

EXAMPLE TERMS & CONDITIONS OF SALE

By placing a Purchase Order, the Buyer accepts and agrees to be bound by the terms and conditions set out in their Agreement with the Company.

This document contains an example of those terms and conditions for informational purposes only, but should not be relied upon, as the actual terms and conditions of the Agreement may be different.

1. DEFINITIONS

In this Agreement:

- 1.1. **Agreement** means these terms and conditions and any amendments to it from time to time, and includes all Purchase Orders.
- 1.2. **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the respective Australian state or territory to which this Agreement applies.
- 1.3. **Buyer** means the person who is purchasing Goods from the Company.
- 1.4. **Claims** means all claims, disputes, losses, damages, differences, allegations, complaints, demands, notices, suits, actions, proceedings, expenses and liabilities of whatever nature and however arising, whether presently known or unknown, whether past present or future, including without limitation, claims for interlocutory relief, costs, damages and interest.
- 1.5. **Company** means the particular company the Buyer engages to buy Goods or services pursuant to a Quote, being one of:
 - 1.5.1. F. L. Costello & Co Pty Ltd;
 - 1.5.2. F.L. Costello & Co (Sydney) Pty Ltd;
 - 1.5.3. F.L. Costello & Co (Qld) Pty Ltd; or
 - 1.5.4. F.L. Costello & Co (SA) Pty Ltd.
- 1.6. **Delivery Date** means the date on which the Goods are to be delivered as set out in a Purchase Order.
- 1.7. **Delivery Point** means the location or address for delivery of the Goods as set out in a Purchase Order.
- 1.8. **Force Majeure** means an event, or a series of related events, outside the reasonable control of the party affected including but not limited to:
 - 1.8.1. act of God, explosion, flood, tempest, fire or accident;
 - 1.8.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 1.8.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 1.8.4. import or export regulations or embargoes;
 - 1.8.5. strikes, lockouts or other industrial action or trade disputes whether involving the Company's employees or those of a third party;
 - 1.8.6. pandemic or state of emergency;
 - 1.8.7. difficulty in obtaining raw materials, labour, fuel, parts or machinery; and
 - 1.8.8. power failure or breakdown in machinery.
- 1.9. **Goods** means the goods which are available for purchase by the Company.
- 1.10. **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.11. **GST** has the meaning given to it in the GST Act.

2.

INTERPRETATION

In this Agreement, unless the context otherwise requires:

- 2.1. Alternative grammatical forms of defined words or expressions have corresponding meanings;
- 2.2. Word denoting the singular number include the plural and vice versa and words denoting a given gender include all genders;
- 2.3. The expression "person" includes an individual, body corporate, a business or an unincorporated association;
- 2.4. The words "including" or "includes" means "including, but not limited to" or "includes, without limitation" respectively;
- 2.5. If something is to be done or may be done on a day that is not a Business Day, then it must be done on the next Business Day;
- 2.6. \$ or dollars is a reference to Australian dollars;
- 2.7. A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.

3.

GENERAL

- 3.1. This Agreement governs the sale of Goods by the Company to the Buyer. To the extent of any inconsistency between this Agreement and a Purchase Order:

- 3.1.1. the terms of the Purchase Order prevail in relation to the number, type and price of Goods sold, but only to the extent those terms are consistent with a Quote provided by the Company to the Buyer not more than three months before the Company's receipt of the Purchase Order; and
- 3.1.2. otherwise, and in all other respects, the terms of this Agreement prevail.
- 3.2. The description of the product on the face hereof or given in any other document is for identification purposes only and the use of such description shall not constitute the sale of Goods by description unless expressly stated by the Company in writing.
- 3.3. The Company reserves the right to fulfil the Purchase Order by instalments in any sequence. Each instalment shall be treated as if it constituted a separate and distinct contract incorporating this Agreement. Any delay in delivery, non-delivery or defect in the instalment shall not entitle the Buyer to cancel any other instalment or terminate the Purchase Order.

4. CONDITIONS AND ORDERS

- 4.1. The Buyer acknowledges that, except where expressly noted in writing by the Company, the Company has not and does not make any warranty or representations regarding the Goods and the Buyer relies on its own investigation and evaluation regarding the Goods.
- 4.2. The Company shall not be bound by any opinion or recommendation given by the Company's employees or agents to the Buyer as to the storage, application or use of any Goods, unless such opinion or recommendation was also verified by the Company in writing.
- 4.3. The Company reserves the right to make changes to any specifications, dimensions, descriptions and illustrations contained in any sales literature, Quote, pricelist or other advertisement in relation to Goods, and shall not be obliged to inform the Buyer where such changes do not (in the Company's opinion) materially affect the quality or fitness for purpose of the Goods purchased by the Buyer.

5. PRICE AND PAYMENT

- 5.1. By placing a Purchase Order, the Buyer agrees to pay the Purchase Price for the Goods plus GST and any delivery, loading, transport and/or freight charges.
- 5.2. The Company may require the Buyer to pay a deposit of up to 25% of the Purchase Price when the Purchase Order is placed.
- 5.3. The Buyer may request the Company provide a Quote for the Buyer's proposed Purchase Order. Unless otherwise indicated on the Quote, the Quote will expire automatically within 30 days after the date appearing on the Quote. If the Buyer accepts the Quote in writing within the 30 day time frame, the Quote will automatically convert to a Purchase Order.
- 5.4. The Company reserves the right to change the prices of its Goods at any time without notice to the Buyer. However, the Purchase Price that is payable by the Buyer will be the price that was applicable at the time that the Purchase Order was placed.
- 5.5. The Company, may from time to time, be required to increase the Purchase Price due to factors beyond the Company's reasonable control, including but not limited to:
 - 5.5.1. foreign exchange fluctuations;
 - 5.5.2. increase in taxes and duties;
 - 5.5.3. increased costs of labour, materials and other manufacturing incidentals.
- 5.6. If the Company is required to increase the Purchase Price as per clause 5.5, the Company will notify the Buyer in writing and the Buyer may choose to either:
 - 5.6.1. Proceed with the Purchase Order and pay the increased Purchase Price; or
 - 5.6.2. terminate the Purchase Order and receive a refund of any money that has been paid as a deposit for the Purchase Order.
- 5.7. the Buyer must pay the Purchase Price in full by:
 - 5.7.1. providing the Company with the Buyer's credit or debit card details and authorising the Company to deduct an amount equivalent to the Purchase Price; or
 - 5.7.2. transfer the Purchase Price electronically to the Company's bank details stated on the invoice; before the Delivery Date and in any case, before the Goods depart the Company's warehouse.

- 5.8. If, the Buyer fails to pay the Purchase Price in full for any reason, then without prejudice to any other remedies that the Company may have:
 - 5.8.1. the Purchase Price will accrue Interest at the Interest Rate from the Delivery Date; and
 - 5.8.2. the Company reserves the right to suspend or cancel delivery of the Goods until the Purchase Price and any accrued Interest has been paid in full.
- 5.9. The Company may seek reimbursement from the Buyer of any bank charges incurred for any dishonoured payments by the Buyer. If the Company incurs any bank charges as a result of a failure for any reason of the Buyer's bank to honour any payment made by the Buyer, the Buyer must reimburse the Company within 7 days of such charges being notified to the Buyer and any such sums shall constitute a debt payable immediately on demand.
- 5.10. Payment of the price is of the essence.
- 5.11. If a product is not in stock, the Company will contact the Buyer to discuss revised delivery times or refund options.

6. DELIVERY OF GOODS

- 6.1. The Company will only deliver Goods to street addresses within the Serviced Areas. Goods cannot be delivered to a PO box.
- 6.2. Delivery of Goods to certain parts of the Serviced Areas which are remote or isolated may require extended delivery times and are subject to local transport schedules. There may also be certain parts of Australia that the Company is unable to deliver to, if this is the case, the Company will notify Buyer in writing.
- 6.3. The Company reserves the right to charge a reasonable fee for any delivery that the Buyer cancels once a Delivery Date has been set. The Buyer must pay this to the Company before the Company will make any further attempt to deliver the product.
- 6.4. When the Buyer and the Company have agreed upon and set a Delivery Date, the Buyer agrees that:
 - 6.4.1. any change or cancellation of the date of delivery by the Buyer may incur a reasonable fee charged by the Company and the Company reserves the right to suspend delivery of the Goods until such fee is paid;
 - 6.4.2. it is the Buyer's responsibility to ensure that there will be an authorised person present at the Delivery Point to accept delivery; the Buyer will ensure there is adequate access to the Delivery Point to allow the Company to deliver the Goods in a safe manner; and
 - 6.4.4. the Buyer may incur a further delivery charge if the Company is unable to deliver the Goods due to the absence of an authorised person to accept delivery or inadequate or unsafe access to the Delivery Point.
- 6.5. The Buyer acknowledges that there are factors beyond the Company's control that may impact on its ability to make timely deliveries (including the timing of deliveries by the Company's suppliers and the availability of sufficient trained staff for installation).
- 6.6. Any dates the Company gives the Buyer for delivery of the product are approximate only and the Company will not be liable for any delay in or non-delivery of the product. Subject to clauses 8.2 and 8.3, the Buyer is deemed to accept delivery of an order at the time the delivery is made even if a different Delivery Date had previously been specified. The product may be delivered in advance of any estimated delivery date upon reasonable notice.
- 6.7. Except to the extent otherwise required by law, the Company will not be liable to the Buyer for any loss, damage, cost or expense suffered as a direct or indirect consequence of any failure or delay in delivery or third party interference.

7. RISK AND TITLE

- 7.1. Risk in the Goods passes to the Buyer on the earlier of:
 - 7.1.1. the Company delivering the Goods to the address specified in the Purchase Order;
 - 7.1.2. the Company unloading the Goods from the Company's transport and placing it at the Delivery Point; or
 - 7.1.3. the Company unloading the Goods and handing the Goods over to the possession of the Buyer's nominated carrier.

- 7.2. Notwithstanding anything to the contrary, where this Agreement between the Company and the Buyer has been terminated for any reason and the Company is to take possession of the Goods, title of the Goods will revert to the Company (where title has already transferred to the Buyer). Risk of the Goods will revert to the Company when the Company has taken possession or retrieved the Goods from the Buyer. The Buyer must take reasonable care of the Goods while the Goods are in the Buyer's possession.

8. DEFECTIVE OR INACCURATE GOODS/ RETURNS

- 8.1. The Buyer shall inspect the Goods as soon as reasonably possible after delivery.
- 8.2. If the Buyer alleges any fault or defect in the Goods, the Buyer must notify the Company within two Business Days of delivery and provide details of the alleged fault or defect.
- 8.3. To the extent the Buyer does not notify the Company within two Business Days of delivery of an alleged fault or defect in the Goods supplied, the Buyer:
- 8.3.1. waives any right to allege a fault or defect in the Goods supplied; and
- 8.3.2. shall be deemed to have accepted the Goods with all faults and defects on an 'as-is' basis.
- 8.4. The Buyer must allow the Company an opportunity to inspect the Goods within a reasonable time after delivery, during which the Buyer must not use the Goods. If the Buyer does not comply with the requirements of this clause, the Buyer will be deemed to have accepted the Goods in its state and condition.
- 8.5. Any returns of non-defective Goods is strictly at the Company's sole discretion. Should the Company agree to accept a return of a non-defective Good, the Buyer agrees to:
- 8.5.1. pay a handling charge equivalent to 25% of the Purchase Price;
- 8.5.2. pay any return postage or freight costs arising from the return; and
- 8.5.3. return the Goods in its original packaging.
- 8.6. To maximum extent permissible by law, the Company's liability in respect of any defective supply of Goods shall be limited to either:
- 8.6.1. making good any defect or damage in the Goods;
- 8.6.2. replacing the Goods; or
- 8.6.3. if the Company elects to do so, refunding an appropriate proportion of the Purchase Price to the Buyer.
- 8.7. The Buyer acknowledges that they will not be entitled to any refund or remedy solely because any packaging of the Goods is damaged in transit.

9. CANCELLATION OF PURCHASE ORDERS

Once a Purchase Order has been accepted by the Company, it can only be cancelled by the Buyer if the Company is, for any reason whatsoever, unable to fulfil it.

10. DISPUTES

- 10.1. In the event either party to this Agreement alleges a breach of this Agreement, then before any legal proceedings or recovery action are instituted, the party alleging the breach (First Party) must first issue a written notice of dispute to the other party (Second Party) setting out the alleged breach, the amount (if any) in dispute, the action required and the time within which the First Party requires the breach to be rectified (which must not be less than 7 days) (Dispute Notice).
- 10.2. If the dispute is not resolved within 14 days after the Dispute Notice is given to the other party or parties, the parties must endeavour to settle the dispute in connection with the Agreement by mediation. The mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties, and must be conducted in Perth, Western Australia. The Resolution Institute mediation and conciliation rules (at the date of this Agreement) as amended by this clause apply to the mediation, except where they conflict with this clause (in which case this clause shall prevail).

- 10.3. If the parties cannot agree upon the mediator and the mediator's remuneration within 7 days after referral to mediation, the chair of the Resolution Institute (principal appointer) or the principal appointer's nominee, acting on the request of any party to the dispute, shall appoint a mediator and determine the rate. The mediator's remuneration shall be borne by the parties to the dispute in equal shares. Each party must pay its own costs of the mediation.
- 10.4. If the dispute is not resolved within 14 days after the appointment of the mediator, a party may commence court proceedings in relation to the dispute.
- 10.5. To the extent that a party seeks to have a Dispute resolved or determined in a different forum, including but not limited to a Court, another party may apply to have that process or proceeding stayed and / or dismissed.
- 10.6. Nothing in this clause prevents the parties from commencing proceedings for urgent interlocutory relief where appropriate.

11. DISCLAIMERS AND LIMITATION OF LIABILITY

- 11.1. To the maximum extent permitted by law, the Company shall not be liable for any loss including consequential, direct, indirect or special losses or damage or injury of any kind (whether in contract, tort or otherwise in law) suffered by the Buyer or any third party as a result of:
- 11.1.1. errors, mistakes or inaccuracies on the Technical Reference Materials accompanying any Goods;
- 11.1.2. a breach of any term, obligation, warranty, representation, undertaking or other acknowledgment contained in this Agreement by the Buyer;
- 11.1.3. any Claim of any employee, sub-contractor or agent of the Buyer to payments, entitlements or benefits under any contract, arrangement or applicable law;
- 11.1.4. any act or omission of the Buyer (including fraud), its officers, employees or agents;
- 11.1.5. failure to comply with any law or regulation by the Buyer, its officers, employees or agents, including but not limited to work health and safety or occupational health and safety laws, privacy laws and environmental protection laws;
- 11.1.6. injury, death or loss arising out of or in any way connected with the use of the Goods by any person.
- 11.2. To the maximum extent permitted by law, this Agreement operates to the exclusion of all implied terms. The Company gives no warranty as to the nature of the Goods or that it will be fit for any specified purposes.
- 11.3. The Company will not be liable to the Buyer for any Claims arising out of a Force Majeure Event, or for any consequential, special or indirect losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.
- 11.4. To the maximum extent permitted by law, the Company will not be liable to the Buyer for any Claims arising directly or indirectly out of the Buyer's use of the Goods, the Company's website or any other service provided under this Agreement. To the maximum extent permitted by law, any liability of the Company under this Agreement is limited to the Purchase Price (or part thereof) that has been received by the Company.
- 11.5. The Buyer will at all times indemnify and keep indemnified, the Company (including its directors, officers, employees and agents) in relation to any breach of this Agreement by the Buyer and any Claims brought against the Company by any third person where such Claims arose out of, in connection with or in respect of the Buyer's conduct or breach of this Agreement.

12. TECHNICAL REFERENCE MATERIALS

The Company may, but shall not be obliged to, provide or make available for viewing Technical Reference Materials which are intended for use by qualified and licensed service technicians and are for reference purposes only.

INTELLECTUAL PROPERTY

- 13.1. The Company owns all rights, title and interest in and to the Intellectual Property and nothing in this Agreement creates a transfer, conveyance or diminution of those rights.
- 13.2. In the event the Buyer learns of any infringement or threatened infringement in respect of the Intellectual Property, or any common law passing-off by reason of imitation or otherwise, or that any third party alleges or claims that the Intellectual Property is liable to cause deception or confusion to the public, the Buyer shall immediately notify the Company in writing giving particulars of the infringement or threatened infringement. The Company may institute and prosecute legal action in respect of any perceived or actual infringement of the Intellectual Property and the Buyer shall cooperate with the Company for the purposes of such proceedings. The Company may, in its sole discretion, suspend the supply of the Goods on such terms as it sees fit in the event of any pending or current legal proceedings concerning the Intellectual Property.

14. GENERAL

- 14.1. Entire Agreement: This Agreement, together with any Purchase Orders, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other agreements or representations pertaining to the same.
- 14.2. Variation: This Agreement may not be amended, modified, waived, discharged or terminated verbally nor by implication. No variation to this Agreement shall be valid unless in writing signed by each of the parties.
- 14.3. Severability: If any provision of this Agreement is, or at any time becomes, prohibited by or unlawful under, any applicable law, regulation or other condition actually applied or otherwise becomes void or unenforceable, it will be severed and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement. The remaining provisions will, to the extent permitted by law, continue in full force and effect.
- 14.4. Assignment: The Company may assign any of its rights or obligations under this Agreement without the consent of the Buyer. The Buyer must not assign any of its rights or obligations under this Agreement without the prior written consent of the Company.
- 14.5. Waiver: No waiver by the Company of any breach of these conditions shall be considered as waiver of any subsequent breach of the same or any other provision of these conditions.
- 14.6. Notice: Any notice or document required under these terms and conditions to be served on the Company must be addressed to its registered office for the time being. Any notice or document similarly required to be served on the Buyer may be sent to the Buyer's last known address. Notices and documents may be delivered by hand or sent by prepaid post and if sent by post shall be deemed to be served on the day on which they would be delivered in the ordinary course of post. Notices and documents may be delivered by facsimile or electronic email to the parties' last known facsimile number or email address and shall be deemed to be served at the time of transmission.
- 14.7. Jurisdiction: This Agreement is subject to the exclusive jurisdiction of the laws in force in Western Australia from time to time. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and waive any rights for proceedings to be heard in any other jurisdiction.