

## **INTERPRETATION**

1. In these conditions:
  - (1) "Vendor" means THE ANTHONY GROUP which includes Anthony Innovations Pty. Ltd .ABN 76 004 325 026, whose registered office is 45 Ricky Way, Epping, Victoria which is the seller of goods.
  - (2) "Purchaser" means the purchaser of the goods specified herein.
  - (3) "Goods" means the products and, if any, services specified herein.
  - (4) Nothing in these 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 Competition and Consumer Act 2010) which by law cannot be excluded, restricted or modified.

## **GENERAL**

2. These conditions (which shall only be waived in writing signed by the vendor) shall prevail over all conditions of the Purchaser's order to the extent of any inconsistency.

## **TERMS OF SALE**

3. The goods and all other products sold by the Vendor are sold on these terms and conditions.

## **VENDOR'S QUOTATIONS**

4. Unless previously withdrawn, vendor's quotations are open for acceptance within the period stated therein, or when no period is so stated, within sixty (60) days only after its date. The Vendor reserves the right to refuse any order based on this quotation within seven (7) days after the receipt of the order.

## **PACKING**

5. The cost of any special packing materials used in relation to the Goods shall be at the Purchaser's expense notwithstanding that such cost may have been omitted from any quotation.

## **SHORTAGE**

6. The Purchaser waives any claim for damage to or shortage of any Goods delivered if the Purchaser thereof has not lodged a claim in respect with the Vendor within ten (10) days from the date of receipt of Goods.

## **SPECIFICATIONS**

7. All specifications, drawings and particulars of weights and dimensions submitted to the Vendor are approximate only and any deviation shall not be taken to vitiate any contract with the Vendor or form grounds for any claim against the Vendor. The description, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods. Where specifications, drawings or other particulars are supplied by the Purchaser, the Vendor's price is made on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by the Vendor and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to unit prices set out herein.

## **PERFORMANCE**

8. Any performance figures given by the Vendor are estimates only. The Vendor shall be under no liability for damages for failure to attain such figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable to such figures.

## **DELIVERY**

9. The delivery times made known to the Purchaser are estimates only and the Vendor shall not be liable for late delivery or non-delivery and under no circumstances shall the Vendor be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery or late installation of the Goods.

## **LOSS OR DAMAGE IN TRANSIT**

10. Subject to any written agreement to the contrary, the Vendor is not responsible for any loss or damage to Goods in transit. The Vendor shall render the Purchaser such assistance as may be necessary to press claims on carriers provided the Purchaser shall have notified the Vendor and the carriers in writing immediately loss or damage is discovered on receipt of the goods and shall lodge a claim on the carrier within three (3) days of the date of receipt of the Goods or discovery of their loss.

## **WARRANTY**

11. (1) the Vendor's liability for defective Goods manufactured by it is limited to repairing, or at the Vendor's option replacing, the defective goods provided that:

- (a) the defective Goods are returned to the Vendor free of cost within twelve months of the delivery of the Goods to the purchaser;
- (b) Defects have arisen solely from faulty materials or workmanship;
- © the goods have not received maltreatment, inattention, interference, overload or abuse during assembly or operation;
- (a) the damage has not arisen from:
  - (i) improper adjustment, calibration or Operation by the Purchaser;
  - (ii) the use of accessories not manufactured by or approved in writing by the Vendor;
  - (iii) any contamination or leakages caused or induced by the Purchaser;
  - (iv) any modifications of the Goods not authorised in writing by the Vendor; or
  - (v) inadequate or incorrect site specification;
- (b) accessories of any kind used by the Purchaser are manufactured by or approved by the Vendor;
- and
- (c) the goods have been properly mounted, operated, adequately lubricated and serviced in accordance with the Vendor's specifications.

### (2) If:

- (a) the Purchaser is acknowledged in writing by the Vendor as a member of any recognised building industry body or organisation, or
- (b) the Goods are to be supplied by the Purchaser to a member of any recognised building industry body or organisation, and the Goods are used in an approved use in the Building Industry, the warrant referred to in paragraph (11) (1) shall apply to the Goods for a period of ten (10) years after the Goods have been delivered subject otherwise to the conditions specified in paragraph 11 (1).

- (3) If the Vendor does not manufacture the goods, the warranty of the manufacturer thereof is accepted by the Purchaser and is the only warranty given to the Purchaser in respect of the goods.

- (4) The Vendor shall not be liable for and the Purchaser releases the Vendor from any claims in respect of faulty or defective design of the Goods unless such design has been wholly prepared by the Vendor and the responsibility for any claim has been specifically accepted by the Vendor in writing. The Vendor's liability hereunder is limited to repairing, or at the Vendor's option replacing, the relevant Goods.

- (5) Except as provided herein and to the extent permitted by law, all express and implied warranties, guarantees and conditions under statute and general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, material or workmanship or otherwise are hereby expressly excluded and the Vendor shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Vendor's negligence or in any way whatsoever.

## **TRADE PRACTICES**

12. The Vendor's liability for breach of any conditions or warranty implied by Div. 2 of Pt V of the Competition and Consumer Act 2010 (other than s 69) and similar provisions of relevant State legislation is hereby limited to :

- (1) in the case of Goods, at the Vendor's option:
  - (a) the replacement of the Goods, or the supply of equivalent Goods;
  - (b) the repair of the Goods;
  - (c) the payment of the cost of replacing the Goods acquiring equivalent Goods; or
  - (d) the payment of the cost of having the Goods repaired; or
- (2) in the case of services, at the Vendor's option:
  - (a) the supplying of the services again; or
  - (b) Payment of the cost of having the services supplied again.

13. The Vendor's liability under s 74H of the Competition and Consumer Act 2010 and similar provisions of relevant State legislation is expressly limited to a liability to pay to the Purchaser an amount equal to the lowest of:
  - (1) the cost of replacing the Goods;
  - (2) the cost of obtaining equivalent goods; or
  - (3) the cost of having the Goods repaired whichever is the lowest amount.

## **PRICES**

14. Unless otherwise stated all prices quoted or listed by the Vendor are net, exclusive of all taxes, duties, impositions and charges, whatsoever imposed by any government or other authority and payable in respect or by reason of the sale or delivery of the Goods whether or not the same were payable at the date of quotation or order. The Purchaser shall pay all taxes, duties, imposition and charges whatsoever imposed by any government or other authority and payable in respect of or by reason of the sale or delivery of the Goods or any part thereof whether or not the same were payable at the date of quotation and are based on rates of freight, insurance, taxes, duties, impositions, charges, exchange, shipping expenses, sorting and stacking charges, cartage, rates and wages, costs and materials and other charges affecting the cost of production ruling on the date it is made and any alterations thereto either before acceptance of or during the currency of the contract may be made without notice and shall be to the Purchaser's account.

## **PAYMENT**

15. (1) The purchase price in relation to the Goods shall be payable net and payment thereof shall be made on or before the thirtieth day of the month next following the delivery of the Goods unless other terms of payment are expressly stated herein in writing.

(2) The Purchaser may not deduct or withhold any amount (whether by way of set-off, deduction, counterclaim or otherwise) from any money owing to the Vendor.

(3) If the Purchaser shall fail to make any payment by the due date then in addition to any other rights and remedies available to the Vendor by these terms and conditions or by law the Vendor may cancel or suspend any contract between the Vendor and the purchaser.

(4) Any payment not made within the time

(5) e specified in sub-clause (1) hereof may attract interest rate at a rate of 2% per month on the amount outstanding until payment in full is made.

(6) The Purchaser shall pay all expenses and costs (including legal costs as between solicitor and client) in relation to the Vendor's obtaining or attempting to obtain a remedy for the failure to pay.

## **RIGHTS IN RELATION TO GOODS**

16. (1) The risk in the Goods shall unless otherwise agreed in writing pass to the Purchaser upon delivery to the Purchaser or his Agent or to a carrier commissioned by either the Purchaser or Vendor.

(2) The property or title in the Goods shall not pass to the Purchaser until the Vendor has been paid in full the price of the Goods and all other monies which are owing by the Purchaser to the Vendor on any account whatsoever whether under the Contract of Sale of the Goods or any other contract between the Vendor and the Purchaser and whether for Goods sold to the Purchaser, for transport charges, or for anything else.

(3) Payment in full by the Purchaser to the Vendor shall be deemed made by payment in cash, bank cheque or clearance of a cheque, other negotiable security or bill of exchange by the Vendor's bank.

(4) Until such time as property or title in the Goods has passed to the Purchaser the Purchaser shall keep the Goods separate from other goods not belonging to the Vendor and mark them as the property of the Vendor.

(5) The Purchaser hereby irrevocably authorises and licences the Vendor, its servants and agents at any time until property or title in the Goods has passed to the Purchaser to enter any premises occupied by the Purchaser and use such force as is reasonably necessary to inspect and carry out an inventory of Goods sold.

(7) On the happening of any of the events set out in this sub-clause in addition to any other remedies the Vendor may have, all monies which the Purchaser may owe to the Vendor on any account whatsoever whether under this Agreement or otherwise shall upon without the necessity of any notice or demand to the Purchaser become immediately due, payable and recoverable and the Vendor may without previous notice to the purchaser repossess the Goods in which property or title has not passed to the Purchaser and recover from the Purchaser all costs incurred and damages sustained in connection with the costs of the repossession and for that purpose the Purchaser hereby irrevocably authorises and licences the Vendor, its servants or agents to enter upon premises occupied by the Purchaser or any other place where the goods may be and use such force as is reasonably necessary:

(a) if the Purchaser has defaulted in the due and punctual payment of the price of the goods or any other monies due to the Vendor,

(b) if the Purchaser has parted with possession of the Goods in respect of Goods in which property or title has not passed to the Purchaser,

- (c) if the Purchaser, being a company, receives a Section 460 winding up notice pursuant to the Corporations Law,
- (d) if the Purchaser, being an individual, receives a bankruptcy notice;
- (e) if execution or distress is levied against the Purchaser;
- (f) if the Purchaser enters in to a scheme of arrangement with creditors or is placed under some form of official management or any such meeting is convened for any such purposes.
- (8) No time or indulgence or waiver of the Vendor's rights under these Terms and Conditions shall constitute a waiver or release of any breach committed by the Purchaser.
- (9) The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks, or numbers of the Vendor attached to or placed upon the Goods, and any special dies, tools, patterns, designs, specifications and drawings used in the manufacture of the Goods or supplied to the Purchaser shall remain the property of the Vendor and shall not be used in the production, manufacture or design of any other articles or disclosed or furnished to any other person, firm or government except with the Vendor's prior written consent.

## **FORCE MAJEURE**

17. The Vendor shall not be liable for any failure to perform, and shall be relieved of its' obligations under this Agreement occasioned by force majeure including but without limiting the generality of the foregoing to war, legislation, civil commotions, fire, flood, explosions, acts of God, strikes, lockouts, sabotage, embargoes, labour or employment difficulties, accidents, breakdowns, restrictions, prohibitions or any action by any government or quasi-government authority, and any other causes outside the reasonable control of the Vendor.

## **PURCHASER'S PROPERTY**

18. Any property of the Purchaser under the Vendor's custody or control shall be entirely at the Purchaser's risk as regards loss or damage caused to the property or by it.

## **STORAGE**

19. The Vendor reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Purchaser within fourteen (14) days of a request by the Vendor for such information.

## **RETURNED GOODS**

20. The Vendor shall not be under any obligation to accept goods returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case. In the event of acceptance of returned Goods, the Vendor shall be entitled to charge to the Purchaser an amount of 20% of the price of the goods as a handling charge without prejudice to any other rights of the Vendor pursuant to these terms and conditions or otherwise. No claims for return of goods can be made after 10 days of receipt. Special items are NOT returnable. Invoice number and date to be quoted in references or enquiry.

## **GOODS SOLD**

21. All goods to be supplied by the Vendor shall be as described on the purchase order agreed by the Vendor and the Purchaser and the description on such purchase order modified as so agreed shall prevail over all other descriptions including any purchaser's specifications or enquiry.

## **CANCELLATION**

22. No order may be cancelled except with consent in writing and on terms which will indemnify the Vendor against all losses.

## **PLACE OF CONTRACT**

23. The contract for sale of the Goods and the rights and obligations of the parties hereunder shall be made in, governed and interpreted by and enforced in accordance with the laws in force in the State of Australia from which this document is issued and the parties agree to submit all disputes arising between them to the courts of the said State at any court competent to hear appeals therefrom.

## **WAIVER AND FORBEARANCE**

If at any time the Vendor does not enforce any of these terms and conditions or grant to the purchaser time or any other indulgence. The Vendor shall not be construed as having waived that term or condition or its rights to later enforce that or any other term of condition.