

# TERMS AND CONDITIONS OF SALE

Actco Pickering Metal Industries Pty Ltd (ABN 25 090 585 434) trading as Ridgeback Service Bodies

## TERMS AND CONDITIONS OF SALE

### Definitions:

**'Buyer'** means the purchaser of any goods specified on a purchaser order or sales contract to the Company.

**'Company'** means Actco Pickering Metal Industries Pty Ltd (ABN 25 090 585 434) (**APMI**) trading as Ridgeback Service Bodies (**RSB**).

**'Goods'** means the products and, if any, services specified on a purchase order from the Buyer to the Company.

**'GST'** means Goods and Services Tax in Australia as determined in accordance with the GST Act.

**'GST Act'** means the A New Tax System (Goods and Services) Act 1999.

### 1. General

**1.1** These Terms and Conditions of trade (**Terms and Conditions**) apply to all sales of goods by the Company to the Buyer (including any sale to which a quotation relates)

**1.2** Notwithstanding clause 1.1, the Company may change these Terms and Conditions at its own discretion and such amended Terms and Conditions will be either posted on the Company's website or provided in writing to the Buyer and will apply to all Goods ordered by the Buyer from the date of such notice.

### 2. Pricing and Delivery

**2.1** The price of the Goods is to be calculated by reference to the Company's sales quotation.

**2.2** The prices and product specifications contained in the Company's quotation are subject to change at the absolute discretion of the Company and without notice to the Buyer.

**2.3** The Buyer agrees that the delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of the Buyer, shall be conclusive evidence of delivery.

**2.4** The Company deliver point is from 28 Quality Drive Dandenong South, Victoria 3175.

**2.5** All delivery charges from any other delivery point are at the Buyers cost, unless the Company expressly provides in writing alternative delivery options

### 3. Orders

**3.1** An order for Goods constitutes an offer to purchase the Goods by the Buyer subject to these Terms and Conditions.

**3.2** Orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent.

**3.3** The Company may at its absolute discretion decline any order either in whole or in part.

### 4. Terms of Payment

**4.1** A 20% deposit is required at time of placement of sales order contract

**4.2** Balance is payable in full prior to delivery by bank transfer, bank cheque or credit card

**4.3** Credit card payments will attract the merchant fee applicable to the card issuer

**4.4** The Company may provide credit terms at its sole discretion

**4.5** Should the Buyer fail to pay the Company's invoices by the due date then:

**4.5.1** The Company may charge interest on any overdue invoice at the penalty rate fixed under the Penalty Interest Rate Act 1983 (Victoria) calculated and payable daily, compounded from the due date until the invoice is paid in full, and;

**4.5.2** The Buyer shall pay all of the Company's costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.

### 5. Goods and Services Tax ('GST')

**5.1** All prices will be quoted exclusive of GST. However, all goods will be sold on a 'plus GST (if any)' basis. Invoices will be issued in the prescribed form as set out by Section 195-1 of the **GST Act** and the related imposition Acts of the Commonwealth (the **GST Law**).

**5.2** Any discounts or other terms agreed between the Buyer and the Company will be calculated on and applied to the Purchase Price exclusive of GST.

#### 5.3 Payment for GST

**5.3.1** If GST is imposed on any supply made by the Company to the Buyer pursuant to these Terms and Conditions (the GST Amount), the Buyer must pay the GST Amount to the Company, in addition to any amount payable, and any non-cash consideration provided, for that supply (without any deduction or set-off) by the Buyer under any other clause in these Terms and Conditions). Any GST Amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.

**5.3.2** If any part of the Purchase Price is referable to both a Taxable Supply (as defined in the GST Law) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by the Company, and GST applied accordingly.

**5.3.3** If the Company determines on reasonable grounds that an adjustment is required to the purchase price, it will promptly issue any 'Adjustment Notes' that are prescribed by the GST Law.

### 6. Warranty

**6.1** Please refer to the standard warranty terms document

**6.2** The warranty document is to be read together with any obligations that the Company must provide under Australian statute.

### 7. Return of Goods

**7.1** The Company will not accept returns for credit, other than defective Goods and warranty claims for which a credit or refund is required by law, without prior authorization.

**7.2** Any Goods which the Buyer returns for credit, other than defective Goods and warranty claims will only be accepted if they are in the original packaging and in as new saleable order and condition.

**7.3** If the Company authorises the return of Goods a Return Authority (RA) will be raised and the RA number must be quoted by the Buyer on or with any claim documentation sent with the Goods, which must be sent freight pre-paid or otherwise, if approved by the Company, carried by the Company's nominated carrier.

## **8. Implied Terms**

**8.1** It is hereby acknowledged by the Buyer that, under the Australian Consumer Law, certain conditions and warranties may be implied in the contract between the Company and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.

**8.2** Subject to the clause 9.1, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

**8.3** The Company's liability under s74 of the Competition and Consumer Act 2010 (CCA) is expressly limited to a liability to pay or credit to the purchaser an amount equal to:

**8.3.1** the cost of replacing the Goods;

**8.3.2** the cost of obtaining equivalent Goods; or

**8.3.3** the cost of having the Goods repaired, whichever is the lowest amount.

**8.4** Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

**8.5** Accordingly, subject to clause 9.1, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

## **9. Indemnity**

**9.1** Subject to Clause 9, the Buyer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:

**9.1.1** As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;

**9.1.2** As a result of any other negligence or other breach of duty by the Buyer; or

**9.1.3** As a result of any compliance or adherence by the Company with any instructions of the Buyer in relation to the Goods or their manner of fabrication.

## **10. Performance and Representations**

The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

## **11. Waiver**

Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

## **12. Notices**

**12.1** Any notice to be given by the Buyer to the Company must be in writing and shall be sent to the Company's address which is, until notified otherwise, as follows:

28 Quality Drive Dandenong South, Victoria 3175

**12.2** No notice shall be deemed to have been given until it is actually received at such address.

## **13. Severance**

It is agreed that if any provision of these Terms and Conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

## **14. Governing Law**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Victoria. The Buyer and the Company agree to submit to the non-exclusive jurisdiction of Victoria and the Federal Court of Australia.

## **15. Entire Agreement**

These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Company may have with the Buyer, then the provisions of these Terms and Conditions shall prevail. The only exception to the foregoing will be a signed Trading Terms agreement (if applicable) that will prevail in relation to specific clauses relating to Pricing, Minimum Order Values and Delivery Terms.