

## TERMS AND CONDITIONS OF TRADE

### 1. Definitions and interpretation

In this Agreement:

**Buyer** means the person or entity issued with the Quote;

**Company** means Wardrope & Carroll Engineering Pty Ltd ABN 73 096 923 527;

**Goods and Services** means the Goods and/or Services the subject of the sale described by the Quote;

**Guarantor** means the Guarantor (if any) described in the Quote;

**Price** means the Price for the Goods and Services in AUS\$ and unless stated is exclusive of GST and freight costs;

**Quote** means the Quote provided by the Company to the Buyer (and the Guarantor, if any) which, together with these Terms, form the agreement between the parties, clerical errors and omissions accepted.

**Terms** means the terms and conditions contained in this document, as amended by the Company and published on the Company's website [www.abud.com.au](http://www.abud.com.au) from time to time.

### 2. Orders

- 2.1 These Terms apply to every order placed by the Buyer with the Company for the Goods and Services immediately upon acceptance of that order by the Company. If the Buyer accepts a Quote, it is accepting all of these Terms without amendment.
- 2.2 Orders must be placed by the Buyer in writing referring to the Quote number and subject to any conditions stated on the Quote.
- 2.3 The Company is not obliged to accept any order placed by a Buyer and reserves the right to withdraw a Quote at any time.
- 2.4 Amounts and prices stated on any Quote are those at the date of the Quote. If the Buyer require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of an order, any increase in those amounts are for the Buyer's account and will increase the price accordingly.
- 2.5 The Buyer must ensure that all information provided to the Company is true, accurate and not misleading. The Buyer must satisfy itself that the

quantities, descriptions and specifications in the Quote are correct and that the goods including their specifications are suitable for the Buyer's purposes before placing an order.

- 2.6 If an individual accepts a Quote, the individual warrants they are authorised to accept these Terms on behalf of the relevant entity (if any).

### 3. Payment

- 3.1 The Company will issue a tax invoice to the Buyer for the supply of the Goods and Services. Any tax invoice issued by the Company is issued as a payment claim pursuant to section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) if applicable.
- 3.2 The payment method will be specified on the quote. The payment methods are:
  - (a) "Advance Payment" – the Buyer must pay the deposit specified on the Quote when placing an order, and if not specified, the deposit is 30% of the Price (plus GST). The balance of the Price must be paid in full prior to delivery.
  - (b) "Account" – the terms as to payment of the Price are as agreed between the parties in relation to that account. Failing agreement, the Price for each order must be paid in full within 30 days of the end of each month.
- 3.3 The Buyer agrees to pay to the Company interest on any amounts due to the Company but unpaid after 30 days at the rate of 10% per annum, calculated daily until paid.
- 3.4 The Buyer further agrees that all costs and disbursements incurred by the Company in recovering payment of any overdue invoice or in enforcing its rights under this Agreement including, without limitation, legal costs on a solicitor and client basis ("Recovery Expenses") are recoverable against the Buyer as a debt.
- 3.5 The Company reserves the right to charge a credit card processing fee of 1.5% of the Price (plus GST) in lieu of the merchant fees payable by the Company to credit card providers.

### 4. Charging clause

As security for repayment of any outstanding invoices issued to the Buyer and any associated costs and expenses, including Recovery Expenses, the Buyer and the Guarantor hereby charge in favour of the Company any real property and any personal or other property in which it has an interest ("Charge"), and irrevocably authorise the

Company to lodge caveats to notify and protect that Charge in relation to any real property in which Buyer or the Guarantor have an interest. Where the Buyer or Guarantor is a corporation, if any tax invoice remains unpaid for 60 days or more, the Company may enforce the Charge by the appointment of a receiver by the Supreme Court of New South Wales and the Buyer and Guarantor each consent to the appointment of such a receiver.

## 5. PPSA Registration

- 5.1 The Buyer agrees that all Goods supplied by the Company will be subject to a security interest as that term is defined in the *Personal Property Securities Act 2009* (PPSA) and will treat the security interest in the goods as continuing and subsisting security with priority over a registered general security and any unsecured creditors.
  - 5.2 Accordingly, the Buyer grants the Company a security interest in the Goods and in any proceeds arising from the sale of the Goods.
  - 5.3 The Buyer is responsible for the costs incurred by the Company in registering its interest under the PPSA and all costs of enforcement. Furthermore the Buyer agrees, if needed, to the unconditional ratification of any actions by the Company in relation to the protection of its security interest.
  - 5.4 If the Company, pursuant to PPSA, takes possession of all or any of the Goods in satisfaction of the Buyer's obligations to the Company, the Buyer agrees that it will remain liable to the Company for the difference between the market value of the Goods at the time they are first able to be sold by the Company free from all rights and interests of the Buyer and other persons and the amount of the Buyer's obligation for which it is in default.
  - 5.5 The Buyer agrees to waive to the maximum extent possible at law, the right to receipt of a verification statement pursuant to Section 157 of the PPSA, and any other right in favour of the Buyer that can be lawfully contracted out of under the PPSA (including, but not limited to, the items listed in Section 115 of that Act).
  - 5.6 The Buyer acknowledges that sections 96 and 125 do not apply to any security agreement created on the basis of these terms.
  - 5.7 The Buyer agrees to immediately notify the Company of any change in its:
    - (a) name, address, contact or personal details to enable the Company to register a financing change statement if required.
    - (b) In its business practices which may effect the Company's interest/s.
- 5.8 The Buyer agrees that it will not encourage or allow any other person to register a financing statement in relation to the Goods without the express written consent of the Company and shall notify the Company as soon as it is aware of any other person taking steps to register an interest in the Goods.
- ## 6. Cancellation
- Apart from the right of termination conferred by clause 11 below, no order from the Buyer may be cancelled by the Buyer except with the written consent of the Company and on terms agreed with the Company. If the Buyer cancels an order, the Buyer must pay all reasonable costs and expenses which may have been incurred by the Company in providing or preparing to provide the Goods and Services to the time of cancellation.
- ## 7. Title and risk
- 7.1 Risk passes to the Buyer upon delivery of any goods associated with the provision of the Goods and Services to the relevant site.
  - 7.2 Title in such goods does not pass to the Buyer until payment of the Price and any associated costs and expenses including Recovery Expenses, in full. If goods are delivered prior to payment of the Price in full, until payment of the Price in full, the Buyer must hold those goods as bailee for the Company and must insure and securely store the goods in a manner such that they are readily distinguishable from other similar goods of the Buyer or third parties.
  - 7.3 Until payment of the Price in full, the Buyer grants the Company the irrevocable right to enter upon any premises owned or occupied by or licensed to the Buyer to retake possession of the Goods without liability for any damage.
- ## 8. Delivery
- 8.1 Any dates specified by the Company for delivery of the Goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. The Company may deliver the goods in batches or in instalments.
  - 8.2 The Company waives any claims in respect of any shortages for any Goods delivered unless a notice of a claimed short delivery is provided to the Company in writing within 7 days of delivery.
  - 8.3 The Buyer has no right of action for damages or otherwise against the Company and release the Company from any claim for loss or damage occurring by reason of any failure or delay in delivery for taking delivery in batches.
  - 8.4 Details of any goods as recorded by the Company upon dispatch will be conclusive evidence of the quantity received by the Buyer on delivery unless

the Buyer provides conclusive evidence proving the contrary within 7 days of delivery.

- 8.5 If the Buyer fails to take delivery of any of Goods or to provide any instructions to enable the Goods to be delivered, without prejudice to any other rights, the Company may store or arrange for the storage of the Goods pending delivery but as it relates to the timing of payment for the Goods under these Terms, delivery shall be deemed to have taken place on the date the Company store or arrange storage of the Goods. Any costs or expenses incurred in relation to storage, including related insurance, of goods pending delivery are payable by the Buyer.

## 9. Warranties

- 9.1 The Company will provide the Goods and Services in accordance with any applicable industry or statutory standards, any applicable literature regarding the Goods and Services as published by the Company from time to time and any specifications agreed in writing between the parties. This warranty does not affect the Buyer's obligation to pay the Price.
- 9.2 To the maximum extent permitted by law, the Company does not provide any other warranty in relation to the Goods and Services other than that in this clause. To the maximum extent possible, any other warranties that may be asserted whether express or implied and including through statute, are expressly negated and excluded.
- 9.3 Where the design of a particular product or good has been provided by the Buyer (whether it's own design/specification or those prepared by a third party), the Buyer warrants that it has the right to use the design/specification and to have the design/specification reproduced in three dimensional form. The Buyer and the Guarantor indemnify the Company for any and all loss, cost, damage, liability or expense, whether direct, indirect, special or consequential, that the Company suffers itself or incurs in relation to any third party for the Buyer breaching this warranty.

## 10. Indemnity

The Buyer releases and indemnifies the Company and its officers, contractors, delegates, employees and agents for any and all loss, cost, damage, liability or expense, whether direct, indirect, special or consequential, that the Company suffers itself or incurs in relation to any third party, where the loss, cost, damage, liability or expense is caused by or contributed to by an act or omission of the Buyer or its officers, contractors, delegates, employees or agents for such things including but not limited to breach of a warranty in this Agreement and the use, installation and maintenance of the goods.

## 11. Termination

- 11.1 Subject to clause 6, the Buyer may terminate this Agreement on 10 business days notice in writing and on terms which indemnify the Company from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 14 days of the cancellation.
- 11.2 The Company may terminate this Agreement on 10 business days notice by notice in writing and the Buyer agrees that no damages will flow from such termination, any deposit or payments towards the Price to be refunded to the Buyer.
- 11.3 The termination of the Agreement is without prejudice to the accrued rights and obligations of any party prior to termination.
- 11.4 The Company may refrain from providing any Goods and Services, cease production and terminate this Agreement in accordance with clause 6 if the Buyer has not strictly complied with any term of this Agreement.

## 12. Returns

The Company is not under any obligation to accept a return of any goods or to provide refunds, however, it may do so on terms satisfactory to the Company.

## 13. Intellectual Property

- 13.1 In this clause, "intellectual property" means all methodologies, processes, inventions, discoveries and novel designs whether or not registrable including any invention of or developments or improvements to equipment, methods or techniques.
- 13.2 All rights the Company may hold in any intellectual property associated with Goods sold or delivered remains the Company's property, whether under licence from another or otherwise.

## 14. Force majeure

- 14.1 The Company will not be liable to the Buyer in any manner or be deemed to be in breach of this Agreement because of any delay in performing or any failure to perform any of the Company's obligations under this Agreement if the delay or failure was due to any cause beyond the Company's reasonable control.
- 14.2 The following are included (without limitation) as causes beyond the Company's reasonable control: (a) governmental actions or restrictions, curfews, lockdowns, border closures, war or threats of war, national emergency, riot, civil disturbance, sabotage or requisition; (b) Acts of God, fire, explosion, flood, epidemic, pandemic or accident; (c) import or export regulations or embargoes; (d) labour shortages or disputes not including disputes involving the Company's work-force; (e) any kind of carriage, transportation or postal delay; or (f) inability to obtain or delay in obtaining supplies to enable the provision of the Goods and Services.

#### **15. Delegation**

The Company may, in its absolute discretion, delegate or sub-contract the performance of any obligation under this Agreement without the written consent of the Buyer.

#### **16. Governing law and jurisdiction**

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in New South Wales, Australia and the parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

#### **17. Guarantee**

The Guarantor irrevocably guarantees to the Company the performance by the Buyer of all obligations under this Agreement, including as to payment.

#### **18. Limitation of liability**

To the maximum extent permitted by law, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of this Agreement is limited to the Price or provision of further similar Goods and Services at the Company's absolute discretion.

#### **19. Claims**

Any claim by the Buyer for short delivery, damage or defective workmanship must be notified to the Company in writing within 7 days of delivery, failing which no claim may be made. The Company has the right to inspect and if warranted, the Company will have a reasonable time to repair or rectify (in the Company's absolute discretion) the Goods and Services having regard to the time it takes to source products, parts or labour.

#### **20. Arbitration of disputes**

All questions, disputes or differences which arise between the parties with respect to this Agreement are to be referred to a single arbitrator in accordance with the provisions of the Commercial Arbitration Act 1984 (NSW) or any re-enactment or statutory modification of that law for the time being in force.

#### **21. Variation and waiver**

The Terms may be varied only by a written agreement between the parties. No right or remedy under or arising from this Agreement may be waived other than in writing signed by all the parties. Accordingly, any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

#### **22. Severance**

If any provision of this Agreement should be held to be void, illegal or unenforceable in any way, it may be

severed or read down as appropriate and the remaining provisions will not in any way be effected or impaired thereby and this Agreement will be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

#### **23. Information**

- 1.1 To the maximum extent permissible by law the Buyer waives all rights under the Privacy Act 1988 and consent to the collection, storage and provision of information by the Company to third parties. Such information may be used in respect to the Company's attendances relating to the goods it provides the Buyer and for the Company's statistical or marketing purposes, among other uses.
- 1.2 Further, the Buyer expressly consents to the Company using any personal information or any other information the Company holds on the Buyer for the purposes of investigating the Buyer's creditworthiness including but not limited to conducting a credit check and consent to the Company providing details of any default or credit to any credit reporting agency.

#### **24. Independent legal advice**

The Buyer acknowledges it has had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

#### **25. Entire agreement**

These Terms supersede all previous agreements between the parties and embody the entire agreement in relation to any accepted Quote or any other arrangement between the parties.