

Capral Limited

Conditions of Sale (November 2016)

1 General

- (a) Any order for the purchase of goods placed by a purchaser (**order**) will incorporate these Conditions of Sale (**Conditions**). Any conditions contained in a purchaser's order are excluded, unless expressly agreed to in writing by Capral Limited (ABN 78 004 213 692) (**Company**).
- (b) The Company reserves the right to vary these Conditions at any time upon the provision of 7 days written notice. If the purchaser does not accept these changes, it must notify the Company in writing within 7 days of receipt of the Company's notice.
- (c) In these Conditions: **contract** means a purchaser's order when accepted by the Company, these Conditions, any other part of this document and any other terms and conditions agreed in writing by the Company and purchaser; **goods** means the goods that the Company proposes to sell or has sold to a purchaser, being (where relevant) the goods described on the other part of this document, and a reference to goods includes services; **GST** means goods and services tax imposed under A New Tax System (Goods and Services Tax) Act 1999, and any regulation made under that Act (as amended or replaced); **purchaser** means the person buying goods from the Company; **PPSA** means the Personal Property Securities Act 2009 (Cth); and **toolage** means any dies, tools and other equipment which the Company manufactures or obtains in order to produce the goods and includes all intellectual property in or relating to the goods.
- (d) The contract constitutes the entire agreement between the parties as to its subject matter and may only be amended as mutually agreed in writing signed by both parties.
- (e) If there is any inconsistency between any of the terms of a contract, the order of priority is:
- any other additional terms and conditions agreed in writing by the parties;
 - these Conditions;
 - any other part of this document;
 - the purchaser's order.
- (f) The purchaser acknowledges that it has read and has had a reasonable opportunity to negotiate and agree changes to these Conditions and accepts that they are fair and reasonable.

2 Prices and Quotations

- Unless the Company otherwise agrees in writing:
- (a) Prices quoted are based on the Company's estimated cost of production, manufacture or supply at the time of quotation and may be altered if there is any increase in the Company's costs between the date of quotation and the date of acceptance of the order.
- (b) All goods will be charged in accordance with the Company's prices at the date of acceptance of the order (plus any applicable GST) that are applicable for the relevant delivery date, which must be paid to the Company by the purchaser when payment for the goods is due.
- (c) Prices will be rounded to the nearest whole cent in the Company's invoices.
- (d) In the case of orders for goods on the basis of the number of pieces, the Company may apply a nominal weight (kg) to those goods to determine the price of the goods. On request by the purchaser, the Company will disclose such nominal weight. The weight shown on packaging is for shipping purposes only and should not be taken as the weight of those goods.
- (e) In the case of orders by the purchaser made on the basis of weight (kg), the Company may:
- calculate the number of pieces of the goods to be supplied by reference to the nominal weight of the goods; and
 - calculate the price by reference to the nominal weight of the goods to be supplied; and
 - supply and invoice the goods by reference to the nominal weight, rather than the actual weight, of the goods.
- (f) Shipping tolerances apply that may result in goods being over or under the quantity ordered.

3 Payment

- (a) Payment must be made without set-off, counterclaim, deduction or withholding by the last working day of the month after the month of invoice, unless otherwise agreed in writing by the Company and purchaser. Any reasonable request to set-off, deduct or withhold from amounts outstanding will be considered by the Company, provided that reasonable evidence is provided to the Company as to why the purchaser is entitled to the set-off, deduction or withhold from amounts outstanding.
- (b) The Company reserves the right to vary the terms of payment and to require payment in full prior to delivery if, at any time, the credit worthiness of the purchaser is, in the Company's opinion, unsatisfactory. If the purchaser has not paid the Company in full by the due date, the Company may, at its option and upon the provision of written notice, rescind the contract and resell or dispose of the goods without prejudice to any claims for damages against the purchaser.
- (c) Fees apply for payment by credit card for account customers.

4 Delivery

- (a) Unless otherwise agreed in writing by the parties, all costs of delivery will be for the purchaser's account.
- (b) Any date for delivery of the goods or completion of the services shown on the other part of this document or otherwise indicated by the Company, whether before or after or at the same time as the contract is made, is an estimated date for delivery only. The Company will not be

liable for any loss or damage, however it arises, if the goods are not delivered or the services are not completed by that date.

- (c) Without limiting clause 4(b), the Company is not liable for any delay in delivery for any reason not within its control, including, without limitation:
- act of God, lightning, fire, flood, explosion;
 - strike, lock-out or other labour difficulty;
 - breakage, accident or other damage to or failure of machinery or equipment;
 - unavailability or shortage of raw materials, labour, power supplies or transport facilities; or
 - failure or inability to obtain licences or the effect of any applicable laws, orders, rules or regulations of any government or competent authority.
- (d) If the Company is unable to deliver within a reasonable time or at all the contract may be cancelled by the Company upon the provision of written notice. If the contract is cancelled, neither party will have a claim against the Company for any damage, loss, cost or expense.

5 Instalments

The Company reserves the right to deliver the goods by instalments and each instalment will be taken to be sold under a separate contract. Failure of the Company to deliver any instalment will not entitle the purchaser to cancel the balance of the order unless those remaining instalments are unable to be delivered. If the purchaser defaults in payment for any instalment, the Company may elect to treat the default as a breach of contract relating to each other instalment.

6 Claims for wrongful delivery

Any claim by the purchaser for short or wrongful delivery of the goods must be notified to the Company in writing within 14 days of delivery of the goods. Any claim which the purchaser does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

7 Risk and Property

- (a) Unless otherwise agreed in writing by the Company, the risk of loss of, or damage to, the goods will pass to the purchaser on delivery to the purchaser. If the purchaser collects the goods or arranges for their collection from the Company then delivery will be deemed to occur on collection of the goods from the Company.
- (b) Property in, and ownership of, the goods will not pass from the Company to the purchaser until payment in full of the purchase price of the goods. Refer also to clause 26 below.
- (c) Until property passes to the purchaser:
- the purchaser will hold the goods as fiduciary and bailee for the Company;
 - the goods must be stored in a manner to enable them to be identified and cross-referenced to particular invoices;
 - the Company, its employees or agents, are entitled to enter the purchaser's premises between 9.00am and 5.00pm on any business day to inspect the goods;
 - unless otherwise notified in writing by the Company, the purchaser is authorised to sell the goods in the ordinary course of the purchaser's business; and
 - the proceeds of goods sold by the purchaser are to be held in trust for the Company.
- (d) If the purchaser fails to pay all or any part of the purchaser's total indebtedness to the Company under a contract, the Company may with written notice and without prejudice to any of its other rights and remedies:
- recover and/or re-sell the goods or any part of them and may enter upon the purchaser's premises for that purpose; and
 - recover any difference between the sale or scrap value of the goods and the price payable by the purchaser for the goods.

8. Description

Any description of the goods is given by way of identification only and the use of that description does not constitute a sale by description.

9. Specifications

- (a) Unless otherwise agreed in writing by the Company, the specification of the goods is in respect of tolerances, weight, quantity, size, dimension, finishes, chemical composition and physical properties as stated in the Company's most recent published product data and/or in any recent applicable drawings issued by the Company, or, if not so specified, subject to tolerances normally regarded as being commercially acceptable.
- (b) All illustrations, drawings and specifications remain the property of the Company and must be treated as confidential by the purchaser (who may not copy, sell, lend or otherwise dispose of or use them without the prior written consent of the Company).

10. Toolage

- (a) If the goods are manufactured from dies, tools or other equipment supplied by the purchaser (**purchaser equipment**), the Company accepts no responsibility for the shape, measure, capacity, fitness or otherwise, of the purchaser equipment or the suitability of the purchaser equipment for manufacturing the goods and the Company is not liable for any loss or damage, however caused (including negligence of the Company), to the purchaser equipment.
- (b) All toolage remains the property of the Company and the Company is not required to deliver such toolage to the purchaser or part with possession of it. This applies even where the purchaser has fully or

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partly contributed to the cost of development and manufacture of the toolage.

- (c) Where the Company has agreed in writing that particular items of toolage will be used exclusively for the manufacture of goods for the purchaser, the Company will not use that toolage to manufacture goods for third parties or sell to third parties products manufactured from that toolage, unless:
- (i) the purchaser has authorised such use or sale; or
 - (ii) the third party owns the intellectual property in the goods; or
 - (iii) the purchaser has not paid for the toolage (volumes purchased under deferred die charge arrangements do not constitute payment in this regard); or
 - (iv) the purchaser has not, for a period of 18 consecutive months, purchased from the Company any goods manufactured from that toolage; or
 - (v) the purchaser is in default under a contract.
- (d) Where sub-clauses 10(c)(ii) to (c)(v) (inclusive) apply, the Company may without reference to the purchaser dispose of such toolage or release such toolage for general use.
- (e) Nothing in this clause 10 prevents the Company from supplying any third party with shapes that are identical or similar to those produced from toolage maintained for the purchaser.

11. Intellectual Property

- (a) The purchaser warrants that anything furnished to the Company will not cause the Company to infringe any intellectual property rights in the execution of the purchaser's order. The purchaser indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred by the Company as a result of any infringement or unauthorised use of intellectual property rights arising out of the manufacture of the goods for, or use of the goods by, the purchaser.
- (b) The sale and purchase of the goods does not confer on the purchaser any licence or rights under any intellectual property right which is the property of the Company.

12. Implied terms

Subject to clauses 13(b) and 16, all conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise that are permitted to be excluded, are expressly excluded, in relation to the goods supplied to the purchaser.

13. Warranty

- (a) The Company warrants that all goods (and their components) manufactured by it will be free from defects in materials or workmanship under normal use and service.
- (b) In relation to the goods the subject of an order for less than \$40,000, the Company acknowledges that the goods come with guarantees that cannot be excluded under the Australian Consumer Law. The purchaser is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The purchaser 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. Where goods are defective due to the purchaser's specification, the Company is not liable.
- (c) The Company will investigate and determine whether the goods and their components are defective, and notify the purchaser of the outcome of its investigation.
- (d) The liability of the Company under this Condition is limited as detailed in clauses 14 and 16 below. All other costs, including cartage and installation, must be paid by the purchaser.
- (e) While the goods are in the custody of the Company for investigation or repair they will be at the risk of the purchaser and the Company will not be liable for any damage to the goods.
- (f) The Company will use its reasonable endeavours to obtain for the purchaser the benefit of any applicable manufacturer's warranty in respect of goods not manufactured by the Company.

14. Liability and indemnity

Subject to clauses 13(b) and 16, the liability of the Company, howsoever arising in relation to goods supplied under a contract, is limited to:

- (a) the replacement or repair of the goods;
- (b) the supply of equivalent goods; or
- (c) the cost of replacing or repairing the goods or of acquiring equivalent goods.

Unless otherwise agreed in writing by the parties, the purchaser agrees to release, hold harmless and indemnify the Company from and against any liability whatsoever and howsoever arising in connection with the goods manufactured to the purchaser's specification and/or the use of the goods by the purchaser supplied under a contract.

15. Indirect loss

Subject to clauses 13(b) and 16, neither party is liable in any way for any indirect or consequential loss (including loss of profit, revenue, reputation or opportunity), in contract, tort (including negligence) or otherwise arising in connection with the goods supplied under a contract.

16. No limitation on statutory rights

Nothing in clauses 12, 13, 14 or 15 purports to have or has the effect on excluding, limiting or modifying any rights, entitlements or remedies that may be conferred on a purchaser under the Competition and Consumer Act 2011 (Cth) or the Sale of Goods Act 1923 (NSW) to the extent that those rights, entitlements or remedies cannot be excluded or modified by agreement.

17. Cancellation

If the purchaser cancels any order or refuses to accept all or any of the goods in an order other than in circumstances permitted in a contract, the purchaser will be liable for any resulting damage or loss suffered by the Company. If the goods have been or are in the process of being manufactured or produced specifically for the purchaser, the purchaser will pay to the Company as liquidated damages the full contract price of the goods and any additional costs incurred by the Company (including any GST) less the scrap value of the goods as determined by the Company.

18. Interest

Without prejudice to any other rights or remedies of the Company, if any payment is not made by the due date, the purchaser will pay on demand, without limiting any other rights of the Company, interest at the rate of 10% per annum, on the outstanding amount, calculated from the due date for payment until payment is made in full.

19. Waiver

Failure by the Company or the purchaser to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or any rights that party may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

20. Subcontracting

The Company reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any materials or services to be supplied.

21. Notice of Defects

The purchaser must notify the Company as soon as reasonably practicable (but not later than 14 days after delivery) of any defect in the goods of which it becomes aware after delivery and will take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. If the purchaser transforms the goods and sells the transformed goods, the purchaser will impose on the acquirer of the transformed goods an obligation to notify immediately the purchaser and the Company of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. The Company will not be required to incur additional expense in repairing goods caused by the transformation of goods or the integration of goods with other goods.

22. Notices

Any notice to be given under a contract must be sent by email, facsimile or prepaid mail to the other party's email address, facsimile number or address (as notified by that party from time to time).

23. Governing law and jurisdiction

Contracts are governed by and will be construed in accordance with the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

24. International Supply Contract

The United Nations Convention on Contract for the International Sale of Goods will not apply to any contract.

25. Confidentiality

Each party must keep any contract and related information confidential, except to the extent it is in the public domain through no fault of a party or if required to be disclosed by law.

26. PPSA

- (a) Defined terms used in this clause 26 have the same meaning as given to them in the PPSA.
- (b) The Company and purchaser acknowledge that a contract constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the goods supplied to the purchaser, as Grantor, pursuant to a contract, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).
- (c) The goods supplied or to be supplied under a contract fall within the PPSA classification of "other Goods" acquired by the purchaser pursuant to these Conditions.
- (d) The purchaser acknowledges that the Seller, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to the purchaser, as Grantor, under a contract on the PPSA Register as Collateral.
- (e) The purchaser waives its right to any of the following under the PPSA:
 - (i) receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the purchaser, as Grantor, to the Company;
 - (ii) receive notice of removal of an Accession under section 95;
 - (iii) receive notice of an intention to seize Collateral under section 123;
 - (iv) receive notice of disposal of Collateral under section 130;
 - (v) receive a Statement of Account if there is no disposal under section 130(4);
 - (vi) receive notice of retention of Collateral under section 135;
 - (vii) redeem the Collateral under section 142;
 - (viii) reinstate the Security Agreement under section 143;
 - (ix) object to the purchase of the Collateral by the Secured Party under section 129;
 - (x) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties

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and whether Security Interests held by other Secured Parties have been discharged.

- (f) The purchaser agrees that, to the extent permitted by law, nothing in sections 130 to 143 of the PPSA will apply to, or the Security under, these Conditions.

27. Severance

A term or part of a term of a contract that is illegal or unenforceable may be severed from a contract and the remaining terms or parts of the term of a contract continue in force.