



I. Interpretation

In this Agreement the word "person" will include a corporation; "Company" will mean Optibelt Australia Pty Ltd ACN 133 422 009, and its agents, servants and employees and any of its subsidiaries as defined in section 9 of the Corporations Act 2001 (Cth) (if this subsidiary is named as the party making or accepting the order); "Purchaser" will mean and include the person to whom any quotation is made and will include any person acquiring goods or services from the Company or offering to contract with the Company on the following terms and conditions; words denoting the singular number include the plural and vice versa; words denoting any gender include all genders; and references to a person include a body corporate.

II. Offer and Acceptance

1. Any quotation made by the Company is not an offer to sell goods or to provide services and the Purchaser's order made as a result of any quotation will not bind the Company until accepted by the Company in writing or by the commencement of supply of goods or the provisions of services.
2. Unless otherwise agreed in writing all orders are subject to the Company responding within 30 days of receipt by the Company of the Purchaser's order, as to whether it accepts the order.

III. Inspection

Where goods are sold subject to inspection by the Purchaser:

1. Inspection will be at the Company's premises unless otherwise agreed
2. If the goods are to be delivered outside the metropolitan area of the state of purchase, the Purchaser must acknowledge satisfaction with inspection in writing prior to dispatch of the goods by the Company.

IV. Delivery

1. Any date quoted for delivery of goods is an estimate only unless otherwise agreed with the Purchaser and unless a guarantee has been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date, the Company will not be liable to the Purchaser for any loss or damage howsoever arising even if arising out of the negligence of the Company. The Purchaser will not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery or dispatch. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part will constitute delivery and the terms of payment will apply.
2. The Company reserves the right to deliver by instalments, and each instalment will be deemed to be a separate contract. Failure to deliver any instalment will not entitle the Purchaser to repudiate, rescind or terminate this Agreement. (c) Any quotation containing a provision to supply goods "ex stock subject to prior sales" is subject to fulfilment of prior orders at the date of receipt of the Purchaser's order.

V. Payment

1. Unless agreed in writing payment terms are 30 days from the end of the month in which the goods are delivered to the Purchaser, or the Purchaser's carrier or agent.
2. If the Company does not receive forwarding instructions sufficient to enable it to despatch the goods within 14 days of notification that they are ready, the Purchaser will be deemed to have taken delivery of the goods and the terms of payment will apply from that date. The Purchaser will be liable for storage charges

payable monthly on demand, storage being at the Purchaser's risk.

3. In the event where your overdue account is referred to a collection agency and/or law firm, you will be liable for all costs which would be incurred as if the debt is collected in full, including legal demand costs.

VI. Price

Unless otherwise expressly agreed in writing the price of the goods will be that price charged by the Company at the date of the Purchase Order plus the amount which the Company is required to pay on account of any excise, or sales tax or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any parts thereof, or the manufacture, use, sale or delivery thereof. Unless otherwise specified any prices quoted do not include transportation costs. Goods will be supplied ex works INCOTERMS 2010. The prices quoted are based on present day cost of labour and materials and will be subject to contract price adjustment with prior notice to the Purchaser. The Company reserves the right to increase the amount charged on any invoice up to the minimum charge as established by the Company as at the day of the invoice.

VII. Force Majeure

1. The Company will not be responsible for any delay in manufacture, failure to perform an obligation or delivery of the goods or the provision of services caused by, or in any way incidental to any act of God, war, terrorism, riot, insurrection, vandalism or sabotage, fires, breakages of machinery, strikes, a lockout, ban, limitation of work or other industrial disturbance or disputes, breakdown or damage to any property, law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application, arising as a consequence of natural or political events, acts of state, or arising out of any other unexpected or exceptional cause which is unforeseen, or any cause beyond the Company's reasonable control (Events). A Force Majeure as stipulated herein is also in case the Companies' suppliers have a Force Majeure.
2. The Company must notify the Purchaser as soon as practical of any anticipated delay or failure caused by an Event.
3. The performance of the Company's obligation is suspended for the period of delay caused by the Event.

VIII. Cancellation

Subject to any relevant applicable laws and without limiting the entitlement of a consumer to rescind a contract as provided in any such laws, any order may only be cancelled, varied or suspended with the written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any costs, expenses, charges incurred by the Company in preparation for and in the execution of an order which, without limitation, will include an amount equal to 50% of the net profits of the order for the Company had the order not been cancelled, varied or suspended.

IX. Quantities

Subject to any relevant applicable laws, no claim for shortage of delivery or shortfall or excess in capacity of performance of the goods of more or less than 5% of that ordered will be made by the Purchaser and in any event any claim will not exceed the invoiced unit price of the goods in respect of which the claim is made. Excess delivery of up to 5% of quantities ordered of the goods will be accepted by the Purchaser and payment made for this excess quantity.



X. Description and Specifications

1. Any description, illustration and other material contained in any catalogue, price list, brochure, leaflet or other descriptive material provided by or on behalf of the Company, is given by way of identification only and the use of such description, illustration or other material will not constitute a contract between the Company and the Purchaser as a sale by description.
2. The Purchaser warrants that any goods manufactured, constructed or supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will not infringe any third party's patent, trade mark or registered design or other intellectual property rights ("Third Party Rights"). The Purchaser irrevocably and unconditionally agrees to indemnify and keep indemnified the Company from and against any loss, damage, expense, cost or other liability suffered or incurred by the Company arising out of any allegation by a third party that the designs, drawings or specification supplied to the Company by or on behalf of the Purchaser infringes on the Third Party Rights.
3. Without waiving any legal requirements, it will not be a term of any agreement between the Company and the Purchaser that any goods manufactured, constructed or supplied by the Company by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgement of the Company for the fitness of any purpose of any goods so manufactured, constructed or supplied unless otherwise agreed.

XI. Access

In respect of any work done on the Purchaser's premises or elsewhere other than at the Company's premises it will, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances will be suitable to the Company failing which the Company will be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances.

XII. Waiver

The failure, delay or omissions by the Company to exercise a power or right conferred on the Company under this Agreement does not operate as a waiver of that right, and any single exercise of a power or right does not preclude another exercise of that power, or the exercise of another power or right under that Agreement.

XIII. Containers

Containers (which will include but will not be limited to stillages, formers and pallets) in or on which goods are delivered and for which a deposit charge is made, remain the property of the Company or the Company's supplier. On the return of the containers in the same good order and condition as they were supplied, the deposit will be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in such good order and condition will only be refunded in part having regard to their actual conditions. Containers will be deemed to be not returned by the Purchaser until received back to the same place as they were dispatched to the Purchaser.

XIV. Insolvency and Default

If: (a) the Purchaser defaults in any payment due under this Agreement; (b) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in Section 9 of the Corporations Act 2001 (Cth)) or similar official is appointed in respect of the Purchaser or any asset of the Purchaser; (c) a liquidator or provisional liquidator is appointed in respect of the Purchaser; (d) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or (e) a meeting is convened, or a resolution is passed, for the purpose of: (i) appointing a person referred to in clause 14(b) or (c); (ii) winding up the Purchaser; or (iii) proposing or implementing a scheme of arrangement in respect of the purchaser; (f) execution is levied upon the assets of the Purchaser for amounts in excess of \$1000 and is not satisfied within 7 days; or (g) the Purchaser ceases or threatens to cease conducting business or becomes unable to pay its debts as and when they fall due, then the Company may at its option withhold further deliveries or cancel this Agreement without prejudice to its rights under this Agreement, provided that the Company may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its right thereafter to rely on the happening thereafter of any of the events previously referred to or upon the continuation after such waiver of any state of affairs the subject of such waiver.

XV. Title to Goods

1. Title to the goods to be delivered will not pass to the Purchaser until payment in full for those goods, together with any other money owing by the Purchaser to the Company, has been received by the Company. The Purchaser, in the meantime, takes custody of the goods and retains them as the fiduciary agent and bailee of the Company. Until the date of final payment the Purchaser will store the goods so that they are clearly identified as the property of the Company. (b) If the Purchaser does not make payment in respect of specific goods, payment may be treated as having been made first in respect of goods which have passed out of the possession of the Purchaser, and then in relation to such goods as are still in the possession of the Purchaser, as the Company may elect. (c) Until the goods are paid for in full, the Purchaser (i) must protect and insure the goods; (ii) must separately store the goods from any other stock or products and clearly mark the goods as being the property of the Company; and (iii) may sell the goods in the ordinary course of business, but only in its capacity as fiduciary agent of the Company. All proceeds received directly or indirectly from any dealing with the goods are held in trust for the Company until the Purchaser's liability to the Company is discharged. (d) If the Purchaser uses any of the goods in a manufacturing process of its own or of a third party and sells the product of the manufacturing process, the Purchaser holds that part of the proceeds of the sale of any manufactured product as relates to the goods sold by the Company to the Purchaser and used in the manufacturing process on trust for the Company. (e) Without prejudice to any other rights of the Company, and in addition to any lien to which the Company may, by statute or otherwise, be entitled, the Company will in the event of the Purchaser's insolvency, bankruptcy or winding-up be entitled to a general lien on all property or goods belonging to the Purchaser in its possession (although such goods or some of them may have been paid for) for the unpaid price of any other goods sold and delivered to the Purchaser under this Agreement or any other arrangement, understanding or contract between the Purchaser and the Company. The Company will be entitled to access any premises of the Purchaser to inspect or take any property or goods belonging to the Company that have not been paid for in full by the Purchaser.



2. Title to the goods shall not be defective if the Purchaser is not prevented from using the goods in their normal manner at the Purchaser's place of business.
3. To the extent permitted by law, goods will only be considered to have a deficiency in title due to intellectual property rights if the Purchaser proves that the goods are not free from enforceable intellectual property rights or claims by third parties in Australia, at the time the risk to the goods passes.

XVI. Risk and Insurance

Unless otherwise agreed in writing all goods will be at the Purchaser's risk following delivery to the Purchaser, or the Purchaser's carrier or agent.

XVII. Intellectual Property

The parties acknowledge and agree that all intellectual property developed by the Company and embodied in or used in connection with the manufacture of the goods or which may be developed by the Company in connection with the manufacture of the goods (whether registered or unregistered) shall be and remains the property of the Company, and the Company acknowledges that the maintenance of, and management of any commercial negotiations in relation to, its intellectual property, is the responsibility of the Company. The term "intellectual property" means any intellectual or industrial property, including any patent, trade mark or service mark, copyright, registered design, trade secret or confidential information or any licence or other right to use or to grant the use of any of the foregoing or to be the registered proprietor or user of any of the foregoing.

XVIII. Exclusion of Liability and Damages

1. Except as expressly provided to the contrary in this arrangement (including paragraph (b)), all terms, conditions, warranties, undertakings, inducements, or representations whether express, implied, statutory or otherwise, relating in any way to any goods or services the subject of this Agreement, are excluded. To the extent permitted by law and without limiting the generality hereof, the Company will not be under any liability to the Purchaser in respect of any loss or damage including consequential loss or damage however caused which may be suffered or incurred or which may arise directly or indirectly in respect of any goods or services the subject of this Agreement or the failure or omission on the part of the Company to comply with its obligations under this Agreement. (b) Where any law implies in this Agreement any term, condition or warranty and that law avoids or prohibits provisions in a contract including or modifying the application or exercise of or any liability under such term, condition or warranty will be deemed to be included in this Agreement, provided that the liability of the company for any breach of such term, condition or warranty will be limited to any one or more of the following: (i) if the breach relates to goods: (A) the replacement of the goods or the supply of equivalent goods; (B) the repair of such goods; (C) the payment of the cost of replacing the goods or requiring equivalent goods; or (D) the payment of the cost of having the goods repaired; and (ii) if the breach relates to services: (A) the supplying of the services again; or (B) the payment of the cost of having the services supplied again. (c) The Purchaser

warrants that it has not relied on any representation made by the Company which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by the Company.

2. To the extent permitted by law, the Company will only be liable to pay damages to the Purchaser as a result of its breach of this agreement, and only to the extent that the loss caused by the breach was unavoidable and foreseeable to the Company, and where the Purchaser has taken steps to immediately mitigate the loss.
3. The Company is not liable for the conduct of suppliers or subcontractors, or to the extent that the Purchaser contributed to the loss or damage.
4. For the avoidance of double, the Company is not liable for loss of profit or damage to the reputation of the Purchaser.
5. The amount of damages for failure to deliver is limited to 0.5% [of the purchase price] for each full week of delay, up to a maximum of 5%, and the amount of damages for other breaches contemplated above by the Company is limited to 200% [of the purchase price] for the non-conforming part of the contract.

XIX. Governing Law and Jurisdiction

The laws applicable in the State of Victoria, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia and any courts competent to hear appeals from those courts.

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