

## TERMS AND CONDITIONS - CAFORD AUSTRALIA PTY LTD – ACN 603 713 748

### DEFINITIONS

“**The Company**” shall mean Caford Australia Pty Ltd (ACN 603 713 748) of 13-15 South Link, Dandenong South, Victoria 3175 and its successors and assigns.

“**The Customer**” shall mean the individual, partnership or corporation to whom credit may be granted and/or Goods are supplied by the Company.

“**Goods**” shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of services).

### RECITALS

The Company agrees to sell to the Customer and the Customer agrees to purchase from the Company subject to these terms and conditions. Unless otherwise agreed in writing, all quotations are made, and all orders are accepted subject to these terms and conditions notwithstanding anything that may be stated to the contrary on the Customer's enquiries or orders. This document, notwithstanding the time of its signing or delivery, embodies the sole terms and conditions of contract between the Company and the Customer, and shall supersede all other conditions and agreements between the parties unless expressly amended in writing. No alteration or variation of its terms and conditions shall be binding on the Company unless authorised by the Company in writing. This document also serves as a notice that these terms and conditions shall without further notice apply to all future transactions between the Company and the Customer whether or not this document is delivered or executed in the course of such transactions.

### 1. QUOTATIONS AND ORDERS

- (a) Unless otherwise stated quotations will remain valid for thirty (30) days from the date appearing on the face of the quotation after which date they are subject to alteration or withdrawal without notice. A quotation by the Company shall not be deemed to be an offer to sell.
- (b) An order or an offer to purchase is accepted only when the Company confirms its acceptance in writing; until then the estimates and quotations submitted by the Company are not binding.
- (c) Any modification agreed verbally will be effective only after confirmation by the Company in writing.
- (d) Orders or offers to purchase, if accepted, are subject to the understanding that any orders may be manufactured in whole or in part by any manufacturer in any part of the world.
- (e) All prices quoted by the Company exclude GST.

### 2. PAYMENT AND DEFAULT

- (a) Full payment for an order is required upon an order being placed unless credit terms have been granted or otherwise notified by the Company in writing.
- (b) Payment can be made either by Direct Credit (EFT) into the Company's account, Credit Card, Cheque (by arrangement) or Cash.
- (c) The Company may apply a payment received from the Customer to any accounts owed by the Customer (including interest, part payment of an invoice, administration, collection and other costs) in any order.
- (d) All payments must be made without retention, deduction or set-off of any kind.
- (e) Interest is payable on overdue accounts at the rate prescribed under the *Penalty Interest Rates Act 1983 (Vic)* plus an additional 2%. Any payment received will be applied first against any interest accrued.
- (f) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's loss and damage in respect of any recovery action including, without limitation, all solicitors' fees (on an indemnity basis), commercial agents' commission, bank fees, freight, insurance, loss of profit and interest.
- (g) Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these terms and conditions including, but not limited to, ceasing the provision of further credit to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- (h) In addition to any right of lien or other security to which the Company may be entitled by law, the Company shall in the event of the Customer's insolvency, be entitled to a general lien on all Goods of the Customer in the Company's possession, even if such Goods or some of them may have been paid for, against any outstanding amount for these or any other Goods sold and delivered by the Company to the Customer, under this or any other contract.
- (i) If the Customer defaults in any payment or commits any act of insolvency, the Company may, without prejudice to its own rights, suspend further deliveries, require payment in advance for all such deliveries, or terminate any contract forthwith, by written notice to the Customer.
- (j) The Customer may be charged administration charges if:
  - (i) it requests alterations to an order, and/or
  - (ii) it fails to provide accurate and correct billing and delivery details at the time it places its order.
- (k) Any discount offered by the Company is at its complete discretion and will only be available provided the Customer is not in breach of any part of these terms and conditions and is not in default in any of its dealings with the Company.

### 3. TITLE AND REGISTRATION OF SECURITY INTEREST

- (a) It is the intention of the Company and agreed by the Customer that property in the Goods shall not pass until:
- (i) the Customer has paid all amounts owing to the Company; and
  - (ii) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer, and that the Goods, or proceeds of the sale of the Goods shall be kept separate until the Company has received payment and all other obligations of the Customer are met.
- (b) It is further agreed that:
- (i) the Customer shall not deal with the money of the Company in any way which may be adverse the Company;
  - (ii) the property in the Goods remains with the Company and the Customer agrees to hold the Goods as bailee for the Company;
  - (iii) if the Customer fails to return the Goods to the Company upon demand then the Company or the Company's agent may terminate the bailment and enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage caused;
  - (iv) receipt by the Company 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 recognized and until then the Company's ownership of rights in respect of the Goods shall continue;
  - (v) the Customer shall not charge the Goods in any way or grant nor otherwise give any interest in the Goods while they remain the property of the Company;
  - (vi) the Company may require payment of the amount due from the Customer for Goods sold or the balance of such amount with any other amounts due from the Customer to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of such amounts due; and
  - (vii) the Company can issue proceedings to recover any amounts due from the Customer to the Company notwithstanding that ownership of the Goods may not have passed to the Customer.
- (c) The Company's retention of title pursuant to the terms set out in this clause constitutes a Purchase Money Security Interest ('PMSI') as contemplated by the Personal Property Securities Act 2009 ('the PPS Act'). To protect its security interest in the Goods until payment the Company may choose to register it under the PPS Act. The Customer agrees to do all things necessary to facilitate such registration.
- (d) In accordance with section 157(3)(b) of the PPS Act the Customer hereby waives its right to receive notice of registration in the event the Company opts to register its security interest on the Personal Property Security Register.
- (e) To the extent that chapter 4 of the PPS Act would otherwise apply to an enforcement by the Company of any security interest under these Terms and Conditions, each party agrees that the following provisions of do not apply:
- (i) to the extent that section 115 (1) of the PPS Act allows them to be excluded: sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and,
  - (ii) to the extent that section 115 (7) of the PPS Act allows it to be excluded: sections 127, 129 (2) and (3), 132, 133(1)(b) (insofar as it relates to a security interest of the Company), 134 (2), 135, 136 (3), 136 (4), 136 (5) and 137.

### 4. DELIVERY OF GOODS

- (a) The risk in the Goods purchased shall unless otherwise agreed in writing pass to the Customer upon delivery to the Customer or his agent or to a carrier commissioned by the Customer.
- (b) The Customer is deemed to accept delivery of Goods when the said Goods are placed at the Customer's disposal at the named place of destination and all subsequent transportation of the said Goods shall be carried out at the expense and risk of the Customer, whether carried out under his direction or not.
- (c) The Company shall have the right to charge the Customer with all costs incurred due to storage, detention, double cartage, or similar causes, whether or not the costs are incurred at the Customer's request, if occasioned by the Customer's inability or failure to accept delivery of Goods when delivered or ready for delivery by the Company. Should the Customer for any reason be unable or fail to accept delivery of the Goods the Company shall have the right to deposit the Goods in any place of storage nominated by the Customer, or failing such nomination in any store determined by the Company. Delivery to such store shall in all respects be deemed to be delivery to the Customer.
- (d) If, upon taking delivery of the Goods, the Customer or his agent signs a receipt for the Goods which states that the said Goods were received in good order and condition or words to that effect, and the Goods are later found to have been damaged in transit, or part of the Goods are found to be missing, and the signing of the said receipt thereby prejudices a possible claim by the Company or the Customer against a third party, the Company shall be free from all liabilities with respect to the loss or damage for which the Company does not recover from the third party.

### 5. DELIVERY DATE

The Company will make all reasonable efforts to have the Goods delivered to the Customer on the date(s) agreed between the parties as the delivery date(s), but the Company is under no liability whatsoever should delivery not be made by the period stated. Any delivery date specified is an estimate and approximate only.

## **6. FORCE MAJEURE**

The Company accepts no liability and shall not be or be deemed to be in fault or breach of any contract where delivery within any time agreed is prevented or hindered by reason of delays in manufacture or transportation arising from any of the following causes or being in any way incidental: Acts of god, wars, insurrection or internal disturbances, fires, floods or accidents, breakdowns of plant or machinery, unavailability of or delays in shipping or other transport strikes or lockouts of workmen, shortages or other default by suppliers of fuel, power or raw material, or any unforeseen happenings or events beyond the Company's control.

## **7. CLAIMS**

- (a) The Customer shall inspect the Goods immediately on arrival and shall, within two business (2) days from receipt of the Goods, give notice to the Company in writing of any matter or thing by reason of which the Customer may allege that the Goods are not in accordance with the contract. If the Customer fails to give such notice, the said Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to accept and pay for same accordingly.
- (b) No claim shall be made against the Company unless at the time the Goods in question are intact as a whole. The Customer hereby covenants to allow the Company access to the Goods and facilities in any way required for the Company's investigation (if any) of the claim. Acceptance or disposal of any part of the consignment of Goods in question is hereby deemed and agreed to constitute acceptance of the whole consignment of Goods and an acknowledgement and acceptance by the Customer that it has forfeited any rights whatsoever to make any claim in respect of the said consignment of Goods.
- (c) Any liability incurred by the Company to the Customer is limited to the replacement of the Goods, or (at the option of the Company) to refund the price paid by the Customer. Any damages recoverable from the Company as a result of any proven breach by it of its contractual obligations, shall not include consequential damages, and shall not extend to loss of profit, resale, storage or other charges. Investigation of any claim by the Company shall not constitute or be constructed as an admission of liability by the Company. It shall be a condition precedent to the making of any claim whatsoever against the Company that the Customer has paid in full to the Company all moneys owing by it.
- (d) Compensation for short deliveries shall be limited to refund of an amount not exceeding the value of the agreed shortfall at the selling price. The Company accepts no liability or responsibility for damage to Goods or shipping containers or packages and the like, or for labour charges in the counting or assessing of any claim.
- (e) Returns will not be accepted after fourteen (14) days from invoice date. Invoice number and purchase date must be supplied when returning Goods. Goods cannot be returned without the prior written approval of the Company.

## **8. CANCELLATION**

- (a) No cancellation or suspension of any order or part of any order by the Customer shall be binding on the Company unless accepted in writing by a duly authorized officer of the Company.
- (b) In the event of the Company agreeing to suspend or cancel an order or part of any order, the Company reserves the right to demand what it considers to be a fair and reasonable price and/or compensation, at the Company's option and any deposit paid by the Customer may be non-refundable at the election of the Company.

## **9. WARRANTIES**

All warranties guarantees and conditions other than those expressly stated in these Terms and Conditions, and whether implied by statute, common law, custom of the trade, or otherwise, are to the extent as the law permits, expressly excluded.

## **10. JURISDICTION**

All contracts made with the Company shall be deemed to be made in Victoria and the parties submit to the jurisdiction of the appropriate Courts in or nearest Melbourne.

## **11. GENERAL**

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.