

## TERMS AND CONDITIONS OF SALE

### Interpretation

- 1.1 "Supplier" means Duraform Products (Australia) Pty Ltd (ACN 087 439 610).
- 1.2 "Purchaser" means any person, firm or corporation including his/her/its successors, administrators and permitted assigns which has requested the supply of goods by Supplier.
- 1.3 "CC Act" means the Competition and Consumer Act 2010 (Cth) as amended from time to time.
- 1.4 "PPSA" means the Personal Properties Securities Act 2009 (Cth) and any regulations made under it.

### 2 Standard Terms of Sale

- 2.1 These Terms apply to the supply of any goods by the Supplier, including any goods the subject of a quotation or goods ordered by the Purchaser ("Goods").
- 2.2 These Terms will prevail over any terms and conditions provided by the Purchaser, except to the extent specifically agreed by the Supplier in writing and signed by an authorised representative of the Supplier.

### 3 Quotations

- 3.1 The Supplier may provide the Purchaser with a quotation for the supply of specific Goods ("Quotation"). Unless expressly stated in the Quotation, each Quotation will be valid for 30 days from the date of the Quotation, and will be exclusive of GST and all other taxes.
- 3.2 The Purchaser agrees to keep confidential the terms of the Quotation, including pricing details.
- 3.3 It is the Purchaser's responsibility to verify prior to accepting a Quotation that the Goods will meet the Purchaser's requirements.
- 3.4 The Supplier reserves the right to vary or withdraw a Quotation prior to acceptance, to take into account any variation in currency exchange rates, government charges and import duties, transportation costs or other similar variations affecting the Supplier or the Goods arising after the date of the Quotation.

### 4 Orders

- 4.1 Subject to clause 4.2, a contract will be deemed to have been made upon receipt by the Supplier of a written order from the Purchaser accepting the Quotation of the Supplier, or a written order based on the Supplier's then-current product and price list (Order).
- 4.2 The contract will comprise (in order of precedence) these Terms, the terms set out in the Quotation (if any) and the details of the Goods listed in the Quotation, to the exclusion of any other terms and conditions. Any Order which purports to impose additional terms or amend these Terms will be void and will not constitute a binding contract.
- 4.3 Alterations and or cancellations to orders by the Purchaser will not be accepted once an order is placed, except with the Supplier's consent. Where the Supplier does so consent, the Purchaser must indemnify the Supplier against all losses and costs associated with effecting the alteration and or cancellation.

### 5 Prices

Prices quoted are in accordance with the Supplier's then current price list which is subject to alteration without notice. Particulars of delivery charges are included in the Supplier's current price list and are also subject to alterations without notice.

### 6 Accounts

- 6.1 If the Purchaser has an approved 30-day credit account with the Supplier, then the Purchaser shall ensure that payment for all Goods will be made prior to the end of the month following that in which the Goods are invoiced.
- 6.2 If the Purchaser does not have an approved 30-day credit account with the Supplier, then the Purchaser must pay in full for all Goods ordered within 14 days of receipt of a tax invoice from the Supplier. The Supplier may invoice the Purchaser at any time after acceptance of an Order by the Supplier.
- 6.3 The Supplier reserves the right at any time to cancel any credit account between Supplier and Purchaser.

### 7 Payment

- 7.1 The parties agree that punctual payment by the Purchaser is of the essence.
- 7.2 Non-payment or late payment for any or all Goods will be a breach of the Terms and, without limiting any other rights the Supplier may have, the Supplier may, in its absolute discretion:
- suspend or cancel any further supply or deliveries of any Goods;
  - cancel the Purchaser's rights to operate a commercial credit account with the Supplier;
  - charge interest on any outstanding amount calculated from the day following the date upon which the payment should have been made, at a rate equal to the Supplier's then current overdraft rate, from time to time; and/or
  - proceed with legal action for the recovery of non-payment by the Purchaser.

### 7.3 The Purchaser undertakes to pay:

- a dishonour fee of \$45.00 for charges incurred by the Supplier in respect to any cheques not met upon first presentation to the Supplier's bank; and
- all debt recovery costs, including legal costs on a solicitor/own client basis and disbursements and any mercantile costs, incurred by the Supplier as a result of late payment.

### 8 GST

- 8.1 In this clause 8, words and expressions which are not defined in these Terms but which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and other similar or related act, regulations, or rulings ("GST Legislation") have the same meaning as in the GST Legislation.
- 8.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under these Terms are exclusive of GST.
- 8.3 If a supply made pursuant to these Terms is a taxable supply, the recipient shall pay on demand to the supplier any GST payable on that supply in addition to any other amount that may be payable by the recipient to the supplier for that supply pursuant to these Terms, provided that the supplier provides to the recipient a valid tax invoice in the form prescribed by the GST Legislation within fourteen (14) days of such payment.

### 9 Delivery

- 9.1 Delivery occurs when the Supplier delivers the Goods to the Purchaser's nominated carrier (or the Supplier's carrier where the Purchaser has requested the Supplier to arrange transport on its behalf (which shall be at the Purchaser's cost and charged as a separate item)).
- 9.2 Delivery and despatch dates are estimates only. Subject always to Goods being in stock, the Supplier will use reasonable endeavours to deliver the Goods.
- 9.3 The Supplier is not liable whatsoever for any direct, indirect or consequential loss or damage suffered by the Purchaser or any third party caused directly or indirectly by non delivery or delay in delivery of Goods by the date or dates specified by the Supplier.
- 9.4 Where the Supplier is unable to deliver Goods because of a matter or matters beyond the Supplier's control, including but not limited to plant and delivery equipment breakdowns, industrial stoppages or shortages of raw material, the date specified for delivery shall be extended until the cessation of such matter or matters.
- 9.5 The type and quantity of Goods delivered are detailed on the delivery docket/invoice (if applicable) and must be checked by the Purchaser at the time of delivery for compliance with the Purchaser's order. If delivery is to an unattended site (as requested by the Purchaser), the Supplier will not be liable for any loss or damage to the Goods and the Purchaser will be deemed to have accepted the Goods as per the delivery docket/invoice in good order.
- 9.6 Any request for credit, or claim by the Purchaser (including any claim that the Goods delivered do not correspond with the Goods ordered) will not be accepted unless made in writing within 7 days of delivery, and such claim must be accompanied by proof of purchase, otherwise the Purchaser will be deemed to have accepted the Goods.
- 9.7 Small deviations or variations in the Goods will not give rise to any claims.
- 9.8 If the Supplier accepts a request for credit, the Goods must be returned in "as new" condition, and may be subject to a restocking fee to cover the reasonable costs of the Supplier.
- 9.9 Risk in the Goods will pass to Purchaser once the Goods are despatched from the Supplier's premises.

### 10 Reservation of Title

- 10.1 Until payment for the Goods has been made in full by the Purchaser to the Supplier, property in and ownership of all Goods will remain vested in the Supplier. Title of Goods will pass to the Purchaser when all monies owing by the Purchaser to the Supplier for such Goods have been paid in full.
- 10.2 Until title passes to the Purchaser, the Purchaser must store the Goods and keep all necessary records so as to show clearly that they are the Supplier's property.
- 10.3 Until full payment of the price for the Goods is made, the Purchaser irrevocably authorises the Supplier to enter any premises where the Goods are kept and to use the name of the Purchaser and to act on its behalf to recover possession of the Goods.
- 10.4 If the Purchaser sells the Goods or incorporates them into another product prior to payment of the price for the Goods, the proceeds of such sale will be held on trust for the Supplier, until such time as the Price for the Goods has been paid in full.

### 11 PPSA

- 11.1 In this clause 11, words and expressions which are not defined in these Terms but which have a defined meaning in the PPSA have the same meaning as in the PPSA.
- 11.2 The Purchaser acknowledges that until such time as full title, property and ownership of the Goods passes to the Purchaser under clause 10, these Terms constitute a Security Agreement for the purposes of the PPSA, and the Supplier has a Security Interest in the Products.
- 11.3 Without limiting clause 17.10, the Purchaser agrees to do such things as Supplier may require from time to time to ensure that any Security Interest of Supplier arising from or connected with this Agreement is Perfected under the PPSA for

whatever period Supplier determines in its sole discretion, including signing documents and providing Supplier with all further information required to enable Supplier to register its Security Interests on the PPS Register, and to otherwise protect Supplier's position under the PPSA. The Purchaser must keep Supplier fully informed of all relevant information regarding it and its activities, including by providing not less than 14 days notice in writing of any proposed change in its name or contact details, and immediately advising Supplier of material changes in its business activities.

11.4 The Purchaser agrees to indemnify Supplier for all expenses incurred by Supplier in registering its Security Interests on the PPS Register, and will reimburse Supplier for all such expenses immediately upon demand.

11.5 The Purchaser waives its rights under section 157 of the PPSA to receive a notice in relation to the registration events to which section 157(3)(a) of the PPSA applies, including without limitation, the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest created by this Agreement.

11.6 The Purchaser agrees that nothing in sections 118, 121(4), 125, 130, 142 or 143 of the PPSA will apply to this Agreement or any Security Interest in the Products created by these Terms, and waives its rights to receive any of the following documents:

- (a) a notice of removal of an accession under section 95 of the PPSA;
- (b) a notice of an intention to seize collateral under section 123 of the PPSA;
- (c) a notice of a disposal of collateral under section 130 of the PPSA;
- (d) a statement of account under section 132(3)(d) of the PPSA;
- (e) a statement of account under section 132(4) of the PPSA;
- (f) a notice of retention of collateral under section 135 of the PPSA; and
- (g) any notice from Supplier under each of the provisions listed in section 144 of the PPSA.

## 12 Termination

12.1 The Supplier may terminate any contract relating to the supply of Goods, including any Order, upon fourteen (14) days prior written notice to the Purchaser.

12.2 The Supplier may terminate any contract relating to the supply of Goods immediately in the event of:

- (a) the breach, non performance or non observance of these Terms by the Purchaser, which is not rectified within 7 days of written notice from the Supplier; or
- (b) the Purchaser being subject to an insolvency event of any kind.

12.3 Upon termination provided by paragraph 12.2:

- (a) the Supplier may enforce its rights under these Terms, without prejudice to any other rights it may have; and
- (b) all other obligations upon the Purchaser shall remain.

12.4 Termination of these Terms or any contract formed hereunder will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in these Terms.

## 13 Advice

13.1 The Purchaser must ensure that Goods are not used for any purpose for which are not suitable and be responsible for using the degree of skill and care in handling the Goods that is required for the Goods.

13.2 Subject to any rights or remedies the Purchaser may have under the CC Act or any other legislation the Purchaser expressly acknowledges and agrees that any advice provided by the Supplier with respect to the use of the Goods is given in good faith but on the basis that the Supplier assumes no obligation or liability for advice given or results obtained, and all such advice is given by the Supplier and accepted at the Purchaser's risk.

13.3 The Supplier reserves the right at any time to make such alterations to the specifications, design or construction of the Goods as the Supplier may in its own discretion deem fit, provided always that the Goods shall remain of acceptable quality and fit for the purpose of the Purchaser.

## 14 Five Year Limited Warranty

14.1 The Supplier warrants that the Goods are, under normal use and service, of acceptable quality and free from defects caused by faulty manufacture or faulty materials. This warranty is valid for **five (5) years** from the date of purchase of the Goods, or such period provided in the manufacturer's warranty documentation accompanying the Goods, whichever is the lesser. This warranty is in addition to any non-excludable legal rights or remedies conferred on the purchaser under the CC Act and any similar laws.

14.2 If, during the warranty period, any part of the Goods fails to operate correctly due to faulty manufacture or materials, the Supplier will, at its sole option, either repair the Goods, supply replacement Goods or reimburse the Purchaser for the price of the Goods, provided that the Purchaser returns the Goods to the Supplier at the address specified in the Quotation, or as otherwise nominated by the Supplier.

14.3 In order to bring a claim under this warranty, the Purchaser must provide proof of purchase of the Goods from the Supplier, to the Supplier's reasonable satisfaction.

14.4 The Purchaser is liable for all costs associated with sending the warranty claim Goods to the Supplier, including freight or postage and insurance, and for collection, return, disassembly and reassembly of the repaired or replacement Goods.

14.5 To the extent permitted by law, all warranties, conditions, obligations and liabilities, other than those specified in these Terms, are excluded.

14.6 To the extent permitted by law, the Supplier's liability for any non-excludable condition or warranty is limited to (at the Supplier's option):

- (a) in the case of goods – repairing, replacing or supplying equivalent goods, or paying the cost of any of those remedies to the purchaser; or
- (b) in the case of services – supplying the services again or paying the cost of having the services supplied again.

14.7 This clause 13.7 applies from 1 January 2012 where the Goods are "consumer goods" within the meaning of the CC Act:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

14.8 The Supplier will not be liable for, and this warranty will not apply to, any defects or damage to the Goods arising from any of the following:

- (a) fair wear or tear;
- (b) accidents, abuse or misuse;
- (c) exposure to excessive temperatures or moisture, including but not limited to flush mount wall ovens: heat deflectors to be installed, overheads to low to cook top, steam from pots and kettles;
- (d) improper or faulty installation or fabrication;
- (e) improper maintenance; or
- (f) alteration, maintenance or repair by anyone not authorised by the Supplier.

14.9 If a colour has been discontinued, the replacement Goods will match as close as possible and this will only apply to affected Goods.

## 15 Liability

15.1 The Supplier's liability under these Terms will be reduced to the extent that the loss or damage to the Purchaser or subsequent owner of the Products was caused or contributed to by any act or omission of the Purchaser, owner or any third party.

15.2 For the avoidance of doubt, in no circumstances will the Supplier be liable for any indirect, special, consequential or incidental damages howsoever caused (including without limitation, at law, in equity or pursuant to statute) even if such damages are foreseeable, and even if advised of the likelihood of such damages occurring.

## 16 Dispute Resolution

16.1 A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.

16.2 A party claiming that a Dispute has arisen will notify the other party of the Dispute in writing.

16.3 Each party to the Dispute will ensure that during the thirty (30) day period after a notice is given under clause 15.2 (or a longer period agreed between the parties) the chief executive officers (or equivalents) of the parties will use their best reasonable endeavours:

- (a) to resolve the dispute; or
- (b) to agree on (i) a process to resolve all (or at least part) of the Dispute without arbitration or court proceedings and/or (ii) the selection and payment of a mediator for the dispute, and the nature and extent of the mediator's role in the process and (iii) a timetable and any procedural rules to be observed.

16.4 The role of the mediator will be to assist in negotiating a resolution of the Dispute. A decision of any mediator is not binding on any party unless the parties have otherwise agreed in writing.

16.5 Each party will bear its own costs of resolving a Dispute under this clause 15, and will bear equally the costs of any mediator engaged.

16.6 After the thirty (30) period referred to in clause 15.3 (or longer period as agreed between the parties) has expired, a party that has complied with clause 15.3 may terminate the Dispute resolution process by giving notice in writing to all other parties and commence arbitration or court proceedings in respect of the Dispute.

16.7 Nothing in this clause 15 prevents or limits the Purchaser from exercising its rights and requiring remedies from the Supplier in respect of a breach of a non-excludable condition (subject always to clause 14 above).

## 17 General

- 17.1 These Terms contain the entire agreement between the parties with respect to its subject matter and supersede all prior agreements and understandings between the parties in connection with it.
- 17.2 The Supplier may amend these Terms on 30 days' prior written notice to the Purchaser, and the amended Terms shall apply to any Quotation or order made after such date.
- 17.3 No variation to these Terms is binding upon the Supplier unless set out in writing and signed by an authorised representative of the Supplier.
- 17.4 If any provision of these Terms is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.
- 17.5 No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any rights, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 17.6 The relationship between the parties is that of independent contractors and the parties are not partners, joint venturers or principal and agent.
- 17.7 These Terms will not be construed against the Supplier merely because the Supplier prepared them or relies on them.
- 17.8 These Terms shall in all respects be governed by and constructed and interpreted in accordance with the laws of the jurisdiction of South Australia, and the parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.
- 17.9 Notices by a party must be delivered by (i) prepaid post (ii) facsimile or (iii) hand, and sent to the address of the receiving party specified in the Quotation. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by facsimile upon receipt of a successful transmission report.
- 17.10 Each party must do all acts necessary or desirable to give full effect to these Terms, and refrain from doing anything which might prevent full effect being given to these Terms.

#### Reservation

Duraform Products (Australia) Pty Ltd are constantly reviewing the quality and marketability of their products and reserve the right to change any of the descriptions and specifications at any time without prior notice. This Trade Price Guide comes with errors and omissions accepted.