



CUMI (Australia) Pty Limited

ACN 094 328 882

ABN 24 094 328 882

Conditions of Sale

1. INTERPRETATION

(a) In these conditions:

- (i) "The Company" shall mean CUMI (Australia) Pty Limited.
- (ii) "The Purchaser" means the Purchaser of the goods and/or services specified in the quotation.
- (iii) "The Goods" means the products (if any) specified in the quotation.
- (iv) "The Services" means the services (if any) specified in the quotation.
- (v) "Contract" means the contract for the sale of the Goods and/or the Services, including these terms.
- (vi) "Design Documents" means the drawings, calculations, specifications and the like required by the contract and created or to be created by the Company for the manufacture of goods and/or the implementation of the service.

(b) 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 conditions, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

2. GENERAL

These conditions shall only be waived by the Company if such waiver is in writing and executed by the Company and shall to the extent of any inconsistency prevail over all conditions contained in any order given by the Purchaser to the Company.

3. TERMS OF SALE

The Goods sold and Services supplied by the Company are sold and supplied exclusively on these terms and conditions.

4. COMPANY'S QUOTATIONS

Unless otherwise provided in any quotation(s) provided by the Company, the quotation(s) shall remain valid for thirty (30) days after the date thereon. Quotations shall only be valid if in writing, and issued by a duly authorised employee of the Company.

5. ACCURACY OF SPECIFICATIONS

The Purchaser warrants the accuracy of information submitted by it to the Company and shall indemnify, keep indemnified and hold harmless the Company from and against all costs, losses and liabilities whatsoever suffered or incurred by it arising out of any breach by the Purchaser of this warranty.

6. STANDARD SPECIFICATIONS

Unless otherwise agreed in writing where Goods are manufactured by the Company to particular standards and tolerances and the Company has advised the Purchaser of those standards and tolerances the Purchaser shall accept all Goods supplied to it by the Company provided that those Goods meet such standards and tolerances.

7. PERFORMANCE

Any information or data with respect to the performance or capacity of Goods provided by the Company are estimates of performance or capacity only and the Company shall not be under any liability to the Purchaser with respect to any failure of the Goods to achieve such performance or capacity unless specifically guaranteed by the Company in writing. Any descriptions, illustrations or details of performance or capacity contained in catalogues, price lists or any advertising material shall not form part of the contract for the sale of the Goods and shall not be taken as representations by the Company and shall not be binding upon it.

8. DELIVERY

The Company shall not be liable for any loss, damage, delay or consequential losses occasioned to the Purchaser arising out of or in any way relating to late or non-delivery of the Goods or Services.

9. TRANSFER OF RISK

Risk, other than warranty, shall transfer to the Purchaser on delivery of the goods to the contracted point of delivery or on performance of the service as the case may be.

10. WARRANTY

Unless otherwise agreed in writing by the parties:

10.1 The Company warrants that any Goods manufactured by it will be free from defects arising from faulty material or workmanship for a period of one (1) month from the date of delivery of the Goods to the Purchaser as well as any Services provided by the Company will be free of defects in workmanship provided that the Goods and/or Services are correctly serviced, maintained and operated by the Purchaser under such conditions and in such manner as may be prescribed by the Company or, if the Company does not so prescribe, under such conditions and in such manner as is normal for such Goods and/or Services.

10.2 The liability of the Company pursuant to this warranty is specifically limited to:

(a) In the case of Goods:

Making good at the Company's premises any Goods or parts thereof which shall in the opinion of the Company be defective and which are returned by the Purchaser to the Company's premises within the warranty period with transportation charges for delivery and return prepaid by the Purchaser.

(b) In the case of Services:

Supply of the services again which in the opinion of the Company are defective and details of which have been advised in writing by the Purchaser to the Company within the warranty period.

10.3 This warranty shall not apply to:

(a) Any Goods and/or Services which have been repaired, altered or modified in any way whatsoever by any person(s) other than the Company or its authorised representatives, or

(b) Any Goods, products or materials whether or not incorporated within the Goods supplied by the Company which are not manufactured by the Company.

10.4 If Goods are not manufactured by the Company the guarantee or warranty given by the manufacture thereof (if any) shall be accepted by the Purchaser to the exclusion of any warranty by the Company and shall be the only guarantee or warranty given to the Purchaser in respect of the Goods.

10.5 The Company shall not be under any liability with respect to any defects in the Goods and/or Services arising directly or indirectly from fair wear and tear, incorrect, faulty or negligent operation or maintenance by the Purchaser, misuse or damage caused by discovery of any defect or deficiency which has not been rectified or from any other cause whatsoever not attributable to the negligence of the Company. Save for the warranties contained in this Clause the only conditions, warranties, obligations to compensate representations and statements which are binding upon the Company in relation to its supply of the Goods or Services are those required by law to be binding upon it and to the extent that the law applies the liability (if any) of the Company arising or resulting from any of the foregoing shall be limited to:

(a) In the case of Goods:

(i) The repair of the Goods.

(ii) The payment of the cost of replacing the Goods or of acquiring equivalent Goods or of having the Goods repaired.

(b) In the case of Services:

(i) The supplying of the Services again.

(ii) The payment of the cost of having the Services supplied again; and otherwise all conditions and warranties whether express or implied by law and all representations, statements and obligations which would otherwise be binding upon the Company are hereby expressly excluded.

10.6 The Company shall not be liable for and the Purchaser releases and discharges the Company from and indemnifies the Company against any claims whatsoever in respect of faulty or defective design of any Goods and/or Services supplied unless such design has been wholly carried out by the Company and the responsibility for any claim has been expressly agreed in writing by the Company and in any event the liability of the Company hereunder (if any) shall be strictly limited to rectification in accordance with Sub-clause 10.5 of these Conditions.

10.7 Except as provided herein, all express and implied warranties, guarantees and conditions whether pursuant to statute or general law as to merchantability, description, quality, suitability or fitness of the Goods and/or Services for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the Company shall not be liable for any loss, damage, including consequential loss or damage, expense or costs whatsoever arising out of the manufacture, supply, assembly, installation or operation of the Goods and/or Services or arising out of the Company's negligence or breach of contract or otherwise howsoever.

11. PRICES

The price which the Purchaser shall pay to the Company shall be the Company's written quoted selling price.

12. TERMS OF PAYMENT

12.1 Payment shall be made in Australian dollars, unless otherwise nominated in the Company's quotation, without any deductions whatsoever.

12.2 The Company reserves the right to submit monthly claims for progress payments covering design, goods, products and materials supplied, and work performed in respect of any of the Goods and/or Services supplied or to be supplied by the Company.

12.3 Where the Purchaser has an existing approved trade credit account with the Company, the Purchaser shall pay the Company's invoices within thirty (30) days from the end of the month in which the invoice was rendered by the Company to the Purchaser, at such place as is indicated on the invoice.

12.4 If for any reason beyond the control of the Company or due to the default of the Purchaser the Company is prevented for a period of one (1) month from delivering Goods, then the Purchaser shall upon demand by the Company pay for the Goods as if the Goods had been delivered plus any costs reasonably incurred as a result of any such delay.

12.5 If any progress or other claim for payment made by the Company in accordance with these conditions is not paid by the Purchaser within thirty (30) days from the end of the month in which such claim was made then interest on such claim will be payable by the Purchaser to the Company at a rate equal to ten percent (10%) above the official Cash Rate as set by the Reserve Bank of Australia and the Company may suspend work until payment is made and the Company shall be entitled to extend the date of delivery of the Goods or supply of Services by the period of such suspension.

13. PAYMENT DEFAULT

13.1 A "Default Event" occurs on any of the following events:

- (i) Monies are unpaid after the due date.
- (ii) A cheque from the Applicant is dishonoured.
- (iii) The Purchaser commits an act of bankruptcy or is declared bankrupt.
- (iv) A petition for the Purchaser's winding up is filed for the Purchaser is wound up.
- (v) The Purchaser is placed in receivership or external administration.
- (vi) The Purchaser enters into any deed of agreement with creditors.
- (vii) The Purchaser ceases to trade or carry on business in the usual manner.

13.2 If a Default Event occurs:

- (i) The Company may suspend or terminate the supply of Goods and/or Services on credit terms.
- (ii) All monies unpaid in respect of Goods and/or Services become immediately due and payable.
- (iii) The Company may retake possession of the Goods and sell them.
- (iv) The Company shall be entitled to pursue any recovery action against the Purchaser for the balance of any unpaid monies due including all costs associated with the recovery action.

14. TRADE CREDIT FACILITY

14.1 Where the Purchaser has an existing approved trade credit account with the Company:

- (i) The Company reserves the right to review, suspend or terminate the credit facility at any time, without prior notice to the Purchaser.
- (ii) The Company reserves the right to vary the dollar value of the approved credit limit at any time, without prior notice to the Purchaser.

15. PURCHASER'S PROPERTY

Any property of the Purchaser in the custody of under the control of the Company shall be entirely at the risk of the Purchaser and the Company shall not be responsible for any loss or damage whatsoever caused to such property whether by the negligence of the Company or otherwise howsoever.

16. STORAGE

In the event that the Purchaser fails to take delivery of the Goods the Purchaser shall upon demand being made by the Company pay to the Company all storage and other costs incurred by it as a result of such failure by the Purchaser and the Company shall have a lien on the Goods for all such costs.

17. CONSIGNMENT GOODS

17.1 The Company may allow some Purchasers the facility to hold Goods on consignment, to be sold to a third party. Goods supplied by the Company to the Purchaser on a consignment basis are supplied on such basis only if expressly stated in writing by the Company.

17.2 The Purchaser must indemnify and agrees to keep indemnified the Company in respect of any claims, actions, suits, demands, orders for costs or damages relating to or arising out of the consignment arrangement.

17.3 At all times during which the Purchaser holds Goods on a consignment basis, the Purchaser must:

- (i) Hold the Goods as the Company's agent;
- (ii) Properly store the Goods separately from any other goods and in a manner which clearly shows the Company as the owner of the Goods;
- (iii) Ensure that no lien or charge is placed on the Goods by any party whilst held on consignment by the Purchaser;
- (iv) Store the Goods in a safe and secure environment from theft and damage;
- (v) Keep the Goods and respective packaging in 'as new' condition;
- (vi) Adequately insure the Goods against damage, theft or any event that may cause loss to the Company.

17.4 Should the Purchaser have not kept the Goods or parts thereof, and packaging, in 'as new' condition, then the Purchaser will be deemed to have immediately purchased the Goods.

17.5 The Goods and/or Services the subject of the consignment between the Purchaser and the Company will be taken to be delivered by the Purchaser when the Purchaser delivers them to the third party.

17.6 If Goods are supplied to the Purchaser by the Company on a consignment basis, the Purchaser irrevocably authorises the Company by its servants or agents to enter the premises of the Purchaser where the Goods might be situated for the purpose of conducting an on site stock take. If the Company is in any way prevented or excluded from entering upon the Purchaser's premises or any premises where the Goods might be situated, the Purchaser acknowledges and agrees that the Company shall be entitled to immediately invoice the Purchaser for all Goods that have been provided to the Purchaser upon consignment by the Company.

17.7 If the Purchaser does not meet the terms and conditions outlined in the clauses relating to Consignment Goods, the Company reserves the right to refuse any further consignment.

18. ENVIRONMENTAL REQUIREMENTS

The Purchaser confirms and acknowledges it has made all inquiries in relation to all responsibilities and compliance in relation to storage of and disposal of any or all Goods supplied by the Company

19. PROPERTY RIGHTS – INTELLECTUAL, JIGS, TOOLS, ETC.

Where it is necessary for design documents, jigs, tools, gauges, patterns, moulds, dies or similar articles ("the Articles") to be produced or obtained in order to supply any of the Goods then all property of whatsoever nature including all intellectual property in the Articles shall be and remain at all times the sole property of the Company and the Purchaser shall not assert any rights or interest whatsoever with respect thereto.

20. PATENTS

The Purchaser shall indemnify, keep indemnified and hold harmless the Company from or incurred by reason of any infringement or alleged infringement of letters, patent, registered design, trademark or name copyright or other protected right in respect of any design plan, drawing or specification supplied by the Purchaser to the Company.

21. CANCELLATION OF ORDERS

No order for the Goods or the Services may be cancelled by the Purchaser except with the prior express written consent of the Company and then only upon terms to be agreed by the Company which will fully indemnify the Company from and against all losses, costs, damages and expenses of whatsoever nature, including consequential losses which may be suffered by it.

22. RETURNS OF GOODS

22.1 Goods may only be returned with prior written approval of the Company and if such approval is given, the Goods shall be returned to the Company's chosen point of return at the Purchaser's cost. When contacting the Company for such approval, details of invoice number, specific stock details of Goods to be returned, and date of shipment must be provided.

22.2 An administration, handling and stocking fee, payable by the Purchaser, will be calculated by the Company at the time of determining the Purchaser's request to return the Goods.

22.3 Returned Goods will only be accepted by the Company if the Goods are unused, undamaged and packed in their original packaging with their original marks and numbers unaltered so as to be in a saleable condition by the Company.

22.4 When all of the conditions, as outlined above in the clauses relating to Returns of Goods are met, a credit note will be issued to the Purchaser by the Company for the agreed value. The credit note will be applied against future purchases of Goods and/or Services. No cash refunds will be given.

23. PLACE OF CONTRACT

This contract for sale of the Goods and supply of the Services is made in the State of New South Wales and the parties agree to submit all disputes arising between them to the courts of New South Wales of any Court competent to hear appeals thereon.

24. VALIDITY OF TERMS AND SEVERABILITY

In the event that any of these conditions, provisions or terms shall be determined invalid, unlawful or unenforceable to any extent, such condition, provision or term shall be severed from the remaining conditions, provisions and terms which shall continue to be valid to the fullest extent permitted by law.

25. WAIVER

The Company's failure to exercise any right or power does not operate as a waiver and a partial exercise of a right or power does not preclude any further exercise of the right or power.

26. BUSINESS OWNERSHIP AND STRUCTURE

The Purchaser must no later than fourteen (14) days prior to any proposed change of business structure, ownership, shareholding and/or effective control or of company directors of the Purchaser, notify the Company in writing of the proposed changes. In the event that the Purchaser's business structure changes, then the Purchaser must notify the Company within seven (7) days and where applicable, complete a new Application for Credit.

27. CAVEATABLE INTEREST

The Purchaser as beneficial owner and as trustee of charges in favour of the Company, provides the Purchaser's right, title and interest in land (including land in the future) to secure the payment of all unpaid monies and the observance and performance of the Purchaser's obligations under these terms and conditions and the Company may register a caveat over the Purchaser's land in respect of this charge. In the event that the Company is required to exercise its right under this clause against the Purchaser, then the Purchaser grants to the Company the right to appoint a registered company Receiver and sell the Purchaser's right, title or interest in the property(ies) mentioned above.

28. TRUSTEE OF A TRUST

If the Purchaser is a trustee of any Trust:

- a) It is bound by these terms and conditions and charges its land and property as trustee; and
- b) It is a proper exercise of the Purchaser's authority and power under the Trust instrument and at law to transact with the Company and to charge its land and property in accordance with these terms and conditions.

29. COSTS

All reasonable costs, expenses and disbursements incurred by the Company, including debt collection fees and legal fees, arising from or incidental to the Company exercising any right(s) under these terms and conditions or from a Default Event, are payable by the Purchaser upon demand.

30. HEADINGS

The headings herein are for ease of reference only and shall not form part of any contract between the Purchaser and the Company or affect its construction.

31. PRIVACY

The Purchaser irrevocably authorises the Company to make such enquiries as it deems necessary to investigate the credit worthiness of the Purchaser from time to time including (but without limiting the generality of the foregoing) the making of enquiries of persons nominated as trade references, the bankers of the Purchaser or any other credit providers (collectively the "Information Sources") and the Purchaser hereby authorises the Information Sources to disclose to the Company such information concerning the Purchaser which is within their possession and which is requested by the Company. The Company may disclose personal information relating to the Purchaser's credit history with the Company to:

- a) Credit reporting agencies;
- b) Organisations to which the Purchaser has listed the Company as a trade reference.