

**1. DEFINITIONS & INTERPRETATIONS**

In the following conditions of sale ("Conditions of Sale"):

- (a) "ICI Industries" means ICI Industries Pty Ltd 20 Bridge Road Griffith N.S.W. 2680
- (b) "The Client" means the sole trader, partnership or company whose name and address is endorsed on the front hereof or referred to in the document attached hereto or such other document in which these terms and conditions of sale are expressly referred to or contemplated.
- (c) "the Goods" means the goods and services the subject of these Conditions of Sale or any part thereof and is strictly limited to those goods and services:
- (d) "AUD\$" means the lawful currency of Australia;
- (e) "USD" means the lawful currency of the United States Of America
- (f) "EUR" means the lawful currency of the European Union

**2. GENERAL**

Any order placed by the Client is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the Client's order or acceptance unless expressly agreed by ICI Industries in writing.

**3. DESCRIPTION**

Any description of the goods contained overleaf or on other documents or any other sales literature is given by way of identification only and the use of such description shall not constitute the contract of sale by description.

**4. DISCREPANCIES**

Where ICI Industries has executed a written contract for the sale of the goods in the case of any discrepancy between the express terms of such contract and these terms and conditions the former shall prevail.

**5. ADVICE**

Subject to Clause 19, any advice, recommendation, information or assistance provided by ICI Industries in relation to the Goods or their use of application (except to the extent that ICI Industries has expressly agreed to in writing to provide the same) is given in good faith and is believed by ICI Industries to be appropriate and reliable, however, any such advice, recommendation, information, or assistance is provided without liability or responsibility on the part of ICI Industries.

**6. TOLERANCES**

Unless expressly agreed to the contrary, the provisions and tolerances contained in the standard specification to which the goods are manufactured by ICI Industries or its suppliers will apply to all orders accepted.

**7. WATER SUPPLY**

The Client represents to ICI Industries that if a water supply is involved that, unless otherwise specified, the water is clean and free of impurities and that equipment is required for the Client's Specifications detailed and no others and agrees to indemnify and keep indemnified ICI Industries against all loss and expense suffered and incurred by ICI Industries arising out of the Specifications not being in accordance with the said Representations.

**8. QUOTATIONS AND TENDERS**

- 8.1 Any quotations made by ICI Industries shall not be construed or operate as an offer or obligation to sell, but shall be an invitation to treat only. ICI Industries reserves the right to accept or reject in its absolute discretion any order which may be received by it. The Client shall submit a written purchase order, which is subject to acceptance by ICI Industries. Acceptance by ICI Industries may, at the discretion of ICI Industries, be by notification in writing or by the supply of goods in accordance with the purchase order.

- 8.2 Unless otherwise specified by ICI Industries in writing and subject to Section 10, all quotations are valid for twenty-eight (28) days from the date thereof.

**9. PRICES**

Unless otherwise expressly agreed by ICI Industries in writing all goods will be charged for at the prices ruling on the date or dates of dispatch from warehouse and stated in the ICI Industries applicable price list.

**10. EXCHANGE RATE FLUCTUATIONS**

- 10.1 If ICI Industries gives a quotation in AUD\$ for the supply of goods to be imported then, unless stated otherwise in the quotation, the AUD\$ price for the goods shall be indicative only and the following provisions apply:

(a) If an exchange rate is included in the quotation then, unless ICI Industries has agreed in writing that ICI Industries will bear the exchange risk, the Client acknowledges that the quotation is given on the basis that the exchange risk is with the Client and that the quoted price and exchange rate are indicative only.

- 10.2 If ICI Industries gives a quotation in foreign currency for the supply of Goods, the price payable for such Goods will be that sum of foreign currency.

**11. SPECIAL ORDERS**

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

**12. MINIMUM ORDER VALUE**

ICI Industries reserves the right to introduce minimum order value(s) for any class or classes of products and to amend any such value without notice. ICI Industries reserves the right at its discretion to refuse to accept orders which do not satisfy the current minimum order value.

**13. DELIVERY**

- 13.1 Unless otherwise expressly agreed in writing, all goods are sold by ICI Industries ex-works and the Goods must be collected by or on behalf of the Client from ICI Industries at Griffith.

- 13.2 Subject to clause 13.1 ICI Industries will make all reasonable efforts to have the Goods available for delivery to or collection by the Client, on the date(s) agreed between the parties, but ICI Industries shall be under no liability whatsoever, should delivery not be made in the said date(s) for whatever reason nor shall the Client be entitled to terminate any contract arising therein for such reason. Each supply of the Goods or part thereof is a separate contract and the Client is bound to accept and make payment for partial supplies thereof.

- 13.3 Subject to clause 13.1, where the full or partial cost of delivery is expressly included in prices contained in the ICI Industries quotation, price list or sales literature, ICI Industries will be responsible for the cost thereof and shall deliver the Goods in accordance with the terms of the said quotation, price list or sales literature and using mode and method of transport normally utilised by ICI Industries. In all other circumstances, the Client will be responsible for the full cost of freight.

- 13.4 Where ICI Industries is required to make delivery, it is agreed and declared that ICI Industries is not a common carrier and that in the event of loss or damage to the Goods In Transit caused by or resulting from an act, neglect or default attributable to ICI Industries, ICI Industries' liability to the Client shall be limited to and completely discharged by either the replacement or the repair of the Goods, so lost or damaged. Any claims against ICI Industries for such loss or damage of the Goods must be made within 30 days from the date of invoice.

- 13.5 Delivery to the Client shall be deemed to take place when the Goods are delivered into the Client's custody, any person acting on the Client's behalf, the Client's Client or when the Client is responsible for the cost of freight to a carrier nominated by the Client and all risk in the goods shall thereupon pass to the Client.

**14. ACCEPTANCE**

The signing of a manifest or delivery docket for goods received, notwithstanding anything that may be stated to the contrary by the Client shall constitute acceptance of these Conditions of Sale.

**15. PAYMENT**

Strictly in accordance with terms of invoice, or where expressly arranged in writing or if none stated, net cash within 30 days from date of invoice. ICI Industries reserves the right notwithstanding any arrangement which may have been made to require payment in advance or cash on delivery should the Client's credit worthiness appear in the opinion of ICI Industries to be unsatisfactory to it. Any expenses incurred in recovering moneys owing to ICI Industries are for the account of the Client and shall be recoverable in full on an indemnity basis.

**16. LEGAL TITLE**

16.1 As long as the Client owes ICI Industries any part of the price of goods supplied at any time, ICI Industries shall retain the legal title to all goods supplied and not yet used or resold in the ordinary course of business. When such goods are used, even with loss of identity, the legal title to the resultant product shall vest in ICI Industries. Proceeds of sale of unused goods or resultant products shall be received by the Client as agents of ICI Industries and on their account, such proceeds to be kept in a separate account or to be accounted for to ICI Industries on demand.

16.2 If goods are in the possession of a Client to which title has not passed the Client is under obligation to retain them in a good and merchantable condition, to insure them for their full insurable value against loss or damage by fire, theft, accident and other such risks and to ensure that they are stored separately and marked as the property of ICI Industries until either paid for or collected and to allow ICI Industries and/or its servants or agents onto the premises where they are stored for the purpose of collecting the goods.

**17. RETURNS**

Subject to clause 11, Goods may only be returned for credit with the express written approval of ICI Industries obtained prior to return and goods will be subject to restocking charges and accepted only if received in original condition.

**18. CREDIT NOTES**

Acceptance of delivery of goods returned for credit does not signify agreement to issue a credit note. A credit note will be issued only after the goods have been inspected and found to be satisfactory in the opinion of ICI Industries. In the event that a credit note is not issued, the Client will be advised and the goods made available to the Client. No freight charges for return of goods under the Client's volition shall be acceptable by ICI Industries unless authorised by ICI Industries.

**19. WARRANTY**

19.1 Except as may be expressly agreed between the parties in writing from time to time, the only conditions and warranties which are binding on ICI Industries, in respect of the state, quality or condition of the Goods supplied to the Client are those imposed and required to be binding by statute (including Trades Practices Act 1974) and to the extent permitted thereby the liability, if any, of ICI Industries arising from the breach of such conditions or warranties shall, except in cases where the Goods are of a kind ordinary acquired for person, domestic or household use or consumption at ICI Industries's option, be limited to and completely discharged by either the replacement of the Goods OR the supply of equivalent goods OR repair of goods OR payment of the cost of repairing the goods OR of acquiring equivalent goods OR payment of the cost of having the goods repaired OR in the case of services, to the supply of the services again OR payment of the cost of having the services supplied again by ICI Industries. Otherwise, all other conditions and warranties, whether express or implied by law in respect of the state, quality or condition of the Goods which may, apart from this clause, be binding on ICI Industries, are hereby expressly excluded and negative.

19.2 Any liability of ICI Industries pursuant to Clause 19.1 hereof is conditional upon the Client returning, within fourteen days, all or part of the goods as applicable which is sufficient to enable proper examination of the Goods to ICI Industries.

19.3 Except to the extent provided above, ICI Industries shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise, howsoever suffered or incurred by any such person in relation to the Goods and without limiting the generality thereof, in particular, any loss or damage consequential or otherwise, howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, breakdown, defect, or deficiency of whatsoever nature or kind of or in the Goods.

19.4 Goods supplied which are not of ICI Industries manufacture shall be subject to the warranties of the manufacture only.

**20. IMPLIED CONDITIONS**

These terms and conditions of sale represent the whole of the contract between the parties and all representations, conditions or warranties and agreements whether expressed or implied not contained herein are hereby expressly excluded except to the extent that the Client has rights and remedies in respect of the product under the Trade Practices Act and in any similar state or territory laws and nothing in these terms and 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) and which by law cannot be excluded, restricted or modified.

**21. LEGAL JURISDICTION**

This contract shall be governed by the laws of the State of New South Wales notwithstanding the place in which the goods or services or any of them are to be delivered. The Client submits to the exclusive jurisdiction of the Courts of the State of New South Wales including all Courts of Appeal therefrom.

**22. NOTICES**

Notices to ICI Industries shall be transmitted by prepaid registered mail to the address stated on the contract or to the registered office of ICI Industries. No notice or payment transmitted to ICI Industries shall be deemed to have been given or made until it is actually received at such address.

**23. SUBCONTRACTING**

ICI Industries reserves the right to sub-contract the manufacture and/or supply and/or installation of any part of the goods or services quoted or any materials to be supplied.

**24. PATENTS**

Where ICI Industries has followed a design or instruction furnished or given by the Client, the Client will indemnify ICI Industries against all damages, penalties, costs and expenses to which ICI Industries may become liable through any work required to be done in accordance with those instructions involving an infringement of any patent trade mark, registered design, copyright or common law right.

**25. LICENCES**

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

**26. WAIVER**

Failure by ICI Industries to insist upon strict performance of any term or condition herein shall not be deemed a waiver thereof or of any rights ICI Industries may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

**27. GST**

The purchase price and all other moneys payable by and on behalf of the Client under this agreement are exclusive of Goods and Services Tax or like Tax (GST). Liability for GST payable in respect of any taxable supply is additional. It is payable by the Client to ICI Industries at the same time as the purchase price and other moneys are payable.