

Malmet (Australia) Pty Ltd

Terms and Conditions of Trade



1. GENERAL

Any order placed by the customer named in the order form (**Customer**) will incorporate these terms and conditions of trade (**Terms and Conditions**) and constitute the Customer's agreement to these Terms and Conditions. These Terms and Conditions constitute the entire agreement between the parties and will take precedence over any terms set out in a purchase order or other document issued by the Customer. Malmet (Australia) Pty Ltd (**Malmet**) has an absolute discretion whether or not to supply goods upon any order placed by a Customer from time to time. Malmet's supply of goods upon any order placed by a Customer does not, and will not under any circumstances, impose an obligation on Malmet to supply goods upon any other order placed by the Customer (and for the avoidance of doubt does not create an implied or ongoing distribution agreement). A failure by Malmet to enforce any provision of these Terms and Conditions does not constitute a waiver of that provision.

2. QUOTATIONS AND PRICES.

Unless otherwise expressly agreed by Malmet in writing, all goods will be charged for at the prices ruling at the date or dates of delivery. Prices quoted for delivery and installation costs are based on the assumption that the goods will be delivered and installed or commissioned in the quantities and on the dates determined by Malmet and notified to the Customer. If the Customer requests any variation, for example, delivery or installation over multiple dates, extra charges will apply. Malmet requires at least 7 days' notice of any requested variation to delivery, installation or training dates. All prices listed are exclusive of GST which, if applicable, must be paid by the Customer at the time payment for the purchased goods is made. Additional charges may apply for any services provided by Malmet out of business hours. Errors or omissions in fixed price quotes are not binding on Malmet.

3. TERMS OF PAYMENT.

Subject to the Customer being considered creditworthy, the Customer will be permitted, and must pay to Malmet, the amount of each invoice without deduction within 30 days of the date of the invoice. Malmet 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's reasonable opinion, unsatisfactory, or should the account fall into arrears. Likewise, if the Customer is in default, Malmet has the right to request immediate payment in full of any outstanding amounts, and to revoke all credit facilities. Credit facilities may be granted to the Customer after it has completed Malmet's Credit Application Agreement and solely at the discretion of Malmet which will be entitled to vary such terms at any time by providing notice. Should the Customer's credit facilities be terminated for any reason pursuant to these Terms and Conditions, all amounts owing by the Customer to Malmet will be immediately due and payable. If a Customer cannot meet its debts in the ordinary course of business or a Customer is placed under official management, an administrator is appointed to the Customer or the Customer is placed in liquidation, Malmet will withdraw all credit facilities, all moneys owing will become immediately due and payable and any rebates or incentives will be withdrawn and terminated.

4. INTEREST AND CHARGES ON OVERDUE ACCOUNTS.

To the extent permitted by law, if payments are not made within 7 days of the due date, Malmet 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, or alternatively, the maximum amount permitted by law, until payment is made in full. The Customer agrees that such rate is a reasonable estimation of the damages suffered by Malmet in not receiving payment as agreed.

5. REBATES.

If the Customer has the benefits of any rebates or incentives such rebates and incentives may be withdrawn at any time solely at the discretion of Malmet if the Customer does not maintain its account in accordance with clause 3. Rebates and incentives are only payable by Malmet 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.

6. CLAIMS.

Any claim by the Customer for short delivery, or delivery of the wrong or damaged goods that is evident on delivery, must be notified to Malmet in writing within 14 days after delivery of the goods to the Customer or its agent or carrier.

7. 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. Malmet is not responsible for storage of the goods whether on a Customer's site or otherwise once the goods are delivered. Delays caused during site deliveries beyond Malmet's control will be charged accordingly. The costs of delivery are in addition to the cost of the goods.

8. PART ORDERS.

Malmet reserves the right to deliver part of an order to a Customer in which case such part order will be deemed to be sold under a separate order of the products or services set out therein. To the extent permitted by law, failure by Malmet to deliver any part of an order will not entitle the Customer to cancel the balance of the order.

9. LIABILITY.

- (a) Nothing in these Terms and Conditions is to be interpreted as having the effect of excluding or modifying or restricting any condition, guarantee or warranty, or right or liability implied by any applicable legislation into the arrangement between Malmet and the Customer, if such exclusion or restriction or modification would be void or prohibited by the legislation.
- (b) To the extent permitted by law, where Malmet breaches any condition, guarantee or warranty implied into the arrangement between Malmet and the Customer and which cannot be excluded or modified, Malmet's liability is limited to, at Malmet'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:-
 - (v) supply of the services again; or
 - (vi) payment of the cost of having the services supplied again.
- (c) Malmet may from time to time provide express warranties with the sale of its goods, which warranties are evidenced by a warranty card, which is enclosed with the goods sold. Malmet may also from time to time choose to sell or grant to a Customer an extended warranty, which will be evidenced in writing. Where a Customer receives an express warranty from Malmet in accordance with this clause, the rights and obligations of Malmet and the Customer are as set out in that express warranty, and those rights and obligations are provided or imposed in addition to clauses (a) and (b) above.
- (d) Subject to (a), (b) and (c) above, and to the extent permitted by law, Malmet is not liable to the Customer (or to any third party claiming through the Customer) for any damage (including consequential loss or damage), expense, loss, cost or other liability caused by any act or omission of Malmet, its employees or agent, and whether based on negligence or other tort, contract or otherwise.

10. RETENTION OF TITLE AND PERSONAL PROPERTY

- (a) All goods provided to the Customer from Malmet remain the property of Malmet, notwithstanding delivery to the Customer, until payment in full is received by Malmet.
- (b) The 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, or



- (ii) the Customer is not paid by that party but Malmet elects by notice in writing to the Customer to permit the Customer to do so, whereupon the Customer will assign its claim against that party to Malmet.
- (c) To the extent permitted by law, the Customer grants a license to Malmet to enter onto any premises owned or controlled by the Customer, on which any goods in which title has not passed to the Customer are stored, to inspect their condition and conduct a stock take. If the Customer fails to pay by the due date any amount owing to Malmet, and to the extent permitted by law, Malmet may (without prejudice to any of its other rights) recover and resell any such goods, and the Customer hereby authorises Malmet to enter onto the premises where the goods are kept to take possession of the goods for that purpose at any time.
- (d) The Customer acknowledges and agrees that by assenting to these Terms and Conditions, the Customer grants a security interest to Malmet in all goods supplied by Malmet to the Customer and all other goods that will be supplied in the future by Malmet to the Customer (or to its account) until payment in full for such goods is received by Malmet.
- (e) The Customer will do such acts and provide such information (which information the Customer warrants to be complete, accurate and up to date in all respects) as in the opinion of Malmet (acting in its absolute discretion) may be required or desirable to enable Malmet to perfect under the *Personal Property Securities Act 2009* (Cth) (as amended or replaced from time to time) (PPSA) the security interest created.
- (f) The Customer waives any right to receive a copy of a verification statement under the PPSA and agrees as to any contract between Malmet and the Customer for the supply of goods governed by these Terms and Conditions, to the extent permitted by law, to contract out of section 115(1) of the PPSA, except section 115(1)(g) to the intent that Malmet will preserve its right to seize collateral, and the Customer agrees to waive its rights referred to in section 115(1).
- (g) The Customer agrees to pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by Malmet to comply with the PPSA or to protect its position under the PPSA. The Customer agrees to pay any costs incurred by Malmet, including, but not limited to, legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any goods supplied by Malmet.

11. GST

- (a) For the purpose of these Terms and Conditions, each Taxable Supply, GST, GST Rate, Tax Invoice, Adjustment Note and GST Law have the meanings given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Unless stated otherwise, if a Taxable Supply is made by Malmet under these Terms and Conditions, Malmet may, in addition to the amount payable under these Terms and Conditions, recover from the Customer an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate.

12. CONFIDENTIAL INFORMATION.

If at any time Malmet discloses to the Customer, or the Customer becomes aware of, confidential information of Malmet, including pricing and other information relating to the goods, materials, procedures, tests or equipment, the Customer must not use the information for any purpose not approved by Malmet and must not disclose that confidential information to any other person/s unless expressly agreed to in writing by Malmet.

13. FORCE MAJEURE.

Without limiting any other provisions in this document, Malmet is not liable to the Customer for any failure to perform any of the stipulations of these Terms and Conditions or to deliver any goods

on time to the extent caused by any of the events set out below (each called ('force majeure')):

- (a) an Act of God;
- (b) the outbreak of hostilities (whether or not accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism;
- (c) the act of any government or competent authority (including the cancellation or revocation of any approval, authority or permit or restrictions imposed under any public health orders);
- (d) fire, explosion, food, inclement weather, or natural disaster;
- (e) the declaration of a state emergency or the invocation of martial law having an effect on commerce generally;
- (f) industrial action (including strikes and lock-outs) that is of a widespread nature affecting Malmet personally or the industry or sector of which Malmet is a part (whether in a vertical sense or horizontal);
- (g) the default or any suppliers under any material contracts to which Malmet is a party; or
- (h) any other cause, impediment or circumstances beyond the reasonable control of Malmet which could not be taken to account on the formation of this document,
- and Malmet will use its reasonable endeavors to notify the Customer of any force majeure event.

14. CANCELLATION OF ORDERS.

- (a) Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) accepted by Malmet. Delivery of the goods ordered and/or the supply of services cannot be deferred and non-defective goods ordered cannot be returned except with the prior written consent of Malmet and then only upon terms that the Customer reimburse and indemnify Malmet against all loss it has reasonably incurred as a result of the cancellation, deferral or return, including (without limitation) cartage, bank charges and other incidental expenses incurred on any part of the order that is cancelled.
- (b) Notwithstanding any other rights Malmet may have under these terms and conditions, Malmet may cancel any order or delivery of any order, by providing written notice to the Customer if the Customer:
- (i) defaults in payment of any invoice by the due date;
- (ii) enters into liquidation or, in the case of an individual, becomes bankrupt; or
- (iii) breaches an essential term of this agreement.

15. DELIVERY.

- (a) The Customer will be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
- (b) The Customer acknowledges and accepts that any estimated delivery for supply of goods provided by Malmet is an estimate only and, subject to law, Malmet will not be liable for any loss suffered by the Customer as a result of any delay in the delivery of goods or non-delivery of the goods.
- (c) Malmet is entitled to charge a reasonable fee for:
- (i) storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the goods; or
- (ii) taking receipt of delivery if Malmet agrees to the Customer's request to do so.

16. SETOFF.

Malmet may at any time set-off amounts owed by Malmet to the Customer from the amounts owed by the Customer to Malmet. Malmet will apply payments against the outstanding amounts in the order in which they were incurred.

17. GOVERNING LAW.

These Terms and Conditions are governed by the laws of New South Wales, Australia. The parties agree that any disputes will be heard in the courts of New South Wales.