

TERMS & CONDITIONS OF TRADE

To the fullest extent legally possible, all contracts, dealings and/or arrangements made between CAPS Australia Pty Ltd ACN 008 877 790 (“CAPS”) and any Customer are subject to the following Terms & Conditions of Trade (“these Terms”) unless otherwise agreed in writing.

1. Payment is to be by cash, cheque, bank cheque or Electronic Funds Transfer without deduction, within 7 days from date of invoice for capital items or within 30 days of date of invoice for all other products or services.

2. Interest will be charged on overdue accounts at prescribed under the Penalty Interest Rates Act 1983 (Vic) rate, plus an additional 2%.

3. Property: **a)** Property in products shall not pass until payment in full of all monies owed for those products or on any other basis by the Customer to CAPS who reserves the right to take possession & dispose of products as it sees fit at any time until full payment. **b)** The Customer grants permission to CAPS to enter any property where any product is in order to do so with such force as necessary. **c)** Immediately upon delivery the Customer accepts liability for the safe custody of the products. **d)** Upon sale or disposition of any products prior to full payment, the Customer agrees to deposit all proceeds in a separate bank account, agrees not to mix proceeds with any other monies & will forthwith account to CAPS therefore even if CAPS may have granted any credit facility &/or time to pay. **e)** Until payment in full the Customer agrees (i) to keep all products unpaid for as fiduciary for CAPS & store them in a manner showing CAPS as owner; (ii) only to sell products in the usual course of business on condition that the Customer holds all proceeds in trust for CAPS. (iii) sale on terms or for less than cost shall not be “in the usual course”. **f)** This clause 3 is not intended to create a charge & shall be read down to the extent necessary to avoid creating a charge. **g)** Products will be deemed at all times to be dealt with by the Customer on a “first in first out” basis. **h)** The Customer agrees that a certificate purporting to be signed by an officer of CAPS identifying products as unpaid for shall be conclusive evidence that the products have not been paid for & of CAPS' title thereto. **i)** Without derogating from CAPS' rights as a creditor or otherwise arising under these Terms, if the Customer uses or incorporates any product in any production, building, fabrication or construction (“Process”) which results in an entitlement of the Customer to receive payment for or as a result of the Process, the Customer agrees to hold such part of any payment received (and/or the corresponding book debt owed to the Customer) as is equal to the value of any Products used in the Process (calculated by reference to the amount invoiced by CAPS to the Customer for those products) upon trust for CAPS until payment in full all monies owed to CAPS

4. Limitation Of Liability: **a)** The Customer agrees to limit any claim to the cost of re-supply of equivalent products or the supply of services again **b)** CAPS shall not be liable for any claim for loss or expense which is made after 14 days from date of delivery or services (or at all once products have been unpacked, on-sold or otherwise used or applied) after which there shall be deemed unqualified acceptance. **c)** CAPS will not be liable for any contingent consequential direct or indirect special or punitive damage arising in any way, whether due to negligence or otherwise & the Customer acknowledges this limit of liability & agrees to limit any claim accordingly. **d)** No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied in any way extending to, relating to or binding upon CAPS, other than these Terms, is made or given.

5. Exclusions: **a)** Sample: Nothing between CAPS & the Customer shall be or be deemed a sale by sample **b)** If CAPS publishes material concerning its prices, anything so published which contradicts these Terms is excluded **c)** The Customer will rely on its own knowledge & expertise in selecting any product or services for any purpose **d)** Advice or assistance given for or on behalf of CAPS shall be accepted at the Customer's risk & shall not be or be deemed to be given as expert or adviser nor to have been relied upon by the Customer.

6. Placement Of Orders: **a)** if any dispute arises over any order (including any question of identity, authority or any telephone, facsimile, computer or e-mail order) the internal records of CAPS will be conclusive evidence of what was ordered **b)** each order placed shall be & be deemed to be a representation made by the Customer at the time that it is solvent & able to pay all of its debts as & when they fall due **c)** failure to pay in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation & the representations were unconscionable, misleading and deceptive **d)** with each order placed, the Customer shall inform CAPS of any material facts which would or might reasonably affect any decision to accept the order &/or grant credit in relation to it. Failure to do so shall create & be deemed to create an inequality of bargaining position, shall be & be deemed to be taking an unfair advantage of CAPS & to be unconscionable, misleading and deceptive.

7. Purchase Price: **a)** All sales are made by CAPS at its ruling price at time of delivery. **b)** any tax, government imposts, GST etc (“imposts”) will be paid by the Customer. **c)** CAPS' price lists exclude imposts unless expressly identified.

8. Delivery: The Customer acknowledges & agrees that **a)** CAPS accepts no responsibility or duty for delivery but may elect to arrange delivery at its discretion without any liability & at the Customer's costs & responsibility in all things **b)** CAPS reserves the right to charge for any delivery **c)** The Customer shall be deemed to have accepted delivery & liability for the products immediately CAPS notifies the Customer that any products are ready for collection or they are delivered to a carrier or to the Customer's business premises or site whether attended or not **d)** A certificate purporting to be signed

by an officer of CAPS confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket. **e)** CAPS will not be liable for delay, failure or inability to deliver any products or perform any services **f)** Once the Customer is notified products are ready for collection or delivery, the Customer agrees to pay all costs of CAPS in holdings products for the Customer **g)** The Customer shall provide reasonable and proper access to any site specified for deliver and Council approved crossing facilities **h)** the Customer agrees to pay all costs and expenses arising from frustrated or delays in delivery **i)** The Customer shall be responsible for any damage caused in the course of delivery whether to footpaths or to any other property. **j)** CAPS may unilaterally delay, cancel or suspend any delivery for any period or cancel any agreement for sale without any liability to any party.

9. Warranty: The warranty period shall commence from date of delivery to the customer. Caps warranty is limited to new equipment and is for a period of 12 months. For spare parts the warranty period is 90 days, and for service labour the warranty is 30 days. Any variation to these warranty periods must be agreed to by Caps in writing. Caps warranty is limited to defects resulting from faulty design, materials and workmanship (fair wear and tear excepted), but does not include freight charges, labour costs and travelling expenses incurred by Caps on warranty work.

Parts Items claimed to be defective are to be returned (at the customers risk and freight paid) to the nearest Caps branch or other authorised location. The warranty will be rendered null and void, should the correct operation and maintenance of the equipment (as directed in the operations manuals) not be followed.

Where the equipment supplied is not of Caps manufacture, Caps warranty is limited to that given by the manufacturer (specifics of which can be supplied upon request). Caps warranty does not cover consequential losses or damages resulting from failure of parts or equipment other than remedies available under Australia Consumer Law. If during the warranty period, the customer makes design changes or uses non-genuine replacement parts (without Caps authorisation), then the warranty becomes immediately null and void.

Australian Consumer Law: The benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods and services to which the warranty relates. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

10. Other Terms & Conditions: No terms & conditions sought to be imposed by the Customer upon CAPS shall apply, unless otherwise agreed in writing.

11. Products and Services: **a)** CAPS disclaims any responsibility or liability relating to any products or services **i)** made or performed to designs, drawings, specifications &/or procedures etc or with materials which are provided or approved by or on behalf of the Customer **ii)** utilised, stored, handled or maintained incorrectly or inappropriately **b)** the Customer agrees to check all products and services for compliance with all applicable standards & regulatory bodies before use, on-sale or application & to use or apply same in accordance with all applicable standards, regulations & guidelines, with all manufacturers and/or CAPS recommendations & directions as well as with sound commercial practice **c)** The Customer agrees to ensure that any use or on-sale of any products or services complies with all applicable Occupational Health and Safety laws, regulations etc., and practices **d)** All repairs, maintenance, service or works before or after sale will be performed by CAPS as the authorised agent of the Customer. **e)** The Customer agrees that all reports and records of CAPS relating to any repairs, maintenance, service or works to any allegedly faulty or malfunctioning product, whether owned by the Customer or requested by the Customer will be deemed to be prepared in anticipation of litigation and privileged **f)** The Customer agrees to be responsible for the proper supply of all services to any products and all necessary coolants, lubricants, electricity or supplies and the effective connection thereof to products for and after any installation, commissioning, repairs, maintenance, service or works.

12. Recovery Costs: The Customer will pay to CAPS the costs & expenses incurred by it or its solicitors, legal advisers, mercantile agents & any other parties acting on CAPS behalf in respect of anything instituted or being considered against the Customer whether for debt, possession of any products or otherwise as a result of default under any part of these Terms.

13. Attornment: To give effect to the Customer's obligation under these Terms, the Customer irrevocably appoints the solicitor of CAPS from time to time, as its attorney in all things.

14. Variation or cancellation of these Terms or any orders must be in writing.

15. Defaults. **a)** On any default or breach by the Customer of any part of these Terms or any dealing with or obligation to CAPS, CAPS may elect to retain all monies paid, cease further deliveries, recover from the Customer all loss of profits & take immediate possession of any product not paid for, without prejudice to any other of its rights & without liability to any party **b)** The Customer agrees not to commence or continue or permit to be commenced or continued any action against CAPS whilst the Customer is in default under any part of these Terms.

16. Severability: Any part of these Terms is capable of severance without effecting any other part of these Terms.

17. Customer Restructure: The Customer will notify CAPS in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship and of the sale of any part of its business within 7 days of any such change or sale.

18. Jurisdiction: The Customer agrees that all contracts made with CAPS shall be deemed to be made in the State/Territory nominated by CAPS & agrees to submit to the jurisdiction of the Courts in or nearest the Capital of that State/Territory.

19. Credit Limit: If CAPS grants a credit facility or nominates a credit limit, this is an indication of its intention at the time. CAPS can vary or withdraw any credit facility at any time, without liability to the Customer or any other party.

20. Waiver: If CAPS does not exercise any of its rights arising as a result of any breach of these Terms, this shall not be a waiver of any rights relating to any subsequent or other breach.

21. Notice: a) The Customer agrees that it will be deemed to have notice of any change to these Terms immediately they are adopted by CAPS whether or not the Customer has actual notice. b) The Customer shall be bound by any terms & conditions of sale adopted by CAPS immediately they are so adopted, notwithstanding any other purported, pre-existing or other terms & conditions.

22. Indemnity: The Customer indemnifies CAPS against any claim or loss arising from or related to any dealing between CAPS & the Customer or anything arising therefrom, including any liability under the Trade Practices Act, any applicable Occupational Health and Safety laws, regulations etc., or arising as a result of or subsequent to any breach of these Terms.

23. Security For Payment: The Customer agrees on request to charge in favour of CAPS; (i) by way of a fixed charge all its books of account, financial records, goodwill, documents of title & current & later acquired real property & intellectual property; & (ii) by way of a floating charge, the whole of the Customers other undertaking, property & assets, with payment of all monies owed to CAPS.

24. Partial Delivery/Forward Orders: If the Customer places a forward order the Customer agrees: a) to pay for so much of any order as is from time to time delivered by CAPS; b) no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

25. Force Majeur: CAPS will not be in default or in breach of any contract with the Customer by as a result of Force Majeur. Force Majeur means anything beyond the reasonable control of CAPS and includes any strike or lock-out.

26. Insolvency: a) If the Customer commits or is involved in any act of insolvency, this shall be deemed a default under these Terms b) An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

27. Abnormal payments: the Customer will pay an administration fee of 2% (calculated on the amount paid) on any payment made other than as provided in clause 1 hereof, which fee is agreed as the liquidated cost of processing the payment.

28. Pallets etc: The Customer will return all pallets and any other re-useable packaging or delivery material provided by CAPS and indemnifies CAPS for the full replacement cost of any which are not returned to CAPS promptly.

29. Ability to Supply: The Customer agrees that CAPS will not be liable for any delay in supply or availability of any products, and may allocate products as between Customers at its absolute discretion, if demand exceeds supply.

30. Amendments to Terms: The Customer agrees that the above terms will operate in their entirety and no amendments to these terms will be acknowledged unless approved in writing from the Managing Director or Chief Financial Officer.

Terms & Conditions of Trade - Rev 02 issued: 10th October 2017.