



## TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale shall apply to the sale of goods or services ("goods") by Key Plastics Pty Ltd ABN 80 000 063 623 ("the Supplier") to another party. These terms and conditions of sale replace any previous terms and conditions of sale.

### 1 DEFINITIONS AND INTERPRETATION

"Customer" means a person whose order for the purchase of goods is accepted by the Supplier.

"GST" means goods and services tax levied pursuant to the A New Tax System, (Goods and Services Tax) Act 1999.

- (a) The headings used do not form part of these terms and conditions and are for convenience only.
- (b) Where the context admits or requires words importing the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.

### 2 GENERAL

- (a) Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions or any other written contract for the sale of goods are expressly rejected by the Supplier.
- (b) A quotation shall not constitute an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance). The Supplier may accept or refuse any order for goods in their absolute discretion and may make their acceptance of an order conditional upon them receiving a satisfactory credit assessment of the Customer.
- (c) The Supplier may vary these terms and conditions by notice in writing to the Customer. The Customer agrees that the purchase of any goods after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions.
- (d) Should there be any variation to any of the information supplied by the Customer to the Supplier or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer shall immediately notify the Supplier in writing.
- (e) These terms and conditions shall be binding on the Customer's personal representatives successors and permitted assigns and shall be for the benefit of the Supplier's successors and assigns.

### 3 PRICING

- (a) Unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- (b) Notwithstanding any prior acknowledgment by the Supplier of the price of goods, the prices specified for goods may at the Supplier's option be subject to alteration to reflect the Supplier's prices and charges in effect at the time of delivery.
- (c) Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imports shall be to the Customer's account.
- (d) The Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.

### 4 ACCOUNT TERMS

- (a) The Customer shall pay for all goods delivered in any calendar month on or before the last trading day in the following month.
- (b) If GST is imposed on any goods supplied by the Supplier, then the Customer must pay to the Supplier an additional amount equal to the GST payable on or for such taxable supply. Payment of the additional amount will be made at the same time as payment for the goods is required to be made in accordance with these terms and conditions, subject to the provision of a tax invoice.
- (c) If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily rate at 2% per month from the due date for payment until actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest.
- (d) The Customer shall pay any legal costs (on an indemnity basis), stamp duty and other expenses payable in relation to any credit facilities which the Supplier may make available to the Customer, together with any guarantee or other security documents signed by the Customer or any guarantor and shall also pay any dishonour fees.
- (e) The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.

### 5 DEFAULT

- If:
- (a) There is any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owed by the Customer;
  - (b) An administrator, liquidator or provisional liquidator is appointed in respect of the Customer;

- (c) A receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
- (d) The Customer goes into bankruptcy or is wound up; or
- (e) The Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due, or
- (f) There is a breach by the Customer of any of these terms and conditions, then all monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding the due date for payment shall not have expired, and the Supplier may without prejudice to any other rights they may have do any or all of the following:
  - i Withdraw any credit facilities which may have been extended to the Customer;
  - ii Withhold any further deliveries of goods;
  - iii In respect of goods already delivered enter onto the Customer's premises to recover and resell the goods for their own benefit; and
  - iv Recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries.

### 6 DELIVERY

- (a) Goods will be delivered or deemed to be delivered when they are delivered to the delivery place nominated by the Customer. If no such address is nominated then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- (b) The Customer shall pay to the Supplier packing (other than the standard packing of the Supplier), crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate then the Supplier may charge a reasonable amount to the Customer. The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- (c) The Customer authorises the Supplier to deliver products to the place nominated by the Customer and to leave the products at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- (d) The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgment shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- (e) Any times quoted for delivery are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.
- (f) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- (g) The Supplier reserves the right to deliver goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.

### 7 PROPERTY AND RISK

- (a) The goods shall be at the sole risk of the Customer as soon as they are delivered or deemed to be delivered.
- (b) Property in and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer have been paid for in full and until then:
  - i The Customer will hold the goods as fiduciary and bailee for the Supplier;
  - ii The goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
  - iii The Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
  - iv The Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the goods.
- (c) The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the

insurance policy. If the Customer does not insure the goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance, which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

#### **8 DRAWINGS AND SPECIFICATIONS**

- (a) The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.

#### **9 RETURN OF GOODS**

- (a) Subject to clause 10, unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier will attract a surcharge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier and shall be deducted from the amount of the credit allowed for the return.
- (b) The original invoice number must accompany all goods returned to the Supplier.
- (c) The Customer is not entitled to return any goods pursuant to this clause 9 which have been custom made, custom processed or custom acquired for the Customer unless such goods are defective.

#### **10 CLAIMS UPON SUPPLIER**

- (a) Subject to Clause 6d) and Clause 19, all claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the goods provided that if the Supplier agrees to accept the return of any goods they must be in a good and saleable condition and a handling charge will be payable by the Customer.
- (b) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Trade Practices Act 1974) or cause any part of this clause 10 to be void. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- (c) Unless the goods supplied by the Supplier are of a kind ordinarily acquired for domestic household or personal use or consumption, the Supplier's liability under clause 10b) for breach of a non-excludable condition or warranty is limited at the Supplier's option, to 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 providing replacement goods or of acquiring equivalent goods;
  - iv The payment of the cost of having the goods repaired.
- (d) Subject to clause 10b) the Supplier shall not be liable for any direct or indirect loss whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

#### **11 FITNESS FOR PURPOSE**

- (a) The Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

#### **12 TRUST AND TRUSTEES**

Where the Customer is a trustee:

- (a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier.
- (b) The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by these terms and conditions both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any agreement with the Supplier.

#### **13 LAWS TO GOVERN PROVISIONS OF AGREEMENT**

- (a) Unless varied by notice in writing by the Supplier these terms and conditions shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the exclusive jurisdiction of the courts in the central district of that State.
- (b) The parties agree that proceedings may be commenced in any Court in Queensland and consent to that Court having jurisdiction by virtue of clause 14a) even though the Court would not otherwise have such jurisdiction without this consent.

#### **14 NOTICE**

- (a) Notice to be given by the Customer to the Supplier may be delivered personally or sent to the credit manager of the Supplier at the Supplier's address at Cnr Southpine & Johnstone Rds Brendale and unless the contrary is proved shall be taken as delivered when received by the Supplier. Notice to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known postal address, facsimile or electronic mail address and unless the contrary is proved shall be taken as delivered on the second business day following posting or on the date that such facsimile or electronic mail was sent. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post but otherwise on the date of transmission by facsimile or electronic mail.

#### **15 SEVERANCE**

- (a) In the event that the whole or any part or parts of any provisions in this agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these

terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

#### **16 CERTIFICATE**

- (a) A statement in writing signed by the Supplier's credit manager stating monies payable by the Customer to the Supplier shall be prima facie evidence of the amounts so payable.

#### **17 INTELLECTUAL PROPERTY**

- (a) The Customer hereby licences the use by the Supplier, where the same is necessary for the execution of any contract, of any copyright material, patents, registered designs or trademarks of which the Customer is the owner, or in the case of copyright material, patents, registered designs or trademarks of which the Customer is the licensee, sub-licensee the Supplier's use if them as aforesaid.
- (b) It is the condition of any contract arising out of these conditions that the Customer shall hold the Supplier harmless from and indemnify the Supplier against any infringement of any copyright, patent, registered design or trademark with respect to any copyright, patent, registered design or trademark furnished to the Supplier by the Customer.
- (c) The sale to and purchase by the Customer of any goods and services does not confer on the Customer any licence or trademark which is the property of the Supplier.

#### **18 SPECIAL ORDERS**

- (a) The Customer warrants as a fundamental condition of its agreement with the Supplier that all drawings and specifications and other design information supplied by it to the Supplier are accurate in all respects. Goods manufactured to special order of the Customer shall in no circumstances be returnable to the Supplier nor shall the Supplier be entitled to claim any rebate or refund of the price despite the goods not complying precisely with the Customer's specification.

#### **19 DISCLAIMERS**

- (a) All advice and information contained in the Supplier's published literature and given by the Supplier's staff is compiled from the best information available to the Supplier, but the Supplier accepts no responsibility whatsoever for its accuracy or for any results which may be obtained by the Customer. If the Customer relies upon any such advice or information they do so entirely at their own risk and the Supplier will not be liable for any loss or damage thereby suffered notwithstanding any want of care on the part of the Supplier or their staff in compiling or giving any advice or information.

#### **20 WAIVER**

- (a) Any failure by the Supplier to insist upon strict performance of any conditions herein shall not be deemed a waiver thereof of any right that the Supplier may have and shall not be deemed to be a waiver of any subsequent breach of any condition.

#### **21 TOOLING**

- (a) Where tooling is manufactured for use by the Supplier (notwithstanding that the Customer may have contributed to the cost of development or manufacture of such tooling), it will, unless otherwise agreed, be and remain the property of the Supplier and the Supplier shall be entitled to deal with such tooling as it so determines.

#### **22 PACKAGING**

- (a) The Supplier at all times retain the right of possession of any of the Supplier's owned boxes, pallets, drums or skips used for delivery of the goods and the Customer agrees to indemnify the Supplier in respect of any boxes, pallets, drums or skips not returned in good order and condition to the Supplier within 14 days of delivery of the goods.
- (b) Unless otherwise indicated prices include standard packing by the Supplier. If packing is charged for and is returnable an allowance will only be made for the return of such packing when the Supplier in good condition has received it.

#### **23 MINIMUM ORDER PRICE**

- (a) The Supplier may from time to time set a minimum price for any one order.