

## TERMS AND CONDITIONS OF SALE

In these terms and conditions "the Company" means Wynn Fraser & Company Limited which supplies goods to the purchaser of such goods (the 'Purchaser'). The Company supplies all goods to every Purchaser notwithstanding anything that may be stated to the contrary in the 'Purchasers' inquiries or on the Purchaser's orders, subject to the following conditions.

### Price

1. The Purchaser shall pay the price indicated on the invoice, order form or other similar document issued by the Company.
2. The prices payable under Clause 1 shall include Goods and Services Tax and any other taxes payable in respect of the supply of goods as at the date of the said invoice.
3. The Purchaser acknowledges that the Company may alter prices without notice and the purchase price of goods may be different to the price quoted or the price current when goods are ordered.
4. The Purchaser shall make all payments due to the Company in full without any deductions, whether by way of set off, counter claim, or any other equitable or legal claim.

### Terms of Payment

5. The Purchaser shall pay all amounts due to the Company on the due date as set out on the invoice.
6. In the event that:
  - a) any amount payable by the Purchaser to the Company is overdue, or the Purchaser fails to meet any other obligation to the Company (whether in relation to the sale of goods or otherwise), or in the Company's opinion the Purchaser is likely to be unable to meet its payment or other obligations to the Company; or
  - b) the Purchaser becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed, or is placed under statutory or Official management; or
  - c) the ownership or effective control of the Purchaser is transferred or the nature of the Purchaser's business is materially altered; then:
    - i. the Company shall be entitled to cancel all or any part of any contract or contracts with the Purchaser which remains unperformed, in addition to and without prejudice to its other remedies; and
    - ii. all amounts outstanding under any contract with the Company shall whether or not due for payment, immediately become due and payable; and
    - iii. the Company shall be entitled to reclaim any goods in the Purchaser's possession or control and to dispose of them for its own benefit and for that purpose the Company shall be entitled, without notice, to enter directly or by its agents on any premises where it believes goods which it has supplied may be stored, without in any way being liable to any person.
7. The Purchaser shall pay the Company interest at the default interest rate of 5% above the current overdraft rate, which the Company has with its bank in respect of all of the Purchaser's indebtedness which is overdue. Such interest shall accrue on a daily basis from the date when payment is due until the date when payment is actually made and the Purchaser shall be liable to pay all expenses and legal costs of the Company as between solicitor and client in relation to obtaining remedy of such failure to pay. The default interest payable under this clause is charged by way of damages for failure to pay and does not imply the granting of, or an extension of, credit by the Company to the Purchaser. The Purchaser
8. If the Purchaser makes default in payment or in taking delivery in time, the Company shall be entitled to terminate any contract as far as it is unfulfilled, without prejudice to its right to recover all sums owing to it in respect of deliveries already made. Upon termination of the contract the Company shall be entitled to dispose of the balance of the goods contracted for and the Purchaser shall indemnify the Company for any loss in price incurred by it on realisation against the price at which such goods were contracted to be bought by the Purchaser.
9. Where the Purchaser owes any amount to the Company, the Company shall be entitled, at its complete discretion, to accept any payment received and apply it towards satisfaction of such indebtedness.
10. The Company shall be entitled to assign to any other person or Company all or any part of the Purchaser's indebtedness to the Company and the assignee shall be entitled to claim all or part of the indebtedness and shall have the same right of recovery as the Company.
11. The Company shall be entitled to cancel all or any part of any contract or contracts with the Purchaser at any time with or without notice. Any such cancellation shall be without prejudice to the Company's other rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Purchaser.

### Delivery

12. Unless otherwise agreed, it shall be the Purchaser's responsibility to arrange and pay for transport of the goods from the Company's premises and any transit insurances in respect of such goods and the Company shall not be liable for any loss or damage to the goods during transportation, even though such loss or damage may be caused by the Company's negligence, or other default.
13. Unless the parties otherwise agree in writing, delivery shall be deemed to be effected upon the transfer of possession of goods to the Purchaser or Purchaser's agent.
14. If the Company is to deliver the goods and delivery is delayed for any reason, the Company shall not be liable to the Purchaser or any other party for any loss sustained due to such delay and the Company reserves the right to cancel delivery of the goods or such installments thereof without prejudice to its rights to recover all sums owing to it in respect of deliveries already made.
15. Where the Purchaser fails to uplift or accept the goods by the delivery date specified or such later date as the parties agree, the Purchaser shall pay reasonable storage costs until such time as the Purchaser uplifts or accepts the goods, such costs to be determined by the Company.
16. If the Company is to deliver the goods and the goods are ready for delivery on the date specified in the order of the Purchaser but the Purchaser does not take delivery when requested by the Company to do so, the Company shall be entitled to invoice the Purchaser for payment in accordance with Clause 5.

### Risk and Title

17. Notwithstanding Clause 18, the risk in the goods supplied by the Company shall pass from the Company to the Purchaser when the goods are delivered, when the Company first makes an attempt to deliver if the Purchaser fails to accept the goods or on the date of a request by the Purchaser to delay delivery.
18. Title in goods supplied by the Company shall not pass from the Company to the Purchaser until all amounts owing by the Purchaser to the Company in respect of those goods and all other goods have been satisfied.
19. Until title passes from the Company to the Purchaser in accordance with Clause 18, the following terms shall apply:
  - a) the Purchaser shall be deemed to be in a fiduciary capacity as bailee of the Company in respect of any goods supplied by the Company; and
  - b) the Purchaser shall, if required by the Company, store the goods in such condition and place that it is clear that they are owned by the Company; and
  - c) the Purchaser shall not under any circumstances mix the goods supplied by the Company with other goods in any manner whatsoever; and
  - d) if the Purchaser wishes to resell any goods before the Purchaser has title to them, the Purchaser may do so only by way of bona fide sales in the ordinary course of business as the Company's agent, but the Purchaser shall not represent to any person that the Purchaser is acting for the Company, or has any authority to bind the Company. The Purchaser shall account to the Company for the proceeds of sale of the goods.
20. Where the Company exercises its rights under Clause 6, 8 or 15, in respect of the resale, repossession, or storage, of the goods supplied (including legal costs as between solicitors and own clients), the Purchaser shall immediately indemnify the Company for all such costs.

### Cancellations

21. No cancellation, addition, deletion, amendment or variation of any kind of or to any contract of supply between the parties may be made except with consent of the Company in writing.

### Claims and Limitation of Liability

22.
  - a) All warranties, descriptions, representations or conditions whether implied by law, trade, custom, or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise and all specific conditions, even though such conditions may be known to the Company, are expressly excluded, except to the extent that they are unable to be excluded by statute.
  - b) The Company shall not be liable in any way whatsoever to the Purchaser or any third party, whether in tort (including negligence), contract, or otherwise for any loss or damage whatsoever whether direct, indirect, special or consequential and all such liability is expressly excluded.
  - c) The liability of the Company in respect of any order of goods shall in any event be limited to the lesser of the purchase price of the goods complained of, the cost of replacing the defective goods, and the actual loss or damage suffered by the Purchaser.
23. The Company may, at its complete discretion, replace or give credit for all goods supplied and established to be defective; provided that the following conditions are met:
  - a) All claims must be received by the Company within seven (7) days of delivery of the goods and, where applicable, the dispatch number and/or invoice number must be quoted by the Purchaser; and
  - b) All claims must specifically identify the defect and, where possible, be accompanied by the defective goods or a sample thereof; and
  - c) The Company shall have reasonable opportunity to investigate the claim.
24. Where the Company replaces the goods, it shall deliver such goods to the Purchaser's premises at the Company's risk and expense.

### Right of Set Off

25.
  - a) The Company may apply (without prior notice) all or part of any credit balance with the Company towards satisfaction of any amount owing (whether or not due for payment) by the Purchaser to the Company.
  - b) If at any time any amount is contingently due or is not quantified, the Company may retain and withhold repayment of any credit balance the Purchaser may have with the Company pending such amount becoming due or quantified.
  - c) The Company shall not be obliged to exercise any of its rights conferred by this Clause 25. The exercise or non-exercise of those rights shall not affect, impair or otherwise, detract from:
    - i. any securities or other documents held now or in the future by the Company, to secure any indebtedness which may be the subject of a set off hereunder; or
    - ii. any rights, privileges, or directions available to the Company, under general law, under any security or other documents or otherwise howsoever, and shall be without prejudice and in addition to such rights, privileges and directions.
  - d) The Purchaser may not assign any credit balance which it may have with the Company and undertakes not to attempt any such assignment.

### Acceptance of Terms and Conditions

26. Any goods supplied by the Company to the Purchaser will be supplied on these terms and conditions. If the Purchaser orders goods, the Purchaser will be deemed to have accepted these terms and conditions. The only circumstances where any variation to these terms and conditions will apply is where a duly authorised representative of the Company has expressly agreed in writing to that variation.

### Non-waiver

27. If at any time the Company does not enforce any of these terms and conditions or grants the Purchaser time or other indulgence, the Company shall not be construed as having waived that term or condition, or its right to later enforce that or any other term or condition.

### Severability

28. Where any provision of these terms and conditions of sale is rendered void, unenforceable, or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision in these terms and conditions.

### Variation of Conditions

29. These terms and conditions may only be varied by the Company in its absolute discretion.

### Disputes

30. If any dispute should arise in relation to the supply of goods or services by the Company to the Purchaser either party may refer the matter to arbitration by an agreed independent arbitrator or, failing agreement on the arbitrator, to two arbitrators and an umpire appointed in accordance with the Arbitration Act 1908.