



CONDITIONS OF SALE (AUSTRALIA)

AES FEP PTY LTD ABN 92 661 450 666

Trading as: Flyte Extruded Plastics

I. DEFINITIONS

In the following Conditions of Sale the 'Seller' means AES FEP Pty Ltd as the entity issuing the invoice to the buyer. The 'Buyer' means the entity purchasing the Goods that are the subject of these Conditions of Sale. 'Goods' means any item of whatsoever nature which is sold by the Seller to the Buyer.

2. FORMATION AND SCOPE OF CONTRACT

A contract for the sale of Goods from the Seller to the Buyer is formed when the order is received and accepted by the Seller. The only contractual terms which are binding upon the Seller are those outlined in these Conditions of Sale or otherwise agreed to in writing by the Seller and those, if any, which are imposed and which cannot be excluded by law. These Conditions of Sale supersede any other terms appearing on any purchase order, statement of work, proposal, quote or other document related to the provision of the Goods, including any terms specified in a Buyer document, and these terms apply to the provision of the Goods to the exclusion of all such other terms.

3. PRICES

- (a) The prices charged and payable will be the Seller's price for the goods at the contract date.
- (b) The Seller is entitled without notice to the Buyer to adjust the selling prices of the Goods whether before or after acceptance of the Goods, in the event of and to take account of any increase in the cost of the following items:-
 - i) quarantine, customs or port charges, demurrage; and
 - ii) duty, charge or levy in respect of the import of goods or changes in the classification or value of goods for customs purposes.
 - iii) Extraordinary Freight or Delivery Surcharge, which means any price increase imposed by the Seller's freight or logistics providers arising from extraordinary market conditions, political events, or force majeure circumstances, including but not limited to regional conflicts or significant global supply chain disruptions that result in a significant increase in fuel or transportation costs. The Seller may pass through to the Buyer any such Extraordinary Freight or Delivery Surcharge. The Seller must provide written notice to the Buyer of the amount of the Extraordinary Freight or Delivery Surcharge and the reasons for it (including evidence of the surcharge from the freight provider). Payment of the surcharge is due and payable by the Buyer within 14 days of receipt of such notice, and forms part of the price payable under these Conditions of Sale. This provision is reasonably necessary to protect the Seller's legitimate interests in managing unforeseen cost.

- (c) In the case of export sales on a "Free on Board,

Contract, Insurance and Freight" or "Contract & Freight" basis, customs duty, excise duty and governmental imposts are not included in prices quoted and are the responsibility of the Buyer.

- (d) In the case of export sales on a "Free into Store" or "Delivered Duty Paid" basis customs duty, excise duty and governmental imposts are the responsibility of the Seller.

4. TERMS

- (a) In the case of export sales, unless otherwise agreed to in writing by the Seller, payment for the Goods and all other costs and expenses will be made to the Seller strictly net cash within thirty (30) days of the month following after customs clearance of the Goods.
- (b) In the case of domestic sales in Australia, unless otherwise agreed to in writing by the Seller, payment for the Goods and all other costs and expenses will be made to the Seller strictly net cash within thirty (30) days of the month following after the earlier of:
 - (i) the loading of the Goods on an outside carrier vehicle of the Buyer's carrier; or
 - (ii) delivery to the Buyer, their carrier or agent.
- (c) Should the Buyer delay or default in respect of any payment due to the Seller, the Seller will have the right, in addition to all other rights granted in these Conditions of Sale or which are conferred by law, to charge interest at the rate equivalent to two per centum (2%) in excess of such rates charged to the Seller by its bankers for overdraft accommodation. Such interest will be calculated from the date payment is due to the date of full and final payment by the Buyer. Any payment by the buyer will be credited first against the interest accrued to the date of payment.
- (d) If, in the Seller's opinion, the Buyer's financial status becomes unsatisfactory to the Seller, the Seller reserves the right to require payment of the price in cash in advance, or security for the price in respect of all future deliveries and for Goods previously delivered for which payment has not been received.

5. CREDIT TERMS

Subject to clause 4, the Seller may offer credit terms to the Buyer and these credit terms will form part of these Conditions of Sale. For the avoidance of any doubt any breach of the credit terms will be a breach of these Conditions of Sale and remedies available to the Seller under these Conditions of Sale for breach of contract will be available if the credit terms are breached. The Buyer acknowledges and agrees that the Seller may withdraw credit facilities at any time at its discretion.

6. GST

Unless specifically stated in writing by the Seller, the Seller's price excludes GST.

7. DELIVERY

- (a) In the case of export sales, the Goods will be delivered by the Seller to the port nominated by the Buyer in the order unless otherwise agreed in writing by the Seller.
- (b) In the case of all sales, the Seller is not a common carrier and in the event of loss or damage to the Goods in transit caused by or resulting from any act, neglect or default attributable to the Seller, the Seller's liability to the buyer will be limited to and completely discharged by, at the Seller's option, either the replacement or the repair of any Goods so lost or damaged.
- (c) Any claims against the Seller for such loss or damage to Goods must be made within seven (7) days of the date of delivery.
- (d) The Seller reserves the right to deliver by instalments and each instalment will be deemed to be sold under a separate contract. Failure of the Seller to deliver an instalment will not entitle the Buyer to rescind or repudiate the contract governing delivery of that instalment or any other contract with the Seller.
- (e) The Seller will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the delivery date but any date named or accepted by the Seller for completion, delivery, dispatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract. The Seller will be under no liability whatsoever should delivery not be made on that date.

8. TITLE AND RISK

8.1 Unless otherwise agreed in writing, risk in the Goods will pass to the Buyer upon the earliest of the happening of:

- (a) the loading of the Goods on an outside carrier vehicle of the Buyer's carrier; or
- (b) delivery to the Buyer, their carrier or agent; or
- (c) in the case of export sales on a Free On Board basis, the loading of the Goods on a vessel; or
- (d) in the case of export sales on a Contract, Insurance and Freight or Contract & Freight basis, customs clearance by the Buyer, their carrier or agent.
- (e) In the case of export sales on a Free Into Store or Delivered Duty Paid basis, delivery to a named destination, fully cleared for import.

8.2

- (a) The legal and equitable title to the Goods will only be transferred from the Seller to the Buyer when the Buyer has met and paid all that is owed to the Seller on any account whatsoever.
- (b) The Buyer acknowledges that until the Buyer has met and paid all that is owed to the Seller on any account whatsoever, the Buyer holds the Goods as bailee for the Seller and that a fiduciary relationship exists between the Buyer and the Seller.

- (c) Until the Seller receives full payment of all monies due to it from the Buyer, the Buyer shall keep the Goods separate and in good condition as a fiduciary of the Seller, clearly showing the Seller's ownership of the Goods and shall keep books recording the Seller's ownership of the Goods and the Buyer's sale or otherwise of them in accordance with clauses 8.2(e) and 8.2(f).
- (d) If the Buyer is in default under these Conditions of Sale, the Seller may take possession of the Goods wherever the Goods are located and the Buyer agrees that representatives of the Seller may enter upon the Buyer's premises for that purpose.
- (e) Despite clause 8.2(b), the Buyer may sell as fiduciary agent for the Seller the Goods to a third party in the normal course of the Buyer's business provided that where the Buyer is paid by that third party, the Buyer holds the proceeds of sale to the extent of the amount owing by the Buyer to the Seller at the time of receipt of such proceeds on trust for the Seller. The Buyer must keep those proceeds separate on trust for the Seller and not mix those proceeds with any other monies.
- (f) If the Buyer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Buyer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Seller. Such part shall be deemed to equal in dollar terms the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer must keep that part of the proceeds separate on trust for the Seller and not mix those proceeds with any other monies.

8.3 These terms create a purchase money security interest in the Goods and the Buyer acknowledges that the Seller may do anything reasonably necessary, including but not limited to registering any security interest which the Seller may have over the goods on the Personal Property Securities Register established under Section 147 of the Personal Property Securities Act 2009 (Cth) ('the PPSA') in order to perfect the security interest and comply with the requirements of the said Act.

8.4 The Buyer agrees, at the Seller's request, to do all acts, matters and things including signing all documents to ensure that the Seller holds a valid and perfected security interest under the PPSA. Any failure by the Buyer to promptly comply with any such request constitutes a default under Clause 10 of these Conditions of Sale.

8.5 The Buyer and the Seller agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to a security interest in the Goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):

- (a) section 129 (disposal by purchase);
- (b) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- (c) paragraph 132(3)(d) (contents of statement of account after disposal);
- (d) subsection 132(4) (statement of account if no disposal);
- (e) section 142 (redemption of collateral); and
- (f) section 143 (reinstatement of security agreement).

8.6 The Buyer agrees to indemnify the Seller, upon demand, for all costs and expenses (including legal fees on a solicitor and

client basis) incurred by the Seller:

- (a) as a result of the occurrence of an event of default (including any actual or attempted enforcement of any security interest granted to the Seller by the Buyer);
- (b) in complying with any demand under the Personal Property Securities Act 2009 (Cth); and
- (c) in registering and maintaining any financing statement.

9. RETURNING GOODS

Subject to the provisions of the Competition and Consumer Act 2010 (Cth), the Buyer may offer the Goods to the Seller in writing within 21 days of delivery if the Buyer no longer requires the Goods and the Goods are in the same condition as they were when delivered. The Seller in its absolute discretion will decide if it will take ownership of the Goods. The Buyer acknowledges that it must pay all expenses associated with this transaction, including freight and insurance costs. If the Seller accepts the Goods, a credit will be provided to the Buyer to an amount agreed between the parties.

10. BUYER'S LIABILITY AND DEFAULT

10.1 If the Buyer:

- (a) fails to make any payment due under these Conditions of Sale or commits any other breach of any of the Buyer's obligations under these Conditions of Sale;
- (b) is unable or deemed to be unable to pay its debts as and when they fall due;
- (c) suffers execution against it, or a Mortgagee or agent of a Mortgagee enters into possession of all or any part of the property of the Buyer;
- (d) commits an act of bankruptcy;
- (e) makes any composition or arrangements with creditors; or
- (f) being a company, passes any resolution or takes any step in connection with the appointment of an Administrator or liquidator, or any step is taken by the holder of a security of all or nearly all of the property of the company to enforce its security, the Seller (in addition to any other remedies hereby or by any statute conferred) may at its option withhold further deliveries and treat the contract as terminated and any part of the purchase price then unpaid whether or not payable under these Conditions of Sale will immediately become due and payable and such termination will be without prejudice to any claim or rights the Seller may possess.

10.2 For avoidance of doubt the Buyer's rights, in the ordinary course of its business in a fiduciary capacity for the Seller, to sell the Goods ceases automatically upon the occurrence of any of the events referred to in clause 10.1 (unless otherwise agreed by the Seller).

10.3 Subject to any restriction imposed by law, if any event described in clause 10.1 occurs, the Seller will be deemed for the purposes of the Corporations Act 2001 (Cth) to have entered possession, assumed control or exercised a power in relation to Goods supplied under these Conditions of Sale.

10.4

- (a) In the event that the Seller repossesses the Goods, the Buyer's liability to the Seller will be reduced according to

the value of the Goods which are repossessed but such reduction cannot be utilised by the Buyer until the value of the repossessed Goods is established in accordance with the following paragraphs (b) and (c) and until the value is established the Buyer will be liable to the Seller without reduction in respect of the repossessed Goods.

- (b) In the three month period following repossession of the Goods, the Seller will exercise reasonable endeavours to sell all or part of the Goods for a reasonable price in all of the circumstances.
- (c) The value of the repossessed Goods will be calculated by reference to the price paid for all or part of the Goods sold at any sale achieved within three months of the date of repossession of those Goods by the Seller, but if any of the Goods repossessed remain unsold after that three month period then there will be no reduction in the Buyer's liability as a consequence of the repossession of those Goods.

11. ADVICE

Subject to Clause 12, any advice, recommendation, information or assistance provided by the Seller in relation to the Goods or their use or application (except to the extent that the Seller has expressly agreed in writing to provide the same) is given in good faith and is believed by the Seller to be appropriate and reliable. Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Seller.

12. WARRANTIES

12.1 Except as expressly provided to the contrary, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

12.2 The Buyer agrees that if it is aware (or should be aware) that any Goods, the subject of an order, are for a particular purpose (including, but not limited to, use as a component part of another product or construction) or are required to possess special or uniform characteristics, the Buyer will clearly specify that purpose or those characteristics in any such order. The Buyer agrees that, unless expressly agreed by the Seller in writing, it has made its own enquiries in relation to the suitability of the Goods and does not rely on representations by the Seller in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use.

12.3 The only conditions and warranties which are binding on the Seller in respect of the state, quality or condition of any Goods supplied by it to the Buyer are those Imposed and required to be binding by statute (including the Competition and Consumer Act 2010 (Cth)).

12.4 The liability, if any, of the Seller arising from the breach of such conditions or warranties will, in the case of terms applying to the provision of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption, at the Seller's option, be limited to and completely discharged by either the replacement or the repair by the Seller of the Goods supplied to the Buyer or payment of the cost of the same and otherwise, to the maximum extent permitted by law. Otherwise, all other conditions and warranties whether express or implied or applied by law in respect of the Goods which may apart from this clause be binding on the Seller are expressly excluded and negated.

12.5 Except to the extent provided immediately above, the Seller will have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise however suffered or incurred by any person in relation to the Goods. Without limiting the generality of this clause, in particular any indirect, special or consequential loss or damage, however suffered or incurred by any person caused by or resulting directly or indirectly from any failure, breakdown, defect or deficiency of

whatsoever nature or kind of or in the Goods.

12.6 In clause 12.5 'indirect, special or consequential loss or damage' includes:-

- (a) any loss of income, profit production, contract, customers, business opportunity or business;
- (b) any loss of goodwill or reputation;
- (c) any loss of value of intellectual property; or
- (d) any loss or damage resulting from the loss or damage to goods other than the Goods.

12.7 Any claim by the Buyer in respect of defective Goods or damaged Goods must be made in writing within 7 days of the delivery of the Goods, unless a longer period is expressly agreed to by the Seller in writing.

12.8 Despite any other provision of these Conditions of Sale, the Seller is not liable for:-

- (a) the cost of removal of Goods not meeting specifications or which are said to be otherwise defective or deficient; whether installed or otherwise;
- (b) the cost of installation of replacements for Goods not meeting specifications or which are said to be otherwise defective or deficient; and
- (c) defects or deficiencies in Goods caused by improper installation or maintenance of Goods or related components or normal wear and tear and damage.

13. PATENTS AND TRADEMARKS

The Seller makes no representation or warranty of any kind, expressed or implied, that the Goods supplied or the use of such Goods or articles made from the Goods either alone or in conjunction with other goods or substances will not infringe any patent, trademark or any other intellectual property right. The Buyer will notify the Seller of any claim or suit involving the Buyer in which such infringement is alleged and if the Seller considers itself to be affected it will be entitled completely to control the defence or compromise of any such allegation of infringement.

14. HEALTH AND SAFETY

It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and where information is supplied to the Buyer on potential hazards relating to the Goods to bring such information to the attention of its employees, agents, sub-contractors, visitors and customers.

Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage.

The Buyer indemnifies and must keep indemnified the Seller against all actions, claims, demands, summons, suits, proceedings, judgments, orders or decrees arising out of or in connection with any act or omission of the Buyer in respect of its obligations pursuant to this clause.

15. FORCE MAJEURE

Deliveries may be totally or partially suspended by the Seller in the event of an Act of God, war, fire, explosion, accident, flood, power failure, governmental laws, failure of machinery or apparatus, national defence requirements or any other event beyond the reasonable control of the Seller or in the event of labour trouble which event prevents the manufacture, delivery, acceptance or consumption of a delivery of the Goods or of a material upon which the manufacture of the Goods is dependent. If, because of any such event, the Seller is unable to supply the total demand for the Goods, the Seller may allocate its available supply of Goods

without obligation to purchase similar Goods from other sources among itself and all of its customers, including those not under contract, on such basis as is determined to be equitable. During the period of total or partial suspension of delivery, the Buyer will be free to purchase elsewhere at its sole risk and cost, such quantities of alternative goods necessary to cover the shortfall of Goods not delivered by the Seller. Notwithstanding anything else contained in these Conditions of Sale, the Seller must not incur any liability whatsoever as a result of a suspension, and the Seller will be under no obligation to subsequently deliver Goods not delivered during the period of suspension, but these Conditions of Sale will otherwise remain unaffected.

16. WAIVER

No waiver by the Seller with respect to any breach or default or any right or remedy will be effective unless it is in writing, signed by the Seller and no such waiver will be deemed to constitute a continuing waiver of any other breach or default or any other right or remedy unless the same be expressed in writing and signed on behalf of the Seller.

17. SEVERABILITY

Any provision of these Conditions of Sale which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of these Conditions of Sale or affecting the validity or enforceability of that provision in any other jurisdiction.

18. LEGAL CONSTRUCTION

These Conditions of Sale will be governed and interpreted according to the laws in force in South Australia in the Commonwealth of Australia and the Seller and the Buyer hereby consent and submit to the non-exclusive jurisdiction of the Courts of South Australia in Adelaide, Australia