

## 1.0 DEFINITIONS

Unless stated otherwise:

“**Agreement**” means the agreement and sale of the Goods between the Buyer and the Seller, bound by these Terms of Trade;

“**Buyer**” means the person to whom, or representative of a company which, any quotation is made by A&G Fabrications Pty Ltd, any person contracting with A&G Fabrications Pty Ltd under this Agreement and any person that purchases Goods under this Agreement;

“**Consequential Loss**” means any loss or damage incurred or suffered by a party or any other person which is in indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

“**Default Event**” pertains to any circumstance whereby:

- a. The Buyer does not make a payment due to the Seller under this or any contract;
- b. The Buyer is unable to pay its debts as and when they fall due;
- c. The Buyer ceases or suspends conduct of their business;
- d. A resolution is passed or proposed or a summons is presented to wind up the Buyer
- e. A receiver and/or manager or other form of insolvency administrator is appointed over the Buyer or all or part of the Buyer's assets
- f. The Buyer makes or proposes to make any arrangement with its creditors;
- g. The Buyer commits an act or bankruptcy; or

“**E&OE**” means any errors and omissions excepted by the Buyer

“**Goods**” mean the goods or services the Seller supplies to the Buyer under this or any other Agreement.

“**GST**” means Goods and Services Tax, as defined by *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

“**Order**” means any purchase order, request, instruction or direction to proceed in any form or via any medium used by The Buyer from time to time during for ordering Goods.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth)

“**Product Data**” means the Seller's technical manual including product drawings, loadings, test results, disclaimers and care and maintenance instructions, as updated by the Seller from time to time.

“**Seller**” means A&G Fabrications Pty Ltd (ACN 106 473 090)

“**Supply Only**” means any Order placed by the Buyer, where the Goods are supplied, but not installed by the Seller.

“**Terms of Trade**” means these Terms of Trade as amended by the Seller in writing from time to time.

“**Title Guarantee**” means a guarantee pursuant to any of sections 51, 52 or 53.

## 2.0 PAYMENT, CREDIT AND PRICE

- 2.1 The Buyer must pay the Seller for all Goods, without set off or deductions, on or before the last working day of the calendar month following the month in which the Seller invoices the Buyer for the Goods.
- 2.2 The Seller reserves the right to, where necessary; adjust its quoted price upon receiving more comprehensive drawings, details and specifications that the Seller deems required to change the Goods, at the cost of the Buyer.
- 2.3 Unless agreed in writing or otherwise, the price for Goods will be Seller's quoted price in effect at the time of dispatch of the Goods.
- 2.4 At its discretion, the Seller may withdraw any credit or limit the amount of credit extended to the Buyer at any time without notice.
- 2.5 All prices provided by the Seller exclude GST; The Buyer is liable for any GST on the Goods.
- 2.6 If a Default Event occurs:
  - (a) at its option, the Seller may withhold further deliveries of Goods and/or withdraw any credit facilities and the Buyer shall make no claim against the Seller for Consequential Loss as a result of the Seller exercising this option; and
  - (b) all amounts outstanding to the Seller by the Buyer, even if not otherwise due for payment, will become immediately payable.

## 3.0 DELIVERY & INSTALLATION

- 3.1 Unless otherwise agreed, the Seller will deliver the Goods to the address the Buyer specifies, at the cost to the Buyer set out in the Seller's quoted price for the Goods.
- 3.2 At the Buyer's expense, the Seller will deliver, install and certify Goods to the address the Buyer specifies, provided the installation may be done so safely. The Seller reserves the right to refuse to install Goods if it is deemed unsafe,
- 3.3 The Goods the Seller delivers will be taken to be delivered immediately they are unloaded from the delivery vehicle and will be unloaded at the Buyer's cost and risk.
- 3.4 The Buyer's representative must be present at the delivery address at the time the Goods are delivered. The Buyer's representative must sign the delivery advice that the driver of the delivery vehicle presents.
- 3.5 The Seller's obligation to deliver shall be discharged on arrival of the goods at the Buyer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Buyer shall unload the Goods upon delivery, provided that if the Buyer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Seller shall be entitled to charge a fee for any delay experienced or arrange for the storage of the Goods at the risk and cost of the Buyer including all transportation, storage and other consequential costs.
- 3.6 The Seller may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate but ongoing supply pursuant to these Terms of Trade.
- 3.7 If the Seller fails to deliver an instalment by the estimated date or fails to deliver it at all, the Buyer is not entitled to terminate the Agreement as to any further instalment deliveries.
- 3.8 Subject to paragraph 3.7 the Buyer may terminate the Agreement if the Seller fails to deliver the Goods within 7 days after written notice from the Buyer to do so, given on or after the estimated delivery date.
- 3.9 If the Seller fails to deliver any Goods to the Buyer on time or at all, the Seller's only obligation is to refund to the Buyer any amount received from the Buyer for the Goods not delivered. The Seller will not be liable for any Consequential Loss the Buyer or any other party suffers arising directly or indirectly from the Seller's failure to deliver the Goods on time or at all, whether or not due to the Seller's or its agent's negligence.

## 4.0 TOLERANCES

- 4.1 Unless otherwise stated on the quotation or product drawing, the Goods will be supplied within the tolerances as to quantity, weight, dimensions, gauge, chemical composition, physical properties, finish, shearing and degree of flatness specified:
  - (a) by the Aluminium Development Council of Australia Limited; and
  - (b) in the Seller's published Product Data current at the date of contract (and if none are specified, those tolerances normally regarded as being commercially acceptable).

## 5.0 WARRANTY AND LIABILITY

- 5.1 The Seller warrants that the Goods will be free from defects in material and workmanship for 12 months, except such defects that are within the normal tolerances set out in the relevant Australian Standards.
- 5.2 The Seller warrants a 5 year Film & Colour Integrity Surface Finish warranty on Powder Coated and/or Anodised fabricated products. To preserve the fine finish of Powder coat and Anodised Aluminium, provided that:
  - (a) regular cleaning be carried out by The Buyer which should never exceed six months between cleaning for suburban and rural areas; and
  - (b) a register of the Maintenance and Cleaning Process be kept; and
  - (c) regular removal of pollutants and other foreign deposits.

- 5.3 Defects occurring in the products supplied by The Seller – as the result of misuse by The Buyers or any third party, as a result of faulty construction design method or materials in other trades, structural loading, maltreatment, damage during/incorrect installation, vandalism or excessive wear and tear – shall render this warranty invalid.
- 5.4 Cleaning procedure of powder coated and anodised material should be performed using hand-cleaning and rinsing technique and all deposits should first be removed with a clean, wet sponge. Use clean water and small amounts of recommended cleaning products. Do not use abrasive type cleaning agents, steel wool, scrapers and scouring liquids as they will severely damage the surface of the material. Rinse off any cleaning materials with clean water. Do not hose off. Dry with a chamois or soft cloth. The following automotive products are recommended:
- (a) Kitten - "Glo-wash"
  - (b) Turtle Wax – "Zip Wash"
  - (c) RE-PO – "Superwash"
- Alternatively, if the desired effect is not obtained, the following car polishes can be used as per the manufacturer's recommendation:
- (a) Turtle Wax – "Car Polish"
  - (b) RE-PO - "Car Cream Polish"
- Use of other cleaning alternatives and/or Failure to keep a Register will deem this warranty invalid.  
Failure to abide by maintenance and cleaning schedule and submission of maintenance slips within specified timeframes will deem this warranty invalid.
- 5.4 Where the Seller installs the product, at the cost of the Buyer, the Seller agrees to certify, and provide a Certificate of Certification to the relevant Australian Standards.
- 5.5 The Buyer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the Goods repaired or replaced by the Seller if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 5.6 The liability of Seller in respect of a breach of a consumer guarantee or any warranty made under these Terms of Trade for any products not of a kind ordinarily acquired for personal, domestic or household use is limited, to the extent permissible by law and at the option of Seller:
- (a) in relation to the Goods, to:
    - (i) replacing the Goods or the supply of equivalent Goods;
    - (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.
  - (b) in relation to services, to:
    - (i) the supply of the services again; and
    - (ii) the payment of the cost of having the services supplied again.
- 5.7 All warranties provided by the Seller are voided if:
- (a) The Buyer purchases Goods in a Supply Only Agreement and modified them;
  - (b) The Buyer attempts, or contracts a third party to attempt, repair of Goods provided by the Seller;
  - (c) The Buyer modifies the Goods in any way, shape or form;
  - (d) The Buyer installs, or contracts to a third party to install, the Goods; or
  - (e) The Buyer fails to follow any and all instructions given by the Maintenance Manual provided by the Seller.
- 5.8 To the extent permitted by law, the Buyer will be taken to have waived any claim which it may have against the Seller unless:
- (a) The Buyer gives the Seller written notice of the claim within 7 days after delivery of the Goods; and
  - (b) The Seller is given a reasonable opportunity to investigate the claim.
- 5.9 To the extent permitted by law and regardless of anything else in the contract, the Seller will not be liable to the Buyer for the Seller's failure to comply with the contract due to any cause beyond the Seller's reasonable control and the Seller's obligations affected by this cause are suspended while the cause continues to hinder or prevent the Seller's performance.
- 5.10 To the extent permitted by law;
- (a) the Buyer will be liable to the Seller if the Buyer wrongfully terminates this contract or refuses to accept all or part of the Goods;
  - (b) If the Goods have been made specifically for the Buyer, or are in the process of being made, the Buyer must pay to the Seller as liquidated damages the full contract price of the Goods and any costs incurred by the Seller less the current scrap value of the Goods as determined by the Seller;
  - (c) The Seller is not liable for any loss or damage caused as a result of the Goods being used for purposes other than those for which the Goods are commonly supplied.

## **6.0 STOCKING**

- 6.1 If the Buyer does not request delivery of the Goods within 14 days of the Goods becoming available for delivery the Seller may, at its option:
- (a) Invoice the Buyer for the full price remaining on the Goods;
  - (b) apply a storage fee, or storage fees;
  - (c) treat the Buyer as having cancelled the Agreement and invoice the Buyer for an amount determined in accordance with paragraph 7.
- 6.2 The Buyer is aware that while aluminium products will not rust, moisture trapped between articles when stored may lead to staining or soiling which is not easily removed.
- 6.3 The Seller will not be liable for any Consequential Loss the Buyer sustains arising out of anything referred to in this paragraph 6 or arising from generally incorrect or careless storage by the Buyer and the Seller will not be required to remove any stains or soiling.

## **7.0 VARIATIONS**

- 7.1 The Seller will not accept alterations to Orders which are in production or completed.
- 7.2 To the extent permitted by law, if the Buyer cancels all or part of an Order:
- (a) before the Seller has started producing the Goods and/or tooling, the Buyer must pay the Seller as liquidated damages an amount equal to 10% of the price of the cancelled goods and/or tooling; or
  - (b) after the Seller has started producing the goods and/or tooling, the Buyer must pay to the Seller as liquidated damages the full price of the goods and/or tooling cancelled, less the current scrap value of the goods as determined by the Seller.

## **8.0 EXCLUSIONS**

- 8.1 Unless otherwise stated, Goods and the price for Goods do not include:
- (a) Allowance for multiple site visits for measure and installation;
  - (b) E&OE;
  - (c) Internal Aluminium Door Frames;
  - (d) Tinted Glass;
  - (e) Architraves / Sheeting / Finishing of Linings into Frames;
  - (f) Glass Supply / Install to Timber Windows & Doors;
  - (g) Hardware / Furniture to Timber Windows & Doors;
  - (h) Splash backs / Shower screens / Mirrors;
  - (j) Electronic Locking Devices;
  - (k) Manual or Electronic remote window control devices;
  - (l) Fly screens, Security Screens, Crimsafe Screens;
  - (m) Fire Rated windows & doors, Timber / Steel windows and doors;
  - (n) Internal linings to curtain wall to block off spandrel panels;
  - (o) Signage / Glazing Films / Tinting to Glass / Blinds;
  - (p) Balustrades / Aluminium Skirting;
  - (q) Acoustic seals & smoke seals to Doors / Window; or
  - (r) Allowance for hoisting or fixed scaffolding.

## **9.0 PATENTS AND DESIGNS**

- 9.1 The Buyer must indemnify the Seller against all Consequential Loss which the Seller incurs arising out of any claim made against the Buyer or the Seller that the Goods, their method of manufacture or their design infringe any industrial or intellectual property rights.
- 9.2 Paragraph 9.1 does not apply in relation to Goods described as standard products in the Seller's published Product Data.

## **10.0 THIRD PARTIES SERVICES SELLER PROCURES AT THE BUYER'S REQUEST**

- 10.1 If at the Buyer's request the Seller arranges for any Goods to be provided by or to a third party in relation to an Agreement:
- (a) the Buyer must indemnify and keep indemnified the Seller in respect of any claims, actions, suits, demands, orders for costs or damages relating to or arising out of the arrangement; and
  - (b) the Goods the subject of the Agreement between the Buyer and the Seller will be taken to be delivered by the Seller when the Seller delivers them to the third party.

## **11.0 FORCE MAJEURE**

The Seller shall not be liable for any failure or delay in supply or delivery of the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of the Seller including, but not limited to, hindered manufacturing ability, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind. If any of the above events occur for more than 30 days, the Seller may, without liability, terminate any affected Order and/or this Agreement immediately by notice in writing to the Buyer.

## **12.0 SERVICE OF DOCUMENTS**

The Buyer agrees that service of any notices or Court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Buyer.

## **13.0 PURPOSE OF CREDIT**

The Buyer acknowledges and agrees that the credit to be provided to the Buyer by the Seller is to be applied wholly or predominantly for commercial purposes.

## **14.0 INSOLVENCY**

If the Buyer becomes insolvent, the Buyer remains liable under the Agreement and these Terms of Trade for payment of all liabilities incurred hereunder. The Buyer remains liable under these Terms of Trade even if the Seller receives a dividend or payment as a result of the Buyer being insolvent.

## **15.0 WAIVER**

A waiver of any clause or a breach of these Terms of Trade by the Seller must be made by an authorised officer of the Seller in writing.

## **16.0 COSTS**

- (a) The Buyer must pay for its own legal, accounting and business costs and all costs incurred by the Seller relating to any default by the Buyer under these Terms of Trade. The Buyer must also pay for all duties and other taxes payable (if any) on the sale of Goods to it by the Seller.
- (b) The Buyer will pay the Seller's costs and disbursements incurred in pursuing any recovery demands or action, or any other claim or remedy sought by the Seller against the Buyer, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Buyer to the Seller irrespective of whether pursuit of the recovery action, claim or remedy is successful.

## **17.0 INTEREST ON UNPAID AMOUNTS**

The Buyer agrees that it will pay to the Seller interest at the rate of 15% per annum on any unpaid monies payable to the Seller or in the event of a default under clause 2.1 herein.

## **18.0 JURISDICTION**

- 18.1 The Buyer acknowledges and agrees that the Agreement shall be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
- 18.2 The Buyer and the Seller to the Agreement agree to submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

**19.0 RETENTION OF TITLE**

- (a) The Buyer agrees that until payment in full has been made for the Goods purchased from the Seller in accordance with these Terms of Trade and any other sums whatsoever outstanding from the Buyer to the Seller from time to time or otherwise, property and title in the Goods shall not pass to the Buyer and the Seller retains the legal and equitable title in those Goods supplied.
- (b) Until payment in full has been made to the Seller, the Buyer will hold the goods in a fiduciary capacity for the Seller and agrees to store the Goods in such a manner that they can be identified as the property of the Seller, and shall not mix the Goods with other similar goods.
- (c) The Buyer shall be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to the Seller, the Buyer shall sell as agent and bailee for the Seller and the Proceeds of sale of the Goods shall be held by the Buyer on trust for the Seller absolutely.
- (d) Pending payment in full for the Goods, the Buyer must not supply any of the Goods to any person outside of its usual course of business.
- (e) Despite 19(d) above, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Seller, the Buyer agrees:
- (i) the Seller retains title in any Proceeds, including but not limited to sale monies or an account for such monies and insurance monies; and
  - (ii) to either pay the amount of the Proceeds of re-supply to the Seller immediately when they are received or pay those Proceeds into an account with a bank or financial institution or deposit taking institution as trustee for the Seller.
- (f) The Buyer's indebtedness to the Seller, whether in full or in part, shall not be discharged by the operation of clause (c) hereof unless and until the funds held on trust are remitted to the Seller.
- (g) The Buyer agrees that whilst property and title in the goods remains with the Seller, the Seller has the right, with or without prior notice to the Buyer, to enter upon any premises occupied by the Buyer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Buyer) to inspect the Goods of the Seller and to repossess the Goods which may be in the Buyer's possession, custody or control when payment is overdue.
- (h) The Buyer will be responsible for the Seller's costs and expenses in exercising its rights under clause (g). Where the Seller exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Seller, its employees, servants or agents.
- (i) The Buyer agrees that where the Goods have been retaken into the possession of the Seller, the Seller has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Buyer on those Goods, and the Buyer hereby grants an irrevocable licence to the Seller to do all things necessary to sell the Goods bearing the name or trademark of the Buyer.

**20.0 STATEMENT OF DEBT**

A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Seller shall be prima facie evidence of the amount of indebtedness of the Buyer to the Seller at that time.

**21.0 MISCELLANEOUS**

- 21.1 The Agreement is not for a sale by sample, even if a sample was inspected by the Buyer or exhibited.
- 21.2 The Seller's waiver of any clause, or breach of any clause, of the Agreement and these Terms of Trade must not be construed as a waiver of any other clause, or a breach of any other clauses, or subsequent breach of the same or any other clause of the Agreement.
- 21.3 Where this Agreement conflicts with anything set out in the Seller's current published Product Data as at the date of the Agreement, the Terms of Trade prevail to the extent of the conflict.

**22.0 PPSA**

- 22.1. Defined terms in clause 22 have the same meaning as given to them in the PPSA.
- (a) The Seller and the Buyer acknowledge that this Agreement constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Seller over the Goods supplied or to be supplied to the Buyer, as Grantor, pursuant to this Agreement.
  - (b) The Goods supplied or to be supplied under this Agreement fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these Terms of Trade.
  - (c) The Seller and the Buyer acknowledge that the Seller, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Buyer, as Grantor, under this Agreement on the PPSA Register as Collateral.
- 22.2 The Buyer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller.
- 22.3 The Buyer agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
- (a) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
  - (b) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Buyer.
- 22.4 The Buyer agrees:
- (a) that, to the extent permitted at law, nothing in sections 130 to 143 of the PPSA will apply to these Terms of Trade or the Security under these Terms of Trade;
  - (b) subject to section 275(7) of the PPS Act, to not disclose any information of the kind mentioned in section 275(1) of the PPSA.
  - (c) to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) receive notice of disposal of Collateral under section 130;
    - (iv) receive a Statement of Account if there is no disposal under section 130(4);
    - (v) receive notice of retention of Collateral under section 135;
    - (vi) redeem the Collateral under section 142;
    - (vii) reinstate the Security Agreement under section 143;
    - (viii) object to the purchase of the Collateral by the Secured Party under section 129; and
    - (ix) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.