

## TERMS AND CONDITIONS

### 1. GENERAL

- (a) In these terms and conditions "the Company" shall mean New Touch Fabrications Pty Ltd ACN (134 353 610) to which this application for credit is made and includes its successors and assigns and "the Customer" shall mean the entity which is applying for credit in the application attached or overleaf.
- (b) These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer's order form or otherwise). The Customer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.

### 2. PRICES

- (a) Orders are accepted on the condition that the goods and services will be invoiced at the price ruling at the date the goods and services are despatched. Unless specified to the contrary, prices quoted are exclusive of all GST, stamp duty and like levies or taxes and are ex-works. The company may amend prices at any time without prior notice. All quotations provided by the Company are valid for period of (30) days.
- (b) Any variation requested by the Customer must be in writing. The Company will charge for and invoice for the requested variation as soon as the variation has been completed.

### 3. PAYMENT

The Customer (approved account holders only) shall make payment to the Company for all goods and services supplied within thirty (30) days from the date of statement unless otherwise agreed in writing. Non account holders will be required to pay prior commencement of any works. The Customer acknowledges that time is of the essence with regard to payment and that any breach of this term will enable the Company at its discretion to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding. A deposit as notified by the Company at the time of order is placed shall be payable by the Customer prior to works and services commencing and such deposit is not refundable. The Customer shall not be entitled to withhold payment of any sums after they become due by reason of any right of set off or counter claim which the Customer may have or alleged to have or for any other reason whatsoever. Credit card payments shall attract a 2.2% processing fee. The Company will not accept Diners Club cards.

### 4. INTEREST

Should payment remain outstanding beyond the Company's payment terms and at the Company's discretion as outlined in clause 3 above, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at a rate equal to 2% monthly above the overdraft rate being charged by the Westpac Banking Corporation on accounts under \$100,000.00 at the time of default.

### 5. COSTS

Should payment remain outstanding beyond the Company's payment terms and at the Company's discretion as outlined in clause 3, the Customer agrees to pay all legal costs (on a solicitor/own Customer basis) and all Mercantile Agent's fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.

### 6. DELIVERY

- (a) The Customer will pay all transport costs and insurance to deliver the goods and services to the Customer's premises in the State which the Customer trades.
- (b) In the event that the Customer specifies a delivery date, the Company shall use its best endeavours to comply with the Customer's requests. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late delivery.
- (c) Delivery of the goods and services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- (d) The Customer shall not be entitled to repudiate the agreement as a result of the failure of the Company to deliver the goods and services.

### 7. CLAIMS

- (a) It is the responsibility of the Customer to check each delivery to ensure that the delivery is complete and in good condition. The Customer will be deemed to have accepted the goods and services as being in accordance with its order and received in good condition unless it notifies the Company in writing of any claim within seven (7) days of receipt of the goods and services.
- (b) The Company will not accept any return of goods unless it has given prior written authorisation for the return and unless the returned goods are accepted by the Company's supplier. The Customer will be responsible for any restocking fees from the Company's supplier. All warranty claims must be returned directly to the Company. The Customer is responsible for payment of any freight or delivery costs to return any goods to the Company unless the Company agrees to pay such costs on the basis that the goods were delivered in a damaged condition.

### 8. JURISDICTION

The proper law of all contracts arising between the Company and the Customer is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State.

### 9. WARRANTY

- (a) All warranties whether express or implied and whether statutory or otherwise with regard to the goods and services supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law.
- (b) Where a manufacturers warranty exists then the Customer may only rely on such warranty and shall not be entitled to rescind or cancel the contract or sue the Company for damages or claim restitution arising out of any misrepresentation made to him by any servants or agents of the Company. The Customer acknowledges that it has relied on its own skill and judgement in deciding to enter into this agreement and has not relied on any representation, condition warranty, covenant, or promise made for and on behalf of the Company.
- (c) Any warranty provided by the Company shall not cover any defect or damage which may be caused by:
- Failure on the part of the Customer to properly maintain any goods and services; or
  - Failure on the part of the Customer to follow any instructions or guidelines provided by the Company;
  - Any use of any goods and services otherwise than for any application specified on any documentation supplied with the goods and services; or

- The continued use of any goods and services after any defect becomes apparent to a reasonably prudent operator or user; or
  - Fair wear and tear, any accident or act of God.
- (d) Any Warranty provided by the Company shall be voided in the event that the goods and services are repaired or altered or replaced without the Company's consent.

### 10. INTELLECTUAL PROPERTY

- (a) The Company shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.
- (b) If the Customer provides the Company with any specifications, designs or drawings for the production or manufacture of any item or items then the Customer hereby warrants that the use of these designs, drawing or specifications will not infringe any third party's rights and the Customer hereby indemnifies the Company against any claims demands suits or actions in relation thereto.

### 11. RIGHTS OF THE COMPANY TO DISPOSE OF GOODS AND SERVICES

In the event that the Company retains or regains possession of the goods ordered by the Customer and the Customer has not paid for the goods within the Company's terms of trade then the Company may dispose of the goods and may claim from the Customer any loss the Company has suffered in relation to same.

### 12. CHANGE OF OWNERSHIP

The Customer agrees to notify the Company in writing of any change of ownership of the Customer within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.

### 13. CANCELLATION

Orders placed with the Company cannot be cancelled without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

### 14. LIEN

The Customer hereby acknowledges that the Company has a lien over all goods and services in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

### 15. TITLE

- (a) Property in any goods and services sold by the Company shall not pass to the Customer until the Customer has paid for the goods and services in full and has paid all other monies outstanding under any other sale of goods and services by the Company to the Customer.
- (b) Risk of loss or damage to the goods and services passes to the Customer with possession. Until payment of the purchase price (and all other monies outstanding) the Customer is to insure the goods and services against all risk. Any insurance claim in respect of loss damage or destruction of the items or goods and services is hereby assigned to the Company.
- (c) In the event that:-
- the Customer has failed to pay for the goods and services as and when due;
  - the Customer has breached any of the conditions of this Contract;
  - the Customer commits an act of bankruptcy or becomes bankrupt;
  - a controller is appointed to the Customer;
  - the Customer is placed under external administration;
  - the Customer enters into a scheme of arrangement with its creditors;
  - execution is issued against the property of the Customer and is returned unsatisfied; or
  - the Customer is insolvent; and
- then the Company may retake possession of any of its goods which have been supplied to the Customer and for this purpose the Company may enter any premises belonging to or occupied by the Customer. The Customer hereby grants right of entry to the Company for the purpose of retaking possession of its goods and indemnifies the Company, its servants, agents and employees in relation to any loss or damage occurring as a result of retaking of possession of the goods.
- (d) The Customer hereby indemnifies the Company against any loss or damage to the goods howsoever arising.
- (e) The Customer is entitled to resell the goods and services in the usual course of its business but the Company is to be paid from the proceeds of the sale the purchase price owed to the Company (and all other monies outstanding including interest, costs and collection costs) which proceeds, to the extent of the purchase price (and all other monies outstanding including interest, costs and collection costs) shall be kept in a separate account and held by the Customer in trust for the Company. The Customer shall, on request, disclose to the Company all relevant information regarding the goods and services and any sale thereof by the Customer.

### 16. CHARGE

The Customer hereby charges all its property whatsoever whether currently owned by the Customer or acquired in the future with its indebtedness to the company.

### 17. CONSENT TO CREDIT CHECK - PRIVACY ACT

The Customer acknowledges and authorizes the Company pursuant to the provisions of the *Privacy Act* to:-

- seek from or give to a Credit Reporting Agency personal information about the Customer at any time after accepting these conditions; and
- Contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Customer and its credit worthiness.

### 18. FORCE MAJEURE

The Company will not be in default or breach of any dealing with the Customer as a result of Force Majeure. Neither party shall be liable for any default due to an act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

### 19. SUB-CONTRACTING

The Customer hereby authorises the company to sub-contract all or any part of the works that the company has been contracted to carry out. The company in doing so may be required to agree to the sub-contractors terms and conditions of trade and the carrying out of the work by the sub-contractor will deem the Customer also bound by those terms and conditions. The sub-contractor in agreeing to carry out the work on behalf of the company shall also be deemed to have the benefit of these terms and conditions.