

## Terms and Conditions of Quotation and Sale – March 2011

These are the terms and conditions upon which the Seller (as named in section 1.1(o) below) sells and quotes for the sale of goods.

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In these terms and conditions, unless the context otherwise requires:

- (a) "ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Law.
- (b) "Agreement" means any agreement for the provision of goods or services by the Seller to the Buyer.
- (c) "Application" in relation to a Buyer means the Commercial Credit Application Form signed by the Buyer which refers to these terms and conditions.
- (d) "Buyer" means the Person named in the relevant Sales Invoice or Quotation.
- (e) "consumer" is as defined in the ACL and in determining if the Buyer is a consumer, the determination is made if the Buyer is a consumer under the Agreement.
- (f) "goods" means goods supplied by the Seller to the Buyer.
- (g) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- (h) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- (i) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- (j) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- (k) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- (l) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
- (m) "Quotation" means the form of quotation submitted by a Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- (n) "Sales Invoice" means the sales invoice issued by a Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- (o) "Seller" in relation to any Quotation or Sales Invoice means Coventry Group Limited ABN 37 008 670 102 also trading as Coventrys, Motor Traders, Coventry Fasteners, Cooper Fluid Systems, Drivetrain and Artia.
- (p) "services" means services supplied by the Seller to the Buyer.
- (q) "Special Goods" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.
- (r) "Tax Invoice" has the meaning given to that term by the GST Law.
- (s) "Taxable Supply" has the meaning given to that term by the GST Law.
- (t) "Terms" means these terms and conditions of quotation and sale.

#### **1.2 Interpretation**

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).

- (c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

### **2. GOVERNING TERMS AND CONDITIONS**

These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller or which are imposed by a statute and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

### **3. TERMS OF PAYMENT**

- (a) Unless the Seller has agreed in writing to extend credit to the Buyer, the Buyer must pay the Purchase Price in full on delivery of goods or services.
- (b) Where the Seller has agreed in writing to extend credit to the Buyer, Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods unless agreed otherwise in writing by the Seller.

### **4. PAYMENT DEFAULT**

- (a) If the Buyer defaults in payment by the due date of any amount payable to the Seller and does not remedy the default within seven (7) days of written notice of the default by the Seller, then all money which would become payable by the Buyer to the Seller at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and the Seller may, without prejudice to any of its other accrued or contingent right:
  - (i) charge the Buyer interest on any sum due at the prevailing rate of 15 per cent per annum for the period from the due date until the date of payment in full;
  - (ii) charge the Buyer for, and the Buyer must indemnify the Seller from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any Goods;
  - (iii) cease or suspend supply of any further Goods or Services to the Buyer;
  - (iv) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.
- (b) Clauses 4.(a)(iii) and (iv) may also be relied upon, at the Seller's option:
  - (i) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (ii) where the Buyer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

### **5. INSPECTION AND ACCEPTANCE**

- (a) If the Buyer is a consumer, nothing in clauses 5 or 6 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

- (b) The Buyer must inspect all goods upon delivery and within 48 hours of delivery give notice with full details and description to the Seller named in the relevant Sales Invoice if the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, the goods shall be deemed to have been delivered to and accepted by the Buyer.

- (c) When any non compliance with the Buyer's order is accepted by the Seller, the Seller may, at its option, replace the goods, or refund the price of the goods.

### **6. RETURNS**

- (a) Unless otherwise agreed, returns other than required pursuant to the ACL must be approved by the Seller named in the relevant Sales Invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition. The Seller reserves the right to charge a handling fee for goods returned under this provision. Products specifically purchased, manufactured, machined or cut-to-size or to the Buyer's specification are not returnable.
- (b) Various trading divisions of the Seller may have separate returns policies which the Buyer should refer to.

### **7. QUOTATIONS**

- (a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation.
- (b) No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Seller in writing, the Buyer acknowledges that such conditions are expressly negated.
- (c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

### **8. PRICING**

The parties agree that the Purchase Price does not include GST.

### **9. PASSING OF PROPERTY AND RISK**

- (a) Goods supplied by a Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller named in the relevant Sales Invoice on the insurance policy and shall produce a certificate to this effect to that Seller upon request.
- (b) Property in the goods supplied by a Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.
- (c) Until the Seller receives full payment in cleared funds for all goods and services supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer:
  - (i) the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller which supplied them; and
  - (ii) the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (d) The Buyer irrevocably authorises each Seller at any time to enter onto any premises upon which:
  - (i) the Seller's goods are stored to enable

the Seller to: - inspect the goods; and/or  
- if the Buyer has breached these terms and conditions, reclaim the goods;

(ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.

(e) The Buyer and each Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.

#### 10. SUPPLY

Each Seller reserves the right to suspend or discontinue the supply of goods to the Buyer without being obliged to give any reason for its action.

#### 11. PART DELIVERIES

Each Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

#### 12. INSTALLATION

A Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the relevant Seller.

#### 13. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration without notice.

(b) Any performance data provided by a Seller or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, each Seller reserves the right to supply an alternative brand or substitute product when necessary.

#### 14. SHIPMENT AND DELIVERY

(a) The means of delivery is at the Seller's sole discretion.

(b) The Seller may deliver the goods to the Buyer's premises in accordance with that Seller's usual practices.

(c) If the Seller directs the Buyer to collect the goods:

(i) the Buyer must collect the goods within 7 days of being advised they are ready;

(ii) if the Buyer does not collect the goods within this time, the Buyer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

(d) A Buyer must pay to a Seller on demand any delivery costs incurred by that Seller if

(i) the Buyer requests another method of delivery from that outlined in (a) above; or

(ii) a Seller elects to use an independent courier to deliver the goods and enter into a separate contract with that independent courier to deliver the goods.

#### 15. MANUFACTURERS' CHANGES

Where a Seller is acting as agent for a manufacturer or supplier, the Seller shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

#### 16. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the relevant Seller will be to the Buyer's account.

#### 17. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon a Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

#### 18. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if a Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account.

#### 19. FORCE MAJEURE

If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

#### 20. SELLER'S CANCELLATION

(a) If the Seller is unable to deliver the goods, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.

(b) If the Buyer commits a breach of its obligations to the Seller under the Agreement, except for its payment obligations at clause 3, and does not remedy the default or breach within seven (7) days of written notice of the breach by the Seller; then the Seller may, without prejudice to any other rights or remedies which it may have, refuse to supply the Buyer without notice and is entitled to immediate payment of the sum equal to the price of all Goods and/or Services then unpaid, together with other costs and expenses of collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller.

#### 21. BUYER'S CANCELLATION

(a) Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by a Seller. If a right of cancellation is granted to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be.

(b) Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be).

(c) Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Special Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

#### 22. WARRANTY AND LIABILITY OF SELLER

(a) The Seller makes no express warranties under this Agreement except that to the extent that the goods supplied are covered by the manufacturer's warranty, the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.

(b) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

(c) If the Buyer is a consumer nothing in these Terms restricts, limits or modifies the Buyer's

rights or remedies against the Seller for failure of a statutory guarantee under the ACL.

(d) If the Buyer on-supplies the goods to a person who is a consumer, or uses up or transforms the goods in the course of trade then:

(i) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Seller's liability to the Buyer;

(ii) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Seller's liability to the Buyer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Buyer or any third party.

(e) If sub clauses 22 (b) and 22(c) do not apply, then other than as stated in the Terms or any written warranty statement the Seller is not liable to the Buyer in any way under or in connection with the sale, installation, use of, storage or any other dealing with the goods or services by the Buyer or any third party.

(f) The Seller is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent imposed by the ACL.

(g) The Buyer expressly acknowledges and agrees that:

(i) it has not relied upon, any service involving skill and judgement, or on any advice, recommendation, information or assistance given by a Seller, its agents or employees in relation to the goods or services or their use or purpose.

(ii) it has not made known, wither expressly or by implication, to the Seller any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services as suitable for the use of the Buyer.

(iii) Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

#### 24. ALTERATION TO CONDITIONS

A Seller may, at any time and from time to time, alter these terms and conditions.

#### 25. GOVERNING LAW

These Terms shall be governed by the laws of Western Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

#### 26. WAIVER

The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.

#### 27. WRITTEN NOTICE

A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.