

TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (**Terms**) apply to all supplies of goods and / or services by Diecast Australia Pty Ltd ABN 22 458 139 687 (**Diecast**) to the customer. The goods, and other requirements of supply, will be set out in an order placed by a customer with Diecast (**Order**). No alternative terms, whether supplied before or after acceptance of an Order will be valid unless such terms have been consented to in writing by Diecast and then only to the extent that they do not conflict with these Terms. Your placement of an Order constitutes acceptance of these Terms.

1. General

These Terms constitute the entire agreement for the sale of goods between the parties. These Terms have priority over any of the customers' terms relating to an Order. No Order or other document issued by the customer will vary these Terms.

2. Quotations, Orders and prices

- 2.1. Customers may purchase goods by placing an Order with Diecast. An Order constitutes an offer by the customer to purchase goods from Diecast pursuant to these Terms.
- 2.2. An Order is not binding on Diecast until it is accepted by Diecast in writing or by any other manner Diecast determines. Diecast may in its discretion accept the whole or part of an Order.
- 2.3. Orders may not be cancelled, withdrawn or revoked after acceptance without Diecast's written consent.
- 2.4. Prices quoted are based on Diecast's estimated cost of production, manufacture and/or supply and will be held firm for a period of 30 days from the date of quotation. All prices quoted are subject to GST. If the supply of Goods attracts GST, an additional amount equal to the GST payable must be paid.
- 2.5. Diecast reserves the right to increase any price in accordance with increases incurred by Diecast and are subject to 30 days' notice to the customer of such variations. Unless an objection to the variation is received within 30 days, the increased price will be applicable.

3. Payment

- 3.1. All invoices issued by Diecast are due and payable on presentation, unless the customer has a credit facility which provides for a later payment.
- 3.2. Provision of credit facilities is at the sole discretion of Diecast and Diecast is not under any obligation to provide, or continue to provide, credit facilities. Diecast may impose, increase or reduce any credit limit provided to the customer under any credit facility.
- 3.3. Diecast reserves the right to vary the terms of payment, and to require payment in full, prior to delivery should the customer's credit worthiness at any time become in Diecast's unfettered opinion unsatisfactory.
- 3.4. If the customer defaults in payment Diecast is entitled to:
 - (i) close or suspend the customer's account and any credit facilities;
 - (ii) charge interest at a rate of 5% calculated monthly on the outstanding amount from the date it was due until payment is received in full, and the parties agree that this interest charge is not a penalty;
 - (iii) require all outstanding Diecast invoices issued to the customer, whether overdue or not, to be paid immediately; and
 - (iv) charge the customer reasonable fees where payments are dishonored or fail to go through.
- 3.5. The customer may not withhold payment to set-off any amount owed by Diecast to the customer.
- 3.6. The customer indemnifies Diecast for all reasonable costs and expenses incurred by Diecast as a result of any breach, act or omission by the customer for recovery or attempted recovery of overdue amounts and costs associated with registration, maintenance and withdrawal of any security provided under these Terms.

4. Description

- 4.1. All samples, descriptions, illustrations and other specifications (**Descriptions**) provided by Diecast are approximate only and may vary from the goods supplied. Any Description is given by way of identification only and the use of such Description shall not constitute a contract of sale by description, sample or specification.
- 4.2. The customer is liable for ensuring that the goods are suitable for its intended use.
- 4.3. Except to the extent that Diecast has acted negligently or in breach of the law, Diecast is not liable for any loss, damage cost or expense suffered as a result of the customer relying on any Description.

5. Dies

Unless otherwise expressly agreed by Diecast in writing:

- 5.1. if the goods are manufactured from the Dies supplied by the customer, Diecast:
 - (i) accepts no responsibility for the shape, measure, capacity, fitness or otherwise of the Dies or the suitability of the Dies for manufacturing the goods;

- (ii) shall not be liable for any loss in any way whatsoever for any loss or damage to the Dies;
 - (iii) makes no warranty as to the quality, fitness for purpose or suitability of the Dies; and
 - (iv) is not liable for any failure, delay loss or damage caused or in connection with any Dies supplied by the customer or any goods which are manufactured from those Dies;
- 5.2. the price of Dies produced, manufactured or supplied by Diecast is to be paid whether or not any goods are manufactured from those Dies;
- 5.3. as soon as the Dies have been fabricated, off tool samples will be submitted to the customer for approval (**Off Tool Sample**). Any alteration, amendment or addition must be notified to Diecast within 14 days from receipt of the Off Tool Samples. If any alteration, amendment or addition in variance from the original specification be required by the customer, additional costs will be applied and the customer agrees to assume all risk of resultant damage to the Dies. The production of product will commence on receipt of the customer written approval of the Off Tool Samples;
- 5.4. maintenance and repairs of all Dies shall be undertaken at the discretion of Diecast and shall be paid for by the customer provided that quotation prior to the commencement of repairs shall only be necessary in the event of major maintenance and repairs being required. If Diecast proceeds with maintenance and repairs to Dies supplied by the customer, the customer shall accept full responsibility and costs for such maintenance and repairs and will not make any claim against Diecast for loss or damage to the Dies or any other loss resulting therefrom;
- 5.5. the customer is liable for any charge incurred by Diecast for its acquisition or use of any tool, equipment, patters, design, system or any other device of manufacture required to satisfy or complete any order made by the customer;
- 5.6. in the event the customer die, tools, patents, and drawings are retained by Diecast for safekeeping. Diecast accepts no liability for any damage loss or deterioration of the same save that Diecast undertakes to store the same in a safe and responsible manner; and
- 5.7. Diecast reserves the right to hold all tooling as security in the event of default in payment of any monies due.

6. Claims

- 6.1. The customer must notify Diecast in writing within 7 days of any claims in relation to the goods including but not limited to:
- (i) allegations of defects or damage;
 - (ii) incomplete or incorrect Orders; or
 - (iii) disputed invoices.
- 6.2. The customer must act to mitigate any loss arising from a defect in the goods.
- 6.3. Any claim which is not notified to Diecast within 7days of delivery, or a failure to mitigate loss, shall result in the customers deemed acceptance that the goods are in compliance with the Order.

7. Limitation of Liability

- 7.1. To the extent permitted by the Australian Consumer Law and any other applicable law, all conditions, guarantees or warranties (whether implied or otherwise) not set out in this Clause 7 are excluded. Nothing in this Clause 7 is to be interpreted as excluding, restricting or modifying any law or statute applicable to the supply of goods which cannot be excluded, restricted or modified.
- 7.2. Where permitted, the liability of Diecast for a breach of a condition or warranty that cannot be excluded is limited at Diecast's option to the replacement or repair of the goods or the supply of equivalent goods or the cost of replacing or repairing the Goods or of acquiring equivalent goods or the re-supply of the service or the costs of acquiring the service.
- 7.3. To the extent permitted by law, Diecast shall not be liable in any way whatsoever for:
- (i) indirect, special, economic or consequential loss, cost, damage or expense;
 - (ii) loss of profit or business revenue, loss of chance or opportunity, damage to reputation or loss of value of intellectual property;
 - (iii) any loss or damage caused as a result of a delay or non-performance under these Terms, which is cause by a Force Majeure Event or any reason outside of Diecast's control; or
 - (iv) loss or damage incurred due to a customer's failure to install or use goods in the correct manner.

8. Quantity

Delivery of 10% more or less than the quantity specified in an Order shall constitute fulfillment of the Order and any excess not exceeding 10% shall be taken by the customer who shall pay for the quantity actually delivered.

9. Delivery

- 9.1. Diecast will endeavor to deliver the goods, or make the goods available for collection, at the time stated by Diecast however the parties acknowledge that delivery / collection dates and times are estimates only

and the customer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery or collection.

- 9.2. Diecast reserves the right to deliver by installments and these Terms apply to each instalment. Failure of Diecast to deliver any installment shall not entitle the customer to cancel the balance of the Order.
- 9.3. Diecast will not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or make available for collection or delay in delivery or collection arising from any circumstances including (without limitation) matters outside the control of Diecast including an act of God, war, terrorism, civil commotion, riots, floods, fires, pandemics, labour shortages or government actions, orders or directions, explosion, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant, unavailability or shortage of raw materials, power supplies or transport facilities or failure or inability to obtain licences.
- 9.4. The customer must nominate an address for the goods to be delivered and authorises Diecast to leave the goods at the nominated address whether or not there is someone there to receive them. The customer warrants that the nominate address is suitable for the delivery and complies with all relevant legislation, including occupational health and safety regulations. Failure to provide a safe location for delivery may result in delivery not being completed and additional charges being occurred for any re-direction, re-delivery or storage of the goods.
- 9.5. If a customer is collecting the goods, the customer acknowledges and agrees that entry onto Diecast's premises is at the customers own risk and that Diecast will not be liable for any loss, damage or injury caused by an act or omission whatsoever while on Diecast's premises. The customer indemnifies Diecast and holds Diecast harmless from any claim, loss or damage arising out of the customer's attendance at Diecast's premises.
- 9.6. Delivery of goods is deemed to have occurred when they are handed to the customer, are delivered to the customer's nominated address, or are collected by the customer from Diecast's premises.
- 9.7. Diecast may charge additional costs and fees incurred as a result of delays in delivery or collection caused by the customer or the conditions of the nominated address, including storage costs.
- 9.8. Diecast will not accept return of the goods unless otherwise agreed in writing and on terms agreeable to Diecast.

10. Property and Risk

- 10.1. Title in the goods will pass from Diecast to the customer upon payment in full of all amounts owing to Diecast by the customer. The risk of loss or damage to the goods passes to the customer on delivery or collection of the goods.
- 10.2. Until such time as title passes, the goods are held by the customer as bailee for Diecast must be easily identifiable as Diecast's property. The customer may in the ordinary course of its business re-sell the goods, however it does so as a fiduciary agent of Diecast. If goods are re-sold before title passes, the customer assigns absolutely and unconditionally to Diecast all proceeds of the re-sale and will hold such part of the proceeds of the re-sale on trust for and as the fiduciary agent of Diecast.
- 10.3. Diecast may repossess the goods if any amount due by the customer in respect of the goods remains unpaid. The customer irrevocably grants to Diecast or its agent a licence to enter its premises to repossess the goods without being liable to the customer or any third party. The customers indemnifies Diecast in full for any loss or damage suffered by the goods between the time that risk in the goods passes and title in the goods passes.
- 10.4. The customer acknowledges that these Terms create a security interest pursuant to the *Personal Property Securities Act 2009* (Cth) (**PPSA**). Each sale or supply of goods under these Terms is subject to the security agreement.
- 10.5. The customer charges all its right, title and interest in all real and personal property (including after acquired property) in favour of Diecast and consents to Diecast taking any action necessary to give effect to the charge including but not limited to the lodging of caveats or financing statements on the Personal Property Securities Register.
- 10.6. On demand, the customer will provide Diecast any information, or do any action, including execution of documents to ensure that Diecast has a perfected first ranking security interest in the goods under the PPSA.
- 10.7. The customer appoints Diecast and any person nominated by Diecast as its attorney with power to execute, sign and deliver such security document to effect the charge granted under clause 10(5).
- 10.8. To the extent permitted by the PPS Act the parties agree to contract out of the following sections of the PPSA: sections 95, 117, 118, 120, 121(4), 125, 126, 130, 132(3)(d), 132(4), 135, Division 6 Part 4.3, 142 and 143.
- 10.9. The customer waives its rights to receive a notice from Diecast of a registration event under section 157(1) of the PPSA.

11. Default

11.1. If the customer:

- (i) is in breach of these terms and fails to remedy the breach within 14 days of being advised in writing of the breach;
- (ii) fails or refused to take delivery of or collect of the goods and such failure or delivery continues for 14 days after Diecast notifies the customer that the goods are ready for delivery / collection; or
- (iii) is placed under external management or makes an assignment, agreement or arrangement in respect of its assets for the benefit of its creditors, including but not limited to the appointment of a liquidator, receiver, manager, administrator or trustee,

(Breach)

then Diecast may immediately:

- (i) suspend or terminate any credit facilities;
- (ii) suspend or cancel the manufacture or delivery of goods;
- (iii) require immediate payment of any invoices;
- (iv) cancel the agreement under these Terms; or
- (v) enforce Diecasts' rights under any security agreement.

11.2. The customer must indemnify Diecast for any loss or damage Diecast suffers or incurs as a result of any Breach including costs and expenditure in taking action in response to the Breach.

12. Intellectual Property

12.1. The supply of goods or services to the customer does not constitute a transfer of any intellectual property rights in the goods or services of any part thereof. The customer shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the de-compilation, disassembly and re-engineering thereof.

12.2. Where Diecast provides the goods or services to the customer's design and specifications the customer agrees to indemnify and keep indemnified Diecast against all actions, claims, loss, damages, costs and fines that Diecast may incur or suffer as a result of a claim by a third party that the manufacture and sale by Diecast of the goods or any part thereof or the provision of the services infringes any intellectual property right of such third party.

13. Performance and Representation

The customer acknowledges that neither Diecast nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing as to the fitness of the goods for any particular purpose or any other matter.

14. Waiver

Failure, delay or partial exercise by a party in exercising any right or remedy or to insist upon strict performance of any term warranty or condition does not constitute a waiver of any rights that party may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

15. Variation

These Terms may only be varied in writing and signed by Diecast.

16. Customer Acknowledgment

The customer acknowledges that the goods are not of a kind ordinarily acquired for private use or consumption and that it is not acquiring the goods for the sole purpose of re-supply but for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods.

17. Subcontracting

Diecast reserves the right to sub-contract at its sole discretion the production, manufacture or supply of the whole or any part of the goods, or of any materials or service to be supplied.

18. Notices

18.1. A notice or other communication required or permitted to be given to a party must be in writing and may be delivered personally, by prepaid post or by email

18.2. A notice or other communication is taken to be delivered:

- (i) if delivered personally or left at the party's address, upon delivery;
- (ii) if posted within Australia to an Australian address, 3 business days after posting and in any other case, 10 business days after posting;

(iii) if delivered by email at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient, but if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

19. Governing Law

These Terms are governed by and construed in accordance with laws of Victoria and the parties submit to the exclusive jurisdiction of Victoria.

20. Severance

If any part of these Terms is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation. If that is not possible, it will be severed from these Terms without affecting the remaining provisions of these Terms (which will remain in full force and effect).

21. Survival and enforcement of indemnities

Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations survives termination of the Terms.

22. No merger

The warranties, undertakings, agreements and continuing obligations in these Terms do not merge on completion of the transactions contemplated by the Terms.

23. Evidence of Debt

A written notice signed by an officer or legal representative of Diecast which states an amount of a debt owed by the customer to Diecast will be evidence of such amount except in the case of manifest error.