the breach is remedied by the Purchaser.
- 20.7 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria.

21. Special Conditions

Where special conditions are specified by CEM in any quotation or other sale document, such special conditions shall apply to these terms and conditions and to the extent that there is any inconsistency between those special conditions and these terms and conditions then the special conditions shall prevail to the extent of the inconsistency.