

Omni Manufacturing Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
 - 1.1 "Omni" shall mean Omni Manufacturing Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Omni Manufacturing Pty Ltd.
 - 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Omni to the Customer.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean tools and/or moulds supplied by Omni to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Omni to the Customer.
 - 1.5 "Services" shall mean all Services supplied by Omni to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the price payable for the Goods as agreed between Omni and the Customer in accordance with clause 4 of this contract.
2. **The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA") and application of these terms and conditions to consumers**
 - 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
 - 2.2 Clause 8 (Defects) and clause 9 (Warranty) may NOT apply to the Customer where the Customer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the TPA or the FTA of the relevant state or territories of Australia.
3. **Acceptance**
 - 3.1 Any instructions received by Omni from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Omni shall constitute acceptance of the terms and conditions contained herein.
 - 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Omni.
 - 3.4 The Customer shall give Omni not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Omni as a result of the Customer's failure to comply with this clause.
 - 3.5 Goods are supplied by Omni only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
4. **Price And Payment**
 - 4.1 At Omni's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Omni to the Customer in respect of Goods supplied; or
 - (b) Omni's quoted Price (subject to clause 4.2) which shall be binding upon Omni provided that the Customer shall accept Omni's quotation in writing within thirty (30) days.
 - 4.2 Omni reserves the right to change the Price in the event of a variation to Omni's quotation.
 - 4.3 At Omni's sole discretion a non-refundable deposit may be required.
 - 4.4 At Omni's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment for approved Customers shall be due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
 - 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
 - 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Omni.
 - 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Delivery Of Goods**
 - 5.1 At Omni's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at Omni's address; or
 - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Omni or Omni's nominated carrier).
 - 5.2 At Omni's sole discretion the costs of delivery are:
 - (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer's account.
 - 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Omni shall be entitled to charge a reasonable fee for redelivery.
 - 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 5.5 Any tools, jigs, fixtures, moulds or other aids used to produce and install the Goods shall remain the property of Omni unless specifically stated otherwise at the time of quotation or as agreed in writing prior to the placement of an order.
 - 5.6 The failure of Omni to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.7 Omni shall not be liable for any loss or damage whatsoever due to failure by Omni to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of Omni.
6. **Risk**
 - 6.1 If Omni retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Omni is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Omni is sufficient evidence of Omni's rights to receive the insurance proceeds without the need for any person dealing with Omni to make further enquiries.
 - 6.3 Where the Customer expressly requests Omni to leave Goods outside Omni's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
7. **Title**
 - 7.1 Omni and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid Omni all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to Omni in respect of all contracts between Omni and the Customer.
 - 7.2 Receipt by Omni of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Omni's ownership or rights in respect of the Goods shall continue.
 - 7.3 It is further agreed that:
 - (a) where practicable the Goods shall be kept separate and identifiable until Omni shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from Omni to the Customer Omni may give notice in writing to the Customer to return the Goods or any of them to Omni. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) Omni shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to Omni then Omni or Omni's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
 - (e) the Customer is only a bailee of the Goods and until such time as Omni has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Omni for the Goods, on trust for Omni; and
 - (f) the Customer shall not deal with the money of Omni in any way which may be adverse to Omni; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Omni; and
 - (h) Omni can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Omni will be the owner of the end products.
8. **Defects**
 - 8.1 The Customer shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify Omni of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Omni an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Omni has agreed in writing that the Customer is entitled to reject, Omni's liability is limited to either (at Omni's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (Cwth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
 - 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.
9. **Warranty**
 - 9.1 Subject to the conditions of warranty set out in clause 9.2 Omni warrants that if any defect in any workmanship of Omni becomes apparent and is reported to Omni within ten (10) years of the date of delivery (time being of the essence) then Omni will either (at Omni's sole discretion) replace or remedy the workmanship.
 - 9.2 The conditions applicable to the warranty given by clause 9.1 are:
 - (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods; or
 - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Omni; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and Omni shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Omni's consent.
 - (c) in respect of all claims Omni shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
 - 9.3 The conditions applicable to the warranty given on Goods supplied by Omni are contained on the "Warranty Card" that will be supplied with the Goods.
10. **Intellectual Property**
 - 10.1 Where Omni has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in Omni, and shall only be used by the Customer at Omni's discretion.
- 10.2 The Customer warrants that all designs or instructions to Omni will not cause Omni to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Omni against any action taken by a third party against Omni in respect of any such infringement.
- 10.3 The Customer hereby authorises Omni to utilise images of the Goods designed or drawn by Omni in advertising, marketing, or competition material by Omni.
11. **Default & Consequences of Default**
 - 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Omni's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
 - 11.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Omni.
 - 11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Omni from and against all costs and disbursements incurred by Omni in pursuing the debt including legal costs on a solicitor and own Omni basis and Omni's collection agency costs.
 - 11.4 Without prejudice to any other remedies Omni may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Omni may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Omni will not be liable to the Customer for any loss or damage the Customer suffers because Omni has exercised its rights under this clause.
 - 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
 - 11.6 Without prejudice to Omni's other remedies at law Omni shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Omni shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to Omni becomes overdue, or in Omni's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
12. **Security And Charge**
 - 12.1 Despite anything to the contrary contained herein or any other rights which Omni may have howsoever:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Omni or Omni's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Omni (or Omni's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should Omni elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Omni from and against all Omni's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Omni or Omni's nominee as the Customer and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
13. **Conditions of Storage**
 - 13.1 In the event that the Goods are stored by Omni, Omni shall acknowledge in writing that exclusive ownership remains with the Customer throughout the storage period. The Goods shall be recorded on a storage register and an annual inspection shall be carried out by the Customer in the presence of an authorised Omni representative.
 - 13.2 The Customer agrees to pay all reasonable costs associated with repair and maintenance including works required to recommission the Goods after an extended period of inactivity.
 - 13.3 Liability to statutory provisions imposing liability in respect of the loss of or damage to the Goods:
 - (a) Omni shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of Omni or otherwise, for any damage to, loss or deterioration of the Goods nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (b) the Customer will indemnify Omni against all claims of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of Omni or otherwise, brought by any person in connection with any matter or thing done, said or omitted by Omni in connection with the Goods.
 - 13.4 Omni is authorised to remove the goods from one warehouse to another without cost to the Customer. Omni will notify the Customer of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
14. **Cancellation**
 - 14.1 Omni may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Omni shall repay to the Customer any sums paid in respect of the Price. Omni shall not be liable for any loss or damage whatsoever arising from such cancellation.
 - 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Omni (including, but not limited to, any loss of profits) up to the time of cancellation.
 - 14.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted, once production has commenced.
15. **Privacy Act 1988**
 - 15.1 The Customer and/or the Guarantor's agree for Omni to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor's in relation to credit provided by Omni.
 - 15.2 The Customer and/or the Guarantor's agree that Omni may exchange information about the Customer and the Guarantor's with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor's.
 - 15.3 The Customer consents to Omni being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
 - 15.4 The Customer agrees that personal credit information provided may be used and retained by Omni for the following purposes and for other purposes as shall be agreed between the Customer and Omni or required by law from time to time:
 - (a) provision of Goods; and/or
 - (b) marketing of Goods by Omni, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
 - 15.5 Omni may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
16. **Unpaid Seller's Rights**
 - 16.1 Where the Customer has left any item with Omni for repair, modification, exchange or for Omni to perform any other Service in relation to the item and Omni has not been tendered the whole of the Price, or the payment has been dishonoured, Omni shall have:
 - (a) a lien on the Item;
 - (b) the right to retain the item for the Price while Omni is in possession of the item;
 - (c) a right to sue on the item.
 - 16.2 The lien of Omni shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
17. **Export Contracts**
 - 17.1 In the event of the Goods are exported, delivery of the Goods may be subject to either FOB Contract or CIF Contract.
 - 17.2 In the event of a FOB Contract the following shall apply:
 - (a) the Goods shall be delivered to the Customer by delivery on board the agreed upon mode of transport on the delivery date. The Agent shall promptly notify the Customer that the Goods have been delivered aboard. Title (subject to clause 8) to, and risk in the Goods shall pass to the Customer upon such delivery being effected. The Agent shall promptly provide the Customer with a clean shipped bill of lading in respect of the Goods.
 - (b) the Customer shall reserve the necessary space on board the agreed upon mode of transport and give the Agent due notice of the loading berth and any revised loading dates. The Customer shall bear any costs caused due to the failure of the agreed upon mode of transport being available to load the Goods on the delivery date.
 - 17.3 In the event of a CIF contract the following shall apply:
 - (a) the Goods shall be delivered to the Customer by delivery on board the agreed upon mode of transport on or before the delivery date. The Agent shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Customer. The Goods shall be at the risk of the Customer as they are loaded on board. The Agent shall promptly tender to the Customer a clean shipped bill of lading, the insurance policy and an invoice in respect of the Goods.
 - (b) the Customer shall accept the documents tendered by the Agent if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.
18. **General**
 - 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
 - 18.3 Omni shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Omni of these terms and conditions.
 - 18.4 In the event of any breach of this contract by Omni the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
 - 18.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Omni nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 18.6 Omni may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 18.7 The Customer agrees that Omni may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Omni notifies the Customer of such change. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
 - 18.8 The failure by Omni to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Omni's right to subsequently enforce that provision.