

C&L Sales & Services Pty Ltd

Standard Terms & Conditions of Sale

Version 1/F

The following terms and conditions of sale ("Terms of Sale") shall apply to and form part of any contract for the supply of goods and services ("Goods") by C&L Sales & Services Pty Ltd ("the Company") to another party ("the Purchaser").

1. QUOTATION

1.1 No quotation given by the Company to the Purchaser shall constitute an offer. Any order from the Purchaser to the Company for the supply of Goods shall not be binding upon the Company until accepted by the Company.

1.2 Prices given in any quotation by the Company are applicable to that quotation only and will not apply in any other instance.

1.3 Quotations are valid for a period of thirty (30) days from date of issue by the Company or otherwise specified in the quotation.

2. PURCHASE ORDERS

2.1 When ordering, an official order is to be submitted by the Purchaser to the Company quoting an order number, full description of the Goods to be purchased and the delivery time and address. Reference to the Company's quote number to the Purchaser should also be made (where applicable).

2.2 These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and any terms and conditions set out in the Purchaser's order deviating from or inconsistent with these Terms of Sale will not bind the Company notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale.

2.3 A contract shall only be or be deemed to have been entered into between the Company and the Purchaser for the supply of the Goods when the Purchaser's order has been accepted by the Company in writing.

3. PAYMENT

3.1 The extension of credit to the Purchaser by the Company shall be at the sole discretion of the Company and, where extended, unless otherwise advised in writing by the Company the Company requires payment in full within thirty (30) days of the end of the month in which Delivery of the Goods occurs or as otherwise specified in the invoice.

3.2 Without in any way limiting the Company's right to require payment in full on the due date, the Company may at its sole discretion charge interest on overdue accounts at the rate of 8.25% per annum. The above will be calculated on a per day basis

3.3 The Purchaser agrees that the Company shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Purchaser (and where the Purchaser is a company, its Directors) in order to assess the Purchaser's credit worthiness.

3.4 Time specified for payment is of the essence.

4. INDEMNITY

Without prejudice to any other rights the Company may have against the Purchaser, and to the extent permitted by law, the Purchaser shall indemnify the Company for, and save it harmless from, any loss, damage or expense (including, without limitation, costs, whether or not the subject of a court order) incurred by it should the Purchaser breach any of these Terms of Sale or cancel any order or part thereof for the Goods after acceptance by the Company.

5. DELIVERY

5.1 Unless agreed in writing the Company shall arrange for delivery of the Goods ("Delivery") to the Purchasers nominated delivery point.

5.2 The Company is entitled to charge a fee for Delivery unless otherwise agreed in writing.

5.3 The Company is deemed to have delivered the Goods when they are made available for unloading at the Purchaser's nominated delivery point.

5.4 The Purchaser is responsible for unloading the Goods from the Company's delivery vehicle.

5.5 If the Goods are to be collected by the Purchaser from the Company's store Delivery occurs when the Goods are loaded on the Purchaser's vehicle.

5.6 The Company is not liable for any claims for non-fulfilment or late Delivery of Goods or for any loss or damage (including consequential loss or damage) suffered by the Purchaser arising from delay in Delivery or failure to deliver due to circumstances beyond the Company's reasonable control and the Purchaser shall accept and pay for the Goods notwithstanding late Delivery.

5.7 The Purchaser shall in its purchase order advise the Company of the nominated delivery point and required delivery time.

5.8 Unless otherwise agreed by the Purchaser and the Company, the Company shall be entitled to deliver the Goods in one or more lots. Where Delivery of the Goods is effected by way of part Delivery the Company shall be entitled to invoice the Purchaser for prorate progress payments in respect thereof.

5.9 Notwithstanding the Purchaser's inability to accept Delivery of the Goods, the Company shall be deemed to have delivered the Goods in accordance with these Terms of Sale and the Goods shall be at the Purchaser's risk from the time when the Goods have been loaded onto the Purchaser's collecting vehicle or delivered to the Purchaser's nominated delivery point (as the case requires).

6. ADDITIONAL CHARGES

The Company reserves the right to charge the Purchaser for any costs, charges or expenses whatsoever that the Company may incur as a result of -

(a) vehicle or wagon detention of the Goods (to the extent the same is not caused or contributed to by the Company);

(b) demurrage on ships as a consequence of any act or omission of the Purchaser;

(c) any special requirements or stipulations of the Purchaser accepted by the Company but not provided for in the Terms of Sale;

(d) any increase in duties, taxes, freight, insurance or other charges or expenses from the date of acceptance of the Purchaser's order by the Company to the date of Delivery, unless otherwise agreed.

7. STORAGE

If the Company notifies the Purchaser that the Goods are ready for Delivery and the Purchaser requests the Company to hold the Goods on its behalf, such Goods will be held by the Company at the Purchaser's risk, and the Company shall be entitled to charge storage fees in respect of the Goods so stored.

8. CLAIMS

8.1 The Purchaser shall inspect the Goods immediately upon Delivery and, if the Goods are damaged or not otherwise in conformity with the contract relating to their supply shall give written notice to the Company of the details in respect thereof within seven (days) of the date of Delivery.

8.2 Any Goods the subject of a notice under clause 8.1 shall be left in the state and condition in which they were delivered until such time as the Company or its duly authorised agent has inspected the Goods, such inspection to be carried out within a reasonable time after notification by the Purchaser. If the Goods are not so left in the state and condition in which they were delivered, the Purchaser shall be deemed to have accepted the Goods and shall pay the purchase price for the Goods to the Company.

8.3 Acceptance of the Goods shall be deemed for all purposes to have taken place when Delivery has occurred.

8.4 No Goods will be accepted for return by the Company unless agreed in writing by the Company prior to such return and then only upon conditions acceptable to the Company and at the Purchaser's entire risk as to loss or damage. Where the Company agrees to accept Goods for return, the Company's then current restocking charge, as varied from time to time, will be charged to the Purchaser and shall be immediately payable.

9. PASSING OF RISK AND RETENTION OF TITLE

9.1 Whilst the risk in the Goods passes on Delivery, legal and equitable title remains with the Company until payment in full for all debts accrued or owed to the Company is made.

9.2 The Purchaser may sell or deal in the ordinary course of business with the Goods and with the interest of the Company in the Goods and may for the purpose of such sale or dealing part with possession thereof but the proceeds of any sale or dealing will be held by the Purchaser on trust for the Company. The Purchaser hereby agrees to accept this appointment as bailee and fiduciary.

9.3 Notwithstanding the above, the Company reserves the following rights in relation to the Goods until all amounts owed by the Purchaser to the Company are fully paid:

(a) legal and equitable ownership of the Goods;

(b) to enter the Purchaser's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and

(c) to keep or resell any of the Goods repossessed pursuant to (b) above.

9.4 The Purchaser must so long as the Company is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of the Company.

9.5 In the event that the Goods are resold, or goods manufactured using the Goods sold, by the Purchaser, the Purchaser holds on trust such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Company and must pay such amount to the Company upon request. Notwithstanding the provisions above the Company is entitled to maintain an action against the Purchaser for the purchase price of the Goods.

9.6 Where the Purchaser processes the Goods or incorporates them in or with any other product before property has passed to the Purchaser, the new product shall be separately stored or marked in a manner which makes such new product readily identifiable as the Goods of the Company. If payment for the Goods is not made by the Purchaser by the due date specified by the Company to the Purchaser then the Purchaser shall return the Goods to the Company on demand. If the Purchaser does not return the Goods to the Company within 48 hours of receipt of the demand, the Company shall be entitled to enter upon the Purchaser's premises at any time to do all things necessary to recover the Goods. The Purchaser shall be liable for all costs associated with the exercise by the Company of its rights under this clause, which shall be repayable on demand.

10. DEFAULT

Should the Purchaser fail to make due payment for any Goods supplied by the Company or commit a breach of any term of the sale, or being a natural person commit an act of bankruptcy, or being a corporation by act or omission enables the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Purchaser pursuant to a mortgage or other security, the Company may, without prejudice to any other rights it may have, do any or all of the following -

(a) Withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owing or accrued;

(b) Withhold any further deliveries of Goods or performance of services required under the accepted purchase order;

(c) In respect of Goods already delivered, enter into the Purchaser's premises to recover and resell same for its own benefit;

(d) Suspend and/or terminate performance of any other contracts which the Company has with the Purchaser.

11. WARRANTIES

11.1 To the extent permitted by law all implied conditions, warranties and undertakings are expressly excluded.

11.2 Except as provided in this clause the Company shall not be liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by the Company or any negligence of the Company, its employees or agents.

11.3 Should the Company be liable for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (not being a condition or warranty implied by Section 69 of that Act) then its liability for a breach of any such condition or warranty express or implied shall be limited, at its option, to any one or more of the following:

(a) in the case of Goods:

(i) the replacement of the Goods or the supply of equivalent Goods;

(ii) the repair of the Goods;

(iii) the payment of the cost of replacing the Goods or acquiring equivalent Goods;

(iv) the payment of the cost of having the Goods repaired;

provided that any such Goods are returned to the Company by the Purchaser at the Purchaser's expense.

(b) in the case of services:

- (i) the supply of the services again;
- (ii) the payment of the cost of having the services supplied again.

11.4 The Company will not be liable for the costs of recovery of the Goods from the field, loss of use of the Goods, loss of time, inconvenience, incidental or consequential loss or damage, nor for any other loss or damage other than as stated above, whether ordinary or exemplary, caused either directly or indirectly by use of the Goods. This warranty does not apply to any defects or other malfunctions caused to the Goods by accident, neglect, vandalism, misuse, alteration, modification or unusual physical, environment or electrical stress.

12. FITNESS FOR PURPOSE

The Purchaser agrees that it does not rely on the skill or judgement of the Company in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.

13. OWNERSHIP AND CONFIDENTIALITY

13.1 The Purchaser acknowledges that all Proprietary Information in respect of the Goods and all right title and interest therein are the sole property of the Company and the Purchaser shall gain no right title or interest in the Proprietary Information whatsoever. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.

13.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company to suffer financial loss.

13.3 The Purchaser shall implement all measures necessary to safeguard the Company's ownership and confidentiality of the Proprietary Information including without limitation:

- (i) allowing its employees, agents, and customers access to the Proprietary Information only to the extent necessary to ensure performance of the Goods and to require, as a condition to such access that such persons comply with the provisions of this part of these Terms of Sale;
- (ii) to co-operate with the Company in the enforcement of such compliance by the Purchasers employees, agents and customers;
- (iii) not to remove any nor permit the removal of any or alteration of any copyright or confidentiality labels placed on the Goods by the Company;
- (iv) not to disassemble, decompile or reverse engineer any part of the Goods whether software or hardware;
- (v) not to reproduce any part of the Goods whether software or hardware.

The Purchaser indemnifies, and agrees to keep indemnified the Company against any loss, costs, expenses, damages, and harm suffered or incurred by the Company in connection with or arising out of or as a result of the breach by the Purchaser of any of the provisions of this clause. Definition For the purposes of this clause "Proprietary Information" means any and all information relating to the Goods or the installation thereof including designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade marks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

14. SALES AND GOODS AND SERVICES TAX

Should any sales tax, Goods & Services Tax as levied under the A New Tax System (Goods & Services Tax) Act 1999 (as amended) and any other tax, fee, levy or duty imposed by any competent authority be payable on any of the Goods supplied by the Company, such tax, fee, levy or duty will be to the Purchaser's account and shall be calculated using the rates and methods of assessment in force at the time of Delivery. The Purchaser is liable for any other applicable tax, including, without limitation withholding tax.

15. DISPUTES

15.1 Any disputes between the parties arising from the performance of the provisions of these Terms of Sale must be settled through friendly consultation by the parties. All disputes arising in respect of these Terms of Sale which are not resolved within thirty (30) days of first arising will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules. The place of arbitration will be the State from which the Goods are sold by the Company ("the State"). The procedural law applicable to the arbitration will be that of the State. The decision of the arbitration is final and binding upon both parties.

15.2 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these Terms of Sale which are not under dispute and which are able to be performed by the parties.

16. FORCE MAJEURE

The Company shall not be liable for any claims for non-fulfilment or late Delivery should actual Delivery of the Goods or any parts be delayed in consequence of unforeseen events such as strikes, unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, rail-road embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply components by the due date.

17. ENTIRE AGREEMENT

These Terms of Sale contain the entire agreement between the parties hereto on the subject matter of this agreement, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings relating to the subject matter of this agreement. Any variation or modification of these Terms of Sale must be in writing.

18. The Company reserves the right to review and amend its terms and conditions of sale from time to time. Current and up to date conditions of sale are available on the C&L web site at www.candl.org This shall be deemed sufficient to bind the Purchaser to any revised or amended terms of sale for all orders placed by the Purchaser and accepted by the Company after receipt of such notification.

NOTHING IN THESE CONDITIONS SHALL BE READ OR APPLIED SO AS TO EXCLUDE, RESTRICT OR MODIFY OR HAVE THE EFFECT OF EXCLUDING, RESTRICTING OR MODIFYING ANY CONDITION, WARRANTY, GUARANTEE, RIGHT OR REMEDY IMPLIED BY LAW (INCLUDING THE TRADE PRACTICES ACT 1974 (CTH) AND WHICH BY LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED.