

## Calbah Industries Pty Ltd – Terms & Conditions of Trade

- 1. Definitions**
  - 1.1. "Company" shall mean Calbah Industries Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Calbah Industries Pty Ltd.
  - 1.2. "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
  - 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
  - 1.4. "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
  - 1.5. "Services" shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
  - 1.6. "Price" shall mean the price payable for the Goods as agreed between the Company and the Customer in accordance with clause 4 of this contract.
- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
  - 2.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 3. Acceptance**
  - 3.1. On the Customer providing instructions to the Company for the supply of Goods and/or Services the Customer shall be deemed to have accepted the terms and conditions contained herein and at the time the instructions are so provided.
  - 3.2. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
  - 3.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company.
  - 3.4. The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
  - 3.5. Goods are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 4. Guarantee and Indemnity**
  - 4.1. The Company may in its absolute and unfettered discretion require the director/s of the Customer or any person who owns more than fifteen percent (15%) of the shares in the Customer to provide a Guarantee and Indemnity on the terms of the Company's standard Guarantee and Indemnity and where the Company requires such Guarantee and Indemnity this agreement is subject to such director/s and/or shareholder executing the Guarantee and Indemnity.
- 5. Price And Payment**
  - 5.1. At the Company's sole discretion the Price shall be either:
    - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods and/or Services supplied; or
    - (b) the Company's quoted Price, including any variation to the quoted Price, (subject to clauses 5.2 and 5.3) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
  - 5.2. The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
  - 5.3. Any variation of the Company's quotation shall only be deemed to have been made if the variation is incorporated onto the quotation or any other document by the Company and is signed by both parties.
  - 5.4. At the Company's sole discretion a deposit may be required.
  - 5.5. At the Company's sole discretion payment for approved Customers shall be made by instalments in accordance with any instalment payment plan approved by the Company.
  - 5.6. Time for payment for the Goods shall be of the essence and will be as stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
  - 5.7. Payment will be made by cash, bank cheque, personal cheque, or credit card not including Amex or Diners. A surcharge of two and a half percent (2.5%) of the price shall apply to all payments made by credit card.
  - 5.8. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 6. Delivery Of Goods**
  - 6.1. At the Company's sole discretion delivery of the Goods shall take place when:
    - (a) the Customer takes possession of the Goods at the Company's address; or
    - (b) if the Goods are delivered to the Customer by the Company, at the time the Goods are delivered to the Customer at its nominated address.
  - 6.2. The Customer shall pay to the Company the cost of delivering the Goods to the Customer in addition to the Price unless the Price includes the cost of delivery.
  - 6.3. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
  - 6.4. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
  - 6.5. The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
  - 6.6. The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Company.
- 7. Risk**
  - 7.1. Risk in the Goods passes to the Customer on delivery notwithstanding that the Company remains the owner of the Goods.
  - 7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Customer remains liable to pay the Price to the Company and agrees to assign the full benefit of any insurance policy to the Company and agrees that the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
  - 7.3. In the event the Company is required by the Customer to undertake any new design or project, the Company offers no guarantee on and shall not be liable for the quality or suitability of the completed Goods, or that those Goods shall meet the Customer's requirements. Should the Customer request alterations to the completed Goods, the Company reserves the right to charge the Customer additional labour and material costs.
- 8. Title**
  - 8.1. The Company and Customer agree that ownership or title in the Goods shall not pass until:
    - (a) the Customer has paid the Company all amounts owing for the Goods; and
    - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
  - 8.2. Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
  - 8.3. It is further agreed that:
    - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
    - (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
    - (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
    - (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
    - (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Company for the Goods, on trust for the Company; and
    - (f) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
    - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
    - (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
    - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.
- 9. Defects**
  - 9.1. The Customer shall notify the Company in writing of any alleged damage to the Goods or shortage in the quantity of Goods supplied or failure to comply with the description of quote within fifteen (15) days of the delivery of the Goods and on the expiration of such time the Goods shall be deemed to be free of any damage and in compliance with the quote. Upon receipt of such notice the Company shall be entitled to inspect the Goods within a reasonable time. Where the Company agrees in writing that there are Goods which the Customer is entitled to reject the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (C/With) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
  - 9.2. Goods will not be accepted for return other than in accordance with 9.1 above.
- 10. Warranty**
  - 10.1. Subject to the conditions of warranty set out in clause 10.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within twelve (12) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) replace or remedy the workmanship.
  - 10.2. The conditions applicable to the warranty given by clause 10.1 are:
    - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
      - (i) failure on the part of the Customer to properly maintain any Goods; or
      - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
      - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
      - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
      - (v) fair wear and tear, any accident or act of God.
    - (b) the warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
    - (c) in respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
  - 10.3. For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
  - 10.4. In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. Intellectual Property**
  - 11.1. Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Company, and shall only be used by the Customer at the written authority of the Company.
  - 11.2. The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 12. Default & Consequences of Default**
  - 12.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment. The Company's entitlement to such interest shall be without prejudice to any statutory or other legal rights the Company may have to interest.
  - 12.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
  - 12.3. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
  - 12.4. If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable. This shall be in addition to the Company's entitlements under clause 12.1.
  - 12.5. Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
    - (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
    - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security And Charge**
  - 13.1. Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
    - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
    - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
    - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
  - 14.1. The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
  - 14.2. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15. Privacy Act 1988**
  - 15.1. The Customer and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
  - 15.2. The Customer and/or the Guarantor/s agree that the Company may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
    - (a) to assess an application by Customer; and/or
    - (b) to notify other credit providers of a default by the Customer; and/or
    - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
    - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
  - 15.3. The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
  - 15.4. The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:
    - (a) provision of Goods; and/or
    - (b) marketing of Goods by the Company, its agents or distributors in relation to the Goods; and/or
    - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
    - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
    - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
  - 15.5. The Company may give information about the Customer to a credit reporting agency for the following purposes:
    - (a) to allow a consumer credit report about the Customer; and/or
    - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16. General**
  - 16.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 16.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
  - 16.3. The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
  - 16.4. In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
  - 16.5. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
  - 16.6. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
  - 16.7. The Customer agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.
  - 16.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
  - 16.9. The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.