

**1. Definitions**

- 1.1 “Seller” means National Plastics & Rubber Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of National Plastics & Rubber Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods, products or Services supplied by the Seller to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 below.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods and no prior or subsequent terms or conditions in any document provided by the Client will bind the parties with respect to the Goods or the Price.
- 2.2 These terms and conditions will continue to apply to any subsequent orders placed by the Client with the Seller except to the extent they are varied by subsequent written agreement or subsequent orders, quotes or invoices.
- 2.3 These terms and conditions may only be amended with the Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.

**3. Change in Control**

- 3.1 The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client’s failure to comply with this clause.

**4. Price and Payment**

- 4.1 At the Seller’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Client; or
  - (b) the Price as at the date of Delivery of the Goods according to the Seller’s current price list; or
  - (c) the Seller’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 The Seller reserves the right to change the Price if a variation to the Seller’s quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to the Seller in the cost of taxes, levies, materials and labour or due to unforeseen or unidentifiable difficulties outside of the Seller’s control) will be charged for on the basis of the Seller’s quotation and will be shown as variations on the invoice.
- 4.3 At the Seller’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
  - (a) before Delivery of the Goods;
  - (b) thirty (30) days following the end of the month;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Seller.
- 4.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Delivery of Goods**

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur and the Goods will be considered “**Delivered**” at the time that:
  - (a) the Client or the Client’s nominated carrier takes possession of the Goods at the Seller’s address; or
  - (b) the Seller (or the Seller’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 5.2 Unless otherwise specified and at the Seller’s sole discretion the cost of Delivery is included in the Price.
- 5.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Any time or date given by the Seller to the Client is an estimate only. The Client must still accept Delivery of the Goods even if late and the Seller will not be liable for and the Client will have no claim against the Seller for any loss or damage incurred by the Client as a result of the Delivery being late.

**6. Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and the Seller will not be liable for any damage to, loss or theft of the Goods.

**7. Accuracy of clients plans**

The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information and the Client will remain liable for payment of the full Price for Goods manufactured or otherwise provided in accordance with plans, specifications and other information provided by the Client.

**8. Sellers Services**

- 8.1 The Seller does not hold any formal engineering qualifications or expertise and do not hold itself (or any of its officers, employees or agents) out as having such expertise. It is up to the Client to ensure that any plans, designs, formulas or specifications provided by them to the Seller are appropriately certified by any such experts before being provided to the Seller.
- 8.2 Where the Client requests the Seller to suggest or produce a solution to a problem, the Client acknowledges that the Seller is not a qualified engineer and the Client will accept the Sellers proposals as suggestions only, and the Client obtain its own independent certification by appropriate professionals including engineers, chemical engineers, chemists, road transport experts and others, unless specifically requested in the order, or provided by the Seller. Any Goods must only be used strictly for the purpose and in the environment described by the Seller. Use of the Goods for other purposes, or in differing environments including subsurface and surface conditions, gradient, ambient temperatures may place unexpected loads on the product leading to failure. Subject to the limited rights in clause 12, the Client will not make any claim against the Seller for any defect in design or specification of any Goods or solutions designed or formulated for the Client by the Seller and the Client waives any claim or entitlement against the Seller accordingly.

**9. Title**

- 9.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
  - (a) the Client has paid the Seller all amounts owing to the Seller; and
  - (b) the Client has met all of its other obligations to the Seller.
- 9.2 Receipt by the Seller 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.
- 9.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
  - (e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
  - (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
  - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**10. Personal Property Securities Act 2009 ("PPSA")**

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

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- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;
  - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**11. Security and Charge**

- 11.1 In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 11.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

**12. Defects, Warranties and Returns, Competition and Consumer Act 2010(CCA)**

- 12.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is (at the Seller's sole discretion):
- (a) limited to replacement of the Goods or a refund of the value of the Goods; or
  - (b) limited to the value of any express warranty or warranty card provided to the Client by the Seller; or
  - (c) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods; and
  - (d) is otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:

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- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) the Seller has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant - where the cost is significant the parties will negotiate a reasonable share of the costs); and
  - (d) the Goods are returned in as close a condition to that in which they were Delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by the Seller;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.

**13. Intellectual Property and Confidentiality**

- 13.1 Where the Seller has designed, drawn or developed Goods, then all intellectual property rights including the copyright in any designs and drawings and documents is and shall remain the property of the Seller.
- 13.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 13.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client
- 13.4 The Client must keep confidential the terms of this agreement, including the Price and any intellectual property of the Seller. The Client indemnifies the Seller for any cost or loss incurred by the Seller due to a breach of the Client's obligations under this clause and acknowledges that where there is a breach or imminent breach that an injunction or urgent declaratory relief to prevent or bring to an end any breach will be a reasonable course of action on the part of the Seller.

**14. Default and Consequences of Default**

- 14.1 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 a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Client. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 14.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client 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 Client or any asset of the Client.

**15. Cancellation**

- 15.1 The Seller 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 Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation (whether direct or indirect).
- 15.2 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed and the Client will remain liable for payment of the full Price for such Goods.

**16. Privacy Act 1988**

- 16.1 The Client agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Seller.

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- 16.2 The Client agrees that the Seller may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Client and Seller or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by the Seller, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 16.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that the Seller is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Seller, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by the Seller has been paid or otherwise discharged.
- 17. General**
- 17.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 17.3 Subject to clause 12 the Seller shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including without limitation loss of profit, loss of revenue, loss of opportunity, loss of contract, injury to reputation or any other form of consequential loss, or indirect loss) suffered by the Client arising out of a breach by the Seller of these terms and conditions. The Seller's liability howsoever arising shall be capped at and limited to damages which under no circumstances shall exceed the Price of the Goods). This liability is capped with respect to each supply of Goods and is not cumulative where Goods have been requested by the Client and supplied by the on more than one occasion.
- 17.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.6 The Client agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect (and will be taken to have accepted) if the Client makes a further request for the Seller to provide Goods to the Client.
- 17.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party except for payment due for Goods that have been Delivered to the Client (even where Delivered in part) or for Goods made to the Client's specifications, or for non-stocklist items for which production has commenced.

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- 17.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 17.9 If either party does not agree with a decision, direction or determination by the other party, either party may, within seven (7) days of such decision, direction or determination, give a written notice of dispute to the other party. The Parties must, within a further two (5) days of receipt of the notice, confer and use their best endeavours to resolve the dispute. If the Dispute cannot be resolved at the meeting, either party may commence litigation or the parties may agree to undertake any dispute resolution process that they agree are appropriate.