



# CUMI (Australia) Pty Limited

ACN 094 328 882

ABN 24 094 328 882

## Conditions of Contract

### 1. DEFINITIONS/INTERPRETATION

For the purpose of these conditions unless contrary to the context:

- 1.1 "Client" means the party or parties described on the quotation or contract details to which these Conditions of Contract are attached or incorporated by reference.
- 1.2 "Force Majeure" means any of the following events or circumstances which CAPL is not able to prevent, avoid or overcome notwithstanding the exercise of reasonable care and which may result in delays in manufacture and delivery of the goods:
  - 1.2.1 Acts of God including but not limited to storm, tempest, flooding, earthquakes, landslides and washouts.
  - 1.2.2 Strikes or other Industrial Disputes.
  - 1.2.3 The inability to procure or delay in obtaining any permits, consents or approvals from any Governmental or Semi-Governmental authority for the production of the Goods.
  - 1.2.4 Unavailability or delay in the supply of raw materials, parts or other items required for the manufacture of the Goods.
  - 1.2.5 Any unforeseen breakdown or damage to CAPL's plant facilities or operations.
  - 1.2.6 Any laws, regulations, rules, orders, or decrees of any Federal, State, or Local Government Authority or other statutory authority affecting completion of the contract.
  - 1.2.7 Accidents.
  - 1.2.8 Riots or civil disturbances.
  - 1.2.9 Acts of any enemy but not limited to wars, blockades or insurrections.
- 1.3 "Goods" means the goods, plant, equipment or components to be manufactured by CAPL in accordance with the quotation or contract to which these conditions are attached or incorporated by reference.
- 1.4 "CAPL" means CUMI (Australia) Pty Limited (ABN 24 094 328 882) together with its successors in business and assignees and its subsidiaries.
- 1.5 These conditions shall take precedence over any other terms or conditions whether express or implied or contained in any of the Client's documentation unless otherwise agreed to and authorised by CAPL in writing.
- 1.6 The contract between CAPL and the Client shall be governed by the laws of the State of New South Wales.

### 2. PRICE

This quotation will remain open for acceptance by the Client for a period of thirty (30) days from the date of quotation by CAPL, unless a longer period has been agreed. After that period CAPL may wish to vary the price quoted and the terms and conditions applicable thereto.

### 3. GOODS AND SERVICES TAX

CAPL's quoted price does not include GST, which will be payable by an Australian resident Client in addition to the quoted price. A Goods and Services Tax, in addition to any other amount stated in this Agreement, may be charged and is payable by the recipient for Goods and Services supplied on or after 1 July 2000.

### 4. DELIVERY DATE

The delivery date for the goods is estimated by CAPL in good faith based on CAPL's contractual commitments at the time of quotation but which date should be confirmed by the Client upon acceptance of the quotation. All reasonable efforts will be made by CAPL to adhere to the proposed completion date for the goods but the client acknowledges that the delivery date may be extended due to "force majeure".

### 5. WARRANTY

CAPL warrants that:

- 5.1 All Goods manufactured and supplied by CAPL are guaranteed to be free from defects in materials or workmanship for a period of one (1) month from the date of delivery to the client unless a varied warranty period has been agreed by CAPL in writing.
- 5.2 All Goods and/or services supplied pursuant to the contract are supplied in accordance with the technical specifications and drawings supplied as part of the contract.
- 5.3 Goods considered to contain any defects in materials or workmanship which are identified by notice in writing to CAPL within the warranty period will be repaired or replaced at CAPL's discretion subject to the following conditions:
  - 5.3.1 Goods must be returned to CAPL's works, freight prepaid for inspection by CAPL. If CAPL agrees that any alleged defect is CAPL's responsibility it will repair, replace or correct the defective Goods and make the Goods available for collection at the original agreed point of delivery.
- 5.4 Goods manufactured by others but supplied by CAPL will only carry the original manufacturer's warranty provided with such goods the benefit of which shall be assigned to the client.
- 5.5 CAPL's warranty excludes any:
  - 5.5.1 Damage to the Goods or any component thereof while being dismantled and/or assembled by the Client or the Client's employees or contractors, and any damage incurred while the goods or any part of the goods are in transit to or from CAPL's works.

5.5.2 Liability for consequential loss, damage or injury howsoever arising whether from downtime, loss of production or any other circumstance arising out of any fault, malfunction or other inadequacy of the goods or any component thereof.

## **6. RISK**

Risk in respect of Goods (other than those referred to in sub-conditions 6.1, 6.2 and 6.3) passes to the client at the point of delivery or handover.

6.1 All Goods or components supplied by the client for inclusion in the manufacture or assembly of Goods by CAPL, or Goods or components supplied for repair or modification, or patterns and tooling supplied to aid the manufacture of goods by CAPL, remain at the risk of the Client in all respects. CAPL will take all reasonable care thereof and will provide adequate storage but takes no responsibility for loss or damage thereto. The Client acknowledges that insurance of any of the Clients goods is the responsibility of the Client.

6.2 Any of the Client's Goods left on CAPL's premises for repair or modification longer than three (3) months from the date of delivery without the Client placing an order for repair or modification may be disposed of by CAPL at its discretion and at the Client's cost.

6.3 Any of the Client's goods scrapped during the course of repair, which are not collected within six (6) months from the date of scrapping may be disposed of by CAPL at the discretion of CAPL, with the disposal costs borne by the Client.

## **7. TITLE**

Title in all Goods, but not risk, shall be retained by CAPL until the full contract sum has been paid and cleared. CAPL shall be entitled to pursue any action against the Client for the balance payable under the contract with the Client.

## **8. QUALITY CONTROL**

CAPL will manufacture the Goods in accordance with generally accepted standards and procedures. The Goods manufactured by CAPL will conform to the specifications, drawings and requirements detailed in writing by the Client in the contract. It is the Client's responsibility to state in the contract precisely what Quality Assurance documentation is required and what level and frequency of third party quality control is required. Any such requirements specified after the contract date will not be regarded as binding or mandatory on CAPL but will be accommodated where possible as a contract variation and any additional compliance costs shall be payable by the Client.

## **9. CONFIDENTIAL INFORMATION**

All drawings, specifications and documents supplied by the Client for completion of the contract will not be used for any other purpose than for the contract and as far as practicable, will be held in confidence by CAPL. The client acknowledges that CAPL will not be responsible for any infringement of patents, copyright or trademarks howsoever arising out of utilisation of any drawings, specifications or documents provided by the Client and the Client will indemnify and keep CAPL indemnified against any such claims, demands, actions, costs or expenses.