

TERMS AND CONDITIONS

1. General

The whole of the Agreement between Maton Pty Ltd ABN 34 004 320 361 ("Maton") and the Applicant referred to in the Credit Application ("Customer") is set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) that are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods and/or materials and/or equipment and/or parts and/or labour and/or services ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. All Goods are charged at the price ruling at the date of invoice and any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* ("GST") or other government imposts shall be payable by the Customer.

2. Credit Terms

- 2.1. Payment is due on or prior to thirty (30) days from the date of statement rendered in respect of the supply of the Goods unless otherwise stated in writing by Maton. Maton may charge liquidated damages at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* if payment is not received by the due date.
- 2.2. Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 2.3, and then to principal.
- 2.3. The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a solicitor/own client basis) incurred by Maton for enforcement of obligations and recovery of monies due from the Customer to Maton.
- 2.4. A certificate signed by an officer of Maton shall be prima facie evidence of the Customer's liability to Maton at the date of the certificate.

3. Selling in Australia

In order to encourage competition while protecting the reputation of the Maton brand, the Customer may only sell the Goods in accordance with clause 5.3 to any third party that:-

- 3.1. If the third party is an individual, is ordinarily resident in Australia.
- 3.2. If the third party is a body corporate, has its principal place of business in Australia.

4. Delivery and Supply

- 4.1. Any times quoted for delivery and/or supply are estimates only and Maton shall not be liable for failure to deliver/supply or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery/supply or dispatch. Maton reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 4.2. The risk of damage, loss or deterioration of any Goods will pass to the Customer upon the earlier of dispatch or from the date of notification by Maton to the Customer that the Goods are available for collection.

5. Property

Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Maton from time to time:-

- 5.1. All sums outstanding become immediately due and payable by the Customer to Maton if the Customer makes default in paying any other sums due to Maton, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 5.2. The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as Bailee for Maton (returning the same to Maton on request). The Goods shall nevertheless be at the risk of the Customer from the time of dispatch referred to in Clause 5.3 and the Customer must insure the Goods from the time of dispatch referred to in Clause 5.3.
- 5.3. The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Maton provided that there shall be no right to bind Maton to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Maton pursuant to the fiduciary relationship.
- 5.4. In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Maton. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value the portion of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 5.5. Maton is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods.

6. Freight

Subject to clause 7.1, Maton shall not be liable for any freight charges.

7. Returns, Cancellations and Claims

- 7.1. The Customer shall not return any Goods to Maton without obtaining prior authorisation from Maton. Unauthorised returns will not be accepted. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. In respect of authorised returns, freight charges from the Customer to Maton are to be borne by the Customer. Freight charges from Maton to the Customer are to be borne by Maton. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by Maton only after Goods returned are either collected by Maton's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Maton but must await receipt of a credit note.
- 7.2. No cancellations or partial cancellation of an order by the Customer shall be accepted by Maton unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Maton, will indemnify Maton against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.
- 7.3. All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Maton in writing within seven (7) business days of the date of the Customer receiving the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

8. Privacy Act 1988 ("Privacy Act")

To enable Maton to assess the Customer's application for credit, the Customer authorises Maton:-

- 8.1. To obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the Privacy Act; and
- 8.2. To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities

AND in accordance with Section 18N(1)(b) of the Privacy Act the Customer authorises Maton to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

The Customer understands the information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its credit worthiness.

9. Notification

The Customer must notify Maton in writing within seven (7) days of:-

- 9.1. Any alteration of the name or ownership of the Customer.
- 9.2. The issue of any legal proceedings against the Customer.
- 9.3. The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 9.4. Any change in the ownership of the business name of the Customer.

The Customer agrees that it shall be liable to Maton for all Goods supplied to the new owner by Maton until notice of any such change is received.

10. Warranties

No warranties except those implied and that cannot be excluded by law are given by Maton in respect of goods or services supplied. Where it is lawful to do so, the liability of Maton for a breach of a condition or warranty is limited to the repair or replacement of the goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods, the supplying of the services again or the payment of the cost of having the services supplied again, as determined by Maton.

11. Legal Construction

- 11.1 These Terms shall be governed by and interpreted according to the laws of Victoria and Maton and the Customer consents and submits to the jurisdiction of the courts of Victoria.
- 11.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

12. Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of Maton all of the Customer's estate and interest in any real property (including but not limited to the land named or described as the Customer's Business Address in the Credit Application) ("Land") to secure payment of accounts rendered by Maton to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a solicitor/client basis) incurred by Maton to prepare and lodge a Caveat against the Land and to remove the Caveat.