

GENERAL TERMS AND CONDITIONS OF SALE

1. Sale of Products/Scope.

The sale of products or services (collectively, "Products") from TriMas Corporation, its subsidiaries and divisions and any entity controlling, controlled by, or under common control with it (collectively, "Seller") to buyer, its subsidiaries and divisions, and any entity controlling, controlled by, or under common control with it (collectively, "Buyer") will be governed by these general terms and conditions of sale (the "Terms").

The Terms are the only agreement binding on Seller and the Terms expressly supersede and exclude the application of Buyer's general terms of purchase as well as any documents, quotations, or any other agreements, whether in writing or oral, issued previously, now or in the future by Buyer in relation to the Products, unless specifically agreed upon in writing by Seller.

No course of dealing or usage of trade is applicable unless expressly incorporated in the Terms.

Any clerical error may be corrected by Seller.

Buyer's written acknowledgment, issuance of a Purchase Order, acceptance of an offer of sale by Seller, delivery of Products or payment for the Products, whichever occurs first, is acceptance of these Terms by Buyer.

Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the Terms is rejected. All such proposals are considered a material alteration of the Terms, and the additional and different terms will not become a part of the contract between the parties.

2. Price/Payment.

The purchase price for the Products will be the price for the Products in effect at the time of shipment, unless otherwise agreed upon in writing by the parties. Seller may change prices without notice. Prices contained in Seller issued quotations or proposals expire 30 days from the date of quotation and are subject to change or termination by notice during this period.

Buyer will pay all taxes (including GST), duties, levies, excises or other government charges (foreign, national, state or local) in relation to the Products (except taxes on or measured by net income) with respect to the production, sale or transportation of any Products, except where the law expressly provides otherwise. Unless specified otherwise, prices quoted do not include GST.

Unless otherwise agreed to in writing by Seller, Buyer will pay all freight, storage, handling, packaging, insurance or similar charges.

Seller may require Buyer to pay a deposit or provide an irrevocable letter of credit in favour of Seller in an amount determined by Seller and from a bank approved by Seller payable on presentation of commercial invoice, packing list or a bill of lading indicating delivery to carrier.

Unless otherwise agreed to in writing by Seller, invoices are payable upon receipt in [**US funds**], in no event greater than 30 days from date of invoice, subject to credit approval.

All payments due to Seller may be accelerated immediately upon Buyer's failure to pay invoices as required and further shipments of Products may be suspended or cancelled at

Seller's discretion. Interest may be charged by Seller on unpaid amounts at the highest rate allowable by law. Buyer agrees to indemnify and hold harmless Seller from any and all legal fees and costs which may be required to collect any overdue balances.

Seller may offset or recoup any amounts owed by Seller to Buyer against any amounts owed by Buyer to Seller. Buyer waives all right of offset and will pay all amounts owed to Seller regardless of any claim asserted by Buyer.

Seller may change payment terms at any time, in its sole discretion.

3. **Forecasts.**

A. **Seller Forecasts.**

Seller may provide Buyer with estimates or forecasts of its capacity for the manufacture or delivery of Products. Buyer acknowledges that any estimates or forecasts are provided for estimation of output only and, like any other forward looking projections, are based on a number of economic and business factors, variables and assumptions, some or all of which are subject to change. Seller makes no representation, warranty, guarantee or commitment, express or implied, regarding any estimates or forecasts provided to Buyer, including the accuracy or completeness of the estimates or forecasts.

B. **Buyer Forecasts.**

If Buyer provides Seller with a forecast of future requirements, Buyer acknowledges that Seller is entitled to rely on the accuracy of such forecast(s) for the purpose of ordering raw materials and arranging its resources so as to be able to meet those forecast requirements.

In the event that Buyer's forecast is materially inaccurate, Seller shall be entitled to invoice Buyer for all costs, expenses or losses which result from Seller having relied on the inaccurate forecast. Seller shall be entitled to invoice Buyer for all finished Products made to forecast and not ordered by Buyer within 3 months of manufacture. All invoices are subject to these Terms.

4. **Allocation.**

In no event shall Seller be required to sell a greater number of Products than it shall have available or allocated for such purposes. If Seller is unable to supply the total demands for any of the Products, Seller shall have the right to allocate its available supply among its customers in such manner as Seller shall deem to be fair and equitable.

In no event shall Seller be obligated to purchase Products from others in order to enable it to deliver the Products to Buyer.

5. **Technical Information.**

All specifications, drawings, schematics, tests, designs, inventions, engineering notices, financial information, technical data, samples, prototypes, models and/or equipment ("Technical Information") supplied by Seller, directly or indirectly, will remain Seller's property and will be held in confidence by Buyer. Technical Information will not be reproduced, used or disclosed to others by Buyer without Seller's prior written consent, and will be returned to Seller upon demand or upon completion by Seller of its obligations under the Terms. Buyer will disclose Technical Information only to employees of Buyer who have a need to know and on the condition that those employees are bound by obligations of confidentiality equivalent to those contained in this Section 5.

Any information that Buyer discloses to Seller with respect to the design, manufacture, sale or use of Products is disclosed as part of the consideration for these Terms, and Buyer will not assert any claim against Seller by reason of Seller's use of such information, which is not limited in any manner.

Seller will own all right, title and interest in any idea, invention, concept, discovery, work of authorship, patent, copyright, trademark, trade secret, know-how or other intellectual property ("Intellectual Property") developed by Buyer or Seller and related, directly or indirectly, to the Products under these Terms, whether or not Seller charges for the Intellectual Property.

Buyer will assist Seller in perfecting its right, title and interest in the Intellectual Property and will execute and deliver all documents reasonably requested by Seller in order to perfect, register or enforce the same. Seller will reimburse Buyer any associated costs incurred by Buyer in providing such assistance.

Without obtaining the prior written consent of Seller, Buyer will not advertise or publish the fact that Buyer has purchased Products from Seller, or use any trademarks or trade names of Seller in Buyer's advertising or promotional materials. Buyer may not resell the Products under any brand name other than Seller's. In the event of Buyer's breach of this provision, Seller will have the right, among all other remedies, to cancel the undelivered portion of any Products and accelerate immediately all amounts due to Seller prior to cancellation.

Buyer will indemnify Seller from all expenses and damages (including legal fees) related to a breach of this Section 5.

6. **Licenses.**

In the absence of a separate license agreement between Buyer and Seller (whether shrink wrap, click through or otherwise), the following apply:

- a) Title to all licensed Products or portion of Products (software, manuals, firmware, storage media or otherwise) (collectively, "Licensed Products") remains with Seller. Buyer agrees not to reverse engineer, disassemble, decompile, or modify any Licensed Product and Buyer irrevocably grants to Seller all right, title and interest in any modifications to a Licensed Product.
- b) Seller grants Buyer a non-exclusive license for internal use and to make one back-up copy for archival purposes only, provided that copyright notices and other proprietary legends remain on such copy.
- c) For Licensed Products imbedded in Products, Seller grants Buyer a non-exclusive right to use such Licensed Products in conjunction with the Product. If Buyer is in default of any of the terms and conditions of these Terms, the rights granted in this Section 6 will terminate immediately without notice of any kind. Upon termination, Buyer will return to Seller all Licensed Products that are subject to return.

7. **Changes to Products.**

At its sole discretion and without giving prior written notice to Buyer, Seller may make changes to the Products in accordance with Buyer's instructions or requirements or as Seller deems necessary, including changes to the design, colour, performance, dimensions and compositions of the Products.

8. **Packaging and Delivery.**

- a) Buyer must not alter or distort, in part or in full, the packaging, markings, numbers, or consistency of the Products as they exist at the time of delivery, or sell the Products in other than their original, unaltered packaging or use those which may have been altered or distorted in any way.
- b) Without prejudice to the above, Buyer is responsible for ensuring that the Products comply with the rules and standards governing the labelling and marking of products in force in the country of import.
- c) All export and import duties, fees, permits, licenses, and equivalent authorisations for Products delivered outside of the United States will be the responsibility of Buyer.
- d) Products will be delivered F.O.B. Seller's facility.
- e) Seller may elect to deliver the Product in instalments. Each instalment will be considered a separate sale and Buyer will pay for each instalment in accordance with these Terms notwithstanding any late delivery or non-delivery of any other lot. Any Products considered "back-ordered" will be considered an instalment.
- f) Risk in the Products passes to Buyer at the time of delivery.
- g) While Seller will use all reasonable endeavours to deliver by the date specified in the Purchase Order, it does not guarantee delivery on that date and is not liable for any Loss resulting from late or early delivery. If Seller allows Buyer to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the Products, as advised by Seller to Buyer. Seller may revise delivery schedules at any time without liability and at Buyer's cost. If no date for delivery has been specified, then the Products shall be supplied to Buyer and Buyer shall receive the Products as soon as practicable after the Purchase Order has been accepted by Seller and the Products have been manufactured.
- h) If Buyer is unable or unwilling to accept delivery on or before the nominated delivery date, or if no delivery date is nominated and Buyer is unable to accept delivery when Seller gives notice that the Products are available for delivery, then Seller will hold the Products in stock for 45 days after which time it may, at its discretion:
 - i) continue to hold the Products and charge Buyer for storage;
 - ii) invoice Buyer and deliver the Products in accordance with prior arrangements, notwithstanding that Buyer's representative or agent is not present or is unwilling to accept the Products; or
 - iii) treat the Terms as having been repudiated by Buyer and invoice Buyer for the full contract price for the Products and any other costs incurred by Seller less any amounts received by Seller from a bona fide sale of the Products to a third party.
- i) If Buyer requires Products to be delivered into the Northern Territory or anywhere north of (and including) Port Hedland in Western Australia, or outside of the metropolitan area of Brisbane, Seller is only obliged to deliver the Products to a nominated store in Adelaide (for Northern Territory) or Perth (for Western Australia) or Brisbane (for Queensland). Any further transport of the Products by Seller is as agent for Buyer, and Buyer is liable for the extra cost.

9. **Security Interest.**

Buyer agrees that property in the Products is retained by Seller until payment by Buyer of all sums owing to Seller, whether under the Terms or otherwise. Buyer will provide documents at Seller's request evidencing this security interest. Buyer must store the Products so that they are identifiable as those supplied by Seller. Buyer will maintain the Products in a segregated area and not commingle any Products which are not fully paid.

If Buyer fails to pay by the due date any amount owing to Seller, Seller may (without prejudice to any of its other rights) recover and resell any of the Products in which property has not passed to Buyer, and Buyer authorises Seller to enter onto the premises where the Products are kept to take possession of the Products for that purpose at any time.

Products are considered strictly personal property no matter whether affixed to a permanent foundation, building or structure, or for what purpose the Products may be used. Buyer will not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in unpaid Products and will advise Seller immediately in writing of any damage to, change in location of, or seizure of, any unpaid Products. If Buyer sells or purports to sell any of the Products supplied by Seller in which property has not passed to Buyer, then Buyer does so as a fiduciary for Seller. The proceeds of such sale are the property of Seller to the extent of any money owed to it by Buyer. The Buyer must account to Seller for that portion of the proceeds of sale.

Buyer will insure such Products for damage or loss (including theft) in an amount not less than replacement value.

10. **Acceptance of Products.**

All drawings, specifications, technical documentation, samples, prototypes and Products are approved and/or accepted by Buyer if Buyer does not provide Seller a written objection and/or rejection within 10 days of receipt or other reasonable time established in writing by Seller. Failure to provide written objection and/or rejection will constitute an irrevocable acceptance by Buyer of the Products.

Any written objection and/or rejection must state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection of the Products. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED BY BUYER. If Buyer rejects the Products, if requested by Seller, Buyer will return the Products to Seller at Buyer's cost, within three days of the date of Seller's request, otherwise Buyer will be deemed to have irrevocably accepted the Products. No attempted revocation of acceptance by Buyer will be effective, and Buyer will be limited to any available remedies specifically provided in the Terms for breach of warranty.

Seller has a reasonable period of time to cure any non-conformity.

If requested to do so by Seller, Buyer must supply a sample of the defective or non-conforming Products to the extent the Seller can identify the Product and the date of manufacture. Seller has the right at any time within 30 days after receipt of the claim to inspect the relevant Products. If Buyer disposes of any of the Products within the 30 day period, except with the written consent of Seller, all claims in respect of the Products disposed of are deemed to have been waived by Buyer.

11. **Responsibility for Safety/Compliance.**

It is Buyer's or other user's responsibility to provide all proper devices, tools, training, and means that may be necessary to protect effectively all personnel from serious bodily injury that otherwise may result from the method of particular installation, use, operation, setup, or service of the Products.

BUYER (OR USER) MUST INSTALL AND USE THE PRODUCTS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE.

Buyer will not engage in any transaction with respect to the Products, by way of resale, lease, shipment, use, or otherwise, which violates any federal, state or local law or regulation or regulations from the country in which the Products are imported.

12. Express Warranty.

Subject to the limitations in these Terms, Seller warrants that the Products will be free from significant operational defects in material and workmanship for a period of 60 days from the date of sale as shown on the invoice. Seller warrants that the Products will not infringe any patent covering the Products themselves, excluding portions specified, designed, or manufactured by Buyer (the two foregoing sentences collectively, the "Warranty").

Seller does not warrant against infringement by reason of the use of such Products in combination with other articles or materials or in any overall process or combination and Buyer assumes all responsibility for determining whether relevant patents exist covering such use, together with all risk and liability arising out of infringement of any such patents.

Nothing in the Terms is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation into the Terms, if such exclusion, restriction or modification would be void or prohibited by the legislation.

- a) To the extent that Seller breaches any condition or warranty implied into the Terms and which cannot be excluded or modified, Seller's liability is limited to, at Seller's discretion, either:
 - i) replacement of the Products or supply of equivalent goods;
 - ii) payment of the cost of replacing the Products or acquiring equivalent goods;
 - iii) repair of the Products; or
 - iv) payment of the cost of having the Products repaired.

- b) And in the case of services, to:
 - i) supply of the services again; or
 - ii) payment of the cost of having the services supplied again.

Subject to (a) and (b) above, Seller is not liable to Buyer (or to any third party claiming through Buyer) for any Loss caused by any act or omission of Seller, its employees or agent, and whether based on negligence or other tort, contract or otherwise. In no event shall Seller be liable for indirect or consequential losses.

The Warranty is valid only if Buyer:

- (a) notifies Seller in writing within 30 days from discovery of any alleged nonconformity;
- (b) the Products are returned to Seller for inspection and testing;

- (c) Seller's inspection discloses to its satisfaction that any alleged non-conformance are material and have not been caused by misuse, neglect, wear and tear, improper installation, unsuitable storage, repair, alteration, or accident; and
- (d) the Products were installed, maintained and used in accordance with Seller instructions, if any.

13. Disclaimer of Warranties.

To the extent permitted by law, Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including descriptions, shipping specifications, technical advice, illustrations, representations as to quality or capabilities (whether oral or in writing), or any other information unless otherwise set forth in these Terms.

14. Limitation of Remedies/Time for Action.

THE REMEDIES SET FORTH IN THESE TERMS WILL BE EXCLUSIVE. SELLER WILL NOT BE LIABLE FOR ANY CLAIMS OF ANY KIND GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCTS FROM WHICH THE CLAIMS ARE MADE. IN NO EVENT WILL SELLER BE LIABLE FOR COSTS ASSOCIATED WITH THE PURCHASE OF SUBSTITUTE GOODS BY THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. Without limiting the generality of the foregoing, Buyer assumes all risk and liability for the results obtained by the use of any Products delivered hereunder in combination with other articles or materials or in the practice of any process, whether in terms of operating costs, general effectiveness, success or failure, and regardless of any oral or written statements made by Seller, by way of technical advice or otherwise, with respect to the use of such Products.

15. Indemnification.

Buyer shall defend and indemnify Seller from all losses, damages, costs or expenses of any kind (including legal fees) incurred as a result of, or arising from:

- a) Buyer's breach of these Terms (including, the use or disclosure of Seller's' Technical Information in violation of Section 5);
- b) patent infringement based on Buyer's use of the Products in an overall process or as an element in an overall combination;
- c) Buyer's alteration, processing, modification, assembly or reassembly of the Products, supplies or materials used in connection with the Products, or parts manufactured with the Products; or
- d) negligence of Buyer.

16. Default.

If Buyer defaults in payment, or an application is made to a court to wind up Buyer, or a receiver or administrator is appointed to manage the affairs of Buyer, then Seller may terminate the Terms and may recover from Buyer, at a minimum, reasonable compensation for materials purchased and ordered and labour expended in complying with the Purchase Orders.

17. **Termination.**

These Terms are subject to Seller's' revocation or cancellation at any time, without liability, provided that Seller completes all current orders in process at the time of cancellation.

Buyer may cancel its Purchase Order prior to Seller completing the Products by immediate payment to Seller of Seller's' cost of manufacture and liquidated damages (including labour, engineering, materials, Tooling, equipment time, overhead) computed using Seller's' standard internal costing procedures, plus 15% of the sales price for the Products. Cost of manufacture includes all materials or services that Seller has ordered and that cannot be cancelled and all costs incurred in cancelling such orders. Seller may retain without cost all materials and partially completed Products on cancelled orders. Any request by Buyer for cancellation of a Purchase Order must be in writing and may be delivered by post, hand delivery or facsimile or email.

18. **Dispute Resolution.**

The parties will attempt to resolve any dispute involving the interpretation, performance or no-performance, or enforceability of the Terms by prompt good faith negotiations and, if such negotiations fail, will consider alternative dispute resolution procedures before resorting to litigation.

19. **Goods and Services Tax.**

If, and to the extent, any supply of the Products under the Terms is a taxable supply within the meaning of the GST Law, the price for the Products will be increased to include GST payable by Seller in respect of the supply.

All rebates, discounts or other reductions in price will be calculated on the GST exclusive price.

The parties agree that:

- (a) the parties must be registered persons within the meaning of the GST Law;
- (b) Seller must provide tax invoices and, if applicable, adjustment notes to Buyer in the form prescribed by or for the purposes of the GST Law; and
- (c) costs required to be reimbursed or indemnified exclude any amount that represents GST for which an input tax credit within the meaning of the GST Law can be claimed.

20. **Miscellaneous Provisions.**

A. **Assignment.**

Buyer will not assign, in whole or in part, these Terms or delegate the performance of its duties without the written consent of Seller. Any assignment or delegation without the previous written consent of Seller, at the option of Seller, will cancel any outstanding Purchase Orders. Any consent by Seller to an assignment will not waive Seller's' right to recoupment from Buyer and/or its assigns for any claim arising out of these Terms. If Seller agrees to the assignment of the Terms, in whole or in part, Buyer will remain solely liable to Seller for the adherence of the assignee to these Terms.

B. **Buyer's Property.**

Buyer shall insure all materials, fixtures, tooling and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

C. Force Majeure.

Any delay or failure by either party to perform its obligations will be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist attacks, sabotage, strikes, shortages of labour or material, vendor failures, transportation embargoes or acts of any governmental or governmental agency. In the event of such a delay, delivery will be deferred for a period of time equal to the time lost due to the delay. Seller will notify Buyer in writing within a reasonable time of any such event. In no event will Seller be liable for late deliveries.

D. Modification and Waiver.

The Terms (including details appearing on any Purchase Order constitute the entire agreement between Seller and Buyer. No modification or waiver of the Terms will be binding upon Seller unless approved in writing by one of Seller's' authorised representatives, or will be affected by the delivery of Product or the acknowledgment or acceptance of Purchase Order forms, invoices, shipping papers or other documents containing other or different terms whether or not signed by an authorised representative of Seller.

The waiver by Seller of any provision, or breach of any provision, of the Terms is not to be construed as a waiver of any other provision or a breach of any other provision, or further breach of the same or any other provision of the Terms.

E. Severability.

If any provision of the Terms is unenforceable or void either in whole or in part for any reason, then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of any other provision.

F. Governing Law.

Any dispute arising out of the Terms is governed by the laws of the State or Territory in Australia where the Purchase Order was received by Seller and Buyer submits to the jurisdiction of and agrees to be bound by the Federal Courts of Australia and of that State.

The United Nations Convention on Terms for the International Sale of Products will not apply to these Terms.

G. Interpretation.

The following words have the following meanings in these Conditions, unless the context requires otherwise :

"GST" has the same meaning as in the GST Law;

"GST Law" means the A New Tax System (Products and Services Tax) Act 1999 (Cth);

"Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property; and

"Purchase Order" means a Purchase Order issued by Buyer to Seller.