



## GENERAL TERMS & CONDITIONS OF SALE

### 1. GENERAL

- 1.1 These terms and conditions apply to the sale of goods and services by Brooks Australia Pty Ltd ("Seller") and all offers made by the seller in relation to the Seller's goods, unless varied, amended or cancelled in writing signed by an officer or other duly authorised representative of the Seller.
- 1.2 The buyer of goods from Seller is deemed to have accepted the terms and conditions contained herein by placing an order with the Seller.
- 1.3 The Seller's failure to object to any term or condition contained in any communication, whether written or oral, from the Buyer, shall not be deemed a waiver of these terms and conditions.
- 1.4 If there is any inconsistency between these terms and conditions and the terms and conditions of any particular offer or communication by or from the Buyer, these terms and conditions shall prevail to the extent of the inconsistency.

### 2. QUOTES BY THE SELLER

- 2.1 Subject to Clause 4.2, unless otherwise specified by the Seller in writing at the time of quotations made by the Seller are valid for the period specified in the quotation, or if no such period is specified, for a period of thirty (30) days from the date of the quotation or as otherwise stated by the Seller. Following the expiration of this period, each quotation is subject to written confirmation by the Seller.

### 3. ORDERS

- 3.1 The Seller requires the Buyer to place written orders for the Seller's goods. All quotations given and orders accepted by the Seller are so given or accepted subject to the General Terms.
- 3.2 The Buyer must purchase at least the minimum order value and the minimum order quantity per line item determined by the Seller.

### 4. PRICES

- 4.1 Subject to paragraph 4.2, and unless otherwise agreed, the purchase price for goods shall be the Seller's list prices as at the date of the Seller's acceptance of an order placed by the Buyer. The Buyer acknowledges and agrees that, in the event that any price quoted by the Seller is calculated on the basis of a per unit price or is based on minimum or specific quantities, the Seller may amend that price if there is any variation in the total quantity of goods ordered from that upon which the quotation was based.
- 4.2 All quoted prices of imported goods are based upon the F.O.B. price of the Seller's supplier and the rates of exchange, freight, insurance and customs or primage duty as at the date of quotation. The quoted prices may be varied by the same percentage amount by which the Seller's actual costs of satisfying an order vary as a result of any change in the said price or in any of these rates or duties. In the case of variations in rated of exchange, the Seller reserves the right to increase its quoted price in relation to goods supplied to the Buyer by the same percentage as the percentage devaluation (if any) of the Australian dollar against the currency in which payment for the relevant goods is required to be made by the Seller to its supplier, calculated from the date of quotation by the Seller to the date of invoice, as disclosed by the variation in the Westpac Banking Corporation Spot Selling Rate in the relevant period.
- 4.3 In addition to the prices specified above, the Seller will charge the Buyer its standard packaging and handling charges from time to time. In addition, the Seller shall be entitled to charge separately for packing which is not in accordance with the Seller's customary standard of packing.

### 5. TERMS OF PAYMENT

- 5.1 For account holders only, all invoices shall be paid in full not later than thirty (30) days from end of month of invoice, unless otherwise agreed by the Seller. Time shall be of the essence in this regard.
- 5.2 In the event that the Buyer fails to make any payment to the Seller when payment falls due, the Seller shall have the right, without prejudice to any other right or remedy to which the Seller may be entitled to charge interest on the overdue amount at the rate of 3% per annum in excess of the interest rate prescribed by the Westpac Overdraft Business Rate, calculated from the date of invoice to the actual date of full and final payment. Any payment by the Buyer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the price.
- 5.3 The extension of credit facilities and the terms upon which such credit is provided are, in all cases, at the sole discretion of the Seller and are subject to confirmation on the receipt of any order. In any event the Seller retains the right to withdraw credit facilities at any time prior to delivery of goods.
- 5.4 In the event that the Buyer fails to make any payment to the Seller when payment falls due, the Buyer shall be liable for the Seller's damages including expenses, costs of collections, in addition to other remedies the Seller shall have under law.
- 5.5 In the event of the Buyer's financial condition shall become impaired prior to delivery of full payment to the Seller, the Buyer shall notify the Seller's office immediately. In the event that the Seller, in its sole and unfettered discretion, finds the Buyer's financial condition unsatisfactory to the Seller (with or without notice from the Buyer) the Seller may exercise any or all of the following options without limitation of any other rights or remedies it has herein or under law,
  - a) demand immediate payment
  - b) suspend all further deliveries
  - c) terminate this agreement upon two (2) days written notice to the Buyer.

## **6. DELIVERY OF GOODS**

- 6.1 Whilst the Seller will use its best endeavours to meet all quoted delivery or consignment dates the Seller shall in no event be liable to the Buyer by reason of delays in delivery caused by any reason whatsoever.
- 6.2 The Seller shall use its own designated carrier for all deliveries. If the Buyer wishes to use its own carrier, delivery of the goods shall be ex-Seller's store and the Buyer shall pay all freight and insurance costs ex-Seller's store and shall indemnify the Seller from an against all actions, suits, proceedings, claims for demands and all losses, expenses and liabilities, howsoever arising, from the transportation of the Seller's goods delivered ex-Seller's store once delivery has been made by the Seller to the Buyer's carrier.
- 6.3 In the event of any delay caused by the Buyer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller at its option, may extend the quoted delivery or consignment dates or consign part of an order or suspend consignment during that period of delay or may cancel the order and the Buyer shall not be relieved of its obligation to accept and pay for an order, or any part of an order, in accordance with Clause 5, as a result of any such extensions, partial consignments or suspensions.

## **7. RISK**

- 7.1 All goods sold to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, to the Buyer's nominee, or to the Buyer's carrier, except where goods are held for the Buyer in which case risk shall pass to the Buyer on the date being seven (7) days from the date of notification to the Buyer that the goods are ready for delivery.

## **8. TITLE OF GOODS**

- 8.1 Notwithstanding the provisions of paragraph 7, the Seller shall retain the title to all goods supplied by it to the Buyer until it has received payment in full of all sums due in connection with the supply of all Goods by the Seller to the Buyer at any time in the case of payment by cheque, bill of exchange or note, title shall not pass to the Buyer until the same is honoured.
- 8.2 In the event that any of the goods are incorporated into or attached to, or mixed with, other goods by the Buyer, so that they are no longer identifiable or separable, then title to the composite goods shall vest in and by retained by the Seller in accordance with paragraph 8.1.
- 8.3 The Buyer shall store all Goods and any composite goods owned by the Seller ("Seller's Goods") in such a way that they are clearly identifiable as the Seller's property, and shall maintain and allow the Seller to inspect records of the Seller's Goods, identifying them as the Seller's property and of the persons to whom it sells or otherwise supplies the Seller's Goods or any of them and of payments made by such persons for the Seller's Goods.
- 8.4 If payment for any Goods is overdue, the Seller is entitled, without prejudice to any of its other rights and remedies, to repossess the Seller's Goods and to enter into any premises upon which the Seller's Goods are stored, without notice for this purpose.
- 8.5 Until such time as the Seller receives payment in full for any Goods, if the Buyer sells or receives any payment from a customer or insurer in respect of the Seller's Goods the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) shall be held by the Buyer on trust for the Seller and paid into a separate bank account which shall not be overdrawn or otherwise dealt without the Seller's prior written consent.
- 8.6 Nothing in paragraphs numbered 8.1 to 8.5 inclusive shall affect the Seller's rights as an unpaid Seller.

## **9. RETURN OF GOODS AND CANCELLATIONS OF ORDERS**

- 9.1 The Buyer may within fourteen (14) days of receipt of any goods claim the right to reject any goods which are wrongly or oversupplied, or which are not in accordance with any express or implied representations, warranties, terms or conditions of the contract of sale, without limiting the Seller's right to dispute any such claim. If the Buyer fails to notify the Seller in writing of its claim for rejection and reasons therefore within such period, the Buyer will, subject always to clause 12 of these terms and conditions, be deemed to have accepted such consignment.
- 9.2 Return of any of the goods cannot be made by the Buyer
  - a) without prior written authorisation from the Seller, and
  - b) unless accompanied by the delivery docket showing the Seller's authorisation reference number, and
  - c) unless returned in original packing, unsoiled, undamaged, and
  - d) unless accompanied by a goods return advice (GRA).
- 9.3 Unless otherwise agreed, goods returned will be subject to a minimum 20% restocking fee.
- 9.4 In the event that the Buyer returns goods other than in accordance with paragraph 9.2, subject always to clause 12 of these terms and conditions, the Seller shall reassign those goods to the Buyer, freight collect.
- 9.5 Unless otherwise agreed, goods returned other than by our nominated carrier/s will not be accepted.
- 9.6 The Buyer shall not cancel any order without the prior written consent of the Seller, which consent may or may not be granted in the Seller's sole discretion.
9. In the event that the Seller agrees to the cancellation of an order in its absolute discretion, the Seller may as a condition of such cancellation, require the payment by Buyer of a cancellation fee of an amount determined by the Seller in its reasonable discretion to compensate it for the loss suffered by it arising out of the cancellation.
- 9.6 At the Seller's option, any order may be terminated by the Seller in the event of the insolvency of the Buyer or in the event of execution being levied against any of the property of the buyer or in the event of the Buyer being placed in liquidation, whether voluntary or otherwise, or a receiver or a receiver and manager being appointed in respect of the assets or undertaking of the Buyer or the Buyer entering into a deed of composition or arrangement with its creditors or any or any of them, or in the event that for any reason, in the Seller's reasonable opinion, the Buyer is unlikely to be able to make payment for goods on the due date.

## **10. SPECIFICATIONS AND INFORMATION**

- 10.1 Listed performance data is based upon our experience and is such as we expect to obtain on test. Should these figures not be obtained no liability will be accepted unless they are specifically guaranteed in writing and in which case they would be subject to the recognised tolerance and rejection limits applicable to such figures. The Buyer shall assume responsibility for the capacity and performance of the goods being sufficient and suitable for the purpose.
- 10.2 All drawings and printed matter accompanying a quotation or in the Buyers hand before or after acceptance of any order are for information only.

## **11. INTELLECTUAL PROPERTY**

- 11.1 The Buyer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Goods shall not pass to the Buyer. The Buyer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Buyer involving any infringement or alleged infringement of any rights of any third party.

## **12. WARRANTY**

- 12.1 The Seller warrants to the Buyer that, under proper and normal use and service in accordance with the Seller's specifications and instructions (if any) the goods will be free from defects solely due to faulty workmanship of materials, during a period of twelve (12) months from delivery, to the extent that upon authorised return to the Seller, freight pre-paid, during that period, of any part of the goods covered by this warranty, the Seller shall, if it finds such a part to be defective in its sole opinion, as its option repair such part or supply a replacement part, provided that:
- a) the goods or any part thereof are not, and have not been, without the Seller's consent, altered, repaired or subjected to any technical attention by any person other than the Seller's authorised representatives;
  - b) the provision of this paragraph 12.1 may, at the Seller's option, be varied or replaced by specific warranty conditions issued in respect of particular products, and
  - c) this warranty does not cover damage due to normal wear and tear, improper installation, use of any of the Seller's goods in life support products, misuse or neglect or where goods have been subjected to operating or environmental conditions in excess of maximum value in the applicable specifications.
- 12.2 To the extent permitted by law, and except as expressly provided in paragraph 12.1, all warranties, representations, terms and conditions, concerning the goods or services to be supplied by the Seller in respect of the goods, including, but not limited to, warranties, representations, terms or conditions regarding the ability of goods, whether express or implied, are hereby expressly excluded.
- 12.3 To the extent permitted by law, the Seller shall not be liable, nor shall there be any remedy against the Seller in respect of any claim, whether contractual, tortious, statutory or otherwise, for any loss, damage, costs, expenses or other injury or harm suffered by the Buyer or any other person in relation to or arising out of use of the goods or in relation to or arising out of service supplied by the Seller in relation to the goods, including but not limited to, loss of profits, loss of business, unavailability of goods or losses arising from claims by third parties.

## **13. LIMITATION OF LIABILITY**

- 13.1 The Seller shall not be subject to not incur, and the Buyer releases the Seller from any claim action or liability (included consequential loss or change, removal, reinstallation, loss of use or of profits) by reason or delays, fault or defective materials or workmanship, negligence or any act matter or thing done permitted or omitted by the Seller.
- 13.2 Buyers property under the Seller's custody or control will be entirely at the Buyer's risk as regards loss or damage thereto or thereby whatsoever cause arising.
- 13.3 Goods shown in any catalogue are those goods the Seller considers its normal lines. The Seller however does not warrant, whether expressed or implied the availability ex stock any of those goods listed.
- 13.4 Errors or omissions of a clerical or mechanical nature appearing on the face hereof are subject, to correction by the Seller.
- 13.5 Neither this agreement nor any rights hereunder may be assigned by the Buyer without the prior written consent of the Seller.

## **14. INFRINGEMENT OF INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

- 14.1 If any action, suit proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the goods infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of third parties, the Buyer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action suit proceedings, claim or demand except with the prior written consent of the Seller.

## **15. GOVERNING LAW**

- 15.1 These terms and conditions shall be governed, and construed in accordance with the laws of the State of New South Wales and the parties unconditionally and inevitably submit to the non-exclusive jurisdiction of the courts of that State.

## **16. USE OF GOODS**

- 16.1 The Buyer will not use the goods for any purpose other than that for which the goods were sold to it and will use the goods strictly in accordance with any instructions or supporting documentation supplied with the goods, or as directed by the Supplier.