

# STANDARD TERMS & CONDITIONS OF SALE

1. **Dictionary**
  - (a) "Seller" means Abrasiflex Pty Ltd being the supplier of the Goods delivered or services provided or, such other company being a related body corporate of the Seller or a related body corporate of its parent or holding company which can accept any order from the Buyer.
  - (b) "Buyer" means the person, corporation or members of a firm who buy or buys or has agreed to buy the Goods, has accepted the Goods for evaluation or has accepted the Goods on consignment for resale;
  - (c) "Goods" means any item of whatsoever nature which is sold by the Seller and invoiced to the Buyer and includes any extras which are provided by the Seller,
  - (d) "GST" means the goods and services tax within the meaning of the GST Act;
  - (e) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* as amended;
  - (f) "Purchase Price" means the price for the Goods specified on the Seller's invoice or any delivery docket given to the Buyer in connection with the Goods and any other charges payable in connection with the sale of the Goods. Where the purchase price is not paid within the time specified for payment the expression shall also include interest for liquidated damages, arising as a result of payment default calculated at the rate specified in clause 4(b); and
  - (g) "Premises" means those premises of the Seller from which the Goods are supplied to the Buyer.
2. **General**
  - (a) These conditions shall apply to every sale made or agreed to be made by the Seller and no variation or abrogation of the same shall be effective unless it is evidenced in writing signed on behalf of the Seller. To the extent to which the terms of any written quotation or order differ from these conditions of sale the acceptance thereof shall be deemed to be an offer to supply on the terms and conditions contained therein and acceptance of the Goods thereafter shall constitute acceptance of the Goods on these conditions of sale except as changed or modified by any special terms and conditions of the written quotation or order.
  - (b) The Seller may from time to time alter its trading terms or these terms and conditions and such altered conditions shall apply in respect of all transactions taking place after notification to the Buyer of such altered conditions.
  - (c) The standard terms and conditions of sale are included in all updated price lists issued by the Seller and are published on its web site and on the reverse of its invoice.
3. **Price**
  - (a) Unless otherwise stated on the face hereof the Purchase Price includes the cost of basic packaging.
  - (b) The Seller shall be entitled without notice to the Buyer to adjust the Purchase Price, whether before or after acceptance of the Goods, in the event of and to account for any increase in the cost to the Seller of supplying the Goods as the result of increases in costs of transport or insurance, or in rates of any applicable taxes in respect of the supply of the Goods including any duty, charge or levy in respect of the export or import of goods, or changes in the classification or value of goods for customs purposes, or any changes in applicable exchange rates or in the event of delays by the Buyer in providing any information required by the Seller for the supply, dispatch or delivery of the Goods, or any other impost arising after the sale.
  - (c) Where a party to these Conditions (Supply Maker) makes a Taxable Supply (within the meaning of the GST Act) under or in connection with these Conditions to another party to these Conditions (Recipient) and the consideration otherwise payable for the Taxable Supply is not specifically stated to include GST, the Supply Maker will be entitled to recover from the Recipient as an additional amount the amount of any GST payable on the Taxable Supply. The additional amount is payable by the Recipient at the same time and in the same manner as the Purchase Price is payable.
  - (d) The amount of any cost recovery or compensation for costs under or in connection with these Conditions shall be reduced by the amount of any Input Tax Credits (within the meaning of the GST Act) available in respect of those costs.
  - (e) A party to these conditions will not be obliged to pay any amounts in respect of GST to the other party unless and until a Tax Invoice (within the meaning of the GST Act) has been issued in respect of that GST.
4. **Payment, Default and Limit**
  - (a) Unless otherwise agreed by the Seller and the Buyer in writing, the Purchase Price shall be paid within thirty (30) days of the end of the month in which the Seller's invoice is dated.
  - (b) Time for payment of the Purchase Price shall be of the essence of the contract and if the Buyer fails to pay the Purchase Price when due, the Seller may treat the contract as repudiated by the Buyer or may, until payment in full is made, suspend delivery of the Goods the subject of the contract and any Goods the subject of any other contract with the Buyer without incurring any liability whatsoever to the Buyer in respect thereof. In addition, but without prejudice to such rights of the Seller, the Buyer shall pay compounding interest on a daily balance basis to the Seller on the overdue outstanding Purchase Price at the rate of 1.5 per cent per month from time to time until the Purchase Price is paid in full. Further, all moneys owing and outstanding to the Seller on any account whatsoever by the Buyer shall become immediately due and payable at the option of the Seller if any of the following events occur:
    - (i) in the case of a corporation:
      - (1) the corporation is dissolved or wound up;
      - (2) a liquidator or provisional liquidator is appointed in respect of that corporation;
      - (3) the corporation enters into a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, except if it does so in order to reconstruct or amalgamate while solvent on terms approved by the Seller;
      - (4) the corporation is or becomes insolvent within the meaning of that expression in section 95A(2) of the Corporations Act or any of the events mentioned in paragraphs (a) to (f) inclusive of section 459C(2) of the Corporations Act occurs in respect of the corporation;
      - (5) an administrator or a receiver, manager or receiver and manager is appointed in respect of the corporation or any of its assets and undertaking; or
      - (6) anything analogous or having a substantially similar effect to any of the events specified above happens;
    - (ii) in the case of an individual:
      - (1) the individual enters into a personal insolvency agreement, scheme of arrangement, composition with or an assignment for the benefit of any of his creditors or any class of creditors;
      - (2) the individual commits an act of bankruptcy; or
      - (3) anything analogous or having a substantially similar effect to any of the events specified above happens;
  - (c) The Seller can at any time without notice to the Buyer alter or terminate the Buyers credit limit or terms. The Seller accepts no liability howsoever in the application of this condition.
  - (d) Any moneys paid by the Buyer shall be firstly applied to payment of all interest owing, secondly to any other costs which are applicable under these conditions of sale (if any) and thereafter any residual of the amount paid shall be applied against the Purchase Price of the Goods.
5. **Recovery**

The Seller may charge the Buyer with all reasonable expenses (including, but not limited to transportation, storage costs, collection and recovery costs and legal costs) incurred by the Seller to enforce payment of any debt owed by the Buyer to the Seller or otherwise in enforcing these terms and conditions of sale.
6. **Delivery**
  - (a) Any time or date named or accepted by the Seller for delivery, dispatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract or part of the description of the Goods. The Seller shall not be under any liability whatsoever for the consequences of any delay as a result of any cause outside its reasonable control and, in particular, but without prejudice to the generality of the foregoing, the Seller shall be under no liability whatsoever for any delay in delivery, dispatch, shipment or arrival of the Goods or in the tender of any documents caused (directly or indirectly) by acts of God, war, riots, strikes, lockouts, trade disputes, fires, breakdowns, mechanical failures, interruption of transport, government action or by any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of the Seller and in any such event the time for delivery, dispatch, shipment or arrival of the Goods or tender of documents may be extended by the Seller (or the Seller may cancel the contract without any liability whatsoever on its part). Time for completion, delivery, dispatch, shipment or arrival of the Goods or for the tender of any documents is not of the essence of the contract.
  - (b) In the event of production of the Goods or any part thereof by the manufacturer of the Goods being hindered or impaired or ceasing for any cause whatsoever outside the reasonable control of the Seller, the Seller may notify the Buyer that it is unable to fulfil the contract and may cancel the contract without being under any liability whatsoever save for an obligation to return to the Buyer any money received by the Seller in respect of the Goods at that time.
  - (c) Unless otherwise stated in writing the Seller may make partial deliveries or deliveries by instalments in any amounts it may determine and each such partial delivery or delivery by instalment shall be deemed to be separate contracts and these conditions of sale shall apply to each partial delivery or delivery by instalment.
  - (d) No return of Goods by the Buyer will be accepted by the Seller after a period of 60 days from the date of the Seller's invoice.
7. **Claims**

The Buyer shall notify the Seller in writing within seven (7) days of the date the Goods are delivered if the Seller is responsible for any shortfall in or loss or damage to the Goods delivered (these expressions include Goods which are defective or non-conforming) and shall ensure the Goods are kept intact for inspection by the Seller. Failure to comply with this provision shall, to the full extent permitted by law, disentitle the Buyer to any remedy in respect of the shortfall, loss or damage. (The Seller may at its discretion refuse Goods for return for any reason other than the conditions contained herein.) Without limiting the provisions of any other condition within these conditions of sale, the Seller's liability with respect to claims shall not exceed the Purchase Price of the Goods. The Seller may at its discretion replace Goods which are the subject of a claim, at no extra cost to the Buyer, and the replacement Goods shall be subject to these conditions of sale. The Seller shall not be liable for freight costs on Goods returned by the Buyer.
8. **Property**
  - (a) Property and ownership in the Goods will not pass to the Buyer but will remain in the Seller until payment in full of the Purchase Price of the Goods and all other amounts owing is made to the Seller by the Buyer.
  - (b) Risk in the Goods will pass at the time of delivery and the Buyer must insure the Goods.
  - (c) Until property in the Goods passes to the Buyer:
    - (i) the Buyer will hold the Goods as fiduciary bailee and agent for the Seller;
    - (ii) after giving 46 hours notice to the Buyer the Seller is entitled to enter upon the Buyer's premises between 9a.m. and 5 p.m. to inspect the Goods;
    - (iii) the Goods are to be stored separately and in a manner to enable them to be readily identifiable as the Seller's property;
    - (iv) the proceeds of any Goods sold are to be kept in a separate account and must not be mixed with any other monies, including funds of the Buyer;
    - (v) the Buyer must return the Goods to the Seller on demand;
  - (d) In the event that the Buyer fails to return the Goods following the making of a demand, the Seller is entitled to enter the Buyer's premises for the purpose of taking possession of the Goods and the Seller may resell the Goods to another person.
  - (e) The Buyer acknowledges that if it mixes the Goods with other products or items so that the Goods are no longer separately identifiable, the Buyer and Seller will be owners in common of the new product.
  - (f) The authority of the Buyer to sell the Goods does not extend to the making of any warranties or conditions which exposes the Seller to liability to another person (except as to the price, the terms of payment and like provisions) and the Buyer must ensure that to the full extent permitted by law all conditions, warranties implied or imposed by law are excluded and where such a condition cannot be excluded that the Seller's liability is limited to the full extent permitted by law.
  - (g) The Buyer shall not attempt to give or allow any security interest over the Goods in favour of another person.
  - (h) The conditions of this clause 8 apply notwithstanding any arrangement between the parties under which the Seller grants the Buyer credit.

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9. **Exclusion Of Liability**
- (a) Unless otherwise agreed in writing to the maximum extent permitted by law the only warranty provided by the Seller in respect of the Goods (if any) is that warranty provided by the manufacturer of the Goods and the liability of the Seller pursuant to such warranty is limited to any amounts received by the Seller from the manufacturer.
- (b) To the full extent permitted by law:
- (i) the Seller gives no condition or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or any special use or purpose and the description of the Goods in any contract or other document shall not import any such condition or warranty on the part of the Seller;
- (ii) all statutory and implied conditions and warranties except as to title are excluded; and
- (iii) it is the responsibility of the Buyer to inspect the Goods and satisfy himself as to the condition, quality, suitability and fitness of the Goods for his purposes prior to the use or resale of the Goods. If the Buyer fails to inspect the Goods in connection with the requirements specified in this clause 9(b)(iii), he shall have forfeited any right for compensation of any kind and must pay the full Purchase Price of the Goods to the Seller,
- (iv) the Seller assumes no liability (whether for negligence or otherwise) for any technical advice or assistance given or the results obtained therefrom and any such advice is given and accepted at the Buyer's risk;
- (v) the Seller shall be under no liability whatsoever for any defects (including any defect caused by the loading of the Goods) in, or deterioration or failure of, the Goods or any part thereof (or any goods supplied with the Goods or any part thereof) whether due to design, workmanship or materials or to any cause whatsoever unless the same is due to the negligence or wilful default of the Seller or its employees or agents. The Seller shall be under no liability whatsoever for any failure of the Goods (other than in relation to a substantial ingredient of the identity of the Goods) to correspond with any description (including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transport of the Goods);
- (vi) the Seller shall be under no liability to the Buyer for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply or failure to supply the Goods.
- (c) Notwithstanding anything else in these conditions of sale, the Buyer will have the benefit of any liability of the Seller arising under a statute (including the *Trade Practices Act 1974*) to compensate or indemnify the Buyer to the extent to which the liability is prohibited by the statute from being excluded, restricted or modified.
10. **Indemnity**
- The Buyer shall comply with all instructions of the Seller in relation to the handling, fitting, installation and use of the Goods and, notwithstanding such compliance, the Buyer shall keep the Seller indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, (including loss of profit) which may be made against the Seller or which the Seller may sustain, pay or incur as a result of or in connection with the sale, export, import or use of the Goods unless such cost, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, the Seller or a duly authorised employee or agent of the Seller.
11. **Health and Safety**
- It is the Buyer's 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 relating to the Goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage.
12. **Packages, Pallets and Containers**
- A deposit charge may be made by the Seller at its discretion for any returnable packages, pallets or containers as supplied by the Seller for delivery of the Goods. Such packages, pallets or containers must be returned in good condition within a period of thirty (30) days of delivery otherwise, the Buyer will be liable for payment of the deposit amount within the agreed thirty (30) days payment terms unless an alternative agreement has been made in writing.
13. **Taxes, Duties**
- The Buyer shall pay to the Seller in addition to the price of the Goods all taxes (including GST), duties, imposts or other levies thereon or in respect thereof charged to the Seller or for which the Seller may be liable when demand is made thereafter (whether in the invoice for the Goods or otherwise). It is the Buyer's responsibility to supply the prescribed certificates exempting payment of taxes within the acceptable period, otherwise taxes are for the account of the Buyer.
14. **Proper Law and Jurisdiction**
- All contracts made between the Seller and the Buyer in Australia shall be governed by and construed in accordance with the laws of the State of Western Australia. The Buyer agrees to submit to the non-exclusive jurisdiction of the Western Australian courts for all purposes of or in connection with such contracts.
15. **Intellectual Property Rights**
- The Buyer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of the manufacturer of the Goods or Seller attached to or placed upon the Goods.
16. **Resupply**
- In connection with the resupply of Goods: (a) the Buyer shall not make any false representations as to the suitability of those Goods for a particular purpose, the description of those Goods, their merchantable quality or any other representation which will constitute a breach of any condition or warranty implied by law; and (b) the Buyer shall distribute to every customer all such warnings, instructions and like information relating to those Goods which the Seller has provided to the Buyer.
17. **Modifications**
- Where the Buyer resupplies the Goods, the Buyer shall not in any way without the consent of the Seller interfere with the Goods or change the composition or appearance of the Goods. Without limiting the generality of the foregoing, the Buyer shall not conceal, remove or otherwise interfere with any warnings, labels or other markings on or affixed to the Goods.
18. **Licences and Consents**
- The obtaining and maintenance in full force and effect of any necessary export or import licences, authorisations or consents in respect of the Goods is the sole responsibility of the Buyer and the Seller shall be under no liability whatsoever in respect of Goods exported or imported without any necessary licences, authorisations or consents.
19. **Return of Goods**
- (a) A restocking charge of 15% may be applied by the Seller at its discretion for Goods returned for credit.
- (b) Goods cannot be returned for credit in any of the following circumstances:
- (i) the Goods have been cut to length or customised for the Buyer;
- (ii) the Goods have been specifically manufactured or purchased for the Buyer;
- (iii) the Goods have been damaged or altered by the Buyer;
- (iv) the period since invoice date exceeds two months.
- (c) The receipt of Goods returned to the Seller is not to be taken as an assumption of liability by the Seller to issue a credit. The Seller maintains the right to establish the condition of the Goods and circumstances of the return. The Seller may reject any claim for credit unless the Goods are returned to its Premises.
20. **Storage of Information**
- The Seller may acquire, use and store information necessary to establish the credit worthiness of an applicant for credit (and any guarantor) and to allow the Seller to share information with external credit providers within normally accepted commercial practices and the privacy laws.
21. **Miscellaneous**
- In this document, unless the context indicates a contrary intention:
- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) the word "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.
22. **Trustee**
- If any party to this document is acting in its capacity as the trustee of any trust then, by its execution of this document, that party represents and warrants to the others that:
- (a) it is the sole, duly appointed trustee of the trust;
- (b) it has the full and unfettered power as trustee of the trust to enter into this document and to carry out all and singular its obligations under this document and has taken all corporate and other action necessary to authorise entry into this document and the carrying out of all matters and things provided for or contemplated by this document;
- (c) it executes this document in its capacity and pursuant to its powers as trustee of the trust;
- (d) it has the right to be indemnified out of the assets of the trust in respect of all obligations undertaken or incurred by it under this document; and
- (e) this document constitutes a legal, valid and binding obligation of that party in its capacity as trustee of the trust.