

CPI T&Cs GOODS AND SERVICES - AUSTRALIA

THE FOLLOWING PROVISIONS APPLY TO ALL SALES AND SERVICES BY CPI

1. WARRANTY. Seller warrants to Buyer that if any product of its manufacture upon examination is found by a Seller's representative to be defective in either workmanship or material under normal use and service, the Seller at its option, will repair or replace same free of charge including lowest transportation charges but not the cost of installation or removal of any product or will refund the purchase price thereof, provided that Seller receives written claim from the Buyer specifying the defect within ninety (90) days from date of sales or service. Seller further warrants that if a service performed by it for Buyer in installation or repair of equipment or parts examination is found by a Seller's representative to be defective in workmanship under normal use and service, Seller, at its option, will repair or replace same free of charge including lowest transportation charges or will refund the purchase price thereof, provided that Seller receives a written claim from the Buyer specifying the defect within ninety (90) days from date of service. All warranties with respect to machinery, apparatus, accessories, materials or supplies not manufactured by Seller shall be limited to their respective warranties of the manufacturers thereof, if any, which Seller may be permitted to pass on to Buyer. The effects of corrosion, erosion, misuse, improper installation (if not by Seller), neglect and normal wear and tear are specifically excluded from Seller's warranty. **ALL OTHER WARRANTIES EXPRESSED AND IMPLIED INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. SUBJECT TO CLAUSE 12 (b) BELOW, THE FOREGOING EXPRESSES ALL OF SELLER'S OBLIGATIONS AND LIABILITIES WITH RESPECT TO PRODUCTS AND SERVICES FURNISHED BY IT HEREUNDER.** The liability of Seller, on any claim of any kind, whether based on warranty, contract, negligence or otherwise, for any loss or damage arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any equipment covered by or furnished under this contract shall, subject to clause 12(b) below, in no case exceed the purchase price, and upon expiration of the warranty period all such liability shall terminate. The foregoing shall, subject to clause 12(b) below, constitute the sole liability of Seller.

2. ORDER ACCEPTANCE.

a. All sales are limited to and expressly made conditional on Buyer's assent to these typed and printed terms and conditions of sale. In the event Buyer accepts any articles or services, such performance by Buyer shall be deemed to be upon all the terms and conditions herein contained. Any articles or services Seller sells or provides will be deemed accepted by Buyer upon delivery, in the case of articles, or performance, in the case of services. These typed and printed terms and conditions shall apply to the exclusion of all and any terms or conditions which are implied by trade, custom, practice or course of dealing.

b. Terms and conditions on the Buyer's order form, at variance with terms and conditions stated herein, are binding upon Seller only if specifically accepted by a duly authorized representative of Seller in writing.

c. Orders accepted by Seller cannot be cancelled by Buyer except with Seller's written consent and upon terms that will indemnify Seller against loss.

3. QUANTITY VARIANCES. Seller reserves the right to ship and Buyer agrees to accept an under-or-over-run of any quantity up to and including 10%.

4. SAMPLES. In the event samples are furnished to Buyer, Seller will not assume any liability in connection with the furnishing or use of these samples and there shall be no warranty covering such samples.

5. PRICE AND PAYMENT.

a. Unless otherwise stated, legal delivery and prices are F.O.B. Seller's plant and prices do not include transportation charges. The prices quoted are subject to variation without notice.

b. **Taxes Not Included in Price:** Except where otherwise prohibited by law, all G.S.T., sales, excise, use or similar taxes or charges which Seller may be required to pay or collect, shall be in addition to price stated and shall be paid by Buyer, unless valid exemption certificate is furnished therefor.

c. **Payment:** All accounts are payable within thirty (30) days of the goods being shipped or posted to the Buyer. Seller may demand payment in advance of shipment if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become, impaired. Interest shall accrue on any late payment at the rate of 1.5% per month (or such other rate allowable by law) from the due date for payment until the actual date of payment, after as well as before judgment.

d. **Payments Where Shipments are Delayed:** Where Buyer requests delay in shipment, Seller shall have the option of billing for goods when ready for shipment. If material is not ordered out within sixty (60) days after goods are ready, Seller will have the option of billing storage charges.

6. DELIVERY.

a. **Shipping Dates:** Shipping dates are approximate only and subject to change.

b. **Unforeseen Delays:** Seller shall not be liable in damages or otherwise for delays or failure in performance when caused by circumstances, of every nature and description and however arising, beyond Seller's reasonable control, including without limitation fire, acts of God, strikes, labor difficulties, acts of governmental or military authority, delays in transportation or in procuring materials. In the event that Seller is unable due to any such occurrence or otherwise, to fulfill its total commitments to all customers, Buyer agrees to accept, as full and complete performance by Seller, deliveries in accordance with such plan or proration as Seller may adopt.

c. **Packaging:** Seller will provide commercial packaging adequate, under normal conditions, to protect the goods in shipment and identify the contents. Should Buyer request any special packaging, it will be done at Buyer's expense.

d. **Routing:** All goods will be shipped via the most direct and economical means of transportation under the circumstances, as determined by the Seller.

e. **Claims:** Claims for loss or damage in transit must be entered and prosecuted by the Buyer.

7. RESERVATION OF TITLE. Subject to clause 5 (c) of these Conditions, title to any products delivered to the Buyer by the Seller will not pass to the Buyer until payment in full of all products and on all invoices is received from the Buyer including all monies owing to the Seller.

8. PERSONAL PROPERTY SECURITIES ACT. This clause will apply to any supply of goods made on or after the registration commencement time (as defined in the Personal Properties Securities Act 2009) ("PPSA").

a. If possession of the goods is transferred to the Buyer in the circumstances described in clause 7 of these Conditions and the Seller has not received full payment for the goods, the Buyer grants to the Seller at the time the Buyer takes possession, a purchase money security interest ("PMSI") (pursuant to the PPSA) in the goods and any proceeds from the goods.

b. The Seller will register a financing statement under the PPSA for its PMSI and the Buyer agrees to execute any documents, provide all necessary information and do anything else required to ensure the Seller obtains and maintains a perfected security interest as that term is defined by the PPSA, which will have priority over all other security interests in the goods.

c. The Buyer agrees to pay all costs and expenses incurred by the Seller in connection with the registration of the Seller's security interest and any enforcement or attempted enforcement and removal of that interest, or preservation of any right or interest under these Conditions or otherwise conferred on the Seller by the PPSA.

d. To the extent permitted under the PPSA, the Buyer agrees that nothing in sections 142 or 143 of the PPSA will apply to these Conditions or the security interest granted by the Buyer to the Seller, the Buyer agrees to waive their rights to any of the following provided for in the PPSA:

i) receive notice of removal of an accession under section 95;

ii) receive notice of an intention to seize collateral under section 123;

iii) receive notice of disposal of collateral under section 130;

iv) receive information under a statement of account under section 132(3)(d);

v) receive a statement of account if there is no disposal under section 132(4);

vi) receive a notice of retention of collateral under section 135;

vii) receive a notice of verification statement under section 157.9. **SPECIAL TOOLING.** All special tooling required to produce the goods shall remain the property of Seller unless specific arrangements are otherwise made. In any case, Seller's responsibility is limited to proper design, proper handling in manufacture and storage, and adequate insurance. The Buyer is responsible for costs resulting from: (1) requested alterations, (2) major repairs or replacement caused by normal wear, (3) additional costs incurred when new factors are introduced such as shorter lead time and/or increased rate delivery. The term "Special Tooling" shall include, but not be limited to, such items as molds, dies, forms, jigs, mandrels, fixture and other special equipment, except machinery which is required to produce the goods.

10. REJECTIONS AND RETURNS.

a. **Notification to Seller:** Buyer will be deemed to have inspected and accepted any shipment under this contract or performance of services, if within thirty (30) days after Buyer's receipt of goods or services, Buyer has not notified Seller in writing that such goods or services are rejected and the grounds therefore.

b. **Return of Goods:** No goods may be returned by Buyer for any reason without Seller's prior written approval.

11. INTELLECTUAL PROPERTY.

- a. Where the goods are manufactured by the Seller according to the Buyer's specifications, the Buyer warrants that the goods will not infringe the intellectual property rights of any third party. The Buyer indemnifies the Seller from any claim that goods manufactured by the Seller according to the Buyer's specifications infringe any third party's intellectual property rights.
- b. Where the goods are manufactured by the Seller according to the Seller's specifications, the Seller warrants that the goods will not infringe the intellectual property rights of any third party. The Seller indemnifies the Buyer from any claim that goods manufactured by the Seller according to the Seller's specifications infringe any third party's intellectual property rights.

12. GENERAL PROVISIONS.

- a. **Modifications of Contract:** It is agreed that there is no other contract in force between Buyer and Seller with respect to the subject matter hereof and no alteration shall be binding unless agreed to in writing by Seller. Failure of Seller to exercise any right or remedy hereunder shall not be deemed a waiver of such right, nor shall any lien or other right of Seller be lost or impaired by laches. The Buyer acknowledges that it has not relied upon any promise, statement or representation by or on behalf of the Seller which is not set out in the contract, and waives any right of action which it might otherwise have in respect of such representation, its sole remedy being for breach of contract.
- b. **Limitation of Liability:** Under no event shall the Seller, its officers, agents and employees be liable for special, incidental, collateral, indirect or consequential damages or lost profits. Nothing in these Conditions shall limit or exclude the Seller's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- c. **Choice of Law:** It is expressly agreed and understood that this agreement is governed by, and will be interpreted in accordance with, the laws of the State of Western Australia, Australia and the Buyer submits to the jurisdiction of the courts of Western Australia and the Commonwealth of Australia in respect of any dispute arising under this agreement.
- d. **Third Party Rights:** A person who is not a party to this agreement shall have no rights under or in connection with it.
- e. **Severance:** If any court or competent authority finds that any provision of the agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the agreement shall not be affected. If any invalid, unenforceable or illegal provision of the agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.