

# MALMET (AUSTRALIA) PTY LTD

## 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). MALMET (AUSTRALIA) PTY LTD has an absolute and unfettered discretion whether or not to supply goods upon any order placed by a Customer from time to time. If MALMET (AUSTRALIA) PTY LTD does supply goods upon any order placed by a Customer, it does so under these Terms and Conditions. Subject only to an express agreement to the contrary, entered into between MALMET (AUSTRALIA) PTY LTD and the Customer, MALMET (AUSTRALIA) PTY LTD supply of goods upon any order placed by a Customer does not, and will not under any circumstances, impose an obligation on MALMET (AUSTRALIA) PTY LTD 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).
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, guarantee or warranty, or right or liability implied by any applicable legislation into the arrangement between MALMET (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD breaches any condition, guarantee or warranty implied into the arrangement between MALMET (AUSTRALIA) PTY LTD and the 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; 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 (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD in accordance with this clause, the rights and obligations of MALMET (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD 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 (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 or dates of delivery. All prices listed are exclusive of Goods & Services Tax which, if applicable, must be paid by the Customer at the time payment for the purchased goods is made. 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 the date of the 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 it 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. Notwithstanding any other provision of these Terms and Conditions, MALMET (AUSTRALIA) PTY LTD may, in its absolute and unfettered discretion, terminate a Customer's credit facilities at any time, with or without notice to the Customer and without any recourse by the Customer. 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 (AUSTRALIA) PTY LTD shall 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 (AUSTRALIA) PTY LTD shall withdraw all credit facilities, all moneys owing shall become immediately due and payable and any rebates or incentives shall be withdrawn and terminated. Any failure by MALMET (AUSTRALIA) PTY LTD to enforce this clause or a provision hereof shall not constitute a waiver of its right to do so, and a decision to enforce this clause or a provision hereof is at the sole discretion of MALMET (AUSTRALIA) PTY LTD.
5. **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 (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 benefits 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 maintain 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. To the extent permitted by law, 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.
  - (a) Delays caused during site deliveries beyond Malmet's control will be charged accordingly.
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. **RETENTION OF TITLE AND PERSONAL PROPERTY**
  - (a) All goods provided to the Customer from MALMET (AUSTRALIA) PTY LTD remain the property of MALMET (AUSTRALIA) PTY LTD, notwithstanding delivery to the Customer, until payment in full is received by MALMET (AUSTRALIA) PTY LTD.
  - (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 (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.
  - (c) To the extent permitted by law, the Customer hereby grants a license to MALMET (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD, and to the extent permitted by law, MALMET (AUSTRALIA) PTY LTD may (without prejudice to any of its other rights) recover and resell any such goods, and the 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.
  - (d) The Customer acknowledges and agrees that by assenting to these Conditions, the Customer grants a security interest to MALMET (AUSTRALIA) PTY LTD in all goods supplied by MALMET (AUSTRALIA) PTY LTD to the Customer and all other goods that will be supplied in the future by MALMET (AUSTRALIA) PTY LTD to the Customer (or to its account) until payment in full for such goods is received by MALMET (AUSTRALIA) PTY LTD.
  - (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 (AUSTRALIA) PTY LTD (acting in its absolute discretion) may be required or desirable to enable MALMET (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD 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 (AUSTRALIA) PTY LTD to comply with the PPSA or to protect its position under the PPSA. The Customer agrees to pay any costs incurred by MALMET (AUSTRALIA) PTY LTD, 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 (AUSTRALIA) PTY LTD.
11. **GST**
  - (a) For the purpose of these Terms and Conditions, each of "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 the Seller under these Conditions, the Seller may, in addition to the amount payable under these Conditions, recover from the Purchaser an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate.