

STANDARD TERMS AND CONDITIONS OF SALE

Definitions

“**Company**” means A.D. Coote & Co (Sheetmetal) Pty Ltd (ABN 36 008 711 466).

“**Company’s Premises**” means the Company’s premises located at 51-57 Welshpool Road, Welshpool 6106 in the state of Western Australia.

“**Conditions**” means the Terms and Conditions contained within this document.

“**Defects Liability Period**” means the period referred to in the Order, or if no period is included then a period of 12 months, commencing from the date the Goods are available for delivery.

“**Goods**” means the goods or services the Company is contracted to supply under an Order.

“**GST**” means the Goods and Services Tax in Australia as determined in accordance with the GST Act

“**GST Act**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Materials**” means the material supplied by the Purchaser in accordance with the Quotation.

“**Order**” means the official purchase order received in writing from the Purchaser and accepted by the Company.

“**Parties**” means the Company and the Purchaser.

“**Purchaser**” means the customer to whom the Goods are being supplied.

“**Quotation**” means any written quotation supplied by the Company.

“**Specification**” means any written specification contained in any Quotation or Purchaser’s Order.

“**Storage Fee**” means an amount equal to \$40 per day.

1. Acceptance of a Quotation

- 1.1 Any Quotation made by the Company to the Purchaser from time to time shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any order which may be received by it.
- 1.2 Until such time as the Company accepts in writing a written order submitted by the Purchaser, it shall not be obliged to supply to the Purchaser the Goods PROVIDED ALWAYS that if at any time the Purchaser goes into default in respect of its payment obligations hereunder the Company may cancel or suspend any uncompleted order that has been accepted by the Company without being liable to the Purchaser in any way whatsoever AND FURTHER PROVIDED that the Company shall not under any circumstances be responsible to the Purchaser for a breach of its obligation to supply goods pursuant to an Order that it has accepted which failure to supply is caused by matters beyond the Company’s reasonable control (including but without limiting the generality of the foregoing) acts of God, acts of any government, war or other hostility, national or international disasters, the elements, fire, explosion, power failure, equipment failure, strikes or lockouts, inability to obtain necessary supplies and the like and other force majeure occurrences.
- 1.3 The Purchaser shall provide the Company with written notification that it has accepted the Company’s Quotation for the supply of the specified Goods.
- 1.4 In the event that the Purchaser’s written notification of acceptance purports to add different conditions, such conditions shall be deemed void and unenforceable, unless the Company gives notice in writing expressly accepting the amendments proposed by the Purchaser. Acceptance of the Quotation by the Purchaser shall be deemed to be solely on the basis of the Conditions contained within this document.
- 1.5 The Company shall be entitled to amend any clerical, mathematical or typographical error notwithstanding the prior acceptance of a Quotation and the Conditions are deemed to be subject to any such correction.
- 1.6 Whether or not a Quotation is accepted, or an Order is made, the Purchaser agrees that the Quotation or Order is confidential and cannot be used for any purpose other than business between the Company and the Purchaser.

- 1.7 The Purchaser shall not assign its rights or obligations under any Quotation or Order to any third party without the written consent of the Company.
- 1.8 The prices and/or rates reflected in the Quotation are based on the awarding of the total scope of work being tendered for. In the event of a partial award, the Company reserves the right to revise the price, rates and any other applicable terms and conditions accordingly.

2. Variations

- 2.1 The Company shall not be liable to undertake any variations to the Specification as required by the Purchaser.
- 2.2 The Company may, in its absolute discretion, agree in writing to any such variation requested by the Purchaser.

3. Delivery of Goods

- 3.1 The Company shall use reasonable endeavours to deliver the Goods in accordance with the time specified in the Quotation or Order (as applicable) and shall notify the Purchaser when the Goods are available for delivery.
- 3.2 Unless stated otherwise, all delivery of Goods is from the Company's Premises. The Purchaser is responsible to pick up and take delivery of the Goods from the Company's Premises, unless otherwise agreed. The Goods are at the Purchaser's risk from the time that the Goods are available for delivery at the Company's premises.
- 3.3 In the event that the Company agrees to transport, test, operate, adjust or otherwise handle the Goods, the Purchaser shall indemnify the Company, its officers, staff and agents from and against all claims and demands whatsoever for loss or damage suffered by any person as a result of any act or omission on the part of such officer, employee or agent, negligent or otherwise, in handling the Goods or the equipment or vehicles incorporating the Goods.
- 3.4 If the Purchaser does not take delivery of the Goods within 30 days of the notification referred to in clause 3.1, the Company shall be entitled to charge the Storage Fee. The Purchaser must pay the Storage Fee on demand.
- 3.5 The Company may dispose of or sell the Goods to a third party and may claim from the Purchaser any loss suffered by the Company if:
 - (a) the Goods remain uncollected for a period of 6 months after they are available for delivery; or
 - (b) the Purchaser is in default under clause 10.

4. Purchaser's Materials

- 4.1 In the event that the Purchaser delivers Materials to the Company, such Materials shall be entirely at the Purchaser's risk and the Company accepts no responsibility for any loss or damage thereto.
- 4.2 The Purchaser warrants that it has full title to such Materials delivered to the Company and that it has the full authority to authorise the Company to incorporate such Materials into the Goods.

5. Defects and Claims

- 5.1 The Purchaser must notify the Company in writing of any defect in the Goods within seven days of accepting delivery of the Goods or within seven days of the defect occurring, whichever is later.
- 5.2 Where the Company is notified of a defect in accordance with clause 5.1 it shall use reasonable endeavours to inspect the relevant Goods within 14 days of receiving such notice. If the Company determines in its absolute discretion that the Goods (or any part of the Goods) contains a defect then, subject to clause 5.3, the Company shall (at its absolute discretion):
 - (a) repair the defect within a reasonable period of time; or
 - (b) replace the defective Goods.
- 5.3 The Company shall in no circumstances be liable for any damage or defects:
 - (a) of which it is notified outside of the Defects Liability Period;
 - (b) of which it is notified outside of the period referred to in clause 5.1;

- (c) caused (directly or indirectly) by an act or omission on the part of the Purchaser or any other person;
 - (d) caused (directly or indirectly) by a failure on the part of the Purchaser or any other person to properly maintain any Goods or follow any instructions or guidelines of the Company;
 - (e) relating to the continued use of any Goods after a defect or damage becomes apparent (or would have become apparent to a reasonably prudent user); or
 - (f) in relation to Goods which have not been transported, stored or used in accordance with any instructions by the Company or otherwise with reasonable care and skill.
- 5.4 The Company will not be liable to compensate the Purchaser for any claim in either replacing or repairing the Goods or in properly assessing the Purchaser's claim.
- 5.5 The Purchaser acknowledges and agrees with the Company that:
- (a) methods and conditions of application and use of the Goods are beyond the control of the Company;
 - (b) any advice, recommendation, information or services provided by the Company, its employees, servants or agents regarding the Goods or the methods and conditions of application and use of the Goods shall not be construed as contractual conditions or warranties; and
 - (c) the Company shall not be liable to the Purchaser for any damage to the Goods sustained by the Purchaser as a consequence of any incorrect advice, recommendation, information or services described in clause 5.5(b) whether or not such loss was caused by any act of negligence, act of recklessness or any breach of any duty of care which may be owed to the Purchaser by the Company, its employees, servants or agents.
- 5.6 To the maximum extent permitted by law, the Company shall not be liable for any consequential, special or indirect loss or damage (including loss of profit) suffered by the Purchaser relating to a breach of these Conditions by the Company.
- 5.7 Subject to clause 5.10 and to the maximum extent permitted by law, the remedy of the Purchaser in relation to any cause of action that Purchaser may have against the Company is limited to damages. The Company's liability in respect of an Order or Quotation or the Goods is limited to the amount payable for all Goods supplied to the Purchaser under that Order or Quotation.
- 5.8 Any term, condition, guarantee or warranty which would otherwise be implied into these terms is excluded to the maximum extent permitted by law.
- 5.9 Nothing in these terms is intended to, or will, have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the Fair-Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.
- 5.10 The liability of the Company for any breach of any mandatory term, condition, guarantee or warranty express or implied into these terms by statute is, to the extent permitted by law, limited to one or the other of the following at the option of the Company:
- (a) the replacement of the Goods or the supply of equivalent goods, or payment for the same; or
 - (b) the repair of such Goods or the payment of the cost of repairing the Goods.
- 5.11 The Company's obligations under this clause 5 are limited to the original Purchaser only. If the Purchaser re-sells any Goods, the Purchaser must ensure that the terms of such sale limit the Company's liability in accordance with these Conditions. The Purchaser indemnifies the Company for any loss or damage incurred by the Company from any failure of the Purchaser to do so.

6. Goods and Services Tax

- 6.1 All prices will be quoted exclusive of GST and all Goods will be sold on a 'plus GST (if any)' basis.
- 6.2 Any discounts or other terms agreed between the Company and the Purchaser will be calculated and applied exclusive of GST.
- 6.3 Payment for GST
 - (a) If GST is imposed on any supply made by the Company to the Purchaser pursuant to these

- Conditions (“the GST Amount”), the Purchaser must pay the GST Amount to the Company, in addition to any amount payable, and any non-cash consideration provided, for that supply without any deduction or set-off by the Purchaser under any other clause in these Conditions.
- (b) Any GST Amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.

- 6.4 If any part of the purchase price relates to both a Taxable Supply (as defined in the GST Act) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by the Company, and GST applied accordingly.

7. Payment

- 7.1 Unless the Company has notified the Purchaser in writing of the credit terms that the Company has agreed to, payment by the Purchaser must be made in full to the Company on or before the Goods are removed from the Company’s Premises.
- 7.2 The Company may issue an invoice for the Goods to the Purchaser upon completing the Order or upon providing the notification referred to in clause 3.1.
- 7.3 Payment of invoices is due no later than 30 days after the date of the invoice.
- 7.4 If a cheque (bank or otherwise) or other negotiable instrument is tendered as payment, payment shall be deemed to have been made on the date on which such cheque or other negotiable instrument is cleared by the Company’s bankers.
- 7.5 Any payments tendered by the Purchaser to the Company shall be applied as follows:
- (a) Firstly, towards any debits to the Purchaser’s account arising from the operation of Clause 10.1(c)(ii) hereof;
 - (b) Secondly towards any debits to the Purchaser’s account arising from the operation of Clause 10.1(c)(i) hereof; and
 - (c) Thirdly in satisfaction or part satisfaction of the oldest portion of the Purchaser’s account.

8. Credit Terms

- 8.1 If the Purchaser wishes to purchase Goods on credit from the Company, then it must first apply for such credit with the Company.
- 8.2 The Company may, in its sole discretion, grant or refuse to grant credit.
- 8.3 The Company will advise the Purchaser if credit terms have been agreed or refused.
- 8.4 The Company is not required to provide the Purchaser with any reasons as to why the application for credit has been refused.
- 8.5 Where the Company agrees to extend credit to the Purchaser, the Company will provide the Purchaser with an invoice for the Goods (or any part thereof) as specified in the Company’s Quotation and the Purchaser’s Order.
- 8.6 The Company shall at all times ensure that the total amount outstanding from time to time remains within the pre-determined credit limit set by the Company.
- 8.7 In the event that the amount owing by the Purchaser exceeds the credit limit that the Company has set, the Company may withhold the delivery of any Goods until such time that the amount owing by the Purchaser falls within the credit limit.
- 8.8 The Company shall be entitled at any stage to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security has been provided by the Purchaser.
- 8.9 If the Purchaser requests documentation in respect of the Goods (for example, manufacturer’s data reports), the Company will use reasonable endeavours to provide the requested documentation (where available) within a reasonable timeframe following completion of the Order.
- 8.10 The Purchaser shall not withhold payment of any amounts owing pending the provision by the Company of any quality assurance documents.
- 8.11 Where the Company has outlaid funds relating to materials associated with an Order, it reserves the

right to claim (in the form of a progress payment) for such expenditure from the Purchaser.

9. Risk and Retention of Title

- 9.1 The Goods shall be at the Purchaser's risk and expense from the date the Company accepts the Order.
- 9.2 Title to the Goods shall remain with the Company until the Purchaser has paid in full the price of the Goods as well as all late fees and Storage Fees associated with the Goods.
- 9.3 The Company's property rights in the Goods will not be affected by the fact that the Goods become fixtures attached to the premises of a third party. If the Company enters the premises of a third party for the purpose of reclaiming possession of the Goods and incurs any liability to any occupier of the premises in connection with that entry, the Purchaser must indemnify the Company from that liability.
- 9.4 Until payment in full to the Company of all moneys owing for the Goods and in respect of the Goods:
 - (a) if the Purchaser has taken possession of the Goods, the Purchaser hold the Goods as bailee for the Company and must, if requested by the Company, keep the Goods separate from any other Goods of the Purchaser and distinctively marked as the property of the Company; and
 - (b) the Purchaser is entitled to re-sell the Goods in its ordinary course of trade to any sub-purchaser and that sub-purchaser will obtain a goods title, but as between the Purchaser and the Company, the Purchaser will hold the proceeds of that re-sale as trustee for the Company and in the event that payment in full to the Company of all moneys owing for the Goods and in respect of the Goods is not made by the Purchaser to the Company, the Purchaser will be deemed to have sold as an agent of the Company and must account to the Company accordingly.

10. Default

- 10.1 If the Purchaser defaults in any of its obligations under these Conditions (including making any payment to the Company on a due date) or, (being a corporation), has a Receiver, Receiver and Manager, Administrator, Liquidator (provisional or otherwise) or Controller appointed, or (being a natural person), commits an act of bankruptcy, dies or becomes of unsound mind or permanently disabled:
 - (a) the whole of the sum then owing by the Purchaser to the Company shall immediately become due and payable and shall be paid by the Purchaser within 7 days of demand;
 - (b) the Purchaser shall not thereafter be entitled to purchase Goods on credit from the Company unless the Company has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement, the payment obligations contained herein shall apply; and
 - (c) The Company may in its absolute discretion debit the Purchaser's account with:
 - (i) interest calculated on the portion of the Purchaser's account overdue from time to time at the rate of 2% per month from the date on which such default arose; and
 - (ii) all collection fees and commissions, administrative costs, out-of-pocket expenses and legal costs (calculated on a solicitor and own client basis) incurred by the Company as a direct or indirect consequence of such default.
- 10.2 The Company, its employees, servants and/or agents hereby authorised by the Purchaser to enter the Purchaser's premises and retake possession of those Goods for which payment has not been made without becoming liable for any loss occasioned thereby. Upon retaking possession of those Goods for which payment has not been made the Company shall within a reasonable time inspect these Goods and credit the Purchaser's account with such sum as the Company in its absolute discretion considers to be a fair and reasonable value of the said Goods after making due allowance for the price for which those Goods were sold to the Purchaser, the condition of the Goods at the time of repossession and the costs incurred by the Company in connection with the repossession, sorting and examination of the Goods.

11. Personal Property Securities Act 2009 (Cth) (“PPSA”)

- 11.1 The Purchaser hereby acknowledges that these Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods previously supplied by the Company to the Purchaser (if any) and all after acquired Goods supplied by the Company to the Purchaser (or for the Purchaser’s account) to secure the Purchaser’s payment obligations to the Company from time to time. The Purchaser agrees to grant a “Purchase Money Security Interest” to the Company.
- 11.2 The Purchaser acknowledges and agrees that by assenting to these terms the Purchaser grants a security interest (by virtue of the retention of title clause in these Conditions) to the Company and all Goods previously supplied by the Company to the Purchaser (or for the Purchaser’s account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Purchaser’s Order.
- 11.3 The Purchaser undertakes to:
- (a) sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up to date in all respects) which the Company may reasonably require enabling registration of a financing statement or financing change statement on the Personal Property Securities Register (“PPSR”);
 - (b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Company;
 - (i) give the Company not less than 14 days’ written notice of any proposed change in the Purchaser’s name and/or any other changes in the Purchaser’s details (including by not limited to changes in the Purchaser’s address, facsimile number, email address, trading name or business practice);
 - (ii) pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Conditions including executing subordination agreements;
 - (iii) be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA;
 - (iv) give the Company free and immediate access to its premises or places within its control to enable the Company to enforce its Security Interests;
 - (v) procure, immediately upon request by the Company from any persons considered by the Company to be relevant to its security position, such agreement and waivers as the Company may at any time require; and
 - (vi) the Purchaser waives any rights it may have under sections 115 of the PPSA upon enforcement.
- 11.4 Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Purchaser waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 11.5 The Purchaser agrees that immediately on request by the Company the Purchaser will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.
- 11.6 The Purchaser gives the Company a Security Interest (as defined in the PPSA) in all of the Purchaser’s present and after-acquired property in which Goods or materials supplied or financed by the Company have been attached or incorporated.

12. Intellectual Property Rights

- 12.1 The Purchaser warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Purchaser's Order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture of the Goods.
- 12.2 The sale and purchase of Goods does not confer on the Purchaser any licence or rights under any intellectual property right which is the property of the Company.
- 12.3 The Purchaser acknowledges and agrees that Company and its affiliates are the sole and exclusive owners of all trademarks, trade dress and trade names used by the Company and its affiliates in connection with the Goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by the Purchaser shall be made only with the Company's prior written approval.
- 12.4 In no event shall the Purchaser or its affiliates file any application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks.
- 12.5 If the Purchaser files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application, or any rights derived therefrom to the Company, or an affiliate as designated by the Company.

13. Governing Law

These conditions shall be governed by and construed in accordance with the laws of Western Australia and the Purchaser agrees to submit to the exclusive jurisdiction of the courts of Western Australia.

14. General:

- 14.1 If any of the Conditions is or becomes for any reason wholly or partly invalid, that Condition is to the extent of the invalidity severed without prejudice to the continuing force and validity of the remainder of the Conditions.
- 14.2 Any notice to be given to the Purchaser is deemed to be received by the Purchaser upon it being posted, emailed, sent by facsimile or delivered to the trading or registered address of the Purchaser.
- 14.3 If the Purchaser is the trustee of any trust ("the Trust") at any time, the Purchaser is nevertheless personally liable for the performance of the obligations contained in these Conditions and agrees that the Company shall be entitled to have recourse to the assets of the Trust in order to satisfy the Purchaser's obligations under these Conditions.

15. Entire Agreement

This document and any warranties implied by law which are not capable of being excluded or modified embody the entire understanding and the whole agreement between the parties hereto relevant to the subject matter hereof and, subject to the expressed terms contained on any written customer order and written acceptance thereof (which shall only apply to that particular order) all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty with reference to the subject matter hereof or the intentions of either of the parties hereto are merged herein and otherwise are hereby excluded and cancelled.

16. Waiver

No waiver by the Company of any one breach of these General Conditions of Sale shall operate as a waiver of another breach of the same or of any other Conditions of Sale and the doing and/or omission of any act, matter or thing whatsoever by the Company, its servants or agents (which but for this clause ought or might amount to a waiver of the Company's rights in respect of any such breach or default) shall not operate nor be deemed to be a waiver in any way of the Company's rights and powers in respect of such breach or default any rule of law or equity to the contrary notwithstanding.

17. Agreement under the Privacy Act 1968

The Purchaser agrees that the Company may:

- 17.1 give a credit reporting agency personal information including:
- (a) identity particulars (as permitted by the Privacy Commissioner's determination issued under s.18E(3));
 - (b) the fact that the Purchaser has applied for credit and the amount;
 - (c) the fact the Company is a current credit provider to the Purchaser;
 - (d) that payments owing by the Purchaser have become overdue for more than 60 days and collection action has commenced;
 - (e) that payments owing by the Purchaser are no longer overdue;
 - (f) that cheques drawn by the Purchaser have been dishonored more than once;
 - (g) that in the opinion of the Company, the Purchaser has committed a serious credit infringement; and
 - (h) that credit provided to the Purchaser by the Company has been paid or otherwise discharged;
- 17.2 receive a consumer credit report from a credit reporting agency and use the report for the purposes of:
- (a) assessing an application made by the Purchaser for commercial credit;
 - (b) assessing whether to accept a signatory as a guarantor in respect of a loan provided by the Company to a person other than the guarantor or a loan for which an application has been made by a person other than the proposed guarantor to the Company; and
 - (c) the collection of payments that are overdue in respect of commercial credit provided to the Purchaser by the Company;
- 17.3 give to or receive from another credit provider (including a bank) a report about the Purchaser's (or a signatory's) consumer credit worthiness, credit standing, credit history or credit capacity for the purpose of:
- (a) assessing an application by the Purchaser for credit;
 - (b) notifying other credit providers of a default by the Purchaser (or signatory);
 - (c) exchanging information with other credit providers as to the status of credit with the Company where the Purchaser (or signatory) is in default with other credit providers; and
 - (d) assessing the Purchaser's (or signatory's) credit worthiness.

18. Notices

Any notice to be given by the Purchaser to the Company must be in writing and shall be sent to the Company's Premises. No notice shall be deemed to have been given until it is actually received at this address by the Company.