

**TERMS & CONDITIONS OF SALE**



## GENERAL

These Conditions of Sale apply to all sales of goods manufactured and or distributed by the Company ("Goods"). No variation or cancellation of any of these Conditions of Sale will be binding on the Company unless agreed to by a responsible officer of the Company in writing.

## PRICES

Prices are subject to variation without notice. Goods will be invoiced on the date of dispatch at prices current at that date.

## QUOTATION AND TENDERS

Subject to the right of the Company to withdraw quotations and tenders early notwithstanding that the quotation or tender does not state this right elsewhere, and unless otherwise specified in writing by the Company, quotations and or tenders of the Company will be open for acceptance for 60 days from the date of issue. Unless otherwise stated, all prices contained in any quotation are based on the cost of material, labour and (where applicable) freight, insurance, rates of exchange, duty and other costs known to the Company on the date of quotation. If by the date of dispatch any variation (whether by rise or fall) occurs with respect to the cost to the Company of supplying the Goods or any part thereof or (where applicable) in the cost of freight, insurance, rates of exchange, duty or other costs, the Company may adjust prices accordingly.

## PAYMENT

Payment must be made in cash within 30 days of the end of the month in which a supply is made, unless otherwise expressly arranged in writing.

If the Customer fails to pay the price when due, the Company may treat the contract as repudiated by the Customer or suspend delivery of the Goods the subject of the contract and any Goods the subject of any other contract with the Customer, without incurring any liability to the Customer in respect of such treatment or suspension.

## DELIVERY

The Company will deliver the Goods free into store or free on rail as applicable within the "free delivery area" and by means of the method of transport nominated by the Company. No responsibility will be taken for any charges incurred in the off-loading of Goods into the Customer's store or from rail. "Free delivery area," means the metropolitan area of state capital cities where stocks of Goods are held by the Company and such other places or areas as the Company may from time to time designate.

Time for completion, delivery, dispatch, shipment or arrival of the Goods or for the tender of any documents is not the essence of the contract for the sale of Goods.

## GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these Conditions of Sale are exclusive of GST. If GST is payable by the Company on any supply made under the Conditions of Sale then the Company will provide the Customer with a valid tax invoice showing the GST exclusive price and the GST amount payable. The Customer will pay to the Company an amount equal to the GST payable on the supply at the same time that the price for the Goods is payable and will be paid in addition to the price.

Where the Customer or the Company is required to pay for or reimburse an expense or outgoing of the other party, the amount to be paid by the Customer or the Company as the case may be

is the amount of the expense or outgoing less any input tax credit in respect of such expense or outgoing that the Company or the Customer is entitled to.

## CLAIMS AND RETURNS

All claims for incorrect pricing or delivery must be made within 14 days of the date of delivery. Goods returned after this period will incur a 10% handling charge. Goods correctly delivered, as ordered, but wished to be returned, will incur a 10% handling charge after prior approval of the Company for return by our normal transport method.

## DELAY AND INSTALMENTS

The Company shall not be liable for any failure to deliver or for any delay in delivery occasioned by any acts of God, strike, combination of workman, industrial action, lockout, difficulty in producing suitable materials or articles or substances required in the manufacture of the goods, shortage of stock, lack or shortage of labour, delays in transport or in transit, governmental or legal prohibitions or restrictions, fire, flood, hostility, civil commotion or other impediments whatsoever (whether similar in nature to the foregoing or not) reasonably beyond the Companies control.

Should the Company's performance hereunder be affected by war or similar disturbances the Company may at its option cancel this contract or order.

The Company reserves the right to deliver goods or perform services by instalments, and each instalment shall be deemed to be sold under separate contract. Failure to deliver any instalment shall not entitle the Customer to terminate agreement with the Company.

## WARRANTY

Sub-paragraphs (a) to (d) of this paragraph only apply where the contract does not constitute a supply of goods or services to a consumer as defined in the Acts. They are subject to any express provision in these Conditions of Sale to the contrary or in the contract for the sale of Goods to the contrary and only operate to the full extent permitted by law:

- a) the Company gives no condition, warranty or undertaking of any kind as to the condition, quality or safety of the Goods, the suitability or fitness for purpose of the Goods or the suitability or fitness for any ordinary use or any special use of the Goods, save that the Goods will be manufactured in accordance with the applicable Australian Standard and save in the case of Goods found to be defective as a result of their manufacture by the Company. In all cases, the Company's liability will be limited to replacing the Goods at its own cost or to providing the Customer with a credit for the Goods;
- b) the description of the Goods in the contract or any other document does not import any condition or warranty on the part of the Company other than the warranties specified in paragraph (a) above;
- c) all other conditions, warranties or liabilities (including liability as to negligence) expressed or implied, whether arising by virtue of any statute or otherwise, relating to the Goods are negated and excluded; and
- d) the Customer accepts full responsibility for ensuring that the condition and quality of the Goods are suitable for the purposes of the Customer.

If the contract for the sale of Goods constitutes a supply of goods to a consumer, as defined in any of the Acts;

- a) nothing in the contract for the sale of Goods or these Conditions of Sale is to be construed as excluding, restricting or modifying any express or implied condition, warranty, right or remedy conferred by any of the Acts on the Customer; and
- b) the liability of the Company in respect of a breach of a condition or warranty implied by any of the Acts, is limited at the Company's option to:
  - i) the replacement of the Goods or the supply of equivalent goods; or
  - ii) the repair of the Goods;
  - iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - iv) the payment of the cost of having the Goods repaired; provided that this provision is not to apply if the Customer establishes that the Company's reliance on it would not be fair and reasonable.

In the case of Goods not manufactured by the Company, the Company will not be subject to any liability whatsoever and so far as possible, the Company shall pass to the Customer the benefit of any manufacturer's or suppliers guarantee relating to such Goods (but so that nothing requires the Company to commence any proceedings against any manufacturer or supplier of such Goods or to incur any material expense in connection with any claim by the Customer).

## BACK ORDERS

Back orders will be held unless otherwise requested by the customer.

## PACKAGING

Unless otherwise indicated prices include standard packing by the Company. If packing is charged for and is returnable, allowance will only be made for the same when packing has been received by the Company in good condition. Any special packing will be to the Customer's account unless specifically quoted.

At all times the Company retains the right of possession of any pallets used for delivery of the goods and the Customer agrees to indemnify the Company in respect to any pallets not returned in good order and condition to the Company within fourteen (14) days of the delivery of the goods.

Any portable containers in which goods are delivered, and for which a hire charge is made, remain the property of the Company.

## TITLE LIEN

Despite any rights of lien to which the Company may otherwise be entitled, the Company has a specific lien, including a right of sale, over the Goods the subject of any contract for the sale of Goods, new products created as a result of the use of Goods in a manufacturing process or the mixing of the Goods with other articles or materials such that the Goods are no longer identifiable, and any Goods the subject of any other contract with the Customer ("Retained Goods") until all amounts owing by the Customer to the Company under all contracts for the sale of Goods from time to time and any other amounts owing to the Customer have been paid in full.

Property in the Retained Goods remains in the Company until full payment for all amounts owing by the Customer to the Company in relation to Goods and otherwise has been made or title is properly vested in some other person by operation of law. Until property in the Retained Goods passes, the Customer shall:

- a) keep the Retained Goods free from any charge, lien or other encumbrance;
- b) hold the Retained Goods on a fiduciary basis as bailee for the Company;
- c) keep the Retained Goods in good and merchantable condition and separate from all other goods in its possession and marked in such a way that they are clearly identified as the property of the Company; and
- d) upon request deliver up such of the Retained Goods (as have not been resold) to the Company.
- e) If the Company fails to deliver up the Retained Goods, the Company may, without notice and without prejudice to any of its other rights and remedies, enter upon any premises on which the Customer holds the Retained Goods by its employees or agents for that purpose. The Customer shall ensure that the Company has access to the premises on which the Retained Goods are held during business hours and authorizes the Company and the Company's employees and agents to enter upon the premises or to exercise any other of the Customer's rights of entry for that purpose.
- f) Any agreement by the Customer to sell the Retained Goods is subject to the passing of property under these Conditions of Sale and does not prejudice the Company's title to the Retained Goods except where title becomes properly vested in some other person by the operation of any statute.
- g) Where the Customer (whether in the ordinary course of trading or otherwise) re-sells the Retained Goods before property in the Retained Goods has passed to the Customer and as a result of such re-sale, property in the Retained Goods passes from the Company, the Company is entitled to the proceeds of such re-sale including any right or claim for such proceeds and the Customer shall hold such proceeds of sale on trust for the Company and keep them apart.

## RISK

Goods supplied to the Customer shall be at the risk of the Customer from the time the Goods ceased to be within the actual possession of the Company, or its agents.

## LICENCES

All goods are sold on the understanding that all licences and permits under all relevant statutes, ordinances, rules and regulations have been obtained by the Customer.

## INTELLECTUAL PROPERTY

The Customer hereby licences the use by the Company, 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-licences the Company's use of them as aforesaid.

It is the condition of any contract arising out of these conditions that the Customer shall hold the Company harmless from and indemnify the Company against any infringement of any copyright, patent, registered design or trademark with respect to any copyright, patent, registered design or trademark furnished to the Company by the Customer.

The sale to and purchase by the Customer of any goods and services does not confer on the Customer any licence or right under any copyright, patent, registered design or trademark which is the property of the Company.

## SPECIAL ORDERS

The Customer warrants as a fundamental condition of its agreement with the Company that all drawings and specifications and other design information supplied by it to the Company are accurate in all respects. Goods manufactured to special order of the Customer shall in no circumstances be returnable to the Company nor shall the Customer be entitled to claim any rebate or refund of the price thereof notwithstanding that the same may not comply precisely with the Customer's specification.

## SUBCONTRACTING

The Company reserves the right to sub-contract the manufacture and/or supply of the goods or any part thereof any materials or services to be supplied.

## MANIFEST DISCREPANCIES AND ERRORS

Where the Company has executed a written contract for the sale of the goods, in the case of any manifest discrepancy between the expressed terms of that contract and these terms and conditions, that contract shall prevail to the extent of any inconsistency. The Company reserves the right to correct clerical errors in quotations, acknowledgments, orders, invoices or other documents relating to the goods or the agreement between the Company and the Customer.

## WAIVER

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

## DISCLAIMERS

The Company does not hold itself out as a designer of pipe systems or as a consultant in relation to their use. All advice and information contained in the Company's published literature and given by the Company's staff is compiled from the best information available to the Company, but the Company 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 he or she does so entirely at his or her own risk and the Company will not be liable for any loss or damage thereby suffered notwithstanding any want of care on the part of the Company or its staff in compiling or giving any advice or information.

## DEFINITIONS

In these Conditions of Sale:

- a) "Acts" means the Trade Practices Act 1974 (Cth) or any applicable consumer legislation ("Acts");
- b) the expressions "consideration", "GST", "input tax credit", "recipient" and "supply", have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999;
- c) "liability" means all liability whatsoever and howsoever arising including, without limitation:
  - i) liability in tort (including liability as to negligence);
  - ii) liability in contract; and
  - iii) any liability for consequential loss including loss of profits or damage of any kind howsoever caused or arising.

Please complete the details below, photocopy the page and send to Key Plastics. The original should be preserved for your records.

I the undersigned confirm that I have read and accept the conditions contained in the Key Plastics Terms & Conditions of Sales.

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Position in Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No. \_\_\_\_\_

Facsimile No. \_\_\_\_\_

Email: \_\_\_\_\_

Signature \_\_\_\_\_

**KEY PLASTICS PTY LTD**

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