

# TERMS AND CONDITIONS FOR SUPPLY BY MOOD®

## 1. SCOPE

These are the terms and conditions upon which Mood® (hereafter referred to as the "Supplier") agrees to supply goods and services.

## 2. ACCEPTANCE

- (a) Any stipulations, terms or conditions contained in the Customer's order form which conflicts with any of the terms and conditions hereof will be inapplicable to any order placed with the Supplier unless agreed upon in writing by the Supplier prior to delivery of the Supplier's products provided that this clause shall have no application where the goods ordered are used for personal, domestic or household use (unless the goods are ordered for the purposes of resale in which case this clause shall apply).
- (b) Any person who accepts the quotation warrants that for all purposes he is the duly authorised agent of the Customer and if such person is not the duly authorised agent of the Customer then in consideration of the Supplier performing its obligation under this contract he shall be deemed to be the Customer and be bound by the terms and conditions of this contract.

## 3. QUOTATIONS

- (a) A quotation shall be open for acceptance by a Customer for a period of 30 days from the date of quotation unless such quotation is previously withdrawn by notice in writing.
- (b) Prices remain firm for 60 days from date of acceptance of quotation. Thereafter, prices are subject to review by the Supplier.
- (c) Sales Tax, Goods & Services Tax and any other State or Federal Tax, or cartage are not included in the quotation unless specifically mentioned.

## 4. ORDERS

- (a) The Customer acknowledges carefully checking all details of the goods as shown on the quotation and/or order form in relation to quantities, description, sizes, dimensions, colour, glass (if not clear float) and accessories.
- (b) Unless the Supplier agrees otherwise, orders must be signed by the Customer or his duly authorised agent, stating full details in writing and shall be delivered to the Supplier at the time of acceptance of the quotation.
- (c) All variations to an order must be in writing and include agreed value to be added to or deducted from the original order value. In the event of a Customer making any variation to an order after production has commenced, he shall pay for all work carried out to the point of alteration.
- (d) In the event of the Customer's cancellation of an order the Customer shall be liable to pay for work done in pursuance to the order up to the date of such cancellation and to pay Supplier compensation for losses incurred by it as a result of such cancellation.

## 5. DELIVERY

- (a) The risk in the goods shall pass to the Customer on delivery to the site nominated by the Customer, provided delivery is between 7.00 a.m. and 4.00 p.m. Monday to Friday or such other times as the Customer and the Supplier agree. If at the time of such delivery the Customer is absent from the site, delivery shall be deemed to have been made at the place and time and the date certified by the carrier of the goods.
- (b) Any times or dates quoted for delivery and installation are estimated as accurately as possible, but in the absence of any specific representations, are not guaranteed nor is any such estimate of essence to or a condition of the contract. No responsibility for loss, damage or delay from any of the above causes is accepted by the Supplier and in such cases the Customer is not entitled to any compensation of any nature. The Customer shall not be relieved from any obligation to accept or pay for goods by reason of any delay in delivery or despatch.
- (c) Protection and insurance of the goods delivered shall not be the responsibility of the Supplier from the time of delivery.

## 6. TITLE

- (a) Notwithstanding that risk in the goods may pass to the Customer, property in and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer (regardless of any credit period) have been paid for in full and until then:
  - (i) the Customer will hold the goods as fiduciary and agent for the Supplier;
  - (ii) the goods must be stored separately and in a manner enabling them to be identified and cross referenced to particular invoices and the Customer acknowledges that if it should mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product; and
  - (iii) the Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the relevant goods.

## 7. WARRANTY

- (a) The benefits conferred by guarantee herein are in addition to all other rights and remedies in respect of the goods or services of which a consumer has under the Trade Practices Act (the "Act") and similar State and Territory laws.
- (b) The Supplier guarantees the product(s) supplied against defects arising from faulty workmanship or materials for a period of 12 months from date of delivery and guarantees that services will be rendered with due care and skill.
- (c) Conditional upon the goods or services provided by the Supplier not being of a kind ordinarily acquired for personal, domestic or household use or consumption and subject to any specific warranty or condition set forth herein and any warranty as to the title implied by Section 69 of the Act and provided that in the circumstances it is fair and reasonable the liability of the Company is limited.

- (a) In the case of goods, any one of the following as determined by the Supplier:-
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the repair of goods; or
  - (iii) the refund of moneys paid;
- (b) In the case of services, one of the following as determined by the Supplier:-
  - (i) the supplying of the services again; or
  - (ii) the refund of moneys paid.

If the goods or services supplied are not in accordance with the warranties then the Customer will advise the Supplier in writing to replace or repair the goods, resupply the services or make the payment as the case may be.

- (d) To the full extent permitted by law, but subject always to the above terms, all conditions and warranties not expressly contained herein are hereby expressly negated and excluded.
- (e) Subject to this paragraph 7 above, the Supplier's liability for any breach of contract or for any negligent act or omission is limited to the cost of replacement of the goods or supply of equivalent goods and shall not extend to consequential loss, loss of profits or any liability for damage to property or death of or injury to persons howsoever caused.

## 8. CREDIT CONDITIONS

- (a) Unless otherwise agreed in writing, a Customer shall pay a deposit equal to 50% of the net order value upon placement of the order and the balance no later than five (5) business days prior to the agreed delivery date.
- (b) Failure to comply with the above terms of payment will without further notice constitute a breach of contract and the Supplier may treat the whole contract as repudiated, and act accordingly, the Supplier may, without prejudice to any other rights it may have, refuse to supply or deliver further products to the Customer detailed in the quotation or otherwise until such time as the Customer has remedied the default.
- (c) Should payment remain outstanding beyond the Supplier payment terms as outlined in this invoice, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at 1.5% per month.
- (d) A statement in writing made up from the books of the Supplier and signed by any manager or accountant of the Supplier as to moneys owing in respect of the account of the Customer at the date mentioned shall be prima facie evidence that such money is so owing.
- (e) Should payment remain outstanding beyond the Supplier payment terms the Customer is liable for all costs including legal costs (on a Solicitor/Own Client basis) and mercantile agents fees incurred by the Supplier in recovering the amount outstanding.

## 9. ASSIGNMENT

This contract cannot be assigned or transferred to any third party without the Supplier's written consent.

## 10. CONFIDENTIALITY

- (a) The Customer acknowledges that the quotation and all information with respect to the goods including all specifications and technical data (the "Confidential Information") is confidential and the property of the Supplier.
- (b) The Customer undertakes to keep the Confidential Information confidential and not to make any disclosure of the Confidential Information to or in the presence of any person nor to use the Confidential Information except solely for the purpose contemplated in this Agreement unless such further use of the Confidential Information is specifically authorised in writing by the Supplier.
- (c) Except as expressly provided, this Agreement shall not be construed as granting or confirming either expressly or impliedly, any rights, licence or relationships by the furnishing of Confidential Information pursuant to this Agreement.
- (d) The Customer shall use every reasonable endeavour to ensure that its employees and agents having access to the Confidential Information shall observe the obligations contained in this clause.
- (e) The Customer acknowledges that the Confidential Information is valuable to the Supplier and that a breach of this clause will cause irreparable harm and that the Supplier will not have an adequate remedy in damages alone in the event that this clause is breached. The Customer acknowledges that a breach of this clause will entitle the Supplier to seek injunctive relief in addition to any other relief it may have whether at law, equity or otherwise.
- (f) The Customer acknowledges that the obligations it undertakes in this clause will survive this Agreement and will bind the Customer until all the Confidential Information is in the public domain.

## 11. WAIVER OF CONDITIONS

Failure by the Supplier to insist upon performance of any term warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the Supplier may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

Accepted subject to the above conditions for sale.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ .

SIGNATURE .....

COMPANY NAME: .....

CONTRACT VALUE: .....