

# Terms of Trade - Rubber Auto Supplies Pty Ltd t/as Australian Rubber & Plastics

## 1. Definitions

- 1.1 "Seller" shall mean Rubber Auto Supplies 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 of the Buyer if a Limited Liability Seller 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 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 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with consent of the manager of the Seller.  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

- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement or sales order forms as provided by the seller to the Buyer.  
3.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivery shall be either greater or less than the quantity purchased provided that;  
(a) such discrepancy in quantity shall not exceed 5%  
(b) the Price shall be adjusted pro rata to the discrepancy

## 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 supplied; or  
(b) The Price shall be the Price of the Seller's current Price at the date of delivery of the Goods.  
(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 quote within thirty (30) days  
4.2 At the Sellers sole discretion a deposit may be required upon ordering the Goods/Services. On confirmation of the order the deposit shall become immediately due and payable.  
4.3 Time for payment for the Goods and/or Service shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery of the Goods/Services  
4.4 For approved buyers, and with the approval of the Seller, payment shall be due 30 days from the end of month of purchase.  
4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by EFT, or any other method as agreed to between the Buyer and the Seller.  
4.6 The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

## 5. Delivery

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the buyer at the Sellers address.  
5.2 Delivery of the 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 that 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 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.  
5.5 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.  
5.6 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.  
5.7 The failure of the Seller to deliver shall not entitle either party to treat this contract 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 (or any of them) promptly or at all.

## 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 for 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 without the need for any person dealing with the Seller to make further enquires. The Seller will apply 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 on delivery or installation and shall within thirty (30) days of delivery or installation 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 and installation within a reasonable time following delivery. If the Buyer shall fail to comply with these provisions the Goods 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) repairing or replacing the Goods, or refunding the Price provided that:  
(a) the Buyer must notify the Seller within 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 or used in a proper manner; and  
(d) the Buyer shall return all paperwork, delivery dockets and invoices as well as all packaging, manuals, and accessories in original condition.

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

- 9.1 Nothing in this agreement is intended to have the affect 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 and 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 from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the costs of collection.  
10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods 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 Goods or Services the following shall apply: An immediate amount of \$50.00 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 due and payable.

## 11. Title

- 11.1 It is the intention of the Seller and agreed by the Buyer that the property of 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 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 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 held responsible for any damage thereby caused.

- (d) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.
- (e) 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.
- (f) The Seller may require payment of the Price or the balance of the Price due together with any 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.
- (g) 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 Charge

- 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 other manner in accordance with this clause and/or its sub-clauses, the Buyer and/or the 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) & (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 charges (whether registrable 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 or 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 Guarantors obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give to the provisions of this clause.

## 13. Moulds, Dies, Tools and Jigs (the Works)

- 13.1 Works manufactured by the Seller (or its agents) that are used in the production and supply of goods and services for the Buyer
- (a) Shall remain the property of the Seller unless otherwise agreed to in writing;
  - (b) The Supplier may charge the Buyer a set up charge for the creation and construction of the Works and for services involved in the installation of the Works;
  - (c) Shall include intellectual property in and to such works.
- 13.2 Where the Buyer delivers to the Seller any mould, dies, tool, jig or other item/s to be used from time to time by the Seller in the manufacture of goods and services for the Buyer, then
- (a) The Buyer shall be liable for any loss of or damage to the said item/s;
  - (b) At the discretion of the Seller, the Buyer shall reimburse the Seller for reasonable maintenance and storage costs;
  - (c) The Buyer shall have the right to request the Seller to return the said item/s notwithstanding that the onus of proof of ownership shall rest with the Buyer to the extent that if the Buyer is unable to provide sufficient proof then the said item/s shall remain the property of the Seller;
  - (d) The Seller shall not be required to return any of the said item/s whilst any invoices raised by the Seller upon the Buyer remain unpaid.

## 14. Cancellation

- 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods and Services at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the price for those Goods. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

## 15. Privacy Act 1988

- 15.1 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.
- 15.2 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 Buyer and/or Guarantor/s.
- 15.3 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).
- 15.4 The Buyer agrees that 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 & Services;
  - (b) marketing of Goods and/or Services by the Seller, its agents or distributors in relation to the provision of Goods or Services.
  - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the Goods or Services;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by buyer; and
  - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.
- 15.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer 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.

## 16. Buyers Disclaimer

- 16.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

## 17. Unpaid Sellers rights to dispose of Goods

- 17.1 In the event that:
- (a) the Seller retains possession or 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.

## 18. Lien & Stoppage in Transit

- 18.1 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like 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; and
  - (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,
- provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

## 19. Intellectual Property

- 19.1 Where the Seller has designed, drawn or constructed Goods for the Buyer then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 19.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller may look for an indemnity for the specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

## 20. General

- 20.1 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, prejudice or impaired.
- 20.2 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.
- 20.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss or profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 20.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 20.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 20.6 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, the 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.
- 20.7 Any variation from the plan of scheduled works or specifications, or from measurements taken on site, will be charged for on the basis of this quotation and will be shown as extras on the invoice. Payment for all extras must be made in full at their time of completion.