

## **Terms & Conditions of Sale**

### **1. DEFINITION**

In these 'Terms & Conditions'

- a) the 'Seller' means Renhurst Ceiling Pty Ltd
- b) the 'Buyer' means any person who buys or agrees to buy the goods; and
- c) the 'Goods' means any item of whatsoever nature which is sold by the Seller

### **2. GENERAL**

Notwithstanding anything contained in any order or other document from the Buyer, these conditions shall be the only terms, conditions or warranties applicable with the exception of any amendments or other agreements agreed to by the Seller in writing

### **3. FUTURE DEALING**

Unless otherwise agreed to in writing by the Seller and notwithstanding any terms appearing in documentation provided by or on behalf of the Buyer the terms appearing herein shall be incorporated by implication into all subsequent agreements by the Seller to supply the Buyer with goods

### **4. LAW & JURISDICTION**

Nothing in these Conditions of Sale is intended to exclude, restrict or modify any statutory obligation of the Seller implied by the Trade Practices Act, 1974 or any State legislation if that cannot be lawfully excluded.

### **5. PAYMENT**

Unless otherwise agreed by the parties in writing, payment shall be 30 days from the date of statement of account. Should payment not be received within this time any discount shown or offered will be re-invoiced and become due and payable.

### **6. INSOLVENCY & DEFAULT**

If –

- a) the Buyer makes default in any payment due hereunder
- b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Buyer
- c) a receiver or a receiver and manager is appointed of the property or any part of the property of the Buyer
- d) the Buyer makes or proposes to make any arrangement with its Creditors
- e) the Buyer is placed under official management
- f) execution is levied upon the assets of the Buyer for an amount in excess of \$1,000.00 and is not within seven (7) days satisfied.

In any such event the Seller may at its option withhold further deliveries or cancel any contract without prejudice to its rights hereunder PROVIDED HOWEVER that the Seller may at any time from time to time upon such terms as it may determine waive any of its rights under this Clause, but without prejudice to its right thereafter to rely upon the happening thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver

### **7. PROPERTY – RETENTION OF TITLE**

- a) the products and any other goods delivered by the Seller to the Buyer shall remain the sole and absolute property of the Seller as legal and equitable owner until such time as all money due to the Seller has been paid by the Buyer but shall be at the Buyer's risk from the time of delivery to it
- b) The Seller may for the purpose of examination or recovery of its goods, enter upon any premises where they are stored or where they are reasonably thought to be stored.
- c) The Buyer warrants that it is not at the time of entering into this agreement insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.
- d) Notwithstanding any of the other provisions of this clause, payment shall become due immediately upon the Buyer doing any act which entitles any person to apply to wind up the Buyer or to have or apply to have a receiver and manager of the Buyer appointed

### **8. GUARANTEE & WARRANTY**

- a) Except where the Buyer is a Consumer for the purpose of the Trade Practices Act 1974 and the conditions warranties and rights implied by that statute cannot be excluded, and subject always thereto representation promises statements and conditions (whether (subject to aforesaid) statutory express or implied) regarding any goods or services supplied by or on behalf of the Seller and expressly excluded. The Seller shall not be liable for any loss or damage whatsoever and howsoever arising whether direct indirect or consequential or in respect or any claim whenever and however made any loss damage deterioration deficiency or any other fault or harm in the goods manufactured, work executed or services provided by or on behalf of or in any arrangement with the Seller of occasioned to the Buyer or any third or other party or to his or her property or interest and whether or due to the negligence of the Seller its servants or agents
- b) As soon as any of the facts or matters which from any part of any claim or complaint whatsoever become known to the Buyer, the Buyer shall within fourteen days notify the Seller in writing of the same  
The Seller's liability shall be limited in all circumstances to the repair or replacement at the option of the Seller of any goods which are returned only upon the written authority of the Seller
- c) The Seller shall not be liable in any circumstances for any:
  - (i) defects or damage caused in whole or in part by misuse, abuse, neglect, improper installation repair or alteration (other than by the Seller) or accident
  - (ii) any transport, installation, removal, labour or other costs
  - (iii) goods not manufactured by it but the Seller will endeavour to pass on to the Buyer the benefit of any claim made by the Seller and accepted by the Buyer and benefit of any claim made by the Seller and accepted by the manufacturer of such goods under a warranty given by the manufacturer provided that nothing contained in this sub-paragraph shall limit the rights of the Buyer to proceed against the Seller pursuant to the Trade Act 1974

### **9. PRICE**

All goods sold are at the price current at the time of delivery and where any discount is shown it is agreed by the Buyer that this discount will become due and payable if the goods supplied are not paid for within the terms set out herein.

**10. FORCE MAJEURE**

Deliveries may be totally or partially suspended by the seller during any period in which the Seller may be prevented or hindered from effecting delivery by its normal means of supply or delivery by normal route by reason on any circumstances outside its reasonable control (including, but not limited to strikes, lockouts, shortages of materials, accidents or breakdowns of plant or machinery). In the event that because of short supply of any material or finished stock the Seller should be unable to supply it may in its sole and unfettered discretion supply a proportion of available supply to any of its Buyers without being thereby in breach of contract.

**11. SELLERS CHARGERS**

The Seller reserves the right to increase the amount charged on any invoice from time to time in accordance with the Seller's pricing policy

**12. RISK**

Unless otherwise agreed in writing all goods shall be at the Buyers risk upon delivery to the Buyer his carrier or agent

**13. INSURANCE**

In the event that the goods are covered by insurance taken out by the Seller, the Seller will only be liable to the extent of any indemnity provided

**14. CLAIMS**

Unless the Buyer shall within seven days from delivery of any of the goods give notice to the Seller of any matter of thing by whereof it may be alleged that any such goods are not in accordance with the Conditions of Sale, the said goods shall be deemed to be in all respects in accordance with the Conditions of Sale and the Buyer shall be bound to pay for the goods accordingly

**15. WAIVER**

Failure by the Seller to insist strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which the Seller may not and shall not, and nor shall any express waiver be deemed to be a waiver of any subsequent breach of any term or condition

**16. CANCELLATION**

Subject to Section 75a of the Trade Practices Act 1974 and without limiting the entitlement of the Buyer to rescind a contract as provided in that Section, any order may only be cancelled, varied or suspended with the written consent of the Seller. The Seller may at its discretion charge the buyer for any costs or penalties incurred due to any cancellation by the Buyer.

**17. RISK ON USAGE**

The Buyer assumes all risk and liabilities for consequences arising from the use of the goods whether singly or in combination with other goods and indemnities the Seller in respect of any such use. The Seller is not liable for any infringement of patent rights arising out of the use of such goods by the Buyer or the Buyer's instructions express or implied. It is the responsibility of the Buyer to ensure that the goods when used by him/her are not damaged and no liability will be accepted by the Seller for the consequences of the use of damaged goods by the Buyer

**18. HEALTH & SAFETY**

It is the Buyers responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage handling and use of the Goods and where information is supplied to the Buyer on potential hazards relation to the goods to bring such information to the attention of its employees agents, sub contractors, visitors and customers. Without prejudice to the foregoing, it is also the Buyers responsibility to provide safe facilities for the reception of the Goods into storage. The Buyer hereby indemnities and shall keep indemnified the Seller against all actions, claims, demands, summonses suits, proceedings, judgements, orders or decrees arising out of or in connection with any act or omission of Buyer in respect of its obligations pursuant to this clause

**19. QUALITY OF PRODUCT**

The goods delivered under this Agreement shall be of normal industrial quality unless herein specifically stated to the contrary. Any description of such goods has been given by any way identification only and the giving or use of such description shall not constitute any sale hereunder a sale by description

**20. SUITABILITY OF PRODUCT**

As the Seller cannot anticipate every possible application for its products nor variations in manufacturing equipment and methods, all products are sold on the condition that the Buyer relies on his own ability to determine the suitability of each product for a particular purpose. Statements concerning the possible use of the Seller's products are not intended as recommendations for use

**21. PROOF OF DELIVERY**

The Seller's delivery records shall be prima facia proof of delivery of the goods in good order to the Buyer and of the quantity, quality and description stated therein and shall be evidence of receipt by the Buyer notwithstanding the absence of any representative of the Buyer at the delivery site

**22. INTERPRETATION**

- a) the contra preferentum rule shall not apply to the Condition of Sale
- b) any notice, communication or other document Authorised or required to be given pursuant to the conditions of Sale may be sent by telex or facsimile transmission