

CONDITIONS OF SALE

Interpretation

1. In these conditions:
  - 1.1 "Seller" means Fabric Solutions Australia Pty Ltd ACN \_\_\_\_\_, Fabric Solutions Pty Ltd ACN \_\_\_\_\_ or any related company which is the seller of the Goods specified in the attached quotation.
  - 1.2 "Buyer" means the purchaser of the Goods specified in the attached quotation.
  - 1.3 "Goods" means the products and, if any, services specified in the attached quotation.
2. 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) and which by law cannot be excluded, restricted or modified.

General

3. These conditions (which may only be waived in writing, signed by the Seller) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

Terms of Sale

4. The Goods sold by the Seller are sold on these terms and conditions.

Seller's Quotation

5. a. Unless previously withdrawn, the Seller's attached quotation is open for acceptance by the Buyer for a period of 30 days from the date of the quotation and if not accepted within such period shall lapse. The Seller reserves the right to refuse any order based on the quotation within 7 days after the receipt of the order.
- b. An order given to the Seller by the Buyer shall be binding if either:
  - i. a written Acceptance of Order is signed for and on behalf of the Seller; or
  - ii. if the goods are manufactured by the Seller in accordance with the order; or
  - iii. if the goods are delivered by the Seller to the Buyer, his servants or agents or any carrier; or
  - iv. the Buyer accepts the Seller's quotation. An acceptance of the order by the Seller is and shall be deemed to be an acceptance of these Conditions of Sale by the Buyer notwithstanding any inconsistencies which may be introduced in the Buyer's order of acceptance unless expressly agreed to by the Seller in writing.

Packing

6. The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

Drawings Etc

7. a. All specifications, drawings and particulars of weights and dimensions submitted by the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.
- b. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- c. Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Seller and set out in the quotation, then such increase or decrease is to be adjusted on a unit rate basis according to unit prices set out in the attached quotation.
- d. Designs prepared by the Seller for the Buyer together with dimensions, weights, test and working pressures and illustrations published by the Seller
  - i. shall be the exclusive property of the Seller who shall at all times retain the copyright thereto;
  - ii. shall not be passed by the Buyer to a third party without explicit written consent of the Seller; and
  - iii. are only for the guidance of the Buyer and shall not form part of any subsequent contract between the Seller and the Buyer.

Performance

8. Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognized tolerances applicable to such figures.

Delivery

9. a. The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- b. The Seller is not to be liable for any loss, damage, or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- c. The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement in the quotation to the effect that the Buyer will not take delivery by instalments.
- d. If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - i. it is not a repudiation of the contract of sale formed by these conditions; and
  - ii. the defective instalment is a severable breach that gives rise only to a claim for replacement.
- e. The Seller shall deliver Goods to the delivery place nominated by the Buyer. The Buyer shall pay to the Seller delivery charges in accordance with the Seller's current rates.
- f. The Buyer authorizes the Seller to deliver Goods to the place nominated by the Buyer ("the Place of Delivery") and leave the Goods at the Place of Delivery whether or not any person is present to accept delivery. The Seller shall not be liable on any basis whatsoever for any loss or damage to the Goods occurring after delivery to the Place of Delivery.
- g. The Seller shall not be obliged to obtain a signed receipt or other acknowledgement at the Place of Delivery. However if a signed receipt or other acknowledgement of delivery is obtained from a person at the Place of Delivery who appears to be authorized by the Buyer to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgement shall be conclusive evidence of delivery, the quantity of Goods received, the lack of defects in such products and otherwise compliance with the order.

Loss or Damage in Transit

10. a. The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).
- b. The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
  - i. has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
  - ii. lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the Goods.

Seller's Liability

11. a. The Seller's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding twelve (12) calendar months after the Goods have been dispatched so long as
  - i. defects have arisen solely from faulty materials or workmanship;
  - ii. the Goods have not received maltreatment, inattention or interference;
  - iii. accessories of any kind used by the Buyer are manufactured by or approved by the Seller; and
  - iv. the defective parts are promptly returned free of cost to the Seller.
- b. If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- c. The Seller is not liable for and the Buyer releases and indemnifies the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 11(a) of these conditions.
- d. Except as provided in these conditions, all expenses and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods arising out of the Seller's negligence or in any way whatsoever.
- e. Any comments made by the Seller regarding project constructions are for information only and are not to be taken as recommendations. Any questions regarding project design should be referred to a competent engineer.

12. The Seller's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to:

- a. In the case of Goods, any one of the following:
  - 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 of acquiring equivalent Goods;
  - iv. the payment of the cost of having the Goods repaired.
- b. In the case of services:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

13. The Seller's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the purchaser an amount equal to:

- a. the cost of replacing the Goods;
- b. the cost of obtaining equivalent Goods; or
- c. the cost of having the Goods repaired, whichever is the lowest amount.

Prices

14. a. Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (GST).  
b. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rates of wages, cost of materials and other charges affecting the cost of production ruling on the date of issue.  
c. If any of the items referred to in 14(b), either before acceptance of or during the currency of the contract are increased for any reason beyond the control of the Seller then the Buyer agrees to pay the additional costs incurred by the Seller as a result thereof.

Payment/Account Terms

15. a. All Goods and services supplied by the Seller to the Buyer shall be paid for in full by the Buyer no later than 30 days from the Invoice Date issued by the Seller ("the Due Date").  
b. The Seller reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the Buyer at any time become in the Seller's opinion unsatisfactory.  
c. The Buyer must pay all legal costs, stamp duties, other expenses, costs or disbursements (including but not limited to any dishonoured cheque fees, debt collection agency fees and solicitor's fees) incurred by the Seller in respect of the collection of any monies owing pursuant to this agreement or the enforcement thereof.  
d. If the Seller is not paid for any Goods by the Due Date, without prejudice to any other right or remedy, all outstanding money shall bear interest on a daily balance until paid at a rate of 1% per month.  
e. The Seller shall be entitled to add to any invoice, the cost of any GST, stamp duty and sales excise, value added, consumption or other tax or imposts applicable to the transactions.
16. If the Buyer makes default in any payment, commits an act of bankruptcy, has managers or receivers appointed or enters into liquidation the Seller may at its option withhold further deliveries or cancel the contract without prejudice to the Seller's rights hereunder.

Property and Risk

17. Unless otherwise agreed by the Seller in writing the following shall apply:
- a. Legal and equitable title in the Goods shall not pass to the Buyer until the purchase price for those Goods has been paid in full to the Seller by the Buyer but risk in the Goods shall pass to the Buyer immediately upon delivery.
- b. Until such time as the title passes in accordance with paragraph 16(a) the Buyer shall hold the Goods as bailee for the Seller on the terms set out below.
- c. The Buyer shall store the Goods separately from other goods in the Buyer's possession in a manner which clearly identifies those goods as the property of the Seller.
- d. The Buyer shall not dispose of or part with possession of the Goods without prior written consent of the Seller.
- e. Pending further transfer of title, the Buyer may use the Goods as agent of the Seller and as authorized by the Seller to manufacture new products. The products resulting from such manufacture will be the property of the Seller.
- f. The Buyer is hereby authorized to sell the Goods or any other manufactured products as agent of the Seller until such time as title passes to the Buyer PROVIDED THAT:
- i. The Buyer must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for, bank the proceeds of any such sale into a separate account and immediately remit such funds to the credit of Seller.
- ii. If any goods are used in a manufacturing process or mixed with other materials, the Buyer shall record the value of goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of the sale to the Seller; and
- iii. The authorization shall lapse immediately upon any of the following events occurring:
1. The Buyer being a natural person, commits an act of bankruptcy or is declared insolvent.
  2. Where the Buyer is a corporation, proceedings are commenced to wind up the Buyer or the Buyer is placed under official management or a receiver is appointed over the Buyer's undertaking or property or any part thereof or the Buyer is placed under any form of insolvent administration.
  3. The Buyer enters into some arrangement or assignment for the benefit of its creditors.
  4. The Buyer disposes of or parts with possession of the Goods otherwise than as expressly authorized by this agreement.
  5. The Buyer, in the opinion of the Seller, is in breach of any terms of this agreement.
- g. If the Buyer does not pay for any Goods or services by the due date, the Seller is hereby authorized by the Buyer to enter the Buyer's premises (or any premises under the control of the Buyer or as agent of the Buyer if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer whatsoever.

Buyer's Property

18. Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

Storage

19. The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

Returned Goods

20. a. The Seller is not under any duty to accept goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.  
b. If the Seller agrees to accept returned Goods from the Buyer under paragraph 19(a), the Buyer must return the Goods to the Seller at the Seller's place of business referred to in the attached quotation.

Sub-Contracting

21. The Seller reserves the right to sub-contract the production, manufacture, supply or installation of the whole or any part of the Goods supplied.

Cancellation

22. No order may be cancelled except with the consent in writing of the Seller and on terms which will indemnify the Seller against all losses.

Place of Contract

23. a. The contract for sale of the Goods is made in the State of Queensland.  
b. The parties agree to submit all disputes arising between them to the Courts of the State of Queensland and any Court competent to hear appeals from those Courts of first instance.

Whole Contract

24. These Conditions of Sale contain the whole terms for the sale of the Goods and the Buyer acknowledges that no representations or warranties have been given to the Buyer by the Seller other than those contained in these Conditions of Sale.

Suitability for Purpose

25. Unless otherwise stated in writing in the quotation attached hereto, the Seller gives no warranty as to the suitability for any purpose of the Goods and the Buyer acknowledges that it has purchased the Goods after making its own enquiries as to their suitability for the purpose of the Buyer.

Inspection

26. If the Seller agrees to the Buyer or its agents or representatives inspecting the Goods at the producing works before delivery, that inspection shall be at the Buyer's expense and be final and on its completion to the satisfaction of the inspector the Buyer shall be deemed to have accepted the Goods. If the inspector does not indicate to the Seller immediately on completion of his inspection any objection to the Goods the Buyer shall be deemed to have accepted them.