

1. DEFINITIONS

In these terms and conditions, unless the context otherwise requires:

- 1.1 **"Coast"** means Coast Distributors Pty Ltd (ABN86002 020 162) and all related corporations or assigns.
- 1.2 **"Contract"** means the contract entered into between Coast and the Customer, on the terms set out herein.
- 1.3 **"Customer"** means the Customer purchasing or offering to purchase goods from (including his successors and nominees), and where there is more than one Customer, the Customer's covenants and obligations are joint and several.
- 1.4 **"Date of Delivery"** is the date of which the Goods leave the premises of Coast.
- 1.5 **"Goods"** and **"Goods supplied"** includes goods manufactured, imported, supplied and/or delivered by Coast.

2. PAYMENT

- 2.1 Payment for goods supplied by Coast to the Customer shall become due on the date of delivery of the Goods or otherwise on the date specified in Coast's invoice. Payment shall be made at Coast's Sydney Head Office.
- 2.2 Time for payment shall be of the essence of the Contract.
- 2.3 If payment is not made in accordance with Coast's terms and conditions then Coast shall without prejudice to any other remedy be entitled to charge interest and administration charges at the higher of 10% or 2% above the overdraft rate charged to Coast by its Bankers from time to time on monies outstanding. the Customer will also be liable for any legal or other costs incurred by Coast in attempting recovery of amounts owed by the Customer.
- 2.4 If the Customer delays making payment under the terms of the Contract Coast may, without prejudice to any other remedy, suspend supply or delivery of any Goods to the Customer until such payment is made and Coast shall be entitled to increase the Contract price to cover any extra expenses incurred as a result of the Customer's default.

3. DELIVERY OF GOODS

- 3.1 Coast shall make all reasonable efforts to deliver to the goods on the date agreed between the parties, but shall not be responsible for any consequential, indirect or other loss arising as a result of any failure by Coast to deliver the Goods at any agreed time or within a reasonable period. Where no date for delivery has been agreed upon, Coast shall deliver the Goods within a reasonable time. Where delivery is to be made during a certain period, Coast may at its option delivery the Goods in instalments during that period.
- 3.2 Where delay in delivery or non delivery is due to the customer failing to obtain any necessary approvals, clearances or other prerequisites to delivery or arises as a result of government interference, riot, acts of public enemies, strikes or lock out, shortages of manpower howsoever occurring, fire, flood, power disturbances, shortage of raw materials, damage to machinery or dislocation of production, dislocation or delay in transport, acts of God or any other occurrence reasonable beyond Coast's control, Coast shall within 30 days of becoming aware of any such occurrence notify the Customer in writing of Coast's inability to deliver and may terminate the contract if it shall so determine.
- 3.3 Unless otherwise agreed, Goods supplied shall be of ordinary commercial quality and all standards including but not limited to tolerances of dimension, strength and weight, shall be of such standard as Coast generally applies to such type of Goods. Coast shall not be liable for over or under delivery of bulk Goods provided that any over or under delivery shall not exceed 10% of the ordered quantity, such bulk goods shall be charged at the ruling unit cost for the goods delivered.
- 3.4 Any measures requested by the Customer to protect the Goods in storage or transit shall be at the Customer's expense.

4. PROPERTY IN THE GOODS

- 4.1 The parties agree that the ownership of the Goods delivered by Coast to the Customer will not pass to the Customer until such time as the Goods the subject of the contract and all other Goods supplied by Coast to the Customer have been paid for in full.
- 4.2 Notwithstanding anything in this clause, Risk in the Goods shall pass to the Customer at the date of delivery.
- 4.3 Until such payment has been made the Customer holds the Goods as bailee for Coast and shall safely and securely store the Goods separately from other goods on the premises of the Customer in such a manner as to show clearly that the Goods are the property of Coast.
- 4.4 Where payment is not made or on before the due date the Customer shall, should Coast so require, deliver up the Goods to Coast failing which Coast is hereby irrevocably authorised to enter at any time by its servants or agents the place where the Goods are situated and to repossess the Goods, and to remove the Goods from any vessel, vehicle, thing or place whether or not they have at any such time before been fixed to any vessel, vehicle, thing or place and for the purpose Coast is appointed the Customer's agent.

4.5 The Customer agrees to indemnify Coast and keep Coast indemnified against all costs incurred by Coast in removing the Goods and against all claims against Coast arising from such removal.

4.6 The Customer bears the onus of proving that Goods supplied by Coast in the Customer's possession (whether mixed with other Goods or not) have been paid in full by the Customer. If the Customer is unable to prove to the satisfaction of Coast, the Goods identified as Coast Goods have been paid in full by the Customer, then those Goods shall be deemed to relate to unpaid invoices outstanding from time to time and such Goods are deemed to be the property of Coast. Coast reserves the right to repossess those Goods without having to prove that the Goods relate to specific unpaid invoices outstanding at the time of repossession.

4.7 Where the Customer makes a new object from the Goods, (whether finished or not) or the Customer mixes the Goods without Goods, or the Goods become part of other Goods (the "New Goods"), the Customer agrees with Coast that the ownership of the New Goods immediately passes to Coast and that until payment of all sums owing to Coast whether under this or any other contract the Customer will hold the New Goods as a fiduciary for Coast. The ownership of the New Goods passes to Coast at the beginning of any operation or event by which the Goods are converted into the New Goods. Where Coast has not been paid in the manner specified in sub-clause 2.1 herein, the Customer agrees with Coast to hold the New Goods in a manner that clearly shows the ownership of Coast.

4.8 Notwithstanding the provision of the preceding sub-clauses, the customer may sell the Goods and the New Goods to a third party in the course of business and deliver them to that party provided however that:

(a) where the Customer is paid by that party, the Customer holds the whole of the proceeds of the sale on trust for Coast and shall not mingle any of the proceeds of sale with the Customer's own monies or in any Bank Account with other monies, but shall ensure that all receipts of sale are separate and identifiable. Moreover, the Customer shall immediately on receipt of the proceed of sale remit to Coast all monies owing under the Contract; and

(b) where the Customer is not paid by the party, the Customer agrees, at the option of Coast to assign his claim against that party to Coast upon Coast giving the Customer notice in writing to that effect. For the purpose of giving effect to this sub-clause the Customer irrevocably appoints Coast as its attorney.

4.9 Where the contract is for delivery of the Goods by instalments the property shall not pass in any instalment of the Goods until payment has been made to Coast of the total contract price.

5. WARRANTIES AND INDEMNITIES

5.1 Subject to the provision of these terms and conditions, Coast warrants the Goods to be of merchantable quality. The liability of Coast pursuant to this warranty or any other warranty implied by operation of the Trade Practices Act 1974 shall be limited to the cost of replacing defective Goods, the cost of obtaining equivalent Goods, or the cost of repairing the Goods, or the cost of repairing the Goods at Coast's discretion provided that in all such cases freight costs and cost of dismantling and reassembly shall be borne by the Customer.

5.2 Coast agrees to provide in respect of the Goods the warranty as described in Coast's form of warranty as supplied with the Goods (if any) provided that the Goods are used strictly in accordance with Coast's specifications and any manufacturers specifications.

5.3 Subject to paragraph 5.1 this agreement shall exclude Coast from any liability arising out of or in connection with the supply, resupply, use or reuse of the Goods, howsoever arising and whether for consequential loss or otherwise, including but not limited to any liability Coast may otherwise have had by virtue of any representations, warranty, condition or term whether express or implied.

5.4 The Customer hereby indemnifies and agrees to hold Coast harmless against all costs, claims, expenses or other liability arising out of or in connection with delivery to the Customer of the Goods, prepared, manufactured or dispatched in accordance with drawings, models, description, analyses, prescriptions other specifications submitted to Coast by the Customer, including but not limited to action for alleged infringement of copyright, patents, registered designs or trade marks.

6. ADVICE

Subject to clause 5, any advice recommendation, information, assistance or serviced provided by Coast in relation to Goods supplied or manufactured by it in respect to their use or application is given in good faith however any such advice, recommendation, information, assistance or service shall be given and accepted without liability on the part of Coast and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make the Goods.

7. APPLICABLE LAW

This contract shall be deemed to have been made in New South Wales and is governed by the law of New South Wales.