

Standard Terms & Conditions of Trade 2/2006

To the fullest extent legally possible, all dealings between Cortrols Pty Ltd ACN. 005 756 516 ("Cortrols ") & any Customer ("the Customer") relating to any products or services are subject to the following Terms & Conditions of Trade ("these Terms") unless otherwise agreed in writing.

Payments to be by cash, cheque, bank cheque or Electronic Funds Transfer within 30 days of date invoice, without deduction, unless otherwise agreed in writing.

Property: **a)** Property in products shall not pass to the Customer until payment in full of all monies owed to Cortrols on any basis (except as set out in sub-clause 3 e) hereof) **b)** Cortrols reserves the right to take possession & dispose of products as it sees fit at any time until full payment & the Customer grants permission to Cortrols to enter any property where any product is in order to do so to such force as necessary **c)** Immediately upon delivery the Customer accepts liability for the safe custody of products **d)** A certificate signed by an officer of Cortrols identifying Cortrols products & stating that monies are owing to Cortrols shall be conclusive evidence of Cortrols's title thereto **e)** on sale or disposition of products by the Customer prior to payment in full, the Customer agrees to assign the acquiring party of these Terms and that title will not pass to the acquiring party until Cortrols has been paid for the products & the Customer agrees to hold all proceeds Upon Trust for Cortrols in a separate bank account agrees not to mix proceeds with any other monies & will upon request immediately pay same to Cortrols even if Cortrols may have granted any credit facility &/or time to pay until full payment the Customer agrees (i) to keep all products as fiduciary & Bailee for Cortrols & return them in a manner which shows Cortrols as owner (ii) only to sell or dispose of products in the normal course of business and on the terms set out in sub-clause 2 e) hereof (iii) sale on terms, at cost less than cost shall not be "in the usual course" **g)** Clause 3 is not intended to create a charge & shall be read down to the extent necessary to avoid being a charge **h)** if the Customer uses or incorporates any products in any production, process or construction or combines them with anything to create a finished or combined new thing for disposition by the Customer, then upon such disposition or to payment in full of all monies owing, the Customer agrees to hold such part of the proceeds thereof (& until payment is received by the Customer, that part of any applicable book debt of the Customer) as equals the costs of the products used &/or incorporated therein (at the prices invoiced by Cortrols to the Customer for them) Upon Trust for Cortrols until payment in full of all monies owing to Cortrols.

Limitation Of Liability: **a)** The Customer will limit any claim upon Cortrols relating to products, to the cost of replacement of products or the supply of equivalent products & relating to services, to the extent of having services supplied again **b)** Cortrols shall not be liable for any claim arising after 7 days from date of delivery of products or performance of services (or at all once products have been packed, modified, on-sold or otherwise used or applied) after which there shall be deemed to be qualified acceptance **c)** Cortrols will not be liable in any way for any contingent consequential direct or indirect special or punitive damage arising whether due to Cortrols's negligence or otherwise & the Customer acknowledges this limit of liability & agrees to limit any claim accordingly **d)** No other termination agreement warranty representation or understanding whether express or implied in any way ending to or otherwise relating to or binding upon Cortrols is made or given **e)** Cortrols will not be liable for any claim relating to any alleged fault or defect caused or contributed to by the Customer or its 3rd party.

Insurance: The Customer agrees to insure Cortrols from any liability claim or damage arising in any way; whether directly or indirectly under **a)** part VA of the Trade Practices Act or **b)** these Terms, which insurance will note the insured interest of Cortrols.

On-Sale: The Customer agrees that upon on-sale or disposition of any products, to inform every 3rd party directly or indirectly involved (including any Owner, Builder, Project Manager or Head Contractor) of these Terms & in particular of clauses 3, 4 & 28.

Placement Of Orders: **a)** if any dispute arises concerning any order (including any measurement quantity identity or authority or any phone fax e-mail or computer generated order) the internal records of Cortrols 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 referred to in 7.b) & that the representations were unconscionable, misleading & deceptive **d)** when any order is placed, the Customer shall inform Cortrols of any material facts which could or might reasonably affect the commercial decision by Cortrols to accept the order &/or grant credit in relation thereto. Any failure to do so shall create & be deemed to create an inequality of bargaining position shall constitute & be deemed to constitute the taking of an unfair advantage of Cortrols & to be unconscionable, misleading & deceptive.

Delivery & Installation: **a)** Cortrols accepts no responsibility for delivery or installation unless expressly forming part of a written quote or tender which has been accepted in writing but may elect to arrange delivery &/or install at its discretion & without any liability & at the Customer's costs & responsibility in all things **b)** Cortrols reserves the right to charge for any delivery or installation **c)** Cortrols will not be liable for delay, failure or inability to deliver or install **c)** Frustrated Delivery &/or Installation: If for any reason outside the control of Cortrols, the time spent in attempting delivery &/or installation exceeds 30 minutes more than fairly estimated by Cortrols or requires more than one attempt, the Customer will pay all additional costs relating thereto together with a loading of 10% to cover administration costs.

Indemnity: The Customer indemnifies Cortrols against any claim, loss or costs arising from or stated in any way to any dealing between Cortrols & the Customer or anything arising there from or as a result of any breach of these Terms or the Trade Practices Act.

Exclusions: **a)** No dealing with the Customer shall be or be deemed to be a sale by sample or description **b)** If Cortrols publishes material about its products & prices, anything which is incompatible with these Terms is expressly excluded **c)** the Customer will rely on its own knowledge & expertise in choosing any product for any purpose **d)** Any advice or assistance given for or on behalf of Cortrols shall be accepted at the Customer's risk & shall not be or be deemed given as expert or adviser nor to be relied upon.

Default or breach by the Customer of these Terms or in any dealings with Cortrols will entitle Cortrols to retain all monies call-up all monies owing whether currently due or not cease further deliveries, commissioning and/or installation and to decommission any products or system incorporating any products & recover from the Customer all loss of profits without prejudice to any other rights under these terms or generally at law.

11. Interest is payable on overdue accounts at Cortrols's election at the rate prescribed under the Penalty Interest Rates Act 1983 (Vic) plus an additional 3%.

12. Severability: Any part of these Terms can be severed without affecting any other part.

13. Products: **a)** Cortrols disclaims any responsibility or liability relating to products **i)** modified to designs drawings specifications or measurements etc or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer **ii)** stored handled or used incorrectly or inappropriately **b)** The Customer agrees to check all products and components for compliance with all applicable Standards & regulatory bodies before use, on-sale or application & only to use on-sell or apply products in accordance therewith & with any manufacturer's or Cortrols's recommendations & directions as well as sound commercial practice.

14. Other Terms & Conditions & Notice: No terms &/or conditions sought to be imposed by the Customer upon Cortrols shall apply unless agreed in writing by Cortrols.

15. Recovery Costs: The Customer will pay all costs & expenses of Cortrols, its legal advisers, mercantile agents & others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms or of any dealings with Cortrols.

16. Attornment: To give effect to its obligations arising under in these Terms the Customer hereby irrevocably appoints any solicitor for Cortrols from time to time, as its attorney.

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

18. Jurisdiction: All contracts made with Cortrols shall be deemed to be made in Victoria & the parties submit to the jurisdiction of the appropriate Courts in or nearest Melbourne.

19. Credit Limit: Cortrols can vary or withdraw any credit facility or limit it at any time at its discretion & without any liability to the Customer or any other party.

20. Waiver: If Cortrols elects not to exercise any rights arising as a result of breach of these Terms it shall not constitute a waiver of any rights relating to any subsequent or other breach.

21. Notice: The Customer will be deemed to have notice of any change to these Terms, immediately they are adopted by Cortrols in its business.

22. Security For Payment: The Customer **a)** agrees on written request to charge in favour of Cortrols (i) by way of a fixed charge, all its books of account goodwill documents of title & current & later acquired real & intellectual property & (ii) by way of a floating charge the whole of the Customer's other undertaking property & assets with payment of all monies owed to Cortrols **b)** grants a lien to Cortrols over any of its property in the possession or control of Cortrols for any monies due & owing to Cortrols under these Terms or otherwise.

23. Force Majeure: Cortrols will not be in default or breach of any dealing with the Customer as a result of Force Majeure (meaning anything beyond Cortrols's reasonable control).

24. Patents etc : If Cortrols utilises any design patent or intellectual property or follows any instruction provided by or on behalf of the Customer the Customer indemnifies Cortrols against any claim proceeding damages or liability for any loss cost or expense arising as a result whether for any alleged infringement of any intellectual property or otherwise.

25. Specifications: **a)** Any illustration drawing or specification supplied by Cortrols ("Specs") are drafts & approximates **b)** Any tangible or intellectual property rights in Specs shall remain the property of Cortrols & may be recalled at any time **c)** Specs will be treated at all times as confidential & not made use of without the prior written consent of Cortrols.

26. Cortrols not Manufacturer: The Customer **a)** acknowledges that Cortrols does not manufacture products & Cortrols accepts no liability in relation to the manufacture of any products & gives no warranty of merchantability, suitability or fitness for any purpose of any products **b)** agrees that any dispute concerning any products will not be with or through Cortrols, but will be direct with the manufacturer &/or designer thereof.

27. Commissioning & Decommissioning: The Customer agrees that until payment in full of all monies owing to Cortrols by the Customer **a)** Cortrols has no obligation to complete installation nor to commission any products or system incorporating any products **b)** Cortrols is authorised to decommission any products or system incorporating any products and may enter any premises in the name of the Customer in order to do so.

28. Price: **a)** Cortrols quoted or tendered prices are fixed for 60 days unless otherwise specified in the applicable quote or tender. After 60 days (or any longer period specified) prices will be at Cortrols ruling price at the time of delivery &/or installation (whichever is the later) **b)** government imposts & GST will be additional to any price quoted unless specified otherwise.

29. Quotes/Tenders: **a)** All quotes and Tenders incorporate & are deemed to incorporate these Terms unless expressly excluded in writing **b)** nothing in any quote or tender or anything written or said by or on behalf of Cortrols will be or be deemed a representation of compliance with any specification or requirement of the Customer or any third party directly or indirectly involved (including any Owner, Builder, Project Manager or Head Contractor).

30. Non-conforming Quotes and/or Tenders may be submitted if Cortrols considers the specifications or requirements of the Customer or any third party directly or indirectly involved (including any Owner, Builder, Project Manager or Head Contractor) otherwise incapable of achievement & the provisions of these Terms will apply.

31. Training &/or Instructions: If Cortrols conducts or arranges any training or instruction (whether written or personally) it will do so as agent for the Customer in all things.

32. Maintenance: Cortrols does not provide any maintenance for any products or software except by separate written agreement specific thereto & then only at the address & on the terms separately agreed & these Terms will be & be deemed incorporated therein

33. Variation or cancellation of any order dealing or arrangement must be in writing.

34. Building & Construction Industry Security for Payment Act ("Act"): If the Act (or its equivalent or any substitute) applies, the Customer must comply with the Act in all respects and **a)** any invoice or claim by Cortrols will be deemed a proper progress payment claim under the Act and satisfactory to the Customer in all respects including as to the value of the work carried out **b)** the Customer will determine the value of each such deemed claim within 10 days of receipt thereof and issue a payment schedule to Cortrols **c)** The Customer will pay the amount of each payment schedule not later than 14 days thereafter subject only to any lawful and permitted deductions under the Act **d)** If the Customer gives or receives any Notice under the Act, it must immediately provide a copy to Cortrols **e)** The Customer agrees that the Authorised Nominating Authority under the Act shall be any person authorised by the Institute of Australian Arbitrators and Mediators to so nominate a person or persons to adjudicate any matter.