

# TERMS AND CONDITIONS OF SALE

1. Any order placed by a Purchaser is deemed to be made on these Terms and Conditions unless otherwise expressly agreed by Arcus Australia Pty Ltd ("The Company") in writing.
  2.
    - 2.1 **No Quotation** given by the Company shall constitute an offer.
    - 2.2 Prices given in any quotation are applicable to that quotation only. A quotation automatically lapses if not accepted within sixty (60) days.
    - 2.3 A quotation is subject to our ability to secure the goods for the manufacture of the items quoted for at the time of order. During any period of general shortage of any component, part or material, the Company may vary any specification in order to complete the work without undue delay.
    - 2.4 **Goods and Services Tax (GST)** will be charged based on the ruling rates of all items as at date of tender and all variations shall be due to the Purchaser's account.
    - 2.5 **The price** for the goods may be varied in accordance with the Company's general prices in effect at the date of delivery of the goods notwithstanding any prior orders or sales order acceptances in respect of the goods. Any variations in cost coming to the Company's notice after quotation and over which the Company has no control will be debited or credited to the Purchaser's account including but not limited to the cost of material or fuel, or in rates of wages, exchange, freight, insurance or any Customs tariffs or the number of hours of work. This provision may be applied by the Company to the unexecuted portion of any order.
    - 2.6 If the Purchaser or its agent so requests, the Company may continue work on an installation beyond normal tradesmen's hours and the Purchaser will pay to the Company such reasonable additional amount as the Company may determine in respect of the overtime worked. Should any Special Agreement between the Builder, Principal or the like with any Trade Union be applicable to this quotation after closing of tender, it will be treated as a variation to this contract.
    - 2.7 Where it is not practical to forward goods "FREIGHT ON", this cost will be billed at a later date when advice of the cost is received.
  3. **Any description** of the goods is given by way of identification only and the use of such description shall not constitute the contract a sale by description. **All representations** not confirmed in writing by the Company are expressly excluded. The Purchaser acknowledges that it does not rely on the skill and judgment of the Company in supplying goods which are fit for a particular purpose.
  4. The Company may decline or cancel, by written notice to the Purchaser, any order in whole or in part at any time prior to delivery of the goods or performance of the services, and thereafter will be under no obligation in respect of the order. **Orders may be cancelled** by the Purchaser only in writing with the consent of the Company and upon payment of reasonable cancellation charges, which shall take into account expenses incurred and commitments made by the Company and all other losses due to such cancellation.
  5. **Confirmation orders or faxes** must be sent for all goods ordered by telephone. No responsibility will be accepted by the Company for incorrect supply of orders or part orders if this condition is not met.
  6.
    - 6.1 **All technical information** supplied by the Company to the Purchaser:-
      - 6.1.1. is approximate only and the Company gives no warranty with respect to the accuracy, adequacy or otherwise of such technical information;
      - 6.1.2. shall be treated by the Purchaser as confidential and the Purchaser shall not communicate such information to third persons without the written consent of the Company;
      - 6.1.3. shall remain the Company's property and shall be considered its business and trade secrets, received in trust and confidence for the sole purpose of the manufacture and supply of the goods.
  7. The Purchaser indemnifies the Company in respect of any loss or damage suffered, or any injury to property, resulting from a breach by the Purchaser or its agent or employees or any third party of Clause 6 of this contract.
  8. The Purchaser warrants that any design or instruction furnished to the Company shall not cause the Company to infringe any **patent, registered design or trade mark** in the execution of the Purchaser's order and the Purchaser agrees to indemnify the Company against any infringement of Patent, Trade Marks, Design or Copyright law arising out of the manufacture or use of the goods. The sale and purchase of the goods does not confer on the Purchaser any licence or rights in any patents, trade marks or copyright works which are the property of the Company.
  9. Unless otherwise stated it shall be the **Purchaser's responsibility** to obtain and provide any access, services, facilities, permits, approvals or licences as may be necessary or required by law for the performance of the work. **No guarantee** is made that noise emission from the system will conform to the requirements of any governing authority. Attenuation to meet such requirements will be the responsibility of the Purchaser. When work is being carried out by the Company on the Purchaser's or his Contractor's premises, unless the Purchaser or his Contractor informs the Company in writing of any special hazards or perils attaching to the premises, or imported into them owing to the nature of the work being done or any other cause, **the Company shall not be liable** for any loss or damage. All materials or goods supplied by the Purchaser are to be at the Purchaser's entire risk as regards loss or damage.
  10. **Any time quoted for delivery** is not of the essence, and the Company shall not be liable for any loss or damage arising as a result or consequence of any failure to deliver or delay in delivery arising from any circumstances beyond the Company's control. The Purchaser shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
  11. Written notification must be received (prior to despatch) if the Purchaser has own insurance, otherwise carrier's insurance will be used. **Insurance will NOT be credited** after goods have been despatched if prior written notification is not received.
  12. **Any claim by the Purchaser** for short or wrongful delivery of the goods or in respect of damaged goods **MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN FOURTEEN (14) DAYS** after delivery of the goods to the Purchaser and any claim not so notified shall be deemed to have been absolutely waived.
  13. No goods may be returned to the Company for credit except upon the Company's written consent. The Company reserves the right to apply **handling and restocking charges** on all returned goods equal to the percentages of the invoice price, as set out below:

13.1	Up to thirty (30) days from date of delivery	0%
13.2	Thirty (30) to sixty (60) days from date of delivery	7.5%
13.3	Sixty (60) to ninety (90) days from date of delivery	10%
13.4	Ninety (90) to one hundred and twenty (120) days from date of delivery	12.5%

Additional charges will be made if re-work is necessary to restore returned equipment to saleable condition. All transportation charges on returned goods will be paid by the Purchaser. Products which are obsolete or made to special order may not be returned.
  14.
    - 14.1 Unless otherwise stated, the **terms of payment** shall be net cash within thirty (30) days of the end of month of date of invoice. When any payment is to be made upon delivery, installation, commissioning or test, which is delayed by the Purchaser, it shall be made as though such delivery, installation, commissioning or test has been completed. Where delivery of the goods the subject of this offer is effected by way of part deliveries, then the Company shall be entitled to pro-rata progress payments.
    - 14.2 When **installation or supply is delayed** for more than ten (10) days from the specified commencement date and equipment is being held in readiness by the Company for such installation or supply, the Purchaser shall pay to the Company a progress payment of the full value of labour utilised and the full cost to the Company of equipment used or held in readiness to that time.
    - 14.3 For all new accounts, the first order must be accompanied by full payment for items required on order. A credit application must be completed before an account will be opened. Directors' Guarantees are a prerequisite to an account being opened. The minimum charge on account is \$50.00.
    - 14.4 If Leasing arrangements are to be made, "the Company" must be advised at the time of ordering. Written advice must be received from the Leasing Company before proceeding with the order. Goods will not be despatched until documentation is complete.
    - 14.5 For non-account customers, a 20% deposit would be required prior to the order being acted on.
  15. If, at the absolute discretion of the Company, the **Company has extended credit** to the Purchaser and in the company's opinion the creditworthiness of the Purchaser becomes unsatisfactory, all credit will be stopped and payment required immediately on outstanding monies in cash or by bank cheque. **Interest** may be charged on outstanding monies over sixty (60) days at two percent (2%) per month.
  16. If the Purchaser defaults in the due observance or performance of any or all of his obligations under this contract or being a corporation takes or shall have taken against it any action for winding up the corporation or the placing of the corporation under official management or receivership then the Company without prejudice to any other rights or remedies open to it may:-
    - 16.1 Determine the contract and/or suspend manufacture, delivery, installation, commissioning or test of any goods then outstanding;
    - 16.2 Retain any security given or monies paid by the Purchaser or available through the enforcement of guarantee or security bonds lodged and apply this against the assessed loss and damages incurred by it in the performance of the contract;
    - 16.3 Enter upon the Purchaser's premises to take possession of and/or remove any goods supplied under the contract for which payment has not been received;
    - 16.4 Take such steps as it may deem necessary to mitigate the damages suffered including the putting to use, hiring out, sale or disposal of any goods supplied or to be supplied under the contract and in its possession.
  17.
    - 17.1 **Property in the goods** shall not pass from the Company to the Purchaser until the Purchaser has paid for them in full. The risk of loss or damage to the goods shall pass to the Purchaser on delivery.
    - 17.2 Where property in the goods has not passed, the Purchaser agrees to store the goods separately and mark them so as to render them identifiable as being or being made from or with goods which are the property of the Company. Should the goods (or any part of them) be converted into or incorporated in a new product the conversion or incorporation shall be deemed to have been effected on behalf of the Company and the new product shall be the property of the Company. The right of the Purchaser to convert or incorporate the goods in a new product or to sell the goods otherwise than in accordance with Clause 17.3 shall automatically cease if the Company at any time revokes such right by notice to the Purchaser, or if a receiver and/or manager is appointed over any of the Purchaser's assets or if an order is made or a resolution is passed for the winding up of the Purchaser.
    - 17.3 The Purchaser shall have no right to sell or otherwise dispose of the goods or the new product until the price of the goods has been paid in full to the Company unless the goods and/or the new product are sold in the ordinary course of the Purchaser's business and that such part of the proceeds of sale of the goods and/or the new product as represents the price of the goods shall be paid to the Company and until such part of the proceeds are paid they shall be held by the Purchaser in trust for the Company.
    - 17.4 Upon a determination of the Purchaser's power of sale under this clause the Company shall become entitled to possession of the goods and/or the new product. The Purchaser shall place the goods and/or the new product at the disposal of the Company who shall be entitled to enter upon any premises of the Purchaser and remove the goods and/or the new product.
    - 17.5 The Purchaser grants to the Company upon the Company giving notice to the Purchaser, the right to bring proceedings in the name of the Purchaser to recover monies owing to the Purchaser as a result of a sale of the goods and/or the new product. Any amounts recovered as a result of such proceedings shall be retained by the Company in payment of amounts owing for goods supplied by the Company to the Purchaser.
  18.
    - 18.1 **The Company warrants** only to repair or replace, at its option and subject to this clause any goods or component part thereof which its examination shall disclose to be defective in workmanship and materials. Goods manufactured by others and furnished by the Company will be subject only to any warranty given by the manufacturer of such goods. This warranty is limited, for new products to any fault arising from defective workmanship or material in manufacture and occurring within twelve (12) months of the date of original installation or fifteen (15) months of the date of its delivery ex the Company (whichever period first expires) and, for second hand products, to three (3) months from the date of delivery on labour ONLY.
    - 18.2 This Warranty shall NOT apply:-
      - 18.2.1. if any serial number or identification or installation plate attached to the equipment has been altered, rendered illegible or removed;
      - 18.2.2. unless written notice of any defect and any claim in respect thereof has been given within the Warranty period;
      - 18.2.3. to light globes, glass components, fuses, drive belts and capacitors;
      - 18.2.4. if the equipment has been:-
        - 18.2.4.1. subject to misuse, abuse, negligence or accident;
        - 18.2.4.2. connected to improper, inadequate or faulty power, fluid or compressed air or gas supply, water or drainage services or intake or exhaust ducts or flues or operated using incorrect insufficient or contaminated fuels, lubricants, coolants, refrigerants or additives thereto;
        - 18.2.4.3. installed, maintained or operated otherwise than in accordance with the instructions furnished by the Company;
        - 18.2.4.4. damaged by foreign objects;
        - 18.2.4.5. serviced, repaired or altered otherwise than by the Company or nominees of the Company or using other than the Company's approved replacement parts;
        - 18.2.4.6. used for any duty or subjected to any operating conditions varying from that for which it was specifically supplied by the Company nor shall it apply in respect of any damage to the equipment arising from abrasions, erosion, corrosion, deterioration or the like contributed to by abnormal temperatures, the influence of foreign matter or energy or the physical or chemical properties of water, steam or chemical compounds unless the equipment was supplied to the Company for a duty which contemplated the above contributing elements and in respect of which elements there was specific and detailed prior disclosure by the Purchaser;
        - 18.2.4.7. (Applicable Beverage Dispensing Equipment Only) - moved from its originally installed position otherwise than by the Company or nominees of the Company.
  - 18.3 The Purchaser shall be responsible for and shall meet all charges in respect of:-
    - 18.3.1. making the equipment accessible for service;
    - 18.3.2. any labour, transportation, travelling or communication expenses necessarily incurred in the provision of service or replacement component parts at locations other than the Perth Metropolitan Area or other nearer premises nominated by the Company (in respect of the replacement of faulty component parts outside of the Perth Metropolitan Area, a replacement part shall be paid for or charged to account prior to despatch and a credit will only be issued when the warranty has been authorised by the Company in writing);
    - 18.3.3. any surcharge applicable in respect of the provision of service or replacement component parts outside the hours of 8.00 am - 5.00 pm from Monday to Friday excluding Public Holidays.
  - 18.4 All compressors under warranty claim must be returned complete with electrics and tubes welded-sealed or the warranty claim will be rejected.
  - 18.5 The Purchaser must produce proof of the date of original installation or delivery ex the Company.
  - 18.6 Subject to the extent allowed by law this Warranty is in lieu of all rights, conditions warranties and liabilities implied by law.
  - 18.7 The Company accepts no liability for any loss or damage, direct or indirect, or to any person or property arising from the supply of services or materials or the supply, installation or operation of goods including consequential loss or damage arising from breakdown or failure to perform.
19. Failure by the Company to insist upon strict performance of any term, warranty or condition of the contract **shall not be deemed as a waiver** of any right the Company may have pursuant to the contract and no waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.