

# CDA PRO AV PTY LTD STANDARD CONDITIONS OF SALE

## 1. The Contract

- 1.1 Any Order sent to CDA Pro Av Pty Ltd ("the Company") by the customer for the supply of the Company's products ("the Products") will be accepted entirely at the discretion of the Company and if so accepted will only be accepted upon these conditions ("the Conditions") and by means of the Company's standard order verification form.
- 1.2 Each Order which is so accepted shall constitute an individually legally binding contract ("the Contract,") between the Company and the customer.
- 1.3 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the customer and no addition or alteration or substitution of these terms will bind the Company or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Company's behalf.
- 1.4 The customer acknowledges that it has not been induced to enter into the Contract by any representation made by or on behalf of the Company other than those contained in the Contract.

## 2. Cancellation

Contracts may not be cancelled by the customer without the written consent of the Company and Contracts resulting from special orders may not be cancelled in any circumstances.

## 3. Variations

No variation of any Contract shall be valid and binding unless the terms thereof have been agreed in writing by both the Company and the customer.

## 4. Prices

- 4.1 Customers will be invoiced by the Company at the Company's prices ruling at the date of despatch of the Products.
- 4.2 Prices quoted in the Company's quotations or price lists:-
  - a) are (unless otherwise stated) the Company's ex-inventory prices and do not include packing in transit insurance or carriage;
  - b) are those then current and shall not be binding on the Company;
  - c) do not include Sales Tax or any other tax, levy, duty or surcharge whether imposed before or after making the Contract.

## 5. Specification and Material

- 5.1 All Products will be supplied to the Company's specifications current at the date the manufacture of the Products starts.
- 5.2 Products will be made from the Company's standard materials but, if, for any reason, such materials are unavailable, the Company reserves the right to substitute the most suitable alternative that can be obtained at the time of manufacture.
- 5.3 All dimensions, sizes, capacities and graphic representations are approximate and subject to variation and change by the Company without notice. Critical features must be agreed in advance of placing an order.
- 5.4 No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.

## 6. Customer's specification

Where the Company supplies Products to a customer in accordance with the customer's specification, any addition or alteration shall be subject to an extra charge and the customer shall indemnify the Company against all damages, penalties, costs and expenses to which it may become liable through the infringement of the rights of third parties.

## 7. Orders

- 7.1 All orders by the customer must:-
  - a) be numbered;
  - b) specify the address which the Products are to be delivered ("the place of delivery");
  - c) specify the address to which the Company's invoice is to be sent.
- 7.2 Orders made by telephone must be confirmed in writing by the customer within 48 hours on order forms marked "Confirmation of telephone order".

## 8. Instalments

- 8.1 By agreement between the Company and the customer orders for the Products may be established for delivery by instalments
- 8.2 Where Products are delivered by instalments each delivery shall be deemed to constitute a separate enforceable Contract and will be invoiced by the Company separately.

## 9. Delivery

All Products supplied by the Company will be delivered to the customer at the place of delivery.

## 10. Non-acceptance of delivery

If the customer fails to take or accept delivery of the Products in accordance with Condition 9 hereof the price shall nevertheless be paid in accordance with Condition 16 as if delivery had taken place. The Company shall be entitled to charge the customer for storage, insurance and other expenses reasonably incurred or suffered by the Company as a result of such failure but the Company shall not be bound to take any steps for the custody or care of the Products or be liable for any loss or damage suffered by the customer arising there from.

## 11. Shortage, damage and non-delivery

No claim against the Company for shortage, damage in transit or non-delivery will be entertained unless:-

- a) non-delivery of the whole consignment of the Products is reported in writing to the Company and the carrier within 7 days of the date of despatch as notified to the customer in advice notes.
- b) partial loss damage or non-delivery of any separate part of a consignment is reported in writing to the Company and the carrier within 3 days of the date of delivery of the consignment or part consignment.

## 12. Delay

Any times quoted for delivery are to be treated as estimates only and will not involve the Company in any liability for failure to deliver the Products within such time. Where for any reasons delivery of the Products to the customer is delayed the customer shall take delivery of the Products sold within 3 days of being so requested by the Company.

## 13. Force majeure

The Company shall not be liable for failure to comply with the terms of the Contract if it is prevented from so doing through any circumstances beyond its control, including but not limited to Act of God, force majeure, strikes, lockouts, accidents, war, fire, reductions in or breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources or routes of supply.

## 14. Warranty

- 14.1 The Company will repair or at its option replace or reimburse or issue a credit note in respect of the price paid for any Products which after proper use prove to be defective within a period of 12 months after the date of delivery. This Condition shall not apply unless:-
  - a) notice in writing of the defects complained of is given to the Company upon their appearance
  - b) the defect shall be found to have arisen solely from the Company's faulty design, workmanship or materials
  - c) the defective Products are returned to the Company's factory at the customer's expense if so requested by the Companyand this Condition shall not apply to Products that have been processed or interfered with other than by the Company or which have not been stored, handled or used in accordance with the Company's instructions.
- 14.2 Any repaired or replaced Products shall be redelivered by the Company free of charge to the original place of delivery but otherwise in accordance with and subject to these Conditions save that the period of 12 months (referred to in Condition 14.1) shall be replaced by the unexpired portion of that period only.

## 15. Limitation of Liability

- 15.1 Except where by law its liability cannot be excluded or limited:-
  - a) the Company's compliance with its obligations under Condition 14 shall be in lieu of any guarantee, representation, warranty or condition (whether express or implied, statutory or otherwise) as to the quality or fitness for any particular purpose of the Products.
  - b) the Company shall not be under any liability for consequential loss whether in contract tort or otherwise as a result of the customer having entered into the Contract and the Company's prices are set accordingly.
- 15.2 Where the customer is a consumer nothing in these Conditions shall affect his statutory rights.

## 16. Payment

- 16.1 Except where a credit account has been opened for the customer by the Company, payment shall be made in advance against a pro-forma invoice.
- 16.2 Credit account invoices are due for payment within thirty days of the date of invoice. All invoices are strictly net.

16.3 Payment of credit account invoices by their due date is a condition precedent to the fulfillment of the Company's further obligations under the Contract in respect of which such default has been made or any other Contract then subsisting between the Company and the customer.

16.4 The Company shall have the right to charge interest at the rate of 1.5% per month and will be charged on a daily basis on overdue accounts calculated from the date payment is due until receipt of the payment at the Company's offices.

## 17. Passing of Property and Risk

- 17.1 The risk in the Products supplied by the Company shall pass to the customer as soon as they are delivered by the Company to the place of delivery.
- 17.2 The Company will remain the sole and absolute owner of the Products until payment of the price has been made in full. Until receipt by the Company of such payment the customer will hold the Products for the Company as fiduciary bailee and will store them upon its premises separately from its own products or those of any other person and in a manner which makes them readily identifiable as the products of the Company.
- 17.3 When payment for the Products is overdue or the customer suffers distress or execution to be levied against its effects, makes an arrangement or composition with creditors or, being a corporate body, enters into liquidation or has an administrator or a receiver appointed for the whole or any part of its undertaking or, being an individual, has a receiving order and bankruptcy made against him, then
  - a) if the customer remains in possession of the Products, whether or not the customer has sold them, the Company shall be entitled to recover the Products from the customer; or
  - b) if the customer has parted with possession with the Product by way of sale having sold them as fiduciary bailee shall hold in trust so much in the proceeds of sale of the Products as represent the customer's liability to the Company in respect of them.

17.4 If any of the Products are processed into other goods before payment in full for the Products has been received by the Company, the customer shall hold the Products and such other goods on trust for the Company until such payment is made and the customer shall hold in trust for the Company so much of the proceeds of sale of the Products and such other goods and any rights arising from sale as are equivalent to the unpaid price.

17.5 The Company may for the purpose of recovery of its Products enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

## 18. Assignment

The Buyer shall not assign or otherwise dispose of this Contract without the Company's prior written consent.

## 19. Insolvency

The Company shall have the right to terminate the Contract forthwith by notice in writing where the customer becomes insolvent or bankrupt or makes an arrangement with its creditors or suffers a receiver to be appointed or being a body corporate enters into liquidation (other than in connection with a reconstruction or amalgamation) in any of which case the Company shall have no further obligations under the Contract and the price for all the Products delivered shall become immediately due and payable.

## 20. Proper Law

Contracts made with the Company shall be governed by and construed according to the laws of Australia and New South Wales and the customer agrees to submit to the jurisdiction of the Australian and New South Wales Courts.