



## Terms and Conditions of Sale

### 1. Definitions and Interpretation

- 1.1 In these terms and conditions, unless the context otherwise requires:
- (a) "AHIC" means AHIC (Australia) Pty Ltd ACN 606 792 456;
  - (b) "business day" means a day that is not a Saturday, Sunday or public holiday in the place in which the Goods are to be delivered or collected (as applicable).
  - (c) "Customer" means the Person named in the Sales Invoice;
  - (d) "Goods" means goods supplied by AHIC to the Customer from time to time;
  - (e) "order" or "purchase order" means an order for or any statement of intent to purchase any Goods or Services placed by the Customer with AHIC;
  - (f) "Sales Invoice" means the sales invoice issued by AHIC to the Customer; and
  - (g) "Services" means services supplied by AHIC to the Customer from time to time.
- 1.2 These terms and conditions:
- (a) replace all prior terms and conditions issued by AHIC to Customer;
  - (b) take precedence over any terms set out in the Customer's purchase order, credit application forms, to the extent of any inconsistency;
  - (c) are subject to any special conditions specified on the Sales Invoice to the extent of any inconsistency; and
  - (d) the expression "Person" includes each individual, body politic, corporation, association (incorporated or unincorporated), statutory authority or any other authority or identified as the Customer, and where the Customer comprises more than one Person, these terms and conditions bind them jointly and severally.

### 2. Orders and Technical Specifications

- 2.1 Once an order has been accepted by AHIC, it cannot be cancelled by the Customer.
- 2.2 The supply of Goods or Services is subject to availability. AHIC reserves the right to suspend or discontinue the supply of Goods or Services to the Customer at any time for any reason without liability or penalty. If AHIC is unable to supply all of the Customer's order, these terms and conditions continue to apply to any part of the order supplied.
- 2.2 It is the Customer's obligation to provide full and complete technical specifications along with their purchase order for the Goods to be placed into production. Should the Customer fail to provide sufficient technical specifications within 15 days of the date of the Customer's purchase order, AHIC reserves the right to revise the price. If the Customer fails to provide sufficient technical specifications within 60 days of the date of the Customer's purchase order, AHIC reserves the right to cancel the order without liability or penalty.

### 3. Pricing

- 3.1 Where a written quotation has been given by AHIC, the selling price is the price specified in the quotation. In any other case, the price for Goods supplied will be AHIC's list price ruling at the date of shipping and the charge for Services supplied will be at AHIC's prevailing rates at the time of supply. Prices are subject to change on notice prior to AHIC's written acceptance of the Customer's purchase order. If the Customer pays a Sales Invoice by credit card, the Customer agrees to pay a surcharge equal to 1.1% of the GST exclusive price for the Goods and Services. The 1.1% surcharge is inclusive of GST.
- 3.2 In cases where AHIC intends to progress bill the Customer for the supply of goods or services, AHIC will do so on a percentage (%) of completion of works basis and specify the billing schedule in its written quotation. A separate Sales Invoice will be raised for each progress payment in accordance with the billing schedule.
- 3.3 All prices, charges and surcharges are expressed exclusive of any applicable goods and services tax or value added tax, freight or delivery charges, and customs duty, which amounts shall be added to and payable at the same time as the price, charge or surcharge is to be paid by the Customer in respect of the Goods and Services, unless otherwise agreed in writing.
- 3.4 AHIC will not be bound by any condition attaching to the Customer's purchase order or acceptance of a sale unless AHIC in writing expressly accepts such conditions.

- 3.5 A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship will arise until AHIC has accepted in writing the Customer's purchase order.

### 4. Payment

- 4.1 The Customer must make immediate payment upon receipt of the Sales Invoice. If the Customer has an approved credit account with AHIC, the Customer must pay for the Goods and Services supplied within 30 days from the date of the relevant Sales Invoice unless otherwise agreed in writing. Time is of the essence in respect of the Customer's obligation to make payment for Goods or Services supplied by AHIC to the Customer.
- 4.2 If any part of a Sales Invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to set-off any claim against AHIC from moneys owing to AHIC.

### 5. Delivery

- 5.1 For Goods collected by the Customer from AHIC or its agents, risk in the Goods passes to the Customer at the time of collection.
- 5.2 If requested by the Customer and agreed by AHIC, AHIC will deliver the Goods to an address specified by the Customer. In such cases:
- (a) the Customer will pay all charges associated with the delivery of the Goods;
  - (b) the Customer, or a representative of the Customer must be present at the agreed place and time for delivery and must sign the delivery docket as acknowledgement that the Goods and quantities described on the delivery docket have been delivered and comply with the Customer's Purchase Order;
  - (c) if the Customer or a representative of the Customer is not present, AHIC may unload the Goods at the agreed place for delivery if possible (additional charges may apply), in which case, AHIC is no longer responsible in any way for the Goods;
  - (d) AHIC's responsibility for delivery ceases at the delivery address at which point risk in the Goods will pass to the Customer. The Customer is responsible for:
    - (i) providing safe and adequate access to and from the delivery address;
    - (ii) the loading or unloading of Goods, and will pay for all damage and injury to any person and to any public or private property which may result from the Customer's breach of this clause 5.2(d).
- 5.3 If the Customer nominates their own vessel or vehicle to deliver the Goods to the Customer then risk will pass when the Goods are loaded onto the Customer's nominated vessel or vehicle and the Customer shall be responsible for arranging the insurance of the Goods. Where the Customer has nominated its own vessel or vehicle for delivery AHIC will not be liable to the Customer for any loss in the event of any failure in delivery or to arrange insurance.
- 5.4 AHIC reserves the right to deliver Goods in installments and all such installments, where separately invoiced, must be paid for without regard to the delivery of subsequent installments. A part delivery of an order will not invalidate the balance of the order.
- 5.5 The Customer acknowledges and agrees that deliver dates and times are estimates only and time is not of the essence in relation to delivery. While AHIC will use all reasonable endeavors to meet agreed delivery dates, AHIC shall not be liable to the Customer for delays due to circumstances outside AHIC's reasonable control or for any indirect or consequential loss or damage whatsoever should AHIC be delayed or prevented from delivering Goods, supplying Services, or otherwise performing any of its contractual obligations. Subject to clause 5.5, delivery dates must not be varied once they have been agreed, without AHIC's prior written approval. Should AHIC agree to postpone delivery, the Goods in question will be stored at the Customer's risk and AHIC reserves the right to obtain payment from the Customer as though the Goods in question had been delivered and to impose a weekly storage charge. Where delivery is postponed for more than 3 months, AHIC may increase any fixed contract prices to reflect AHIC's then current list price.
- 5.7 AHIC may at its discretion sell any Goods still in its possession 3 months after the mutually agreed deferred delivery date and seek damages for any loss incurred by AHIC as a result of the deferment in the delivery date.



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### 6. Retention of Title

- 6.1 Legal and equitable ownership in the Goods shall not pass to the Customer until AHIC receives full payment for the Goods from the Customer.
- 6.2 Where the Goods are resold by the Customer to a third party, the Customer must keep an amount from the proceeds of sale which is equal to the moneys owed to AHIC in a separate identifiable account as the beneficial property of AHIC and must immediately pay such amount to AHIC when due or upon request by AHIC.
- 6.3 This clause 6 applies notwithstanding any arrangement under which AHIC provides credit to the Customer and to the extent that there is any inconsistency between this clause 6 and such credit arrangement, this clause 6 prevails.
- 6.4 The Customer acknowledges that this clause 6 constitutes a Security Agreement in favour of AHIC in all Goods supplied by AHIC to the Customer and which have not become the property of the Customer absolutely. The Customer acknowledges and agrees that, with respect to such Goods:
- (a) AHIC may, without notice to the Customer, seek registration of its Security Interest pursuant to the PPSA as a Purchase Money Security Interest;
  - (b) pursuant to section 275(6) of the PPSA, the Customer agrees that AHIC is not required to disclose to an interested person information regarding AHIC's Security Interest unless required to do so pursuant to the PPSA or at law;
  - (c) the Customer will, upon the request of AHIC, promptly sign any documents, provide any further information and do anything else reasonably required by AHIC to enable perfection of AHIC's Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
  - (d) the Customer will not register a Financing Statement or Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of AHIC;
  - (e) the Customer will not grant any other Security Interest or any lien over Goods;
  - (f) the Customer will give AHIC not less than 14 days' written notice of any proposed change in their name or contact details; and
  - (g) placement of a purchase order by Customer shall constitute acceptance of this clause 6 for the purposes of the Act.
- 6.5 Capitalised terms used in clause 6.4 have the meanings given to those terms in the *Personal Property Securities Act 2009* (Cth) (PPSA).
- 6.6 To the extent permitted by law, the Customer waives its rights to receive any notices required under sections 95, 118, 121(4), 130, 132, 135 and 157 of the PPSA.

### 7. Installation

AHIC's Sales Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by AHIC.

### 8. Dimensions, Performance Data and Other Descriptive Details

- 8.1 Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, the descriptive literature or a catalogue may be subject to alteration.
- 8.2 AHIC reserves the right to make changes in the construction and/or design of Goods and notwithstanding any such changes the Customer shall accept in performance of any order of AHIC's current corresponding standard models.

### 9. Claims and Returns

- 9.1 To the extent permitted by law, all complaints, requests for return of Goods, claims, or notification of lost, incomplete, damaged, defective or non-compliant Goods must be submitted by the Customer to AHIC in writing within 2 business days of the date of delivery or collection of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged, defective or do not comply with the Customer's purchase order.
- 9.2 While AHIC will use all reasonable endeavors to deliver Goods as specified in the Purchase Order, to the extent permitted by law, the Customer acknowledges and agrees that it is the Customer's sole responsibility to ensure that Goods delivered align with the

Purchase Order and notify AHIC of any claims in accordance with clause 9.1. AHIC is not liable to the Customer or any end user for any Goods purchased and or subsequently installed that are different to that specified in original Purchase Order unless the Customer has complied with clause 9.1.

- 9.3 Without limiting or restricting any statutory or implied warranties or consumer guarantees, AHIC will not accept the return of Goods unless the following conditions are satisfied:
- (a) AHIC's written approval has first been obtained, which will include the issue of an authorisation number;
  - (b) the Goods are returned within 7 days of the issue of the authorization number under clause 9.2(a);
  - (c) a copy of the relevant invoice is enclosed with the returned Goods;
  - (d) the Goods are returned in merchantable quality (as determined by AHIC) with the original packaging and without damage or marks to the original packaging;
  - (e) the Customer pays shipping costs for the return of Goods to a warehouse or other premises nominated by AHIC; and
  - (f) the Customer pays to AHIC a handling charge equal to 15% of the price paid for the Goods.

Unauthorised returns will not be accepted. The Customer will be responsible for all damage incurred during return shipment. The Customer shall not deduct the amount or any anticipated credit from any payment due to AHIC.

- 9.4 Any refunds accepted by AHIC will be processed in accordance with AHIC's refund policy from time to time, as published on AHIC's website and available upon request.

### 10. Warranty

- 10.1 If the Customer has the benefit of conditions and warranties implied by Division 1, Part 3-2 of Schedule 2 ("ACL") of the *Competition and Consumer Act 2010* (Cth) ("Act") or under the terms of any equivalent State or Territory legislation that cannot be lawfully modified or excluded, nothing in these terms and conditions is intended to exclude, restrict or modify those statutory obligations.
- 10.2 Should AHIC be liable for breach of a condition or warranty implied by the ACL, AHIC's liability for the breach will, subject to section 64A of the Act, be limited to one of the following as determined by AHIC:-
- (a) in the case of Goods:
    - (i) the replacement or repair of the Goods or the supply of equivalent Goods; or
    - (ii) the payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods;
  - (b) in the case of Services:
    - (i) the supplying of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again.

- 10.2 Subject to clause 10.1, where Goods supplied by AHIC are covered by a written "Express Warranty" supplied with the Goods when sold to the Customer. To the extent permitted by law, the Express Warranty is in substitution for all other terms, conditions, warranties and representations, express or implied by statute or otherwise.

- 10.3 The Customer expressly acknowledges and agrees that it has not relied upon and AHIC is not liable for any advice given by AHIC, its agents or employees in relation to the suitability for any purpose of Goods or materials supplied by AHIC, unless that advice is expressly confirmed in writing by AHIC as a condition of the sale.

### 11. Liability

- 11.1 Subject to clause 10, AHIC is not liable for any special, indirect or consequential damage or loss whether arising in tort, contract or otherwise (even if due to the negligence of AHIC or any of its employees or agents) and whether arising out of or in connection with the supply of Goods or Services including loss of profit, loss of revenue, loss of contract, loss of goodwill or increased cost of workings.

### 12. Termination, Repossession of Goods & Recovery of Debt

If the Customer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or is or becomes or is reasonably suspected by AHIC to be insolvent, insolvent under administration or an



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externally-administered body corporate (each within the meaning of the *Corporations Act 2001* (Cth)) (each a "Default Event"), then AHIC may (without limiting any other right or claim it may have against the Customer) do any or all of the following:

- (a) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue at the rate fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time plus two percentage points calculated from the date the payment was due until the date payment is made (both dates inclusive);
- (b) vary or withdraw any approved credit limit and/or terms of trade;
- (c) cancel or suspend any unfilled orders or cease providing the Services;
- (d) terminate any contracts between AHIC and the Customer and demand immediate payment of any monies due and outstanding under those contracts;
- (e) cancel any rebate, discount or allowance due or payable by AHIC as at the date of the Default Event;
- (f) enter (at any time) any premises in which AHIC's Goods are stored, to enable AHIC to reclaim possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or its landlord or any receiver, manager, controller or administrator (as those terms are defined in the *Corporations Act 2001* (Cth)) appointed over all or any part of its assets. For the avoidance of doubt, title in the Goods immediately re-vest in AHIC upon AHIC asserting its right of entry under this clause 12(f);
- (g) lodge a non-lapsing caveat or other similar instrument over any land or personal property of the Customer and the Customer hereby charges in favour of AHIC all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer with the payment of any monies owed to AHIC. Furthermore, the Customer hereby irrevocably appoints all and any of AHIC's officers or credit managers or a lawyer engaged by AHIC as AHIC's lawful attorney for the purposes of doing all such acts and things and executing all such documents necessary to enable AHIC to register a non-lapsing caveat or other similar instrument over any such freehold or leasehold property and for such purposes a declaration of default duly executed for and on behalf of AHIC by such persons shall be deemed sufficient evidence of such default; or
- (h) institute any recovery process as AHIC in its discretion decides at the Customer's cost and expense.

### 13. Alteration to Terms and Conditions

AHIC may amend or vary these terms and conditions at any time by written notice to the Customer's place of business or by posting an amended copy on AHIC's website <http://www.ahi-carrier.com.au> and that the Customer will be bound by any such amendments in respect of any orders subsequently made or accepted. The Customer may withdraw an order which has not been accepted upon notification of such amendments

### 14. Governing Law

These terms and conditions and any contract including them will be governed by the laws of the State of Victoria, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of or in the State of Victoria and courts of appeal from such courts in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.

### 15. General

- 15.1 All clerical errors are subject to corrections and shall not bind AHIC.
- 15.2 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.
- 15.3 AHIC's failure to enforce, at any time or any period of time, any term of any contract incorporating these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.
- 15.4 Headings are included for ease of reference and do not form parts of or affect the interpretation of these terms and conditions.

15.5 These terms and conditions bind AHIC, Customer and their respective successors and assigns.

### 16. Privacy Collection Notice

16.1 AHIC understands that you value your privacy and wish to have your personal information kept secure. You can view the full text of AHIC's Privacy Policy and Privacy Collection Notice, which sets out how we collect and deal with your personal information, at <http://www.ahi-carrier.com.au/privacy-policy.html> or upon request from us.

AHIC's contact details in respect of any issues in relation to privacy are:

**Telephone** 03 8549 7057

**Email** [salesau@ahi-carrier.com.au](mailto:salesau@ahi-carrier.com.au)

**Post** Attn: Privacy Officer

AHIC (Australia) Pty Ltd

Tenancy 2

15 Corporate Drive, Heatherton, Victoria 3202