

STANDARD TERMS AND CONDITIONS OF QUOTATION AND SALE 2007

These are the terms and conditions upon which Austrend International Pty Ltd ABN 66 862 580 985 quotes for the sale of and sells Goods.

1.0 Definitions:

- 1.1 "Goods" means goods supplied by the Seller to the Purchaser or at the Purchaser's request.
- 1.2 "Seller" means which is Austrend International Pty Ltd ABN 66 862 580 985 .
- 1.3 "The Purchaser" means the person or company to whom Seller supplies Goods. It includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- 1.4 "The Contract" means the contract formed upon acceptance of the Purchaser's order by the Seller.
- 1.5 Words importing the singular shall include the plural (and vice versa).

2.0 Variation of Terms

- 2.1 Unless otherwise expressly agreed in writing, all Goods are sold upon the following terms and conditions to the exclusion of any terms and conditions of the Purchaser and no agent or representative of the Seller has any authority to vary or omit part of or all of, these terms and conditions.
- 2.2 Acceptance by or on behalf of the Purchaser of a quotation provided by the Seller shall constitute acceptance of these terms and conditions by the Purchaser.
- 2.3 The Seller may, at any time and from time to time, alter these Terms and Conditions.

3.0 Quotations:

- 3.1 All quotations are to be deemed valid for 30 days from the date of issue unless otherwise stated.
- 3.2 A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise therefrom until the Purchaser's order has been accepted by the Seller in writing or by the supply of Goods by the Seller.
- 3.3 All prices quoted are to be considered to be ex works unless otherwise stated.
- 3.4 Unless otherwise agreed in writing the price of the Goods shall be that quoted by the Seller plus any tax (including GST) or charge which may be levied by any governmental authority upon the Goods or any part thereof or the manufacture, use, sale, importation or delivery thereof. Unless otherwise specified any prices quoted do not include inland and/or sea transportation costs, intermediate storage, customs examination, landing and port charges, handling, delivery and insurance charges as may be applicable.
- 3.5 No order shall bind the Seller until accepted in writing or by supply of Goods.
- 3.6 The Seller will endeavour to deliver at the time stated and all delivery dates shall be regarded at best as estimates only. The Purchaser must accept the actual delivery date and the Seller shall not be liable for any losses, costs, damages or expenses suffered by the Purchaser or any other party as a result of any delay in delivery.
- 3.7 Every quotation is subject to and is conditional upon obtaining any necessary import, export or other licence or approval.
- 3.8 Any charge, duty, impost, tax or other expenditure which is not applicable at the date of quotation or sales invoice but which is subsequently levied upon the Seller in relation to the

quotation or sales invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Purchaser's account.

- 3.9 A quotation or sale invoice is given by the Seller on a supply only basis. Installation and commissioning (if any) is at the expense of the Purchaser unless otherwise specified in writing by the Seller.

4.0 Cancellation:

This Contract may only be cancelled or varied with the written consent of the Seller upon the terms and conditions set forth in such consent.

5.0 Delivery:

- 5.1 The Purchaser must specify in its order the place at which the Goods are to be delivered.
- 5.2 The Goods will be delivered at the place specified in the Purchaser's order. Should the Purchaser be unable to accept delivery on the due date at the point of delivery, the Goods may be stored at Purchaser's cost and delivery will be deemed to have been effected at the time of storage. The Purchaser is liable to the Seller for all storage charges incurred by the Seller. Insurance on items Goods so stored is the Purchaser's responsibility.
- 5.3 Any deficiency in quantity of product delivered or transportation damage as at the time of delivery shall be notified to the Seller immediately upon receipt.
- 5.4 Acknowledgement of delivery shall be deemed to be acceptance of the quantities as set out by the invoice and that the product has not suffered from transportation damage.
- 5.5 The Seller reserves the right to make part deliveries of any order and a part delivery of an order shall not invalidate the balance of an order. These terms and conditions apply to the Goods comprised in a part delivery even though such part delivery is not a complete discharge by the Seller of its obligations regarding delivery under the Contract.
- 5.6 If the Seller does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Purchaser that the Goods are ready for delivery, the Purchaser shall be deemed to have taken delivery of the Goods and the terms for payment in these terms and conditions shall apply from such date. If the Seller incurs storage or other charges on or after the deemed deliver date, then the purchaser must reimburse the Seller on demand. Storage shall be at the Purchaser's risk.
- 5.7 If the Purchaser requires delivery of the Goods to a place other than the place identified in the Purchaser's order, the Purchaser must reimburse the Seller on demand for any additional charges which the seller incurs.
- 5.8 The Seller reserves the right to nominate the means of delivery at its discretion.
- 5.9 Unless agreed to the contrary in writing, the Seller reserves the right to supply an alternative brand or substitute product at its discretion.

6.0 Insurance:

- 6.1 The Purchaser must insure the Goods.
- 6.2 If the Seller insures the Goods, the Purchaser must pay the cost of insurance to the Seller.
- 6.3 In the event that the Goods are covered by insurance taken out by the Seller:
 - 6.3.1 the Seller will be liable to the Purchaser only to the extent of any indemnity provided by the Insurer;

6.3.2 if at the time of the Goods by the Purchaser the Goods appear to the Purchaser to have suffered loss and/or damages during transit, the Purchaser must notify the Insurer and the Seller immediately.

7.0 Risk:

7.1 Notwithstanding anything contained in this agreement, unless otherwise agreed to in writing, risk in the Goods shall pass to the Purchaser upon delivery to the Purchaser, its carrier or agent, or upon property in the Goods passing to the Purchaser, whichever shall first occur.

8.0 Tooling and Dies:

8.1 All patterns, dies, moulds and other tooling obtained by the Seller on behalf of the Purchaser shall be at the sole cost of the Purchaser. Such items will be retained by the Seller at the Purchaser's risk and expense for six (6) months after their preparation and shall thereafter become the property of the Seller if no order is received requiring the use of such items. The Purchaser acknowledges that the Seller shall have no liability whatsoever in respect of such items.

9.0 Warranties and exclusion of liability:

- 9.1 The Purchaser warrants that Goods supplied by the Seller based on designs specifications or other requirements supplied by or on behalf of the Purchaser do not infringe letters patent, registered designs, copyright, trade mark or any other intellectual property rights.
- 9.2 The Seller does not warrant that the Goods do not infringe any patent, registered design, copyright trade mark or other intellectual property right of any third party.
- 9.3 The Purchaser is responsible for ensuring that any goods ordered by the Purchaser or on its behalf and the Goods do not infringe any patent, registered design, copyright, trade mark or other intellectual property rights.
- 9.4 The Seller excludes all liability to the Purchaser in respect of any claim by any third party that the supply, use or exploitation of the Goods infringes any patent, registered design, copyright, trade mark or other intellectual property right.
- 9.5 The Purchaser must indemnify the Seller in respect of any claim including a claim for costs brought against the Seller by any third party alleging infringement of any patent, registered design, copyright, trade mark or other intellectual property right.
- 9.6 The Seller does not warrant or guarantee the performance fitness or capacity of Goods supplied by the Seller based upon any design, specification or other requirement supplied by or on behalf of the Purchaser which acknowledges that it does not rely upon the skill and judgment of the Seller in respect of the manufacture or supply of such Goods.
- 9.7 The Purchaser must indemnify the Seller in respect of any claim including a claim for costs brought against the Seller by any third party in respect of Goods supplied by the Seller based upon any design, specification or other requirement supplied by or on behalf of the Purchaser.
- 9.8 The Seller gives no warranty, condition, description or representation expressly or impliedly by this agreement or outside this agreement.
- 9.9 All warranties, terms and conditions in relation to the state, quality or fitness of the Goods and of every other kind whether express or implied by use, statute or otherwise are excluded.
- 9.10 The Seller is not liable to the Purchaser in contract or in tort arising out of, or in connection with, or relating to:
- 9.10.1 the performance of the Goods or any breach of these conditions; or

9.10.2 any fact, matter or thing relating to the Goods; or
9.10.3 any error (whether negligent or in breach of contract or not) in information supplied to the buyer or a user before or after the date of the purchaser's or user's use of the Goods.

9.11 These terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods or any part of the Goods including, but without limiting the generality of the foregoing, those relating to the performance of the Goods or any part of the Goods or the results that ought to be expected from using the Goods.

9.12 Subject to clause 9.14 the total liability of the Seller for loss or damage of every kind:

9.12.1 whether arising pursuant to this agreement; or
9.12.2 out of or in relation to the Goods, their sale, delivery or the way they behave, in tort or contract or in any other cause of action; or in any other way whatsoever,

9.12.3 is limited to the amount paid by the Purchaser to the Seller under this agreement at the date when such liability arises.

9.13 Subject to the exclusions of warranties in these terms and conditions and to clause 9.14 and to the extent permitted by the *Trade Practices Act* and relevant state legislation, the sole obligation of the Seller under this agreement is to use its best endeavours to provide the Goods or to repair or replace (at the Seller's discretion) any part of the Goods which is or ought to be found to be defective within thirty days of delivery of the Goods and in no event shall the vendor be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods, and any indirect, special or consequential damages or injury to any person, corporation or other entity.

9.14 If any Goods supplied pursuant to this agreement are supplied to the Purchaser as a 'consumer' of goods or services within the meaning of that term in the *Trade Practices Act 1974* as amended or similar state legislation the Purchaser will have the benefit of certain non-excludable rights and remedies in respect of the Goods or services and nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the *Trade Practices Act* or similar legislation is so conferred. However, if the Goods are goods not ordinarily acquired for personal, domestic or household use or consumption pursuant to s68A of the *Trade Practices Act* and similar provisions of relevant state legislation, the Seller limits its liability to payment of an amount equal to the lowest of:

- 9.14.1 the cost of replacing the goods;
9.14.2 the cost of repair of the goods;
9.14.3 the cost of having the goods repaired or replaced.

9.15 The following provisions have effect to the extent permitted by law:

9.15.1 The Goods may not be returned either in whole or in part to the Seller without the Seller's prior written consent.

9.15.2 The warranties contained in these conditions will not extend to Goods which have been the subject of any modification not authorised by the Seller in writing.

9.15.3 If the Purchaser does not extend to the Seller a reasonable opportunity to inspect Goods which are alleged to be defective, any warranty, whether express or implied, by the Seller in respect of the Goods shall be void.

- 9.15.4 Where the Seller is acting as agent for a manufacturer or supplier, the Seller will not be liable for any alteration or variation in the Goods made by the manufacturer or the supplier.
- 9.15.5 The Seller will not be liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of the Seller.
- 9.15.6 The Seller will not be liable for any loss caused by an error or defect in the Goods or errors or defects caused by components or consumables supplied by any other person which cause or contribute to failure of the Goods.
- 9.15.7 The Purchaser acknowledges that any certificate or other statement as to the chemical, mechanical or other technical properties of the Goods is that of the manufacturer of the Goods and not of the Seller even though it may be provided on the stationery of the Seller and the Purchaser will not make any claim whatsoever against the Seller in respect of any such certificate or statement.
- 11.4.8 must maintain accurate records to facilitate identification of the Goods as the property of the Seller.
- 11.4.9 must keep the Goods in good condition;
- 11.4.10 must at its own cost insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Purchaser carries on business and the Goods are stored;
- 11.5 If, the Purchaser supplies any of the Goods to any person before property in the Goods passes to the Purchaser:
- 11.5.1 the Purchaser holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or are received;
- 11.5.2 the Purchaser must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received.
- 11.6 Any accessory or item which accedes to any of the Goods by an act of the Purchaser or of any person at the direction or request of the Purchaser or with the express or implied consent of the Purchaser becomes and remains the property of the Seller until the property in the Goods passes to the Purchaser.
- 11.7 If the Goods are used by the Purchaser in a manufacturing or construction process of its own or of a third party such that the Goods are mixed with or become a constituent of any other goods, then:

10.0 Payment:

- 10.1 Unless otherwise agreed in writing, the Purchaser must pay for the Goods, freight and other charges before shipment of the Goods to the Purchaser.
- 10.2 The Seller shall be entitled to charge the Purchaser interest on overdue accounts at the rate of 3.5% above the maximum prime rate of interest charged by the Seller's principal bankers on overdraft accounts from the date of such account falling due until the date of payment in full.
- 10.3 If the Seller does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification that they are ready, the Purchaser shall be deemed to have taken delivery of the Goods and the terms of payment shall apply from such date. The Purchaser shall be liable for storage charges payable on demand, storage being at the Purchaser's risk.
- 10.4 Failure to make due payments in respect of deliveries or installments under this or any other contract with the Seller shall entitle the Seller to delay, suspend or cancel deliveries in whole or in part at its option.

11.0 Property in Goods:

- 11.1 The Property in the Goods remains with the Seller until the Seller has been paid in full for all amounts owed by the Purchaser to the Seller on any account whatsoever.
- 11.2 The Purchaser is a bailee of the Goods until such time as property in them passes to the Purchaser.
- 11.3 The Purchaser acknowledges that it owes the duties of a fiduciary to the Seller in respect of the Goods.
- 11.4 Pending payment in full for the Goods, the Purchaser:
- 11.4.4 must not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 11.4.5 must not allow any person to have or acquire any security interest in the Goods;
- 11.4.6 must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods;
- 11.4.7 must store the Goods separately so that they are clearly identified as the property of the Seller;

- 11.7.1 property in those other goods shall vest in the Seller until such time as property in the Goods passes to the Purchaser;
- 11.7.2 such part of the proceeds of such manufacturing or construction process as relates to the Goods shall be deemed to equal in dollar terms the amount owing by the Purchaser to the Seller at the time the Purchaser receives such proceeds and the Purchaser must not mix such proceeds with any other monies.
- 11.8 If the Purchaser is in default, the Seller may recover possession of the Goods and any other goods referred to in clauses 11.6 and 11.7 at any site owned, possessed or controlled by the Purchaser and the Purchaser agrees that the Seller has an irrevocable licence to do so without incurring liability to the Purchaser or any person claiming through the Purchaser.
- 11.9 The Purchaser shall bear the onus of proving that Goods in the Purchaser's possession or control, whether mixed with other Goods or not, have been paid in full by the Purchaser.

12.0 Disputes:

- 12.1 Notice of any dispute shall be put in writing.
- 12.2 Any dispute between the Purchaser and the Seller shall first be the subject of mediation provided that this clause shall not prevent the Seller from instituting legal action at any time to recover monies owing by the Purchaser to the Seller.
- 12.3 Any dispute or difference (other than a dispute regarding the payment of monies due to the Seller) which cannot be settled by mediation must be referred to an arbitrator mutually agreed upon and failing agreement to an arbitrator appointed by the Australian Commercial Disputes Centre whose decision in all respects shall be final and binding.
- 12.4 If the Seller commences legal proceedings for the payment of monies due from the Purchaser, the Seller may at its absolute discretion elect to continue those proceedings or agree to arbitration as provided above.

13.0 Insolvency and Default:

- 13.1 The Purchaser will be in default if:
- 13.1.1 the Purchaser defaults in compliance with a term of, or repudiates this contract;
 - 13.1.2 a resolution petition or application is proposed presented or filed for the winding up of the Purchaser;
 - 13.1.3 a receiver or receiver/manager is appointed to any part of the property of the Purchaser;
 - 13.1.4 the Purchaser proposes any assignment with its creditors;
 - 13.1.5 the Purchaser otherwise comes under external management; or
 - 13.1.6 execution is levied on the assets of the Purchaser and remains unsatisfied after 7 days.
- 13.2 If the Purchaser is in default, then, in its absolute discretion, the Seller may cancel this contract, exercise its rights under clause 11 to recover possession of the Goods or other goods referred to in clauses 11.6 and 11.7 or pursue any remedy permitted by law.
- 13.3 If the Seller recovers possession of the Goods or other goods referred to in clauses 11.6 or 11.7, it may, in its absolute discretion, dispose of them in its own interest without prejudice to any claim it may have resulting from loss on resale or otherwise.
- 13.4 The Purchaser agrees to indemnify the Seller against:
- 13.4.1 all costs and expenses incurred as a result of default by the Purchaser under this agreement and without limiting the generality of the foregoing against all legal expenses incurred by the Seller in relation to enforcing the Seller's rights under this agreement, loss of profit, consequential damages and expenses in removing the Goods and other goods referred to in clauses 11.6 and 11.7 from the Purchaser's premises; and
 - 13.4.2 all claims against the Seller by any third party in respect of steps taken by the Seller to assert its property in or to recover possession of the Goods or other goods referred to in clauses 11.6 and 11.7.

14.0 Confidentiality

- 14.1 The Supplier and the Purchaser agree that a Contract and any other information furnished by one party to the other pursuant to the Contract shall be and remain confidential between the parties and the parties shall not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- 14.1.1 Prior approval in writing has been obtained from the other party;
 - 14.1.2 Disclosure is required by law or;
 - 14.1.3 The information was in the public domain prior to the disclosure by the party.
 - 14.1.4 The expression 'any third party' does not include the financial or legal advisers of a party or a related body corporate of a party.

15.0 Credit Reporting

- 15.1 Where the Goods are supplied to the Purchaser on credit the Purchaser irrevocably authorises the Seller, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade referees, the bankers of the Purchaser, any other providers of credit to the Purchaser and any credit reference services or organisations ("the information sources") and the Purchaser hereby authorises the information sources to disclose to the Seller such information concerning the Purchaser which is requested by the Seller.

16.0 Jurisdiction:

- 16.1 The law applicable to this contract shall be the law of Western Australia. Subject to the dispute resolution provisions of these terms and conditions, the parties hereby submit to the non-exclusive jurisdiction of the Courts of Western Australia.