

PSA Standard Terms & Conditions of Sale

1. DEFINITION

- 1.1 **Customer** means any person or entity who has placed an Order with PSA or requests a Quotation from PSA;
- 1.2 **PSA** means Plastic Solutions Australia Pty. Ltd. ABN 83 158 619 268;
- 1.3 **Products** mean all products (including accessories and spare parts), services and equipment supplied or to be supplied by PSA to the Customer; and
- 1.4 **Terms and Conditions** mean these terms and conditions of supply, as may be amended from time to time by PSA

2. QUOTATIONS AND ORDERS

- 2.1 Any quotation made by PSA is an invitation to treat and not an offer to sell Products. Prices quoted by PSA are in Australian Currency (unless noted otherwise); subject to changes necessary to correct errors and are otherwise valid for a period of 30 days only.
- 2.2 The Customer offers to enter into an agreement with PSA for the supply of Products in accordance with these Terms and Conditions by placing an order for Products with PSA. No order for Products is binding on PSA until PSA formally accepts that order. PSA's formal acceptance of an order, any relevant terms on the quotation made by PSA and these Terms and Conditions alone, will constitute the entire agreement of the parties (**Contract**) in relation to the supply of Products, and may only be varied in writing, signed by the parties or as permitted by these Terms and Conditions.
- 2.3 The Contract sets out the entire agreement and understanding between PSA and the Customer in respect to the relevant Products and supersedes all prior agreements, understandings, representations and warranties (whether expressed or implied).
- 2.4 PSA is not bound by any supply agreement, terms or conditions, purchase order or other document issued by a Customer (**Customer Document**). The Contract prevails over any terms of a Customer Document, which terms will have no contractual effect.
- 2.5 No order may be cancelled after acceptance by PSA without PSA's consent. The Customer indemnifies PSA in respect to all direct and indirect costs, expenses and losses incurred as a result of the cancellation of an order.

3. PRICES

- 3.1 Unless otherwise agreed by PSA in writing, the price to be paid by the Customer for Products will be: (a) PSA's then prevailing price in Australian Currency, for the supply of such Products to the Customer; and (b) any applicable taxes or charges (including any goods and services or similar taxes) levied by any government authority upon the supply or use of the Products.
- 3.2 Unless otherwise specified, prices do not include transportation costs and are exclusive of goods and services tax. Products are supplied ex-works.
- 3.3 If: (a) a raw material, component, or service provider raises its prices, or imposes a surcharge on PSA; or (b) any tax is imposed or increased in connection with the supply of any Products by PSA; (c) PSA otherwise incurs an increase in costs in supplying Products to the Customer, PSA reserves the right to increase applicable prices and the Customer agrees to accept such price increases.
- 3.4 A surcharge may apply to any invoice to make up the minimum order value of \$200 unless otherwise agreed.
- 3.5 Deliveries will incur a delivery charge unless otherwise agreed by PSA.

4. PAYMENT

- 4.1 Payment for Products must be made by the Customer to PSA within 30 days from the last day of the month in which the invoice for those products was issued.
- 4.2 Payment must be in a form acceptable to PSA and without any deduction, withholding, set-off or counter claim of any nature.
- 4.3 PSA reserves the right to charge the Customer for reimbursement of all credit card charges, bank charges (including currency exchange charges), merchant fees etc.

5. DELIVERY

- 5.1 PSA will make all reasonable efforts to have available the Products for the Customer on the date(s) applicable under a Contract, but shall be under no obligation or liability to the Customer for failing to do so.
- 5.2 Delivery shall be effected upon:
 - (a) release of goods into the custody of the Carrier; or
 - (b) pick up by Customer or Customer's Carrier; or
 - (c) physical delivery to the Customer or Customer's nominated Carrier; or
- 5.3 Notation by PSA's carrier on the delivery docket shall be conclusive evidence of delivery. The Customer shall be responsible for unloading; and any loss or damage occurring during unloading of the Products at the Customer's premises.
- 5.4 If the Customer refuses to accept delivery of Products, or is unavailable to accept delivery of Products at an agreed period of time, then the risk in the Products shall pass to the Customer from the time of such refusal or the agreed period of time for delivery. In such event, PSA may (without limiting any of its other rights) arrange to store the Products and/or redeliver at the Customer's expense.

6. TITLE AND RISK

- 6.1 Title in and to all Products delivered to the Customer will remain with PSA and will not pass to the Customer until such time as the Products have been paid for in full.
- 6.2 Risk in and to Products will pass to the Customer upon delivery of the Products.
- 6.3 Until PSA has received payment in full; the Customer holds the Products as bailee for PSA, and
 - (a) the Customer shall safely and securely store the Products separately from the goods on the premises of the Customer in such a manner as to show clearly that the Products are the property of PSA;

- (b) PSA has a security interest in the Products;
- (c) the Customer shall, upon request from PSA, deliver up such Products to PSA (or as directed by PSA);
- (d) representatives of PSA will be entitled and permitted at any time to enter any place where the Products are situated to repossess the Products, and to remove the Products from any vessel or vehicle, and for this purpose PSA is hereby appointed as the Customer's agent. The Customer agrees to indemnify PSA and keep PSA indemnified against all costs incurred by PSA in removing the Products and against losses, and liabilities incurred by, and any claims against, PSA in removing the Products and arising from such removal; and
- (e) if the Products in part or in full are mixed with the Products that have been paid for, the Customer bears the onus of proving that the Products in its possession (whether mixed with other goods or not) have been paid for in full by the Customer. If the Customer is unable to prove, to the satisfaction of PSA that the goods identified as PSA goods have been paid for in full, then those goods shall be deemed to relate to unpaid invoices outstanding from time to time and are deemed to be the property of PSA. PSA reserves the right to repossess those goods without having to prove that the goods relate to specific unpaid invoices outstanding at the time of repossession.

7. BREACH AND INSOLVENCY

If:

- (a) the Customer fails to comply strictly with the terms of a Contract;
- (b) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for the purpose of amalgamation or reconstruction); or
- (c) the Customer enters into any arrangement, compromise or composition or assignment for the benefits of its creditors or any class of them;
- (d) a receiver, a receiver and manager, administrator or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the goods;
- (e) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
- (f) the Customer is or is deemed (including under any applicable law) unable to pay its debts as and when they fall due, or stops or suspends the payments of its debts;
- (g) in the case of the Customer being a natural person, the Customer commits an act of bankruptcy; or
- (h) PSA is of the view, acting reasonably, that any of the above will or are likely to occur,

PSA may (without limiting or otherwise prejudicing any other rights it may have) at any time terminate any and all Contracts between PSA and the Customer and refuse to supply any and all Products to the Customer. The Customer agrees to indemnify PSA (and keep PSA indemnified) against loss, cost or expense and other liability (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by PSA in connection with any breach of a Contract by the Customer.

8. CUSTOMER WARRANTIES

8.1 The Customer:

- (a) warrants to PSA that it has read and understood these Terms and Conditions;
- (b) warrants to PSA that all information supplied by or on behalf of it to PSA in connection with the supply of Products is true and accurate and not misleading;
- (c) warrants that it has not relied on any representation or statement made by or on behalf of PSA in connection with the supply of Products that has not been clearly and expressly stated in the Contract;
- (d) acknowledges that PSA has relied on the information supplied by or on behalf of the Customer to it in supplying the Products; and
- (e) warrants that the supply of the Products by PSA to the Customer, and the use of Products by the Customer, will make PSA liable to any prosecution, claim or other action under any applicable law.

8.2 The Customer indemnifies PSA and holds PSA harmless against all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by PSA in connection with any breach of the warranties of the Customer set out in these Terms and Conditions.

8.3 Without limiting the liability of the Customer under the indemnity above, PSA may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any action, suit, proceeding, claim or demand brought or made against it by any person in connection with any breach of the warranties given by the customer under these Terms and Conditions and the Customer agrees that the indemnity extends to any cost or expense incurred by PSA in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.

8.4 PSA reserves the right to refuse to do or to omit to do anything, or refuse to comply with any request or direction of the Customer, which in the reasonable opinion of PSA would constitute or result in a breach of any warranty given by the Customer under these Terms and Conditions or a breach by the Customer of a Contract.

9. INTELLECTUAL PROPERTY

9.1 All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or industrial or intellectual property disclosed or otherwise provided to the Customer by PSA or otherwise subsisting in the Products and all rights therein (collectively **Intellectual Property**) will remain the property of PSA and will be kept confidential by the Customer. The Customer shall have no claim to, nor ownership interest in, any Intellectual Property. The Customer acknowledges that no license or rights of any sort are granted to the Customer in respect of any Intellectual Property, other than the limited right to use Products purchased from PSA for the purpose they are supplied by PSA.

9.2 The Customer warrants that any Products manufactured, constructed or supplied by PSA which are based in whole or in part upon designs, drawings, specifications or information supplied by PSA by or on behalf of the Customer shall not infringe any letters, patents or registered designs or any other industrial or intellectual property rights of any person.

10. CONFIDENTIAL INFORMATION

10.1 All information furnished or made available by PSA to the Customer in connection with the subject matter of these Terms and Conditions or the supply of Products shall be held in the strictest confidence by the Customer. The Customer agrees not to use such information or disclose such information to others without PSA's prior written consent. The obligations in this paragraph will not apply to any information which:

- (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer or any obligation herein;
 - (b) the Customer can show by written records, was in the Customer's possession prior to disclosure by PSA; or
 - (c) is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to PSA with respect to such information.
- 11.** (a) Examination of the Products shall be made by or on behalf of the Customer, and unless within 7 business days of delivery of the Products, the Customer gives written notice that the Products do not comply with the applicable Contract, the Products shall be deemed to have been in all respects supplied in accordance with the relevant Contract, and the Customer shall be bound to accept and pay for the Products accordingly.
- (b) Claims by the Customer in respect of Products which have not been supplied in accordance with the relevant Contract will only be considered by PSA if: (a) the claim is made within 7 business days of the date of delivery of the Products; (b) representatives of PSA have been afforded a reasonable opportunity to inspect the Products; and (c) the Products are subsequently returned to PSA as directed by PSA.
 - (c) PSA is not obliged to accept any return of Products that have been supplied (or are deemed to have been supplied) in accordance with the relevant Contract. Even if PSA determines that it will accept a return of Products in those circumstances: (a) PSA is not obliged to accept any Products which have been used, damaged or altered in any way; (b) all Products must be returned in their original packaging; (c) Products returned will be subject to a **20% handling and restocking** charge or as determined by PSA; and (d) Products are to be returned at the Customer's expense.
 - (d) Acceptance of Products returned does not imply agreement to issue a credit note.
 - (e) A credit note will be issued by PSA only after the Goods returned are either collected by PSA's authorized representative or agent or returned to it by the Customer as set out above.
 - (f) The Customer shall not deduct the amount of any anticipated credit from any payment due to PSA, nor delay such due payments, but must await receipt of a credit note.
 - (g) Delivery charges and minimum order surcharges will not be credited.
 - (h) If the Customer is a Consumer for the purposes of the Australian Consumer Law (as contained in Schedule 2 of the Competition and Consumer Act 2010 (cth), nothing in the Contract (including this clause 11 and clause 12) will be construed as being contrary to the provisions of the Australian Consumer Law and PSA acknowledges that:
PSA's Products come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

12. LIMITATION OF LIABILITY

- 12.1** PSA will not be responsible for any failure to supply Products on the date agreed between the parties and the Customer is not entitled to cancel any order as a result of that failure.
- 12.2** Except as expressly provided to the contrary in writing by PSA in a Contract: (a) PSA gives and makes no warranty or indemnity in respect of the Products; and (b) all conditions and warranties implied at law (whether by statute, common law, equity or otherwise) are (to the extent permitted by law) expressly excluded from the Contract.
- 12.3** If any statute implies any term, condition or warranty into a Contract, the statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included in the Contract. However, the liability of PSA for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of PSA, to any one or more of the following:
- (a) If the breach relates to goods:
 1. the replacement of the goods, the supply of equivalent goods or the repair of the goods; or
 2. to the extent required by the relevant statute, the payment of the cost of replacing the goods or of acquiring equivalent goods or the cost of having the goods repaired; and
 - (b) If the breach relates to services:
 1. The supplying of the services again; or
 2. To the extent required by the relevant statute, the payment of the cost of having the services supplied again.
- 12.4** To the extent permitted by law, and except as otherwise expressly agreed in writing by PSA as part of a Contract, PSA will not be liable for any personal injury, incidental damages, consequential losses, loss of profit, cost of business interruption, loss of opportunities or any other loss, damage, cost, expense or liability whatsoever arising from any use of, or incidental to, the Products or their use, or arising out of PSA's negligence or breach of a Contract.
- 12.5** The Customer agrees that any legal costs incurred by PSA (on a solicitor and own client basis) in the recovery of any monies due by the Customer shall be recoverable in full from the Customer.

13. EXCUSABLE DELAYS

- (a) PSA shall not be liable for any failure to comply with a Contract when such failure is caused by or arises out of any of the following: (1) fire, storm, tempest, earthquake, inevitable accident or other act of God; (2) any act of public enemy; (3) any act of any government or any government authority or instrumentality; (4) an act of any person engaged in subversive activity or sabotage; (5) epidemics or quarantine restrictions; (6) strikes, slow-downs, lockouts, or labour stoppages or disputes of any kind or freight embargoes; (7) any shortfall, delay or failure to supply by any of PSA's suppliers; or (8) any other cause or event whatsoever which is beyond the control and without the fault or negligence of PSA.
- (b) In the event of a failure by PSA to comply with a Contract, unless PSA advises the Customer that it is able to make alternative arrangements, the Customer shall be entitled to obtain the Products contracted for supply elsewhere for the duration of such failure.

14. CUSTOMER'S TRUST

If the Customer enters into this Agreement as trustee of a trust ("Trust"), the Customer:

- (a) Confirms that it enters into this Agreement as trustee of the Trust both for its beneficiaries and for itself and in this Agreement, each reference to the Customer is a reference to it in each capacity; and
- (b) Warrants to PSA that:
 - (1) It is the only trustee of the Trust;

- (2) No action has been taken or proposed to remove it as trustee of the Trust;
- (3) It has power under the trust deed relating to the Trust to enter into and observe the Customer's Covenants;
- (4) It has a right to be fully indemnified out of the trust fund of the Trust in respect of its obligations to perform and observe the Customer's Covenants;
- (5) The assets of the Trust are sufficient to satisfy PSA's right of indemnity out of the Trust Fund;
- (6) It is not in default under the terms of the Trust; and
- (7) PSA's Rights rank in priority to the interest of the beneficiaries of the Trust.

15. GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the laws of the State of Victoria, Australia (regardless of the place in which the Products are to be delivered). The Customer submits to the jurisdiction of the courts of the State of Victoria and of the courts competent to hear appeals from the courts of that State.

16. VARIATION

- (a) The Customer acknowledges that these Terms and Conditions are available through PSA branches and may change without notice.
- (b) The Customers continued purchase of Product will evidence consent to the new terms and conditions as amended in accordance with clause 16 (b).