

## TERMS AND CONDITIONS OF SALE

These terms and conditions apply to the supply of Inventory by Pacific Urethanes Pty Ltd, unless it agrees in writing otherwise with the Customer, regardless of the terms and conditions of the Customer's order.

### 1. Interpretation

A reference to:

"Customer" means the person or company who purchased the Inventory.

"Delivery Date" means the date set out in the invoice for delivery of the Inventory.

"Force Majeure Event" means act of God, fire, lightning, flood, storm, tempest, earthquake, explosion, strike or other labour difficulty, action or inaction of a government or other competent authority, breakdown of plant, machinery or equipment, shortage of labour, transportation, energy, power, equipment or material and any other act, event or cause (other than lack of funds) which is beyond the reasonable control of PU.

"GST" means any goods and services tax, value added or like tax.

"Inventory" means the inventory supplied by PU to the Customer.

"PPSA" means the *Personal Property Securities Act 2009* (Vic).

"PU" means Pacific Urethanes Pty Ltd ACN 131 890 269.

### 2. Payment and GST

(a) Prices and discounts are subject to change without notice.

(b) Prices are exclusive of GST and the Customer must pay to PU in addition to the price all GST on the price, which it must pay at the same time the price is payable. PU will issue a tax invoice.

(c) Unless otherwise agreed to in writing by PU, payment is to be made within (30) days from end of month, of the date of the invoice issued for the Inventory.

(d) If the Customer does not pay a sum when due, interest will accrue on the amount owing from the date due at the rate prescribed by Section 2 of the Penalty Interest Rates Act (Victoria) plus 2% per annum and it is payable by the Customer to PU on demand. The Customer must also pay, on demand, PU's costs and expenses which are incurred in recovering or attempting to recover the amounts owing.

### 3. Ordering

(a) PU can specify minimum order values and impose a surcharge for Inventory having a value less than that minimum.

(b) PU is not obliged to accept any order. It may accept an order in whole or in part.

### 4. Title, Property and Risk

(a) Title and property in the Inventory remain with PU and will not pass to the Customer until the Customer has paid to PU all sums that are payable to PU by the Customer.

(b) Unless title and property in the Inventory has passed to the Customer, the Customer must not dispose, or purport to dispose of any interest in the Inventory, except in the ordinary course of its business.

(c) The risk in the Inventory passes to the Customer on the earlier of delivery to the Customer, the Customer's agent or the carrier engaged by the Customer.

(d) Where Inventory are not paid for when due, PU may retake possession of that Inventory and may enter any premises controlled by the Customer to do so.

### 5. Storage

Until title and property in the Inventory has passed to the Customer, or the Inventory is used by the Customer in the ordinary course of its business, the Customer will ensure that the Inventory is:

(a) clearly identified as being owned by PU; and

(b) stored at the place named in the delivery docket which accompanied the Inventory.

### 6. PPSA

To the extent permitted by the PPSA, the Customer:

(a) has no right to receive a notice of removal of an accession under the PPSA;

(b) has no right to retain an accession under the PPSA;

(c) waives its right to receive notice of a verification or financing change statement; and

(d) agrees that the provisions of Chapter 4 of the PPSA are excluded.

### 7. Default

If:

(a) the Customer fails to pay the price for the Inventory, or any other money payable to PU, when it is due; or

(b) the Customer breaches any of these terms and conditions; or

(c) the Customer is a company and a receiver or manager or both is appointed over some or all of the assets of the Customer, an application to wind up the Customer is made, a liquidator is appointed to the Customer, it proposes or enters into a compromise, or scheme of arrangement with any of its creditors, or it proposes or effects the appointment of an administrator; or

(d) the Customer loses possession or control of any of the Inventory which has not been paid for otherwise than in the normal course of business;

then all amounts owing to PU will become immediately due and payable and the Customer must not dispose of any of the Inventory and must allow PU to take possession of the Inventory where it is not paid for.

### 8. Pallets

Unless non-returnable pallets are specified on the delivery advice form pallets are to be exchanged at the time of delivery.

### 9. Delivery

All delivery dates are estimates only. PU is not liable (and it is released by the Customer from any liability) for any loss or damage suffered should any of the Inventory not be delivered on the Delivery Date.

### 10. Quality and warranty claims

(a) PU warrants that the Inventory meets PU's published specification at the time risk passes to the Customer.

(b) PU does not warrant that the Inventory is fit for use by the Customer, nor does PU warrant in any way the goods produced by the Customer from the Inventory

(c) Any description of the Inventory is to identify the Inventory and such description does not make any sale a sale by description.

(d) A claim for alleged damaged or defective Inventory, a shortage or misdescription, or a claim based on any other cause can only be made within thirty (30) days of delivery, or where the Inventory claimed is not delivered, within thirty (30) days of receipt of invoice.

(e) The Customer has no authority from PU to meet or settle claims made by the Customer's customers in relation to any of the Inventory.

### 11. Return of Inventory

Inventory can only be returned where:

(a) it is not of merchantable quality, or where defective or faulty, or not in accordance with order, or not fit for the purpose the Customer has made known to PU, or do not match their description; and

(b) where the claim is made within the claim period in clause 10.

### 12. Withholding supply

Even where PU has accepted an order, it can withhold supply and it is not liable to the Customer for any loss or damage caused to the Customer by doing so where:

(a) PU does not have sufficient Inventory to meet the order; or

(b) the Inventory ordered has been discontinued; or

(c) PU has determined that credit should no longer be extended to the Customer.

### 13. Limitation of Liability

(a) To the extent permitted by law, all rights, terms, conditions, warranties, guarantees and undertakings (whether express or implied, statutory or otherwise) relating to the Inventory or its sale, except as set out in these terms and conditions, are excluded.

(b) Where liability has not been excluded but can be limited, PU's maximum liability for all loss or damage for a breach of these terms and conditions is limited to the price of the Inventory supplied. PU may at its option satisfy its liability for a claim that Inventory is defective by replacing the defective Inventory or by paying for the cost of resupply.

### 14. Force Majeure

If PU becomes unable by a Force Majeure Event to carry out an obligation, in whole or in part, placed on it by these terms and conditions, that obligation insofar as it is affected by the Force Majeure Event will be suspended during the period the Force Majeure Event continues.

### 15. MSDS and warning labels

Before using any of the Inventory, the Customer must ensure its personnel who will deal with the Inventory read and comply with all the terms, conditions, instructions and warnings in the material safety data sheets issued for and on the labels on the Inventory.

### 16. Jurisdiction

This agreement is governed by the laws of Victoria and the Customer submits to the jurisdiction of the Courts of Victoria and the Federal Court.