

GENERAL TERMS AND CONDITIONS

1. TERMS AND CONDITIONS TO APPLY

Enduraclad International Pty Ltd (ABN 77 152 587 981) ("Enduraclad") and the addressee, named herein ("Buyer") agree that these terms and conditions ("Sales Conditions") shall apply to the supply of all Goods sold and Services provided ("Goods") by Enduraclad to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to Enduraclad. These Sale Conditions supersede those in any previous form of Enduraclad Sale Conditions and may only be varied or added to by written agreement signed by an authorised representative of both the Buyer and Enduraclad. When attached to an Enduraclad Credit Application these Sales Conditions supersede those in any previous form of Enduraclad Credit Application signed by the Buyer and do not affect the validity of any previous guarantee.

2. QUOTATIONS/TENDERS

If Enduraclad has provided any quotation or tender specifically for the Goods ("Quotation"):

- these Sale Conditions shall apply to the Quotation;
- the price in the Quotation shall be Enduraclad's current price as the date of Quotation and the price actually payable for the Goods shall be Enduraclad's current price as at the date of the Buyers acceptance of the quotation; and
- subject to paragraph (b) the Quotation shall remain valid for acceptance by the Buyers for thirty (30) days after the date of the Quotation.

3. ORDERS

If the Buyer has made an order for the Goods without there being a Quotation provided by Enduraclad ("Order"):

- the Order is subject to acceptance in writing by Enduraclad; and
- the price actually payable for the Goods is Enduraclad's current price as at the date of Enduraclad's acceptance of the order.

4. VARIATION OR CANCELLATION

The Buyer's acceptance of the Quotation or Enduraclad's acceptance of the Buyer's Order shall constitute an acceptance of these Sale Conditions absolutely and without amendment as the terms and conditions of the contract for the supply of the Goods and as the case may be:

- no change in the specification of the Goods shall bind Enduraclad, unless Enduraclad expressly agrees to the change in writing; and
- if the Buyer cancels the Order of Goods, the Buyer will pay Enduraclad any loss, damage or expenses incurred by Enduraclad in relation to the supply or proposed supply of the Goods.

5. CHARGES AND TAXES

Unless otherwise expressly stated, the price of the Goods excludes all freight, transportation, shipping, insurance, parking, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, Goods and services, excise or other taxes, and the Buyer shall pay and indemnify Enduraclad for those charges or taxes. If Enduraclad expressly agrees in writing that the price includes any of these charges or taxes, the prices is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the order.

6. PAYMENT

- The Buyer shall pay for the Goods within thirty (30) days after the date of the invoice issued by Enduraclad for the Goods. Time shall be of the essence in respect of payment for the Goods.
- If payment is not made by the due date for payment, the Buyer shall pay to Enduraclad on demand interest at the rate of one and a half (1.5%) per cent calculated on outstanding balance of the invoice and capitalised monthly until paid. This will not affect the other rights of Enduraclad. Enduraclad is entitled to recover from the Buyer, in addition to the price, any GST on the supply of the Goods except to the extent that the prices, expressly include GST.
- All losses, expenses and costs (including legal fees on an indemnity basis), consequent upon the Buyer's failure to pay on the due date, are payable by the Buyer upon demand and recoverable from the Buyer by Enduraclad as a liquidated debt.

7. GST

- Where a Taxable Supply is made under or in connection with these Sale Conditions or in connection with any matter or thing occurring under these Sale Conditions to the Buyer, Enduraclad will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Buyer the amount of any GST payable on the Taxable Supply.
- Where either Enduraclad or the Buyer is entitled, under or in connection with the Sale Conditions or in connection with any matter or thing occurring under the Sale Conditions, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation shall be reduced by the amount of (or the same proportion of the amount of) any Input Tax Credit available in respect of those costs.
- In these Sale Conditions:
 - "GST" means the tax payable on Taxable supplies under GST Legislation;
 - "GST Legislation" means a New Tax System (Goods and Services Tax) Act 1999 ("Act") and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
 - "Input Tax Credit" has the meaning given in the Act; and
 - "Taxable Supply" has the meaning given in the Act.

8. DELIVERY

- Enduraclad will use all reasonable endeavours to deliver the Goods on or before the agreed date for delivery ("Delivery Date") but;
 - the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Enduraclad; and
 - Enduraclad will not be liable for any loss, damages or other liability (whether in contract, tort [including negligence] or otherwise) and whether directly or indirectly arising from the Goods not being delivered by the delivery/date for any reason.
- Enduraclad may, with the agreement of the Buyer, deliver any of the Goods to the Buyer in instalments in which case Enduraclad may separately invoice the Buyer for payment of each delivery instalment (which shall be taken to be the subject of a separate and distinct contract between Enduraclad and the Buyer, each of which will incorporate these Sale Conditions).
- Any of the Goods returned are only accepted with the prior written approval of Enduraclad and will be subject to a 50% handling/restocking fee, which fee may be varied or waived in writing at Enduraclad's absolute discretion. Goods manufactured by Enduraclad pursuant to the specific requirements of the Buyer are non-refundable.

9. RISK AND PROPERTY IN GOODS

- For the purposes of the *Personal Property Securities Act 2009* (as amended from time to time) ("the PPSA") "Goods" means any and all present and after acquired Goods and services supplied by Enduraclad to the Buyer.
- The Goods shall be entirely at the risk (including loss, damage or deterioration) of the Buyer from the time the Goods are dispatched from Enduraclad's premises (The carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by Enduraclad).
- Enduraclad retains full title to the Goods until Enduraclad receives payment in full for those Goods and all other amounts owed to Enduraclad by the Buyer.
- Until all such monies are have been paid:
 - Enduraclad has the right to call for or recover possession of the Goods (for which purpose Enduraclad's employees or agents may enter onto the Buyer's premises) and the Buyer must deliver up the Goods if so directed by Enduraclad;
 - The Buyer:
 - agrees that the relationship between the Buyer and Enduraclad shall be fiduciary and shall as bailee keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to Enduraclad;
 - shall not resell, encumber or dispose of the Goods;
 - shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to Enduraclad in their original state;
 - agrees that if, in breach of this clause, the Goods are incorporated with Goods of the Buyer, other items or products such that the Goods are no longer separately identifiable, the resultant products or items shall become and be deemed to be the sole property of Enduraclad. If the Goods are incorporated in any way the property of a party other than the Buyer, the resultant product shall become and be deemed to be owned in common by Enduraclad with the other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Buyer of the incorporated materials;
 - shall, as bailee for Enduraclad, hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Buyer in the ordinary course of the Buyer's business) in trust for Enduraclad and shall pay the proceeds into a separate fiduciary account to be held in trust for Enduraclad until accounted for to Enduraclad at the demand of Enduraclad; and
 - shall insure the Goods against theft and damage Enduraclad's interest on the policies of insurance and provide Enduraclad, on demand, with proof of the currency of such insurance.
- To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this Clause 9 that there is created for the benefit of Enduraclad a Purchase Monies Security interest; in the Goods.
- The Buyer agrees that Enduraclad may register any personal property security interest created by these Sales Conditions on the Personal Property Securities Register and the Buyer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statements or financing change statement (as those terms are defined in the PPSA) registered by Enduraclad in respect of any personal property of the Buyer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Buyer or place an obligation on Enduraclad, those provisions will apply only to the extent they cannot be contracted out of or to the extent that Enduraclad otherwise agrees in writing.

10. INTELLECTUAL PROPERTY

All patent, design rights, trade marks, copyright, original works and other intellectual property in any design, specification, process, method of working or other information relating to the Goods (other than that provided by the Buyer to Enduraclad) shall vest for all time in Enduraclad. Enduraclad only grants to the Buyer an irrevocable licence to use the Goods.

11. WARRANTIES

Subject to clause 9(a), Enduraclad warrants that the Goods will, subject to Enduraclad's general tolerance standards (available at the Buyer's request) conform to the specification for the Goods expressly agreed to in writing by Enduraclad, and be free from defects in materials or workmanship.

12. LIABILITY

- If under any law, any terms which apply to the supply of Goods or services by Enduraclad under the Sale Conditions cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- All terms which would otherwise be implied are excluded except as stated in the Sale Conditions.
- To the extent permitted by law Enduraclad's sole liability for any breach of any term is limited:
 - in the case of Goods supplied by Enduraclad, to any one of the following as determined by Enduraclad:
 - the replacement of the Goods or supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - the payment of the cost of having the Goods prepared;
 - in the case of services supplied by Enduraclad, to any one of the following:
 - the supply of the services again;
 - the payment of the cost of having the services supplied again;
- The Buyer does not rely on any representation, warranty or other term made by or on behalf of Enduraclad which is not set out in the sale conditions; and
- Enduraclad is not liable for any damage, economic loss or loss of profits whether direct, indirect, general special or consequential;
 - arising out of a breach of an implied or expressed term; or
 - suffered as a result of the negligence of Enduraclad or its employees or agents, apart from liability as set out in Clause 12(a).

13. DEFECTIVE GOODS

- Within fourteen (14) days of the delivery of the Goods to the agreed delivery location, the Buyer shall both complete any inspection or testing required by it to confirm the Goods comply with the sale conditions and notifies Enduraclad in writing of the extent to which the Goods do not comply with the sale conditions.
- The Buyer shall not use the Goods (other than to the extent reasonably necessary for the inspection and testing) before the Buyer completes the inspection and testing and satisfies itself that the Goods comply with the sale conditions, or, if the Buyer notifies Enduraclad under paragraph 13(a) that the Goods do not comply with the sale conditions, Enduraclad has had a reasonable opportunity to inspect and test the Goods after Enduraclad receives that notice.

(c) Goods must be returned at the cost of the Buyer. Goods returned for credit and accepted by Enduraclad will at Enduraclad's absolute discretion be subject to 50% of the credit claimed. If Goods are not returned within 30 days of notification of the claim to Enduraclad, the Buyer shall not be entitled to any credit.

(d) If the Buyer does not comply with this clause, the Buyer shall be taken to have unconditionally accepted that the Goods comply with the Sale Conditions.

14. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

Where Enduraclad incurs any extra costs in relation to the supply of the Goods, directly or indirectly, as result of any delay, interruption, suspension or alteration of any work or the supply of the Goods caused by or as a consequence of any act or omission of the Buyer, Enduraclad shall be entitled to increase the price by the amount of the extra costs incurred.

15. BUYER'S INDEMNITY

(a) The Buyer indemnifies and holds harmless Enduraclad, its successors, administrators and assigns, from and against all claims for loss or damage to persons or property or loss of property or for death or injury caused by or arising out of or in connection with any act matter or thing done, omitted or permitted to be done by Enduraclad, its servants or agents.

(b) The Buyer indemnifies and holds harmless Enduraclad, its successors, administrators and assigns, from and against all claims loss, (whether direct, indirect or consequential), loss of profit, loss of opportunity or loss of use and any and all other economic loss, including and without limitation, any loss by reason of a breach of a term or condition of the sale conditions, or the negligence or any other act, matter or thing done, admitted or omitted to be done by the Enduraclad.

16. SUBCONTRACTING

Unless otherwise agreed in writing Enduraclad may, without the Buyer's consent, engage subcontractors to carry out the whole of or any part of supply or manufacture of the Goods.

17. DEFAULT, INSOVENCY AND TERMINATION

If there is any default by the Buyer in making due payment to Enduraclad of any monies owing by the Buyer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Buyer or the buyer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Buyer of any of these Sales Conditions then all monies payable by the Buyer to Enduraclad shall at Enduraclad's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired and, Enduraclad may, without affecting Enduraclad's other rights:

(a) immediately terminate any agreement for supply of any Goods, by notice in writing to the Buyer;

(b) refuse, suspend or withhold any further supply of Goods;

(c) enter upon (personally or by its employees or agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Buyer), in which case the sale of those Goods shall be taken to be terminated and Enduraclad shall have no liability to the buyer whether for trespass, payment of damages or compensation or otherwise;

(d) terminate any credit agreement with the Buyer, by notice in writing to the Buyer (in which case outstanding amounts will become immediately due and payable);

(e) forfeit any deposit paid for the Goods; or

(f) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to Enduraclad or damages incurred by Enduraclad as result of the termination of the sale.

18. DUTIES, LEVIES, AND TAXES

The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods supplied and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless Enduraclad from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

19. GOVERNING LAW

The laws of the State or Territory in which the office of Enduraclad which issued the Quotation or accepted the Order shall apply to the Sale Conditions and the parties submit to the jurisdiction of the courts in that state.

20. NON-WAIVER

Enduraclad's failure to exercise any right under these Sale Conditions or failure to insist on strict performance of any part of these Sale Conditions does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.

ADDITIONAL TERMS AND CONDITIONS FOR MANUFACTURE

21. MANUFACTURED GOODS

Where the Goods are to be manufactured by Enduraclad to a specification prepared by or on behalf of the Buyer ("Manufactured Goods") clauses 22 to 25 of these Sale Conditions shall also apply.

22. PRICE FOR MANUFACTURED GOODS

Unless otherwise agreed in writing by Enduraclad, the price for Manufactured Goods may be unilaterally adjusted by Enduraclad;

(a) in accordance with the price variation formula notified by Enduraclad to the Buyer with the Quotation or Order; and

(b) for increases in cost of labour after the date of the Quotation or acceptance of the Order.

23. BUYER'S PATTERNS

Where any patterns or core boxes are provided by or on behalf of the Buyer for use by Enduraclad to produce manufactured Goods ("Buyer's Patterns"):

(a) despite clause 12, Enduraclad shall have no responsibility and will not be liable for any non-conformity of the Buyer's patterns to any drawings or specifications for the Manufactured Goods and the Buyer irrevocably releases Enduraclad from any claims in relation to such non-conformity;

(b) the Buyer must satisfy itself as to and ensure that the Buyer's Patterns meet the requirements of Enduraclad relating to the Buyer's Patterns;

(c) the Buyer acknowledges that Enduraclad will not insure the Buyer's patterns and despite clause 12 Enduraclad shall have no liability (whether in contract, tort [including negligent] or otherwise) to the Buyer for or in connection with any loss of or damages to the Buyer's patterns or any other Goods or materials in Enduraclad's possession in connection with the Manufactured Goods; and

(d) the Buyer agrees to pay Enduraclad, in addition to the price payable for the Manufactured Goods any cost incurred by Enduraclad in storing the Buyer's Patterns or carrying out repairs or alterations to the Buyer's Pattern.

24. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by Enduraclad prior to supply to the Buyer, the Buyer shall pay the costs of that testing (including the cost of obtaining certificates) or inspection on addition to the price for the manufactured Goods, and the result of the tests (include as to weight, size, quantity or composition of manufactured Goods) and inspections shall be final and binding on the Buyer.

25. BUYER'S INFORMATION

Where the Buyer has provided to Enduraclad any design, specification, process, method of working, or any other information in connection with the Manufactured Goods (Buyer's Information):

(a) Enduraclad shall be under no obligation, to check and confirm the conformity, accuracy or adequacy of the Buyers Information;

(b) the Buyer grants to Enduraclad an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;

(c) the Buyer indemnifies Enduraclad, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against Enduraclad in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and

(d) despite clause 12, Enduraclad shall have no liability to the Buyer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.

26. GENERAL

(a) EVIDENCE OF MONIES PAYABLE

A statement in writing signed by any director, secretary, administration manager or credit manager of Enduraclad stating the balance of the monies due to Enduraclad by the Buyer shall be prima facie evidence of the amount of indebtedness of the Buyer to Enduraclad at the date of that statement.

(b) BUYER AS TRUSTEE

Where the Buyer is a trustee the Buyer warrants that it has full power and authority to agree to be bound by the Sale Conditions on behalf of the trust and that it shall be bound by the terms of the sale Sale Conditions both personally and as trustee.

(c) Enduraclad may change any of these general terms and conditions without notice.