

# BUSINESS MANAGEMENT SYSTEM FORM



## STANDARD TERM & CONDITIONS

These standard terms and conditions of sale (incorporating any valid Quotation):

- a) apply to all goods and services provided by the Seller to the Buyer (whether acting as principal or manufacturer's agent); and
- b) form sole agreement between the Seller and the Buyer, and supersede and exclude to the extent possible at law:
  - any terms and conditions contained in previous offers or orders; and
  - any statements, representations or conduct made or done prior to entering into these terms and conditions.

### INTERPRETATION

In these conditions unless otherwise requires:-

- a) "Buyer" means the person or company named in the Tax Invoice or Quotation and in the case of an individual, his executors, administrators and assigns and in the case of a company its successors and assigns.
- b) "Seller" means All Round Supplies Pty Limited.
- c) "Quotations" means the form of written Quotation submitted by the Seller to the Buyer which incorporates these Standard Terms and Conditions.
- d) "Tax Invoice" means the sales invoice form issued by the Seller to the Buyer which incorporates these Standard Terms & Conditions and is made under the Building & Construction Industry Security of Payment Act 1999.
- e) Any special conditions in a Quotation shall override these Conditions to the extent of any inconsistency.

### QUOTATIONS

- a) The Quotation is valid for thirty (30) days unless another period is stated or the Quotation has been withdrawn by the Seller. The Quotation is not be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise there from until the Buyer's order has been accepted by the Seller.
- b) The Seller shall not be bound by any conditions attaching to the Buyer's order or acceptance of the Quotation, unless the Seller in writing accepts such conditions. If the buyer accepts the Quotation by delivery of an order form or document that stipulates or purports to impose conditions, such conditions shall not be applicable to the contract resulting from the Quotation without such written acceptance of the Seller.
- c) Every Quotation shall be subject to and conditional upon any necessary import or export or other License being obtained.

### PRICES

In the event that:

- a) The Quotation refers to goods in the Sellers current price list; or
- b) The price is quoted as being subject to ruling prices or escalation or otherwise subject to variation then the price quoted is based upon the cost of the goods or items to the Seller at the date of quotation. Any subsequent change in the cost to the Seller of supplying the goods (whether caused by increase in raw material prices, wages, transport costs, custom duties or other duties or taxes or any change, duty or impost or expenditure of any kind by reason of legislation, regulation or governmental action or any other factor beyond the control of the Seller), together with the Seller's margin on such changed cost shall be paid by the Buyer in addition to the price on the Seller's current price list or Quotation and the changes to the price shall become the price for all purposes in relation to the sale. If requested by the Buyer, the Seller will furnish documentary evidence of the price variation caused by any of the forgoing matters. Any goods & services tax shall be to the Buyer's Account.

### CURRENCY

Where the goods are to be imported into Australia any variation in the price arising from fluctuation in exchange rates will be to the Buyer's Account. The cost of the goods to the Seller will be ascertained at the rate ruling on the date payment is made by the Seller to the foreign manufacturer/Supplier. If requested by the Buyer the Seller will furnish documentary evidence of the price variation caused by currency exchange fluctuation.

### TERMS OF PAYMENT

Unless otherwise agreed in writing, payment for all goods purchased and services rendered shall be due on delivery or completion of services. Where a credit account has been approved, payment shall be made on or before the last day of the month following the month in which the products were delivered, irrespective of the date upon which any Tax Invoice or statement for, or in respect of, the products and services was received by the Buyer or within such other period or times as may be notified to the Buyer from time to time by the Seller. If, at any time, monies are overdue and owing upon any Tax Invoice then the whole amount of all Tax Invoices then outstanding becomes immediately due and payable. In the event that the Buyer should not make payment of any monies due under any Tax Invoice issued by the Seller within the due time for specified for payment, the Buyer hereby agrees to pay interest at the rate stated in the Building and Construction Industry Security of Payment Act 1999.

### DESPATCH OF GOODS

Goods will be either delivered or available for pick up. Upon acceptance of an order the Seller may seek confirmation of the period of delivery or pick up. If the confirmation shows that any variation has occurred in the quoted period, the Seller will inform the Buyer and, unless within seven (7) days of such information being given to the Buyer, the Buyer objects in writing the period of delivery or pick up stipulated will be the contractual period for delivery or pickup. If the Seller is prevented by circumstances beyond its control from shipping or delivering within the stipulated time, such time will be extended for a reasonable period after such circumstances have ceased to operate and any delay so caused shall not be grounds for cancellation or for any claim for damages or compensation. Unless otherwise agreed in writing, all goods are to be delivered by the seller or picked up from the buyer within 60 calendar days of the goods being available. In the event the goods are not despatched with the 60 calendar days the seller is entitled to invoice the buyer for the goods and charge the buyer a storage fee until the goods are despatched. The seller should not be obliged to issue goods until any monies outstanding have been paid.

### PART DELIVERIES

Unless agreed to the contrary in writing, the Seller reserves the right to make part deliveries of any order. Failure to make a delivery of the total order shall not invalidate the contract as regards other deliveries. Where the Seller makes part delivery, the Seller may invoice the Buyer for the goods delivered on each separate delivery. The Seller shall not be obliged to make further delivery until any monies outstanding have been paid.

### PASSING OF PROPERTY ANY RISK

- a) All deliveries are ex works and the risk in the goods shall pass to the buyer at the time of loading the delivery vehicle. The Seller may impose a delivery charge.
- b) Title to the goods shall remain with the Seller until all money owing to the Buyer has been paid in full (whether such money is payable under a specific contract or on any other account whatsoever) and until such time the Buyer shall store the goods in a manner which identifies and maintains them as the Seller's goods. The Buyer shall hold the goods as bailee for the Seller.
- c) Should the goods be disposed of by the Buyer prior to payment of the Tax Invoice price, whether the goods are in the same or in modified form, any monies received by the Buyer in payment of same shall be held in trust for the Seller by the Buyer.
- d) The Buyer authorizes the Seller and its authorized agents to enter upon the Buyer's premises or any premises in the Buyer's possession or control and to retake possession and delivery of goods in which title remains with the Seller and for which payment has not been received.
- e) The Seller shall not be liable to the Buyer for any loss or damage caused in recovery of its goods in accordance with the provision of this clause 8.
- f) Any goods being returned for Credit must first be inspected by the Seller's representative and approved.
- g) Goods returned must be accompanied by a Goods Return Authority, stating the original Tax Invoice number date of purchase and full reason for return
- h) Goods returned without authorization and without valid reason may be subject to a 15% surcharge.
- i) The Seller will not pay freight for any goods returned without prior approval.
- j) The Seller has an account with nominated carriers and customers are asked to contact customer service for relevant account numbers. The Seller will not accept freight charges on any other transport company used to return goods.

# BUSINESS MANAGEMENT SYSTEM FORM



## **INSTALLATION**

The Seller's offer is based on supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless specified otherwise in writing by the Seller.

## **CANCELLATION OF CONTRACT**

Unless otherwise expressly provided in the documents constituting the contract, the Buyer shall have no right to cancel the contract, except by agreement and then only upon terms which indemnify the Seller against loss.

## **DEFAULT BY BUYER**

- a) In the event the buyer fails to comply with the terms of the contract (including these standard terms & conditions and the terms of any credit facility granted to the Buyer by the Seller which forms part of the contract) then the Seller may, at its absolute discretion refuse to supply further products to the Buyer including any products subject to an order accepted by the Seller prior to the date of exercise of the Seller's discretion and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of the Seller refusing to supply the goods.
- b) A certificate signed by the Secretary of the Seller for the time being, stating the sum due and payable by the Buyer under this agreement at the date mentioned in that Certificate shall be prima facie evidence that the sum so stated is the sum due and payable by the Buyer to the Seller under this Agreement at the date.
- c) The costs of collection of any monies due and payable, including but not exclusively the fees of any Mercantile Agency or Solicitor engaged by the Seller, shall be recoverable in full against the Buyer.
- d) The seller retains title of goods until fully paid.

## **OUTSIDE INTERFERENCE**

The Seller shall not be liable to the Buyer for any defect, loss, damage or delay caused by strikes, lock-outs, damage to or break-down of plant, Government interference, earthquake, civil commotion, force majeure or any other cause beyond the control of the Seller.

## **DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS**

- a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in either the quotation or the descriptive literature or catalogue represent generally the goods offered but subject to alteration without notice by the Manufacturer and the Seller is not bound as to the details or the accuracy thereof.
- b) Any performance data provided by the Seller is an estimate only and is valid only to the extent to which it is related to and based on information given in writing by the Buyer to the Seller prior to entering into the contract and on no other information, knowledge, representation, facts or opinion, however given or expressed.
- c) Notwithstanding that the Seller may assist the buyer to reach a decision with respect to the purchase of the goods the subject of this contract (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), it is hereby agreed that responsibility for the final decision to purchase shall rest in all respects solely with the Buyer.
- d) Unless agreed to the contrary in writing, the Seller reserves the right to supply an alternative brand or substitute product when necessary.

## **WARRANTY**

- a) All goods supplied are covered by a manufacturers warranty period.
- b) The Buyer shall immediately notify the Seller in writing upon discovery of any defect in goods. The Buyer shall not carry out any remedial work to the alleged defective goods without first obtaining the written consent of the Seller to do so.
- c) To the extent permitted by law and subject to warranty implied by the Trade Practices Act, or any act or regulation which confers rights which cannot be modified or excluded by agreement, the Seller makes no representation or warranty as to any goods or services supplied under this Agreement and all liability is excluded. Where any warranty is implied by law (other than a warranty as to goods or services under section 68A of the Trade Practices Act), the liability of the seller in respect of goods and services not ordinarily acquired for personal, domestic or household use or consumption shall be limited to the supply of those goods or the provision of those services again (as the case may be).
- d) All goods are supplied in accordance with the normal industry standards applicable to them and the Seller will not be liable to the Buyer for the condition or quality of goods which comply with these standards.
- e) The buyer expressly acknowledges and agrees the Seller, its agents and employees have not provided any advice in relation to the suitability for any purpose of goods or materials supplied, and that to the extent permitted by law and subject to any warranty implied by the Trade Practices Act, or any Act or regulation which confers rights which cannot be modified or excluded by agreement, the Seller is not liable for any advice given by its agents or employees in relation to the suitability for any purpose of goods or materials supplied by the Seller and all such advice relied upon is at the Buyers risk.
- f) Subject to this clause the Seller shall not be liable for any claims, loss, damage, injury, loss of income, loss of profits or any special indirect or consequential damages arising out of or occasioned by any cause at all arising out of this contract, including liability in negligence.
- g) Except as provided in the preceding clauses the Seller shall not be under any liability, whether in contract, tort or otherwise in respect of defects in goods delivered or for any injury damage or loss resulting from such defects or from work done in connection therewith except to the extent that any statute applicable to these conditions prevents the exclusion restriction or modification of such conditions or warranties.

## **ACCEPTANCE**

- a) Orders may not be altered or cancelled without the Seller's written consent, and the Buyer shall pay to the Seller any loss, damage and expense incurred in relation to cancellation of any order.
- b) Where goods are supplied to the Buyers specifications, the Buyer indemnifies the Seller from any liability, loss or damage suffered by the Buyer in respect of any claim that the goods may infringe any patent, design or similar rights.
- c) Goods specially purchased, manufactured or cut to size to the Buyers specifications are not returnable.

## **ALTERNATION TO CONDITIONS**

The Seller may amend these Conditions at any time in respect of offers accepted after the time of notification

## **CREDIT REPORTING AGENCIES**

The Buyer acknowledges that the Seller is authorized to obtain a consumer credit report on and/or about the buyer, its partners and Directors, from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owned by the Buyer, its Partners or Directors, and generally as to the credit and financial responsibility of the Buyer or its Partners or Directors as required from time to time.

## **APPLICABLE LAW**

This contract and its operation shall be governed by the laws of New South Wales and the parties shall submit to the non exclusive jurisdiction of the courts of New South Wales to determine any disputes arising out of the terms of this contract or its operation. The clause headings shall not affect the construction hereof. If any of the provisions of the contract are unlawful or invalid under any applicable statute or rule of law they are to the extent to be deemed omitted.

## **PERSONAL PROPERTY SECURITIES LAWS**

These items and conditions create a purchase monies security interest (PMSI) in the goods, the Buyer must do all things reasonably required by All Round Supplies Pty Ltd to register and perfect that interest under the legislation of the Personal Properties Act 2009 (Cth) (PPSA) or otherwise. If the Seller repossesses the goods, the Seller does not need to provide the Buyer with any notice under sections 130 and 135 of the Personal Properties Securities Act 2009 (Cth).

The Buyer will, at the Seller's request, pay any or all of the Seller's costs and expenses, on an indemnity basis, related to the registration and enforcement of any security interest related to the terms and conditions (including in the relation to any security interest granted by a person guaranteeing the Buyer's performance of these terms and conditions) or related to ensuring the payment of the Buyer's overdue debt, commission and fees payable to collection agencies, solicitors or the like.

FRM-COR-ADM-003	Authorised By: Earl Palfrey	Ver: V003
Standard Terms & Conditions		Page 2 of 2