

TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Profast" shall mean Profast Pty Ltd or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing goods from Profast.
- 1.3 "Goods" shall mean all goods, materials, or services, provided by Profast to the customer, and shall include without limitation the supply of manufacturing services, all charges for labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of goods by Profast to the customer.
- 1.4 "Price" shall mean the charge for the goods as agreed between Profast and the customer subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Profast from the customer for the supply of goods shall constitute acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The customer authorises Profast to collect, retain and use any information about the customer, or for the purpose of assessing the customer's credit worthiness, enforcing any rights under this contract, or marketing any goods and services provided by Profast to any other party.
- 3.2 The customer authorises Profast to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 2001.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the goods shall be deemed to be sold at the current amount as such goods are sold by Profast at the time of the contract.

5. PAYMENT

- 5.1 Payment for goods shall:
- 5.1.1 Where the customer has an existing account with Profast, or has arranged an account with Profast, the price shall be paid in full on 30th of the month following the date of the invoice ("the due date"); or
- 5.1.2 Where Profast has specified the amount shall be paid in full within seven (7) days following the date of the invoice; or
- 5.1.3 In full on receipt of delivery of goods or completion of work.
- 5.2 Any expenses, disbursements and legal costs incurred by Profast in the enforcement of any rights contained in this contract shall be paid by the customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.3 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.4 We may, at our discretion, accept late or part payment or any payment described as being full or in settlement of a dispute. If we do so, we shall not lose any of our rights under these Conditions or at law, and it does not mean we agree to change these Conditions.

6. QUOTATION

- 6.1 Where a quotation is given by Profast for goods:
- 6.1.1 The quotation shall be valid for thirty (30) days from the date of issue unless otherwise stated; and
- 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary.
- 6.2 Where goods are required in addition to the quotation the customer agrees to pay for the additional cost of such goods.

7. RISK

- 7.1 The goods remain at Profast risk until the dispatch to the customer, but when title passes to the customer pursuant to clause 9.1 of this contract the goods are at the customer's risk whether delivery has been made or not.
- 7.2 Delivery of goods shall be deemed complete when Profast gives possession of the goods for delivery to the customer, or possession of the goods is given to a common carrier, or other bailee for the purposes of transmission to the customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the customer gives written notice to Profast making time of the essence.
- 7.4 Where Profast delivers goods to the customer by instalments and Profast fails to deliver one or more instalments the customer shall not have the right to repudiate the contract but shall have the right to claim compensation as a severable breach.

8. AGENCY

- 8.1 The customer authorises Profast to contract either as principal or agent for the provision of goods that are the matter of this contract.
- 8.2 Where Profast enters into a contract of the type referred to in clause 8.1, it shall be read with and form part of this agreement and the customer agrees to pay any amounts due under that contract.

9. TITLE

- 9.1 If the goods are ascertained to be in a deliverable state, title in the goods passes to the customer only when the customer has made payment for all goods supplied by Profast.
- 9.2 Where the customer has not paid for any goods in its possession title in such goods shall remain with Profast and:
- 9.2.1 The goods shall be held by the customer as bailee; and
- 9.2.2 If the goods are attached, fixed, or incorporated into any property of the customer, by way of any manufacturing or assembly process by the customer or any third party, title in the goods shall remain with Profast until the customer has made payment for all goods, and where those goods are mixed with other property so as to be part of or a constituent of any new goods, title to these new goods shall be assigned to Profast as security for the full satisfaction by the customer of the full amount owing between Profast and the customer.
- 9.3 The customer gives irrevocable authority to Profast to enter any premises occupied by the customer, at any reasonable time, to remove any goods not paid for in full by the customer. Profast shall not be liable for costs, damages or expenses or any other losses incurred by the customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever.

- 9.4 The following shall constitute defaults by the customer:
- 9.4.1 Non-payment of any sum by the due date.
 - 9.4.2 The customer intimates that it will not pay any sum by the due date.
 - 9.4.3 Any products are seized by any other creditor of the customer or any other creditor intimates that it intends to seize products.
 - 9.4.4 Any products in the possession of the customer that are materially damaged while any sum due from the customer to Profast remains unpaid.
 - 9.4.5 The customer is bankrupted or put into liquidation or a receiver is appointed to any of the customer's assets or a landlord distrains against any of the customer's assets.
 - 9.4.6 A court judgement is entered against the customer and remains unsatisfied for seven (7) days.
 - 9.4.7 Any material adverse change in the financial position of the customer.

10. DISPUTES

- 10.1 The customer shall be deemed to have accepted the goods unless the customer notifies Profast otherwise within 48 hours of delivery of the goods to the customer.
- 10.2 No products accepted for return without prior approval of Profast. Only products in original, undamaged, unopened and unused condition will be considered for return. A 15% restocking fee applies to returns. There will be no returns on special orders. The customer is liable for all costs associated with products accepted for return.

11. LIABILITY

- 11.1 Except as otherwise provided by statute Profast shall not be liable for:
 - 11.1.1 Any loss or damage of any kind whatsoever whether suffered or incurred by the customer or another person whether such loss or damage arises directly or indirectly from goods or services or advice provided by Profast to the customer and without limiting the generality of the foregoing of this clause Profast shall not be liable for any consequential loss or damage of any kind including without limitation any financial loss; and
 - 11.1.2 Except as provided in this contract Profast shall not be liable in contract, or in tort, or otherwise for any loss, damage, or injury beyond the value of the goods provided by Profast to the customer; and
 - 11.1.3 The customer shall indemnify Profast against all claims of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Profast or otherwise, brought by any person in connection with any matter, act, omission, or error by Profast its agents or employees in connection with the goods.

12. CONSUMER GUARANTEES

- 12.1 Where applicable, any statutory consumer warranties capable of exclusion where Goods and Services are supplied for business purposes are hereby excluded.

13. GENERAL LIEN

- 13.1 The customer agrees that Profast may exercise a general lien against any goods or any property belonging to the customer that is in the possession of Profast for all sums outstanding under this contract and any other contract to which the customer and company are parties.

- 13.2 If the lien is not satisfied within 7 days of the due date, Profast may having given notice of the lien at its option either:

- 13.2.1 Remove such goods or property and store them in such a place and in such a manner as Profast shall think fit and proper and at the risk and expense of the customer; or
- 13.2.2 Sell such goods or property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

14. WARRANTY

- 14.1 Manufacturer's warranty applies where applicable.
- 14.2 Profast does not provide any warranty that the goods are fit and suitable for the purpose for which they are required by the customer and shall not be liable if they are not.

15. CANCELLATION

- 15.1 Profast shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of goods to the customer if the customer fails to pay any money owing after the due date or the customer commits an act of bankruptcy or is trading whilst insolvent.
- 15.2 Any cancellation or suspension under clause 15.1 of this agreement shall not affect Profast claim for money due at the time of cancellation or suspension or for damages for any breach of any terms of this contract or the customer's obligations to Profast under this contract.
- 15.3 Cancellation of an order will not be entertained once work has commenced, or material or product ordered, without agreement from Profast.
- 15.4 Indent orders cannot be cancelled without agreement from Profast.
- 15.5 The customer agrees to pay all costs, disbursements and loss of profits which may be incurred by Profast in accepting any such cancellation.

16. MISCELLANEOUS

- 16.1 The customer shall not assign all or any of its rights or obligations under this contract without the written consent of Profast.
- 16.2 Profast shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.3 Failure by Profast to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Profast has under this contract.
- 16.4 The law of Australia shall apply to this contract except to the extent expressly negated or varied by this contract.
- 16.5 Where the terms of this contract are at variance with the order or instruction from the customer, this contract shall prevail.
- 16.6 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.7 All goods and services supplied by Profast are subject to the laws of Australia and Profast takes no responsibility for changes in the law which effect the goods or services supplied.
- 16.8 The customer shall give Profast within thirty (30) days written notice of any proposed change of ownership and/or any other change in the customer's details (including but not limited to, changes in the customer's name, address, contact phone, change of trustees, or business practice). The customer shall be liable for any loss incurred by Profast as a result of the customer's failure to comply with this clause.