

TERMS AND CONDITIONS OF TRADE

1. GENERAL. Any order placed by a Customer is deemed to be an order incorporating these terms and conditions, notwithstanding any inconsistencies which may be introduced by any document or statement of the Customer (unless expressly agreed to by MALMET (AUSTRALIA) PTY LTD in writing).
2. LIABILITY.
 - (a) Nothing in these Terms and Conditions is to be interpreted as having the effect of excluding or modifying or restricting any condition or warranty, or right or liability implied by any applicable legislation into the arrangement between MALMET (AUSTRALIA) PTY LTD and Customer, if such exclusion or restriction or modification would be void or prohibited by the legislation.
 - (b) To the extent that MALMET (AUSTRALIA) PTY LTD breaches any condition or warranty implied into the arrangement between MALMET (AUSTRALIA) PTY LTD and Customer and which cannot be excluded or modified, MALMET (AUSTRALIA) PTY LTD's liability is limited to, at MALMET (AUSTRALIA) PTY LTD's discretion, either:
 - (i) replacement of the goods or supply of equivalent goods;
 - (ii) payment of the cost of replacing the goods or acquiring equivalent goods;
 - (iii) repair of the goods; or
 - (iv) payment of the cost of having the goods repaired.and in the case of services, to:
 - (i) supply of the services again; or
 - (ii) payment of the cost of having the services supplied again.
 - (c) Subject to (a) and (b) above, MALMET (AUSTRALIA) PTY LTD is not liable to Customer (or to any third party claiming through Customer) for any damage (including consequential loss or damage), expense, loss, cost or other liability caused by any act or omission of MALMET (AUSTRALIA) PTY LTD, its employees or agent, and whether based on negligence or other tort, contract or otherwise.
3. QUOTATIONS AND PRICES. Prices are subject to alteration without notice to the Customer. Unless otherwise expressly agreed by MALMET (AUSTRALIA) PTY LTD in writing, all goods will be charged for at the prices ruling at the date of delivery. All prices listed are exclusive of Goods & Services Tax which, if applicable, will be for the Customer's account. Errors or omissions in fixed price quotes are not binding on MALMET (AUSTRALIA) PTY LTD.
4. TERMS OF PAYMENT. The Customer shall pay MALMET (AUSTRALIA) PTY LTD the amount of each invoice without deduction on or before the last trading day of the month following date of invoice, but MALMET (AUSTRALIA) PTY LTD reserves the right to vary the terms of payment and to require payment in cash in full, prior to delivery, should the creditworthiness of the Customer at any time be, in MALMET (AUSTRALIA) PTY LTD's opinion, unsatisfactory, or should the account fall into arrears. Likewise, if the Customer is in default, MALMET (AUSTRALIA) PTY LTD has the right to request immediate payment in full of any outstanding amounts, and to revoke all credit facilities. Credit facilities shall be granted to the Customer after its has completed MALMET (AUSTRALIA) PTY LTD Customer Credit Application and solely at the discretion of MALMET (AUSTRALIA) PTY LTD which shall be entitled to vary such terms at any time as it sees fit. If a Customer cannot meet its debts in the ordinary course of business or a Customer is placed under official management, an administrator appointed or it is placed in liquidation then MALMET (AUSTRALIA) PTY LTD shall withdraw all credit facilities, all moneys owing shall become due and payable and any rebates or incentives shall be withdrawn and terminated.
5. INTEREST AND CHARGES ON OVERDUE ACCOUNTS. If payments are not made within 7 days of the due date, MALMET (AUSTRALIA) PTY LTD reserves the right to charge interest at the rate of 15% per annum calculated daily on the amount outstanding, calculated from the due date of payment until payment is made in full. The Customer hereby agrees that such rate is a reasonable estimation of the damages suffered by MALMET (AUSTRALIA) PTY LTD in not receiving payment as agreed. MALMET (AUSTRALIA) PTY LTD also reserves the right to charge to the Customer all costs associated with recovering overdue accounts.
6. REBATES. If the Customer has the benefit of any rebates or incentives such rebates and incentives may be withdrawn at any time solely at the discretion of MALMET (AUSTRALIA) PTY LTD if the Customer does not maintained its account in accordance with clause 4. Rebates and incentives are only payable by MALMET (AUSTRALIA) PTY LTD to the Customer if at the time of payment or delivery of such rebate or incentive the Customer is engaging in business in the ordinary course.
7. CLAIMS. Any claim by the Customer for short delivery, or delivery of the wrong or damaged goods, must be notified to MALMET (AUSTRALIA) PTY LTD in writing within 14 days after delivery of the goods to the Customer or its agent or carrier. Any claim which the Customer does not notify within that time (time being of the essence) is deemed to have been absolutely waived. Should MALMET (AUSTRALIA) PTY LTD agree to take back goods not conforming to the foregoing then an administration charge will become payable by the customer for the processing of the return.
8. RISK AND DELIVERY. The risk of loss or damage to the goods passes to the Customer on delivery to the Customer or its agent or carrier.
9. PART ORDERS. MALMET (AUSTRALIA) PTY LTD reserves the right to deliver part of an order to a Customer in which case such part order shall be deemed to be sold under a separate order of the products or services set out therein. Failure by MALMET (AUSTRALIA) PTY LTD to deliver any part of an order shall not entitle the Customer to cancel the balance of the order. In the event of the Customer making default in payment in respect of any part order, MALMET (AUSTRALIA) PTY LTD may elect to treat the default as a breach of contract relating to the total order or any or all part orders of such order.
10. PROPERTY.
 - (a) The parties agree that ownership of goods sold by MALMET (AUSTRALIA) PTY LTD to the Customer is retained by MALMET (AUSTRALIA) PTY LTD and only passes to the Customer when the Customer has paid all sums owing to MALMET (AUSTRALIA) PTY LTD or a related body corporate, whether under this or any other contract.
 - (b) Until title to the goods has passed, the Customer must keep the goods as a fiduciary for MALMET (AUSTRALIA) PTY LTD until they are disposed of by the Customer in accordance with this clause and, if required by MALMET (AUSTRALIA) PTY LTD, store the goods in a manner that clearly shows the ownership of MALMET (AUSTRALIA) PTY LTD.
 - (c) Customer may sell goods, in which title has not passed to a third party in the ordinary course of its business and deliver them to that party if:
 - (i) The Customer is paid by that party whereupon the Customer will hold the whole of the proceeds of sale on trust for MALMET (AUSTRALIA) PTY LTD, or
 - (ii) The Customer is not paid by that party but MALMET (AUSTRALIA) PTY LTD elects by notice in writing to the Customer to permit the Customer to do so, whereupon the Customer will assign his claim against that party to MALMET (AUSTRALIA) PTY LTD.
 - (d) For the purpose of giving effect to and perfecting the agreement to assign specified in sub-paragraph (c) (ii) of this condition to the Customer irrevocably appoints MALMET (AUSTRALIA) PTY LTD as his attorney.
 - (e) The parties agree that the provisions of this clause apply notwithstanding any agreement, whether subsequent to this agreement or not, between the parties under which MALMET (AUSTRALIA) PTY LTD extends credit to the Customer.
 - (f) Customer hereby grants a licence to MALMET (AUSTRALIA) PTY LTD to enter onto any premises owned or controlled by the Customer, on which any goods in which property has not passed to Customer are stored, to inspect their condition and conduct a stocktake. If Customer fails to pay by the due date any amount owing to MALMET (AUSTRALIA) PTY LTD, MALMET (AUSTRALIA) PTY LTD may (without prejudice to any of its other rights) recover and resell any such goods, and Customer hereby authorises MALMET (AUSTRALIA) PTY LTD to enter onto the premises where the goods are kept to take possession of the goods for that purpose at any time.