

## Terms of Use

SURTECO AUSTRALIA PTY LIMITED ABN 35 092 690 232

TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

In these Terms:

1.1 "Company" means Surteco Australia Pty Limited ABN 35 092 690 232 and its successors and assigns;

1.2. "Confidential Information" means all the Company's trade secrets, confidential business and technical information, know-how not generally known to the public, Customer and supplier lists, pricing policies and costing system data base (whether in electronic or hard copy form).

1.3. "Customer" means any person or entity who acquires Goods from the Company.

1.4. "Excluded Loss or Damage" means any:

1.4.1. loss of profit, revenue (including anticipated revenue), use, product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach;

1.4.2. cost of removal or storage of defective goods or plant or materials;

1.4.3. indirect loss;

1.4.4. loss consequential on other loss;

1.4.5. remote or unforeseeable loss or damage;

1.4.6. liquidated sums including liquidated damages, penalties, losses or damages arising under any contracts or agreements other than the Agreement;

1.4.7. kind of loss or damage considered other than loss arising in usual course of things; and

1.4.8. any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of execution of the Agreement, and in each case arising from or in connection with the performance of the Agreement, whether arising from a breach of contract or tort (including negligence) or under any statute or any other basis, in law or equity, and whether or not foreseeable by the Company or the Customer at the time of entering into the Agreement.

1.5. "Goods" means all goods sold and/or delivered by the Company to the Customer from time to time;

1.6. "GST" means the Goods and Services Tax imposed by A New Tax System (Goods & Services Tax) Act 1999 and any related act and/or regulations;

1.7. "Intellectual Property" means all the Company's Confidential Information, inventions, discoveries and novel designs (whether or not registrable as designs under the Designs Act 1906 or patents under the Patents Act 1952), registered and unregistered trade marks, all copyright works of the Company (including but not limited to all literary and other works as defined in the Copyright Act 1968), all the Company's computer software programs (including source codes and object codes) and all the Company's price lists and manuals (whether in electronic or hard copy form) including technical specifications and product test reports;

1.8. "PPSA" means the Personal Property Securities Act 2009 (Cth) and, if the Customer is based and/or the Goods are located in New Zealand, a reference to a section of the PPSA includes a reference to the equivalent section, if any, of the Personal Property Securities Act 1999 (NZ);

1.9. "PPSR" means the personal property security register created under the PPSA; and

1.10. "Terms" means these Terms and Conditions of Sale.

## 2. APPLICATION

2.1. These Terms apply to every sale or supply of the Goods.

2.2. No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.

2.3. The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Goods or the sale of the Goods other than as contained in these Terms.

## 3. PRICES AND TERMS OF PAYMENT

3.1. Prices are determined by the price list current at the time of order and are subject to change without notice.

3.2. Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated herein or in the relevant invoice or statement.

3.3. Payments are to be made within thirty [30] days of the date of statement.

3.4. Interest is payable on all overdue accounts calculated on a daily basis at the rate of 2% per month as from the due date for payment until payment is received by the Company.

## 4. PROPERTY IN GOODS

Legal and beneficial ownership of Goods supplied by the Company will not pass to the Customer and the Customer grants the Company a security interest in the Goods until such time as the goods so supplied and all other goods supplied by the Company to the Customer from time to time, have been paid in full in cash or cleared funds.

## 5. RISK AND INSURANCE

5.1. The Goods are entirely at the risk of the Customer from the moment the Goods leave the Company's premises even though property in the Goods has not passed to the Customer at that time.

5.2. The Customer must, at its own expense, maintain the Goods and insure them for the benefit of the Company against theft, breakdown, fire, water and other risks, as from the moment of delivery to the Customer and until title in the Goods has passed to the Customer. The Customer must further take all reasonable measures to ensure that the Company's title to the Goods is in no way prejudiced as a result. If the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event received by the Customer, must immediately be paid to the Company.

## 6. RE-SALE OF GOODS

6.1. Should the Customer be a re-seller then, subject to clause 6.2.4, the Customer has the right to sell the Goods in its own name at full market value and in the ordinary course of business.

6.2. Until the amount payable to the Company in respect of the Goods, and in respect of all other Goods previously supplied by the Company to the Customer, has been paid in full in cash or cleared fund: 6.2.1. the Customer will hold the Goods only as bailee for the Company;

6.2.2. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons and so as to clearly show that they are the property of the Company;

6.2.3. the Customer must indemnify the Company from and against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by the Company arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession of them by the Company; and

6.2.4. any sale of the Goods under clause 6.1 will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Company's Customer against its Customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.

6.3. If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to most recent).

## 7. INCORPORATION OF GOODS

7.1. If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the moneys received from time to time by the Customer for such manufacturing or construction process as relates to the Goods, in trust for the Company.

7.2. The part referred to in clause 7.1 will be deemed to equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such moneys by the Customer.

7.3. Money received by the Customer excludes any debts due but not yet paid by the Customer.

7.4. In the circumstances outlined in clause 7.1, the Customer must not assign or deal with its debts in any way prior to payment of the moneys receivable by the Customer in respect of the Goods prior to their payment to the Company.

## 8. DEFAULT

If:

8.1. the Goods are not paid for in accordance with these Terms or any other written agreement between the Company and the Customer; or

8.2. the Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods; or

8.3. any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person [each an "insolvency representative"] to the Customer's undertaking),

then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods and the bailment referred to in clause 6.2

## 9. RIGHT TO ENTER PREMISES

In any of the circumstances referred to in the preceding clause, the Customer:

9.1. authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and

9.2. assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

## 10. ADMINISTRATION, RECEIVERSHIP ETC.

In any of the circumstances referred to in clause 8.3:

10.1. neither the Customer nor its insolvency representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's ownership of the Goods, without the Company's prior written approval;

10.2. the Customer, its insolvency representative or any other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Goods to the Company immediately or immediately on his appointment at its or his expense; and

10.3. if the Goods are returned to or collected by the Company, the Company will within 28 days, account to the Customer or its legal representative for all monies received for the Goods from the Customer less the Company's reasonable administration charges, expenses incurred and loss of profits involved.

## 11. CUSTOMER AS TRUSTEE

If the Customer carries on business as trustee of a trust then the Customer warrants that:

- 11.1. the Customer enters into the contract as trustee of a trust;
- 11.2. the Customer has all requisite powers to enter into the contract;
- 11.3. the beneficiary of the trust approves the purchase of the Goods on the terms of the contract; and
- 11.4. the assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer.

## 12. CUSTOMS DUTIES, TARIFFS AND LEVIES

All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing expressly states otherwise.

## 13. GOODS & SERVICES TAX

- 13.1. Unless expressly stated otherwise in writing, GST is not included in any quoted price.
- 13.2. If GST is imposed on the Company in respect of the supply of the Goods or any other supply by the Company to the Customer, then the Customer must pay the amount of such GST to the Company in addition to the quoted price.
- 13.3. The Company must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of the GST payable.

## 14. DELIVERY

Availability dates are estimates only, but the Company will use its best endeavours to maintain these estimates.

## 15. DELIVERY BY INSTALMENTS

- 15.1. The Company reserves the right to deliver the Goods in whole or by instalments, as well as to deliver prior to the date for delivery and in such event the Customer must not refuse to take delivery of the Goods.
- 15.2. Where the Goods are delivered by instalments, each instalment is sold under a separate contract.
- 15.3. Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the contract with regard to the balance remaining undelivered.

## 16. INSPECTION

Unless the Customer has inspected the Goods and given written notice to the Company within seven (7) days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

## 17. RETURN OF GOODS

- 17.1. No returns will be accepted unless the Company has previously agreed in writing. If the Company agrees to the return of Goods, they must be unsoiled, undamaged and in a resaleable condition (or Customer pays for all costs of replacement or repair) and delivered free to the Company's premises unless otherwise agreed by the Company in writing.
- 17.2. Goods imported especially for the Customer or non-standard equipment made to special order cannot under any circumstances be returned and/or credited.

## 18. CANCELLATION OF ORDER

No order may be cancelled, modified or deferred without the prior written consent of the Company (which is at the Company's sole discretion). If such consent is given, it is at the Company's election, subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation

and restocking fee (being not less than 10% of the invoice value of the Goods).

## 19. PERSONAL PROPERTY SECURITY

The Customer acknowledges that if the Company has a security interest in the Goods and/or their proceeds for the purposes of the PPSA then the Company may register its security interest in the Goods and their proceeds on the PPSR and the Customer in Australia in accordance with section 157

[3] (b) of the PPSA in New Zealand in accordance with section 148 of the PPSA, waives the right to receive notice of such registration. The Customer also undertakes, at its own expense, to promptly do anything (such as supplying information) which the Company requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.

## 20. COMPANY'S LIABILITY LIMITED

20.1. The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to Excluded Loss or Damage) arising from any delay in delivery or provision or fault or defect in the Goods and/or the Services. The Customer acknowledges that the Company is not responsible if the Goods and/or Services do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any claim, cost, damage or demand resulting from such non-compliance.

20.2. If, despite clause 20.1, the statutory provisions under the Competition and Consumer Act 2010 (Cth), the Sale of Goods Act 1923 (NSW) or any other act or the general law impose on the Company a liability for a defect or fault in the Goods then, to the extent to which the Company is able to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to: 20.2.1. replacement or repair of the Goods or the supply of equivalent Goods; or

20.2.2. payment of the cost of replacing or repairing the Goods or of acquiring equivalent goods,

20.3. The Customer indemnifies and keeps the Company indemnified from and against all losses, expenses, claims and demands (including but not limited to legal fees and disbursements on a solicitor-client basis), incurred, suffered or made against the Company in connection with: 20.3.1. any conduct by the Company or its employees or agents, or

20.3.2. any representation, description, undertaking, warranty or promise in relation of the Goods and/or the Services, whether express or implied, other than as contained in these Terms, and in either case, the Company will not be liable for any Excluded Loss or Damage or other direct or indirect loss or damage.

unless the Customer has specifically notified the Company in writing before the date of the Agreement of such conduct, representation, description, undertaking, warranty or promise and the Customer's reliance on it.

## 21. WARRANTY

21.1. The Company warrants to the Customer that the Goods will be supplied in an undamaged condition.

21.2. On discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so.

21.3. The provisions of any act or law (including but not limited to the Competition and Consumer Act 2010 (Cth)) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the agreement between the Company and the Customer in relation to the Goods (the "Agreement") are hereby expressly negated and excluded to the full extent permitted by law.

21.4. The Customer expressly acknowledges and agrees that it has not relied upon, and the Company is not liable for any advice given by the Company, its servants, agents, representatives or employees in relation to the suitability for any purposes of the Goods.

## 22. CATALOGUES

Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, from no part of the contract between the Company and the Customer, and are not binding on the Company.

## 23. CONFIDENTIAL INFORMATION & OTHER INTELLECTUAL PROPERTY

23.1. If any of the Company's Confidential Information and/or other Intellectual Property is supplied to the Customer for any purpose whatsoever, then

23.1.1. it remains the sole property of the Company;

23.1.2. the Customer acquires no right or interest in or to it other than a non-exclusive, non-assignable licence at no fee to use it solely for the purposes for which it was supplied;

23.1.3. it must not be disclosed by the Customer to any other person or company; and

23.1.4. none of it may be used by the Customer in any way which might harm or prejudice the interests of the Company.

23.2. The licence referred to in clause 23.1.2 may be terminated immediately by the Company by notice in writing from the Company to the Customer at any time, with or without cause.

23.3. If the licence referred to in clause 23.1.2 is terminated then all the Company's Confidential Information and/or Intellectual Property must immediately be returned to the Company at the expense of the Customer. In that event, all copies and extracts of the Confidential Information and/or other Intellectual Property, in the Customer's possession or control (including in electronic or written form), must also be returned to the Company.

## 24. SAMPLES

Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

## 25. SPECIFICATIONS

25.1. Unless otherwise agreed in writing, the Goods are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Goods, or, if no such specification has been published or set out, subject to such specification as is normally regarded as being commercially acceptable.

25.2. Where any specification for the Goods are to be supplied by the Customer, they must be supplied in a reasonable time to enable the Company to complete delivery by the date for delivery.

## 26. CONTRACT

26.1. The terms of contract between the parties are wholly contained in these Terms and any other writing signed by both parties. The contract is deemed to have been made at the Company's place of business in Sydney and any cause of action is deemed to have arisen there.

26.2. The provisions of the United Nations Convention on contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 do not apply to any Goods supplied by the Company to the Customer.

## 27. FORCE MAJEURE

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

## 28. WAIVER OF BREACH

No failure by the Company to insist on strict performances of any of the terms in these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

## 29. NO ASSIGNMENT

Neither the Agreement nor any rights arising under the Agreement may be assigned by the Customer without the prior written consent of the Company which is at the Company's absolute discretion.

## 30. SEVERABILITY

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected