

HAGGIE REID PTY LTD – TERMS AND CONDITIONS OF SALE

1. GENERAL

Haggie Reid Pty Ltd “the Company” accepts the customer’s offer to purchase or hire on these conditions when (together with the acceptance) constitutes the entire agreement between the Company and the customer and it is expressly agreed that subject to condition 7 there are no other understandings representations or warranties of any kind (express or implied) forming part of this agreement. In particular (but subject to condition 7):-

- (i) Any condition contained in the Customer’s order or offer which is inconsistent with qualities or is contrary to these conditions shall be of no effect unless that condition is expressly accepted in writing by the Company.
- (ii) Any variation, waiver or cancellation of the Customer’s order or offer shall be of no effect unless accepted in writing by the Company and where the Company accepts cancellation, the Company may levy a handling charge of up to 10% of the price.

2. PRICE AND TERMS OF PAYMENT

(a) The Company’s prices and charges are subject to alteration without notice and the amount payable by the Customer for the goods ordered or hired shall be the amount ruling at the date the goods are collected by or delivered or dispatched for delivery to the Customer.

(b) Where the Customer and the Company agree to variation in the quality of the goods sold and purchased, the goods shall be prices either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of the Company.

(c) The Company’s prices and charges are exclusive of taxes, duties and other imposts which, if chargeable, are payable by the Customer whether they are imposed or brought into force before or after the acceptance of the Customer’s offer.

(d) If the goods are exported the price and other moneys due by the Customer shall be paid in Australian Currency.

(e) All prices and charges are strictly nett and unless otherwise stated in writing by the Company on acknowledging the offer are due for payment on the last day of the month following the month in which the goods (or any installment of the goods) are delivered.

(f) Without prejudice to the Company’s rights to sue for payment or exercise any other remedy, where any payment is not made on the due date, the Company may do any one or more of the following:-

- (i) Charge the Customer interest of 10% from the due date of payment until payment is received by the Company, (without thereby extending the time for payment or implying any forbearance to sue or otherwise recover overdue moneys) at a rate determined from time to time by the Company in good faith to be the Company’s cost of funds.
- (ii) Demand payment of the arrears as well a payment in advance for any undelivered goods before proceeding with manufacture or making any further delivery of goods under this or any other agreement between the Company and the Customer.
- (iii) Rescind this agreement or any other agreement between the company and the Customer, and the Customer shall not be entitled to demand or enforce delivery of any goods or any installment of goods under this or any other agreement.

(g) Notwithstanding any provisions of condition 2(f), the right to restrict or without the sale of further goods on credit is reserved where company has reason to doubt the Customer’s ability to pay for such purchases.

3. DELIVERY

(a) The Company may withhold delivery in terms of condition 2.

(b) The Company reserves the right to dispatch the Customer’s order in one delivery or by installments. Where the Company acknowledges an order which provides for delivery by installments the Company shall be entitled to payment for each installment delivered (as if it were a separate agreement) but failure to deliver any installment shall not entitle the Customer to repudiate the agreement as to any remaining installments.

(c) Any quotations of delivery times by the Company are made in good faith but as estimates and not commitments The Company shall not be bound by such estimate.

(d) Where the customer requests a particular method of delivery and the Company agrees in writing then the Customer shall cover the cost of delivery by that method from the point of dispatch of the goods by the Company or (in the case of hire) return of the goods by the Customer or both. In the absence of such request or agreement, the Company will select the method of delivery on behalf of the Customer who shall cover the costs of delivery.

4. SHORTAGES

Liability for storages in the quantity of the goods supplied on sale is limited to making up the shortages. No Claim for shortages in quantity will be allowed unless the Customer gives written notification of the shortages within 7 days of delivery and provides reasonable opportunity to take all necessary steps to investigate the claim.

5. DAMAGE

Goods leaving the Company’s premises are adequately packed. Claims for damage in transit must be made against the carrier and while the Company will not accept liability for goods damaged in transit, details of any claim should be advised to the Company. Subject thereto:-

- (i) Prior to acknowledging delivery to the carrier, the Customer must ensure that the complete consignment as per the carrier’s note has been received.
- (ii) Any shortage or visible damage to outer packaging must be endorsed on the carriers note.
- (iii) Within 7 days of receipt of goods the Customer must ensure that same are received in good order and condition.

No claims will be considered after 7 days of receipt of goods.

6. PROPERTY AND RISK

(a) This provision protects the Company against a default in payment for goods supplied on sale on or before the due date and the events of bankruptcy receivership or liquidation by or of the Customer.

(b) Risk in the goods sold and purchased or hired (including insurance responsibility) passes to the customer on collection of the goods by the Customer or his agent, or on delivery thereof to the Customer, his agent or the carrier for that purpose by the Company (or by any person on the Company’s behalf) but ownership and property in each item of goods supplied on sale is retained by the Company and will not pass to the Customer until payment in full of the purchase price for same and for all other goods supplied by the Company to the Customer.

(c) Until property in goods supplied on sale passes to the Customer, the Customer shall :-

- (i) Hold each item thereof as a bailee to the Customer and keep it in good order and condition.
- (ii) Store and mark the same in such manner as enables them to be readily identified and distinguished from other property in the Customer’s possession that is not held by the Customer as bailee of the Company.
- (iii) Deliver them up to the company immediately upon being required by the Company (and without limitation upon the Company’s liberty to require such delivery) at any time upon demand following the default or other event referred to in condition 6(a) for all of which purposes (without prejudice to the Customer’s rights arising in consequences of such default or other event giving rise thereto) the Customer authorizes the Company to enter any premises on which the goods may be located in aid of exercise of this entitlement and shall also reimburse the Company’s expenses of and incidental to effecting such delivery.

(d) Notwithstanding that property in any item of goods supplied on sale has not then passes to the Customer, the Customer may sell the same in any bona fide transaction that does not have the purpose or effect of depriving the Company of the benefit of the provisions of this condition 6, in which event the Customer shall:

- (i) hold the proceeds of the sale separate from the Customers own money and pay the same to the Company upon request;
- (ii) hold all claims against purchasers thereof who have not paid the Customer thereof in trust for the Company and upon demand following the default or an event referred to in condition 6(a) in its own name or (at the option of the Company) in the name of the Company institute proceedings to recover such payment.

(e) The provisions of each paragraph of this condition and the rights thereby conferred upon the Company are distinct and severable from the provisions of each other paragraph and any inability of any thereof (whether as between the Company and the Customer or the Company and any other person) shall not affect the operation to its terms of each other paragraph.

7. IMPLIED TERMS AND LIMITATIONS OF LIABILITY

(a) It is acknowledged by the Customer and the Company that the Trade Practices Act 1974 (as amended) (“the Trade Practices Act”) and other laws imply conditions or warranties in certain contracts and also give parties to those contracts certain other rights against suppliers of goods and services. To the extent such condition, warranties or other rights are implied or given in respect of this agreement and it is not lawful or possible to exclude them, then such conditions, warranties and other rights shall (but only to the extent required by law) apply to this agreement and all other conditions, warranties or rights which might but for this provision be implied are hereby expressly excluded.

(b) Section 68A of the Trade Practices Act enables suppliers in respect of certain contracts to limit their liability in certain circumstances for breach of the conditions and warranties implied by that Act. Subject to the qualifications in Section 68A of that Act, the Company’s liability for any breach of a condition or warranty implied by Division 2 of Part V of that Act shall be limited:-

- (i) in the case of goods supplied, to any one or more of the following (as the Company may determine):
 - (a) replacement of the goods or the supply of equivalent goods;
 - (b) repair of the goods;
 - (c) payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (d) payment of the cost of having the goods repaired; and

- (ii) in the case of services supplied, to any one or more of the following (as the Company may determine):
 - (a) supply of the services again; or
 - (b) payment of the cost of having the services supplied again.

(c) In the event that the Company (as a deemed “manufacturer”) has a liability to the Customer (as a “company”) pursuant to section 74H of Trade Practices Act, subject to the terms of section 74L of that Act, such liability is limited to a liability to pay to the Customer an amount equal to whichever is the lesser of the cost of:

- (i) replacing the goods;
- (ii) obtaining equivalent services; or
- (iii) having goods repaired.

(d) Save as provided in conditions 7 (b) and (c) and notwithstanding any implication arising from any other condition, the Company shall not be liable to the Customer or any person claiming under it in contract or in tort for, or in respect of, any direct, indirect or consequential or special loss, damages, expense or injury suffered by the Customer or any other person whatsoever, arising out of, or relating to this agreement (including, by way of illustration and not in limitation, liability due to the negligence or willful default of the Company) or any error (whether negligent or not) in information supplied to the Customer before or after the date of the agreement in connection with its subject matter.

8. COMPANY’S LIABILITY AND MAINTENANCE GUARANTEE

(a) The Customer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and (subject to condition 7) the Company is under no liability if they are not.

(b) In case of goods supplied on sale not of the Company’s own manufacture, in addition to the Customer’s rights under the Trade Practices Act and other laws referred to in the condition 7, the Customer is entitled to such benefits as the Company may receive under any guarantee given to the Company in respect thereof by the manufacturers, but the Company shall not be liable for consequential or special damages under any circumstances whatsoever.

(c) In the case of goods supplied on sale, in addition to Customer’s rights under the Trade Practices Act and other laws referred to in condition 7, the Company shall make good the replacement or repair of defects arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided that the goods have been used in a normal manner, maintained in a proper manner and (unless otherwise arranged) that such defective parts are promptly returned to the Company, but the Company shall not be liable for consequential or special damages in any circumstances whatsoever.

(d) Damage resulting from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment is not recoverable pursuant to this agreement.

(e) (Subject to Condition 7) the company’s liability under this agreement and the warranty in this clause is confined to the Customer named in the agreement, it being agreed that the Company has no liability to any purchaser of the goods from the Customer in that the Customer’s rights under this agreement are not assignable without the prior written consent of the Company.

9. ERRORS OR OMISSIONS

Clerical errors or omissions, whether in computation or otherwise in any quotation acknowledgements or invoice, shall be subject to correction.

10. FORCE MAJEURE

Without restricting the generality of condition 3(c) the Company shall not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform any term of this agreement where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention from government, inability to obtain labour, materials or manufacturing facilities, accidents interruptions of or delay in transportation or any other cause beyond the Company’s control.

11. COMPLIANCES WITH REGULATIONS

The Customer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the goods.

12. PROPER LAW

The contract and the conditions of sale shall be governed by the law of New South Wales, the courts of which shall have nonexclusive jurisdiction in connection herewith.

13. RETURN OF GOODS

Goods supplied on sale will not normally be accepted for return after 14 days from date of delivery. Goods which are accepted from return after 14 days will normally be subject to administration and handling charges of 10% of the value (up to 30 days) and of 15% of the value (if over 30 days). Goods returned must be freight paid in original packs and in a saleable condition and any acceptance is subject to inspection by the Company.