

TERMS AND CONDITIONS OF SALE

ABN 28 050 329 603

PART 1 - GENERAL

- 1.1 The following terms and conditions set out in this agreement (the Agreement) shall apply to all goods sold and services provided by Keech Castings Australia Pty Ltd and its associate and subsidiary companies herein referred to as the company ("the Company"). Such goods and services shall hereinafter be referred to the goods ("the Goods") and the services ("the Services").
- 1.2 These terms and conditions are the complete and exclusive statement of the agreement between the Company and the buyer (the Buyer) and supersede all other proposals, statements, conduct, representations and prior agreements, whether oral or written, between the parties in relation to the Goods sold, or the Services provided, by the Company to the Buyer. These terms and conditions may not be varied, amended, waived, altered, supplemented, modified or added to, without the express written agreement of the Company.
- 1.3 Trade custom and or trade usage is superseded by the Agreement and shall not be applicable in the interpretation of the Agreement.
- 1.4 If any of the provisions set out in the Agreement are determined to be void or unenforceable then that provision must be read down to avoid that result or if the provision cannot be read down then it must be severed and the rest of the Agreement will remain in full force and effect.
- 1.5 The failure of the Company to enforce any provision of the Agreement at any time or for any period of time will not be construed to be a waiver of such provisions or of the rights of the Company to enforce each and every provision of the Agreement. A waiver of a power or right shall be ineffective unless in writing and executed by the Company.
- 1.6 This contract will take effect and be construed in all respects in accordance with the laws of the State of Victoria, Australia. The parties irrevocably submit to the jurisdiction of the State of Victoria, Australia, for all proceedings arising in connection with this Agreement.
- 1.7 Manufacturing will be to standard 4738.1 . 2004.

PART 2 – ORDERS AND PAYMENT

- 2.1 No order accepted by the Company may be altered without the Company's written consent.
- 2.2 If the Buyer cancels an order, other than a statutory right, it shall pay to the Company any and all loss, damage and expense incurred by the Company in relation to the Goods or the Services.
- 2.3 The Company may decline, by written notice to the Buyer, any order, in whole or in part, at any time prior to delivery of the Goods or performance of the Services, in which case the Company shall be under no obligation in respect of the order.
- 2.4 The Buyer must establish an approved Irrevocable Confirmed Letter of Credit (CLOC) prior to any order with the Company being processed, or pay for the Goods or Services prior to despatch.
- 2.5 Payment is deemed to be received by the Company when the cash is received or when the proceeds or other methods of payment are credited and cleared to the Company's bank account.
- 2.6 Previous dealings between the Company and the Buyer shall not have any effect on the Agreement.

PART 3 - QUOTATION AND PRICE

- 3.1 The Buyer acknowledges that list prices and quoted prices are subject to change from time to time as determined by the Company. In the event that the Company notifies the Buyer in writing of the change in price after an order is made, the Buyer shall be deemed to have assented to the price change unless it notifies the Company in writing of its withdrawal of the order within seven (7) days of receiving notice of the price change, in which case clause 2.2 shall apply.
- 3.2 Unless otherwise specified by the Company, the quotation price does not include and the Buyer shall be responsible for, all charges including but not limited to; the insurance, packing, crating, delivery (whether by road, rail or air) and export of the Goods and any transaction taxes or withholding taxes, goods and services taxes or any other taxes payable in relation to the goods in existence or that may come into existence after the effective date of the Agreement.

PART 4 – TERMS of PAYMENT.

- 4.1 Terms of payment are strictly nett. Payment for the goods and services by a Buyer with current approved credit account with the Company shall be within thirty (30) days from date of invoice.
- 4.2 Terms of payment of the Buyer without an as yet approved (or cancelled) credit account will be strictly nett prior to despatch.

PART 5 - DELIVERY

- 5.1 The Buyer acknowledges that the quoted delivery times are estimates only and the Company shall not be liable for any loss incurred by the Buyer whatsoever by failure of the Company to deliver the Goods or Services by the quoted delivery time . The buyer shall not be relieved of any obligation to accept and pay for goods and services by reason of any delay in delivery or dispatch of the Goods or Services.
- 5.2 The Buyer acknowledges that it must inspect and check all Goods or Services upon delivery as soon as practicable. No claim by the Buyer for shortages of Goods may be made unless such claim is notified to the Company within forty-eight (48) hours of such inspection.
- 5.3 The Company will use all reasonable endeavours to rectify any shortages as soon as practicable after receiving notice but the Company will not incur any liability whatsoever for any liability incurred by the Buyer by reason of any such shortages.
- 5.4 The Buyer acknowledges that the Company will not be liable for any damage or loss due to unloading or packaging whatsoever.
- 5.5 The Buyer acknowledges that the Company will not be liable for any damage caused to property owned by the Buyer or any third party caused upon entering the premises of the Buyer or third party to deliver or remove any Goods or to provide any Services.

PART 6 - RETURNS

- 6.1 The Buyer acknowledges that all returns must be advised within 30 days of delivery and must be approved by the Company in its discretion.
- 6.2 The Buyer acknowledges that except as required by law the Company will be under no obligation to accept Goods returned for any reason.

PART 7 - WARRANTIES AND EXCLUSION

- 7.1 Except as expressly provided to the contrary in the Agreement, all representations, warranties, terms and conditions in relation to the Goods or Services, whether implied or express, are hereby excluded unless otherwise not permitted to be excluded by the law.
- 7.2 The Company warrants that it shall, for a period of twelve (12) months only from the invoice date, repair or replace at its option, any of the Goods shown to the Company's satisfaction to have been defective in material and workmanship. The Buyer acknowledges that this period shall run from the date of invoice and shall not recommence should any rectification works be undertaken in relation to the Goods or Services.
- 7.3 The Company shall not be subject to, nor incur, and the Buyer releases the Company from, any claim, action or liability for consequential loss or damage to persons or property, including loss of use of the goods, or of profits arising by reasons of delays, non delivery, defective materials or workmanship, negligence or any act, matter, conduct or thing done, permitted or omitted by the Company.
- 7.4 The Buyer acknowledges that if the Company is in breach of the Agreement then the Company's liability is strictly limited to:
- 7.4.1 for Goods or materials the cost of replacement of the defective Goods or materials as soon as reasonably practicable, or the repair of the defective Goods or materials or the repayment or allowance of the order price of the defective Goods or materials at the option of the Company;
- 7.4.2 for Services, to the provision of the Services again or payment of the cost of having the relevant Services provided again at the option of the Company.
- 7.5 The Buyer acknowledges that any statement made by the Company in relation to characteristics and potential applications of the Goods are made in good faith to assist the Buyer and the Company shall not be bound or held to those representations whatsoever.

PART 8 - PATTERNS AND TOOLS

- 8.1 The Buyer's pattern equipment, tools, dies, jigs, goods and property will be received and stored by the Company at the Buyer's own risk. Payment shall be due for all goods as provided in Clause 4 above notwithstanding the fact that they may be held in storage.
- 8.2 Title in all pattern equipment, tools, dies, jigs and equipment of any description used in relation to the Goods and the Services, except those provided by the Buyer but including those which are made or developed pursuant to a request by the Buyer, shall vest in the Company. The Company shall be under no obligation to disclose the methods or techniques used in relation to the goods or the services.

PART 9A – TITLE AND RELATED MATTERS

- 9.1 The legal and equitable title to the Goods shall only pass to the Buyer from the Company when the Buyer has paid in full for the Goods or Services provided and any other amounts that may remain outstanding by the Buyer to the Company whatsoever.
- 9.2 The Buyer acknowledges that until the Buyer has paid all that is owed to the Company on any Goods or Services supplied whatsoever, the Buyer holds the Goods as bailee for the Company and that a fiduciary relationship exists between the Company and the Buyer.
- 9.3 Until the Company receives full payment of all monies due to it from the Buyer, the Buyer shall keep the Goods separate and in good condition as a fiduciary of the Company, maintaining on all Buyer records and documentation that the Company remains the true owner of the Goods.
- 9.4 The Buyer acknowledges that the Company reserves its rights to call up and demand return of any Goods supplied to the Buyer, at the Buyers expense, should the Buyer fail to meet any amounts outstanding to the Company when they fall due. The Buyer also acknowledges that the Company maintains the right for the Company or any of its representatives to enter upon the premises of the Buyer to take possession of any Goods that the Company hold a legal or equitable title in.
- 9.5 If directed by the Company the Buyer may sell as fiduciary agent for the Company any Goods that the Company still hold legal or equitable title in and the proceeds of that sale shall be held on trust for the Company and shall not be mixed with the Buyer's general accounts.



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- 9.6 Should the Buyer use any Goods that the Company maintains a legal or equitable title in any manufacturing or construction process of its own manufacture or construct or any third party, then the Buyer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods on trust for the Company. Such part owing to the Company shall be calculated equal in dollar terms as to what the Buyer owes to the Company at the time of the receipt of any proceeds. The Buyer must keep such part of the proceeds owed to the Company on trust separate from the Buyer's general accounts.
- 9.7 The Buyer acknowledges that until such time as title in the Goods has passed to the Buyer they shall be responsible for the care and maintenance of the Goods and the Buyer shall insure the Goods against theft or any damage until such time as title in the Goods has passed to the Buyer.
- 9.8 The Buyer acknowledges that should the Goods become lost or damaged whilst in the care or custody of the Buyer or any third party then the Company may at its own discretion require the Buyer to promptly repair or replace the Goods as directed by the Company.
- 9.9 The Buyer acknowledges that risk in the Goods or Services passes to the Buyer upon delivery or upon title in the Goods passing to the Buyer, whichever may be earlier.

PART 9B – PERSONAL PROPERTY SECURITY ACT 2009 (Cth)

- 9.10 In this provision the following definition shall have the corresponding meanings:-
- (a) Financing Change Statement has the same meaning given to that term in the PPSA;
 - (b) Financing Statement means data registered (or that is to be registered) pursuant to an application for registration under Section 150 (1) of the PPSA;
 - (c) Personal Property Security Register has the same meaning given to that term pursuant to Section 147 of the PPSA;
 - (d) Security Agreement has the same meaning given to that term pursuant to Section 10 of the PPSA;
 - (e) Security Interest has the same meaning given to that term by operation of Section 12 of the PPSA;
 - (f) PPSA means the *Personal Property Security Act 2009 (Cth)* as amended and varied from time to time; and
 - (g) Collateral has the same meaning given to that term pursuant to Section 10 of the PPSA.
- 9.11 The Buyer agrees and acknowledges that in addition to being bound by the terms and conditions as herein contained that the Buyer also agrees that these terms and conditions:-
- (a) Constitute a Security Agreement for the purpose of the PPSA; and
 - (b) Create a Security Interest, within the meaning of the PPSA, in:-
 - (i) all Goods previously supplied by the Company (if any); and
 - (ii) all Goods that will be supplied in the future by the Company to the Buyer pursuant to these terms and conditions of sale.
- 9.12 The Buyer agrees to comply with all such reasonable requests as made by the Company from time to time and to provide all such information and to execute all such documentation as may be required by the Company from time to time in registering its Security Interest pursuant to clause 9.11 of this Agreement which includes but is not limited to:-
- (a) Properly signing any further document and/or providing any further information, which the Buyer warrants shall be complete, accurate and up to date in all respects, which the Company may reasonably require to:-
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Security Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct any defect in relation to any statement referred to under this clause 9.12.
- 9.13 The Buyer agrees to:-
- (a) fully indemnify and upon demand being made by the Company reimburse the Company for all expenses incurred in registering a Financing Statement or Financing Change Statement on the Personal Property Security Register established by the PPSA or releasing any Goods charged thereby;
 - (b) Not register a Financing Change Statement in respect of a Security Interest without the prior written consent of the Company;
 - (c) Not register or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of any other third party without the prior written consent of the Company; and
 - (d) Immediately advise the Company of any subsequent dealings with the Goods which would diminish any proceeds which the Company may be entitled to pursuant to the terms and conditions as set out in this Agreement.
- 9.14 The Buyer acknowledges that the Security Interest the subject of this Agreement provides for a Security Interest in Collateral that is not used predominantly for personal, domestic or household purposes and that the parties hereby agree to contract out of the following provisions as set out in the PPSA as set out as follows:-
- (a) The Buyer agrees and acknowledges that Sections 96 and 125 of the PPSA do not apply to the Security Agreement created by these terms and conditions;
 - (b) The Buyer hereby waives its rights to receive notices under Sections 95, 118, 121 (4), 130, 132 (3) (d) and 132 (4) of the PPSA.
 - (c) The Buyer waives its right as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.
- 9.15 The Buyer agrees and acknowledges that in the event that the Company is unable to register its Security Interest as created by operation of clause 9.11 of this Agreement and therefore either has its Security Interest deferred in priority, extinguished, subrogated to the right of the Buyer or any other third party of the Buyer and is unable to; to the priority in the Goods or register any part or all of the Company's Security Interest then the Buyer agrees to fully indemnify the Company against all loss or damages as sustained by the Company arising from or in connection with the Company being unable to register any part or all of its Security Interest.

PART 10 – DEFAULT

- 10.1 The Buyer shall be in default of the Agreement if:
- 10.1.1 the Buyer breaches any of the terms and conditions set out under this Agreement;
 - 10.1.2 payment for Goods or Services have not been received by the Company when payment falls due pursuant to Clause 4.
 - 10.1.3 should the Buyer be an individual they commit an act of bankruptcy or becomes insolvent under administration;
 - 10.1.4 should the Buyer be a body corporate the Buyer becomes an externally-administered body corporate or has an application for winding up filed against it;
 - 10.1.5 the Company in its discretion forms the view that the Buyer's creditworthiness or solvency has diminished.
- 10.2 Should the Buyer be in default pursuant to Clause 10.1 then the Company may:
- 10.2.1 Treat the Agreement with the Buyer as being repudiated and sue for breach of contract; and/or
 - 10.2.2 refuse to supply and Goods or Services to the Buyer; and/or
 - 10.2.3 immediately demand the return of any Goods held by the Buyer of which the Company has a legal or equitable interest in; and/or
 - 10.2.4 without notice to the Buyer make all monies owing to the Company immediately due and payable.

PART 11 – INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 11.1 The Buyer warrants to the Company that all information and/or documents provided by the Buyer or any third party authorised to supply such information to the Company are accurate and that the Company is entitled to use such information and/or documents for the purposes of the Agreement and that such use does not infringe any third party's intellectual property rights.
- 11.2 The Buyer indemnifies the Company against all claims, losses and damages incurred by the Company by reason of the Buyer or any third party supplying information and/or documentation that infringes against a third party's intellectual property rights.
- 11.3 The Buyer acknowledges that any confidential information disclosed to them from the Company shall not be disclosed to any third party unless the Buyer receives the prior written consent of the Company. This obligation of confidentiality survives the expiration of this Agreement or until such time as the information either enters the public domain, other than as a result of a breach of this clause, or disclosure is compelled by law.

PART 12 – FORCE MAJEURE

- 12.1 The Company is not liable for failure to perform the Agreement to the extent and for so long as its performance is prevented or delayed because of:
- 12.1.1 circumstances outside the Company's control; or
 - 12.1.2 causes or results in delay in, or prevention of, the performance by the Company of any of its obligations under the Agreement including but not limited to failure of the Company's machinery or the failure of a supplier to the Company.

PART 13 – MISCELLANEOUS

- 13.1 The Buyer shall indemnify the Company from, and against, all losses, expenses or liabilities incurred by the Company as a result of compliance by the Company with any instruction of the Buyer in relation to the Goods or the Services.

