

Terms and Conditions of Trade



1. Definitions

- 1.1 "Seller" shall mean SAMI Pty Ltd and its successors and assigns.
- 1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts if a Limited Liability Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods or Services shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods and Services

- 3.1 The Goods or Services shall be as described on the invoices, quotation, work, authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The weight or volume of Goods sold to the Buyer shall be the weight or volume determined by the Seller's system of weighing or measuring prior to delivery. Where product is measured by volume, the Seller's standard conversion factors shall be used to calculate weights.
- 3.3 The measure of Services sold to the Buyer shall be the weight, volume, area, time or other such measure determined by the Seller's system of measuring either prior, during or after the delivery of the Service. Where the service is measured by volume, the Seller's standard conversion factors shall be used to calculate weights.
- 3.4 Any description of Goods or Services contained in this agreement is given by way of identification only. The use of the description will not constitute this agreement as a sale by description.
- 3.5 Goods and Services are supplied in accordance with nominated specifications as confirmed by the Seller. The Seller makes no representations as to the type, or quantity of polymer, or other additives used.

4. Price And Payment

- 4.1 At the Sellers sole discretion;
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods or Services supplied; or
 - (b) The Price shall be the Seller's current price at the date of delivery of the Goods or Service according to the Sellers current Price list; or
 - (c) The price of the goods shall be the seller's quoted price, which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation within thirty (30) days.
- 4.2 The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods or Service to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs).
- 4.3 Time for payment of the Goods/Services shall be of the essence and will be upon the date of agreement.
- 4.4 At the Seller's sole discretion, payment for approved Buyers shall be due on delivery of the Goods/Services.
- 4.5 At the Seller's sole discretion, payment for approved Buyers shall be due thirty (30) days from the invoice date.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by direct debit, or by EFT transaction, or by any other method as agreed to between the Buyer and the Seller.

5. Delivery Of Goods

- 5.1 Delivery of the Goods/Service shall be made to the Buyer's address or the Buyers nominated location. The buyer shall make all arrangements necessary to take delivery of the Goods/Service whenever they are tendered for delivery, or delivery of the Goods/Services shall be made to the Buyer at the Sellers address. 60 minutes shall be allowed for unloading from the nominated delivery time. Demurrage delays and additional heating to maintain the standard temperature beyond the nominated delivery time will be charged to the Buyer at the Seller's standard Demurrage and Heating charges.
- 5.2 Delivery of Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.4 Charges to the Buyer for delivery arranged by the Seller will, unless otherwise quoted be in accordance with the Sellers standard delivery charges and will be based on a minimum load of 22 tonnes per delivery.
- 5.5 The Seller may deliver the Goods/Services by separate instalments (in accordance with the a greed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.6 Most Hot Binder Goods will be supplied to the Buyer at a minimum standard temperature of 180°C, for technical and safety reasons some binders may have to be supplied at a lower temperature.
- 5.7 The failure of the Seller to deliver shall not entitle either party to treat this contact as repudiated.
- 5.8 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods/Services (or any of them) promptly or at all.
- 5.9 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price of the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or

not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds as follows:

- (i) First, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
- (ii) Second, in payment of the Outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
- (iii) Third, in payment of any other sums payable to the Seller by the Buyer on any account;
- (iv) Fourth, any balance is to be paid to the Buyer.

7. Defects

7.1 The Buyer shall inspect the Goods/Service on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following the delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods/Service shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Return Of Goods

8.1 Except as provided in this clause, the Buyer is not entitled to return the Goods to the Seller for any reason. For defective Goods, which the buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods, or refunding the Price provided that:

- (a) The Buyer must notify the Seller within seven (7) days of delivery that the Goods are defective;
- (b) The Seller is given a reasonable opportunity to investigate the buyer's claim;
- (c) The Seller will not be liable for Goods, which have not been stored in a proper manner.

9. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Default & Consequences Of Default

10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller for any cost incurred in collecting or enforcing collection of all outstanding monies including but not limited to all solicitors cost and any collection agency charges.

10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods or Services to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

10.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services, the following shall apply: An immediate amount of \$25.00 shall be levied for administration fees which sum shall become immediately due and payable.

10.5 In the event that:

- (a) Any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b) The Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then

- (i) The Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) All amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

11. Title

11.1 It is the intention of the Seller and agreed by the Buyer that the property in the Goods shall not pass until:

- (a) The buyer has paid all amounts owing for the particular Goods: and
- (b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all the contracts between the Seller and the Buyer, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

11.2 It is further agreed that:

- (a) The Buyer shall not deal with the money of the Seller in any way, which may be adverse to the Seller.
- (b) Until such time as ownership of the Goods shall pass from the Seller to the Buyer, the Seller may give notice in writing to the buyer to return the goods or any of them to the Seller. Upon such notice, the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (d) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- (e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (f) The seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

12. Security And Change

12.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge, where appropriate, a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- c) To give effect to the provisions of clause [12.1 (a) and (b)] inclusive hereof the Buyer and/or Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and changes (whether registered or not) including such other terms and conditions as the Seller shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty and asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions in this clause.

13. Cancellation

- 13.1 The Seller may cancel these terms and conditions or cancel delivery of Goods or Service at any time before the Goods or Service delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

14. Lien & Stoppage in Transit

- 14.1 Where the Seller has not received or being tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
- (a) A lien on the goods;
 - (b) The right to retain them for the price while the Seller is in possession of them;
 - (c) A right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) A right of resale;
 - (e) The foregoing right of disposal.

15. Unpaid Sellers Rights to Dispose of Goods

- 15.0 In the event that:
- (a) The Seller retains possession of control of the Goods; and
 - (b) Payment of the Price is due to the Seller; and
 - (c) The Seller has made demand in writing of the Buyer for payment of the Price in terms of this agreement; and
 - (d) The Seller has not received the Price of the Goods, then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

16. Licences And Patents

- 16.1 All Goods are sold and Services performed on the understanding that any licences and permits under all relevant statutes, ordinances, rules and regulations have been obtained by the Buyer and the Buyer will ensure that the installation and use of the goods meets all statutory requirements.
- 16.2 The Buyer further warrants that any design or instruction furnished to the Seller will not cause the Seller to infringe any patent, copyright, registered design or trademark.
- 16.3 The sale and purchase of the Goods does not confer on the Buyer any licence or rights under any patent, registered design, trademark, confidential information, or copyright which is the property of the Seller.

17. General

- 17.1 If any provision of these Terms and Conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law, which affect the Goods supplied.
- 17.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these Terms and Conditions.
- 17.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 17.5 The Seller may licence or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 17.6 The Seller reserves the right to review these Terms and Conditions at any time and from time to time. If, following any such review, there is to be any change in such Terms and Conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 17.7 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

18. Privacy Act

- 18.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 18.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Buyer;
 - (b) To notify other credit providers of a default by the Buyer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) To assess the credit worthiness of the Buyer and/or Guarantor/s.
- 18.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 18.4 The Buyer agrees that the Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) Provision of Goods and Services;
 - (b) Marketing of Goods and/or Services by the Seller, its agents or distributors in relation to the Goods and Services;
 - (c) Analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods or Services;
 - (d) Processing of any payment instructions, direct debit facilities requested by the Buyer; and
 - (e) Enabling the daily operation of Buyer's account and/or the collection of the amounts outstanding in the Buyer's account in relation to the Goods and Services.
- 18.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) To obtain a customer credit report about the Buyer; and/or
 - (b) Allow the credit-reporting agency to create or maintain a credit information file containing information about the Buyer.