

TERMS & CONDITIONS OF SALE



1. The expression "the Company- in these conditions shall mean Allkotes Pty Limited (A.C.N. 001 608 466).
2. (a) Conditions, warranties and other provisions which apply to or in respect of this Contract under or by virtue of the Trade Practices Act 1974 or any other enactment of the Commonwealth of Australia or the State of New South Wales and which by or under that enactment cannot be excluded herefrom are declared to apply hereto together with the rights and liabilities thereby created without restriction, limit or modification notwithstanding any inconsistencies with these Conditions;
(b) Subject to paragraph 2.(a) of these conditions no warranty condition description or representation on the part of the Company is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives.
3. The Company shall be indemnified by the Purchaser in respect of any claims, costs and expenses arising out of any infringement of copyright, patent or design.
4. The Purchaser hereby acknowledges and agrees:-
 - (a) That the goods supplied or the works done by the Company are of merchantable industrial quality, suitable for the purposes for which such goods are normally supplied or such work is performed in the industry.
 - (b) That the Purchaser has not been induced to enter into this Agreement by any promise, representation or warranty which may have been given or made by the Company or the Company's Agents as to the suitability of goods supplied by the Company and to the full extent permitted by law the Purchaser hereby waives the benefit of any such promises, representations, warranties or undertakings which may have been made and hereby agrees that the Purchaser is hereby estopped from alleging any such promises, representations, warranties or undertakings in any legal or other proceedings in respect to this Agreement.
 - (c)
 - (i) All property and material supplied to the Company by or on behalf of the Purchaser (including goods in transit) will be held at the Purchaser's risk and the Company accepts no liability whatsoever for loss or damage to such property or material unless otherwise agreed by the Company in writing.
 - (ii) Unless otherwise agreed in writing by the Company, the Company accepts no responsibility for the insurance of such property or material.
 - (iii) Unless the Purchaser proves gross carelessness on the part of the Company, the risk and cost of all spoilage of materials supplied by the Purchaser shall be borne by the Purchaser.
 - (iv) Where the Purchaser supplies materials, adequate quantities shall be supplied to cover spoilage. Material supplied by the Purchaser will not be counted or checked when received unless requested by the Purchaser in writing. An additional charge may be made by the Company in respect of any such counting or checking requested by the Purchaser.
 - (v) In the case of property and materials left with the Company without specific instructions, the Company shall be free to dispose of them at the end of twelve months after receiving them and to accept and retain the proceeds, if any to cover its own costs in holding and handling them.
 - (vi) Where materials or equipment are supplied by the Purchaser every care will be taken to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of such materials or equipment. We recommend you check the suitability of such materials and equipment prior to proceeding to production.
 - (vii) An extra charge may be made by the Company for handling or storing property or material supplied by or on behalf of the Purchaser.
 - (viii) Goods supplied or work performed whether experimentally or otherwise at the Purchaser's request will be charged for in addition to any quoted work.
5. All quotations supplied by the Company are to be regarded as an invitation to Treat only and must be confirmed and accepted in writing by the Purchaser within THIRTY (30) DAYS from the date of quotation.
6. Prices quoted are subject to withdrawal at any time until the order is accepted by this Company. All quotations are without engagement.
7. Quotations are based on current costs of production and are subject to amendment on, or at any time after acceptance to meet any rise or fall in such costs. Goods and Services Tax and Freight are additional, if applicable.
8. The Company will use its best endeavours to secure the delivery of goods by the estimated delivery date but it does not guarantee the time for delivery and shall not be liable for any damages or claims of any kind whatsoever in respect of delay in delivery howsoever occasioned. Time is expressly stated as NOT to be the essence of the Contract.
9. The Company will not be responsible for any freight costs for delivery of goods supplied by the Company unless expressly stipulated in writing by the Company.
10. Should expedited delivery be agreed and necessitate overtime or other additional cost, an additional charge may be made.
11. Every endeavour will be made to deliver the quantity ordered, but quotations are conditional upon a margin of 10 per cent being allowed for overs or shortage, the same to be charged for or deducted.
12. The Company shall not be liable for indirect or consequential loss or for any loss to the Purchaser arising from third party claims occasioned by errors, by carrying out the work or by delay in deliveries.
13. Every effort will be made to carry out the contract but its due performance is subject to cancellation by the Company or to such variation as may be found necessary as a result of inability to secure labour, materials or lockout, or other labour dispute, fire, flood, drought, Legislation or other cause (whether of the foregoing class or not) beyond the Company's control.
14. In the event of any fault or defect in any goods supplied by the Company, or any short delivery, the Purchaser must notify the Company in writing within SEVEN (7) DAYS of the date of delivery of the goods and the Company will at its own cost and its own option repair or replace the goods and subject to the aforesaid no claim for damage or loss direct or indirect shall exceed the invoice price of the goods as quoted by the Company.
15. The Company shall in respect of all unpaid debts due from the Purchaser have a general lien on all goods and property in its hands and shall be entitled, on the expiration of FOURTEEN (14) DAYS notice to the Purchaser, to dispose of such goods or property as it thinks fit and to apply the proceeds towards such debts.
16. Payment to be strictly THIRTY (30) DAYS NETT from the date of delivery of the goods, unless otherwise stipulated in writing by the Company. In the event of any default of payment made by the Purchaser, the Company reserves the right at its absolute discretion to suspend all further deliveries to the Purchaser until the default be made good or the Company may cancel any undelivered balance of the goods or order of the Purchaser. The Company may at its option charge interest at the rate of FOURTEEN PER CENTUM (14%) per annum on any default upon the Company giving SEVEN (7) days notice in writing to the Purchaser of the Company's intention to charge interest. Any such claim for interest shall be without prejudice to the right of the Company to exercise its legal right and remedies against the Purchaser.
17. The full legal and beneficial title to any goods delivered by the Company to the Purchaser shall be retained by and remain in the Company absolutely until payment in full for the price of goods pursuant to these terms and conditions and for any other goods supplied and delivered by the Company to the Purchaser in respect of which money is owing.
18. Until the Company receives full payment of all sums owing by the Purchaser:-
 - (a) The Purchaser agrees with the Company to keep the goods as bailee for and on behalf of the Company as bailor and shall ensure that the goods continue to be identified as the property of the Company.
 - (b) The Company may at any time after the period of payment specified in these terms and conditions (and without prejudice to its right to recover unpaid moneys in respect of goods sold and in respect of any loss and damage suffered by it) and without the need to give notice to the Purchaser or to obtain consent of the Purchaser take possession of all goods which remain the property of the Company. The Purchaser hereby irrevocably grants to the Company and its servants and agents the right of entry to any premises where the Company's goods may be situated and shall procure the consent to such entry of all persons having interest in the premises for the purpose of the Company so taking possession of the goods.
 - (c) Notwithstanding the provisions of Clause 18 (b), if the goods are used in the manufacture of other goods, the property in those goods shall be transferred to the Company and they shall be stored so that they are clearly identified as the property of the Company, provided that the Purchaser may sell and deliver any such goods to a third party in the ordinary course of business upon the condition that the Purchaser assign to the Company his rights in respect of the sale price thereof.
 - (d) Notwithstanding the provisions of Clause 18 (b) or Clause 18 (c) the Company may maintain an action against the Purchaser for the purchase price of the goods and shall not be required to accept any return of the goods or any part thereof.
19. No addition or variation hereto shall be made or have any force or effects whatsoever unless and until the same be in writing and signed by both the Purchaser and a person duly authorised by the Company.