

CAgroup Pty Ltd

ACN 005 084 097

TERMS & CONDITIONS OF SALE

These supply terms and conditions ("Supply Terms") apply to all goods, materials, equipment and parts provided by **CAgroup Pty Ltd** ABN 83 005 084 097 of 32 Industrial Avenue, Thomastown, Victoria, 3074, Australia to the **Customer**.

1 General:

- 1.1 These Supply Terms set out the entire agreement between CAgroup and the Customer in relation to the supply or delivery by CAgroup, of any goods, materials, equipment and/or parts ("Supplies"). Any terms or conditions contained in any purchase order or any other document issued by the Customer or any correspondence or documents passing between CAgroup and the Customer:
 - (a) have no effect, and will not affect any agreement between CAgroup and the Customer pursuant to these Supply Terms, even if CAgroup has had notice of those terms or conditions; and
 - (b) do not constitute an offer or a counter-offer by the Customer.
- 1.2 By ordering Supplies, or receiving delivery of any Supplies, the Customer is deemed to have accepted the terms and conditions set out in these Supply Terms, and to have agreed that they apply to the exclusion of all others.
- 1.3 No variation of these Supply Terms shall be effective unless documented in writing and signed by CAgroup.
- 1.4 CAgroup may accept or reject any order (or part of any order) placed by a Customer for Supplies in its discretion.
- 1.5 The minimum invoice amount for any order placed by a Customer is \$150.00 (excluding GST, and freight, storage or other expenses).

2 Variations to Pricing; Specifications:

CAgroup may vary without notice the price of any Supplies offered for sale, or the specifications, design or construction of the Supplies as CAgroup or its suppliers consider appropriate.

3 Delivery and Supply:

- 3.1 Dates and times for delivery as specified in any purchase order issued by the Customer or in any confirmation of order issued by CAgroup are estimates. CAgroup will use reasonable endeavors to deliver Supplies by the date for delivery specified by CAgroup in any confirmation of order. However any failure to deliver any Supplies by the stated delivery date shall not be a breach of these Supply Terms, or a basis for cancellation or any order or the return of any Supplies.
- 3.2 Unless CAgroup agrees in writing to the contrary the Customer is responsible for any loss, damage or deterioration to the Supplies once the Supplies are delivered to the Customer.
- 3.3 "Delivery" will be taken to have occurred upon CAgroup handing over possession of Supplies to the Customer. For the avoidance of doubt:
 - (a) where Supplies are sold on an "Ex-Works" basis they are "delivered" when handed to the carrier at CAgroup's premises. In that event, the Customer is responsible for paying for all transport, insurance and associated expenses relating to the transport of the Supplies from CAgroup's premises. If the Customer requests CAgroup to arrange transport of the Supplies on its behalf, CAgroup will arrange such transport as the Customer's agent, and all transport and associated expenses incurred will be charged to the Customer as separate items, in addition to the price for the Supplies; and
 - (b) in all other cases, CAgroup will arrange transport and insurance to the Customer's nominated delivery address, and the Customer must ensure that an appropriately qualified and authorised person is in attendance to take delivery.
- 3.4 If the Customer returns or fails to accept delivery of any Supplies tendered in accordance with these Supply Terms, CAgroup may invoice the Customer for the Supplies delivered, and treat the remainder of the agreement (if any) as cancelled under clause 6.2.
- 3.5 If:
 - (a) CAgroup advises the Customer that the Supplies are ready for collection at CAgroup's premises and the Customer fails to collect such Supplies within 7 days (or a longer period if CAgroup agrees in writing); or
 - (b) where CAgroup has agreed to arrange transport of the Supplies pursuant to clause 3.3(a) to the Customer's nominated address, or CAgroup has agreed to deliver the Supplies to the Customer's nominated address,

then CAgroup is deemed to have delivered the Supplies, and may store any Supplies referred to in this clause 3.5 at the Customer's sole risk and expense, if the Customer fails or refuses to take delivery of those Supplies. In that event, in addition to the invoiced amount for the Supplies, the Customer will be liable to pay CAgroup a storage fee, together with any expenses incurred by CAgroup (such as any freight charges to return the Supplies to CAgroup's premises and transport and insurance costs to transport them again to the Customer's nominated premises).

4 Invoicing and Payment:

- 4.1 Unless otherwise specified by CAgroup, all prices specified in CAgroup catalogues or pricelists, or in any invoice exclude any tax (including any Goods and Services Tax within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("GST"), or any duty or impost levied in respect of the Supplies), which the Customer will pay, in addition to the amounts specified for the Supplies.
- 4.2 Payment is to be by cash unless CAgroup has granted the Customer a separate credit facility. CAgroup reserves the right to refuse credit facilities to any purchaser. CAgroup may revoke or withdraw any approval previously given to the Customer to extend credit to the Customer at any time and for any reason.
- 4.3 If Supplies are sold to the Customer on credit then, unless CAgroup agrees in writing to the contrary, all invoiced amounts are payable within thirty (30) days of the last day of the month in which the invoice was issued to the Customer. If CAgroup does not receive payment by the due date, then without limiting its rights, CAgroup may:
 - (a) charge the Customer interest on the amount outstanding at the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic) (compounding daily);
 - (b) by written notice to the Customer, suspend the provision of any further Supplies, until the Customer has paid the outstanding amount, interest and any amount payable under clause 4.3(d);
 - (c) retain any amount received from the Customer on account of the Supplies; and
 - (d) retain or resell any particular Supplies.
- 4.4 The Customer is also liable for all reasonable expenses incurred by CAgroup in the enforcement of the Customer's obligations and the recovery of monies due from the Customer.
- 4.5 CAgroup is entitled to set-off against any money owing to the Customer, amounts owed to CAgroup by the Customer on any account whatsoever.

5 Title and Risk:

- Title in the Supplies will not pass to the Customer until the Customer has paid CAgroup in full for those Supplies, together with any other sums payable in respect of those Supplies. Until title passes in any Supplies:
- (a) the Customer must hold the Supplies as bailee for CAgroup (and return the Supplies to CAgroup on request);
 - (b) the Customer is only authorised to sell or deal with the Supplies (or any portion of them) to third parties as the fiduciary agent of CAgroup;
 - (c) the Customer must hold all payments (direct or indirect) received from such third parties for the Supplies (or any portion of them) on trust for CAgroup pursuant to that fiduciary relationship;
 - (d) if the Customer incorporates or transforms the Supplies (or any portion of them) into any other goods or products, the Customer must hold a proportion of any payment (the "relevant proportion") received by the Customer for such goods or products on trust for CAgroup. The relevant proportion must be equal to the dollar value of the portion of the Supplies that are incorporated or transformed, and if the Customer receives part payment (not exceeding the relevant proportion) for those goods or products, it does so as payment first of the relevant proportion; and
 - (e) CAgroup is irrevocably authorised to enter any premises where the Supplies is located and to act on behalf of, or in the name of, the Customer to recover possession of them. The risk in the Supplies shall pass to the Customer on Delivery.

6 Returns, Cancellations and Complaints:

- 6.1 The Customer may not return any Supplies to CAgroup without obtaining CAgroup's prior consent, and then only on such terms (including as to the payment of an appropriate charge) as CAgroup may determine. CAgroup reserves the right to refuse or withhold that consent. The Customer may only request in writing to return Supplies for credit within seven (7) days of receipt of delivered Supplies. Return of Supplies will only be accepted if in new condition. No credits will be granted for returned Supplies unless the Customer supplies a copy of the original invoice. Supplies that are returned will be subject to a restocking charge payable by the Customer, calculated as a percentage of the invoice. Where Supplies are have been custom manufactured or fabricated to a specification required by the Customer, CAgroup may impose an additional charge, as a condition of agreeing to accept any return.
- 6.2 The Customer may not cancel any order accepted by CAgroup or any part of it without obtaining CAgroup's prior written consent, and then only on such terms (including as to the payment of an appropriate charge) as CAgroup may determine. CAgroup reserves the right to refuse or withhold that consent.
- 6.3 The Customer must submit all complaints, claims, or notifications in respect of a delivery Supplies that do not comply with an order to CAgroup in writing within seven (7) days of the date of CAgroup's invoice for the Supplies. Otherwise, the Customer is deemed to have accepted the Supplies as delivered.

7 Security Interests

- 7.1 Capitalised words used in this clause 7 (except those otherwise defined in these Supply Terms) have the meanings given to those words in the Personal Property Securities Act 2009 (Cth) and its associated regulations and amendments ("PPSA").
- 7.2 The Customer acknowledges that CAgroup has a Security Interest in all present and future Supplies supplied to the Customer including with respect to any proceeds of those Supplies which may arise ("Collateral"). The Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time.
- 7.3 These Supply Terms constitute a Security Agreement for the purposes of the PPSA and CAgroup may register Financing Statements with respect to the Collateral on the Personal Property Securities Register ("PPSR").
- 7.4 The Customer must not create or purport to create or permit to be created any Security Interest in any Collateral, other than a Security Interest in favour of CAgroup.
- 7.5 The Customer:
 - (a) must do all things and execute all documents necessary to give effect to all Security Interests created, or intended to be created, under these Supply Terms and to enable perfection of those Security Interests;
 - (b) must not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of any of the Collateral without CAgroup's prior written consent; and
 - (c) must provide CAgroup at least 14 days written notice of a proposed change to any of the Customer's address and/or contact details, including the proposed changes.
- 7.6 Where permitted by the PPSA, the Customer waives any rights to receive notifications, verifications, disclosures or other documentation under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157, or any other provision, of the PPSA.
- 7.7 The Customer and CAgroup agree to contract out of and nothing in the provisions of sections 96, 125, 129, 132, 137(3), 142 and 143 of the PPSA will apply to these Supply Terms.
- 7.8 To the extent permitted by the PPSA, the Customer agrees that where CAgroup has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.9 The Customer and CAgroup agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must not exercise its rights to make any request of CAgroup under section 275 of the PPSA, authorise the disclosure of any information under that section, or waive any duty of confidence that would otherwise permit non-disclosure under that section. The agreement in this clause 7.9 is made solely for the purpose of allowing to CAgroup the benefit of section 275(6)(a) and CAgroup shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this clause.
- 7.10 This clause 7 survives the expiry or termination of any of these Supply Terms.

8 Intellectual Property Rights:

The provision of Supplies will not confer any right upon the Customer to use any intellectual property of CAgroup or of any of its suppliers.

9 Warranty:

- 9.1 The period of any warranty applicable to any particular Supplies will be 6 months, or otherwise as specified by CAgroup at the time of accepting any order from the Customer, ("Warranty Period"). The Warranty Period commences on the date of Delivery or deemed Delivery.
- 9.2 CAgroup warrants to the Customer that during the Warranty Period, the Supplies will, allowing for reasonable variations in quality, comply in all material respects with their printed specifications, and will be free of material defects in design, construction and materials, and CAgroup will at its discretion replace or repair any defective Supplies, or refund the price of the defective Supplies.
- 9.3 To claim under the warranty, the Customer must within the Warranty Period, return the defective Supplies to CAgroup at the Customer's expense, together with a copy of the original invoice, for evaluation by CAgroup. Only after CAgroup has made its evaluation will the appropriate action be taken at CAgroup's discretion. Transport to and from CAgroup's premises is at the Customer's expense.
- 9.4 CAgroup is not liable for defects in or damage to Supplies arising from mishandling or misuse, incorrect installation, vandalism, ill-treatment, accident, or any cause out of CAgroup's reasonable control.
- 9.5 CAgroup is not liable for any indirect, punitive, special, incidental or consequential damage, or losses arising out of a third party bringing a claim of whatever nature, which the Customer may suffer or incur or which may arise in connection with any Supplies supplied to the Customer pursuant to these Supply Terms, or in respect of a failure or omission on the part of CAgroup to comply with its obligations under these Supply Terms.
- 9.6 Except for the express warranties set out in these Supply Terms, to the extent permitted by the law, CAgroup expressly excludes all conditions and warranties. Where legislation implies any condition or warranty ("non-excludable term"), and that legislation avoids or prohibits provisions in a contract excluding, or modifying the application or exercise of or liability under that non-excludable term, that non-excludable term is deemed to be included in these Supply Terms. However, CAgroup's liability for any breach of that non-excludable term is limited, at CAgroup's option, to the repair or replacement of the defective Supplies, the supply of equivalent goods or services, or paying the cost of replacing the defective Supplies or of supplying equivalent goods or services.

10 Termination:

- 10.1 CAgroup may at any time for no disclosed reason:
 - (a) decline any order for Supplies and/or cancel any order previously accepted but as yet supplied; and/or
 - (b) stop supplying Supplies to a Customer.

11 General Provisions:

- 11.1 The failure by CAgroup to exercise or enforce any rights detailed in these Supply Terms shall not be deemed as a waiver of any such right and does not bar the exercise or enforcement of such right at any time or time thereafter.
- 11.2 Notwithstanding any other clause in these Terms and Conditions of Sale, CAgroup total aggregate liability arising out of, or in connection with these Terms and Conditions of Sale whether for negligence or breach of contract or any case whatsoever shall in no event exceed the price of the Supplies paid or payable by the Customer.
- 11.3 CAgroup will not be liable to the Customer or to any third party for any non-performance or delay in the performance of its obligations under these Supply Terms, if a Force Majeure Event causes the non-performance or delay, and CAgroup gives the Customer notice of it. In no event will this provision affect the Customer's obligation to make any payments to CAgroup except in respect of Supplies that CAgroup is unable to provide, until they can be provided. For the purposes of this clause 11.3, "Force Majeure Event" means a circumstance beyond CAgroup's reasonable control which results in CAgroup being unable to observe or perform on time any obligation under these Supply Terms, including but not limited to acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, and strikes.
- 11.4 If any license of consent of any Government or authority is required for the importation and/or acquisition of and/or to use any Supplies, the Customer shall obtain the same at its own expense and produce evidence of same to CAgroup on request.
- 11.5 These Supply Terms and any order made under it are governed by and will be interpreted according to the laws of Victoria. Each party consents and submits to the jurisdiction of the courts of Victoria in relation to itself and its property.
- 11.6 If any provision of these Supply Terms proves to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the remaining provisions, and the remaining provisions of these Supply Terms shall continue in full force and effect.
- 11.7 Any notice required or contemplated by these Supply Terms is deemed to have been properly given if it is in writing, properly addressed and delivered personally, or mailed postage prepaid or by fax to the Customer's principal place of business or last known address.
- 11.8 In these Supply Terms, unless the contrary intention appears:
 - (a) words in the singular include the plural and vice versa;
 - (b) words importing a gender include any other gender;
 - (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
 - (d) monetary references are references to Australian currency.