

TERMS AND CONDITIONS OF SALE

GENERAL

These terms and conditions constitute the whole agreement between Starwell Australia Pty Ltd ACN 050 952 219 ("Starwell") and the buyer. These terms supersede all previous communications, either oral or written. Any quotation by Starwell shall be deemed to be subject to these terms and conditions. No term or condition contained in the buyer's order or acceptance document shall add to or alter these terms and conditions or any of them.

It is the buyer's responsibility when ordering to ensure the goods ordered conform to the buyer's requirements and are suitable and fit for the buyer's purpose. Any quotation by Starwell is not and shall not be constituted as an offer capable of acceptance or as creating an obligation to sell.

All descriptive information, volumes, specifications, weights, figures and other data provided by Starwell or contained in brochures, catalogues, price lists or advertisements are by way of general description only of the goods and shall not form part of the agreement.

All orders are deemed to have been made by the buyer and accepted by Starwell upon and subject to these terms and conditions.

PRICE

Prices quoted include the prevailing rates and costs of material, labour, insurance, carrier's fees, government tariffs, duties and taxes, and will be subject to increase in respect of any variation in such rates or costs or new or different impositions of government taxes or the method of assessment of the same occurring before completion of the agreement and prices may alter without notice to the buyer.

TERMS OF PAYMENT

The buyer must pay Starwell the invoice price for the goods on delivery of the goods to the buyer, unless otherwise agreed by the buyer and Starwell prior to delivery of the goods. The buyer agrees to pay interest on any unpaid accounts at the rate from time to time applied by the Westpac Banking Corporation overdrafts in excess of \$100,000.00 plus 2.5% and without any demand being necessary either at the discretion of Starwell or otherwise.

CREDIT CLAIMS - INSPECTION AND ACCEPTANCE

Upon delivery of goods the buyer shall inspect goods at its expense and give written notice to Starwell within seven (7) days of delivery of any non conformity to description or the terms and conditions of these agreements. Failure to give such notice shall constitute an irrevocable acceptance of goods by the buyer. In the absence of such notice, under no circumstances will Starwell accept returns of defective goods after seven (7) days of delivery. No such claims will be recognised unless the relevant invoice number accompanies the goods.

DELIVERY, RISK AND PROPERTY

Unless otherwise agreed in writing, the goods shall be delivered to the buyer ex-store the warehouse or works of Starwell. Starwell shall not be liable for any damages caused to the goods whilst they are in transit.

Delivery of goods to the buyer or the carrier at the point of delivery shall constitute the delivery to the buyer and upon delivery to the buyer risk of loss shall pass to the buyer. As long as the buyer owes Starwell any part of the price of goods supplied at any time, Starwell shall retain the legal and equitable title in all goods supplied and not yet used or resold. Until payment in full has been made, the buyer shall hold the goods in a fiduciary capacity for Starwell separate from any other assets and shall keep such goods separately during the time the buyer has them in such a way that the goods remain identifiable. When such goods are used, even with the loss of identity, legal title to the resultant product shall vest in Starwell. Starwell has and the buyer agrees to Starwell having:

the right of re-entry by its employees, servants or agents, to enter without notice upon the buyer's premises or any premises in occupation by the buyer or any other place where Starwell's products may be and inspect and remove the property of Starwell; and

the power to repossess when payment is overdue.

The Buyer shall be responsible for Starwell's costs and expenses in so doing. Where Starwell exercises the aforesaid powers, such entry shall not give rise to any action of trespass or similar action on the part of the buyer against Starwell, its employees, servants or agents.

The buyer may sell the goods by way of bona fide sale in the ordinary course of business on its standard terms and conditions but may not otherwise deal with, sell, part with possession of, change the character of, convert or otherwise dispose of or handle any of the goods sold hereunder until title has passed to the buyer in accordance with this condition. Where the goods are sold to a third party before title to the goods has passed to the buyer, that sale shall constitute a sale by the buyer of Starwell's property and accordingly the buyer will hold the proceeds of that sale on trust for Starwell.

FORCE MAJEURE

Starwell shall not be liable for any failure or delay to supply the goods due in any part to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, subcontractor, manufacturer or supplier of Starwell's, acts of God, strikes, lockouts, bans or other industrial disturbances, fire, flood, explosion, civil riot or commotion, government interference or request by law, rules or regulations or orders of any competent authority. No such failure or delay shall entitle the buyer to terminate this agreement and Starwell's obligations to the buyer shall be suspended without liability on the part of Starwell while such cause exists.

DEFAULT

Upon the happening of any of the following events:

the commission by the buyer of any act of bankruptcy or the buyer going into liquidation or a petition being presented for the sequestration of the buyer's estate or entering into an administration pursuant to Part X of the Bankruptcy Act or the winding up of the buyer; or
the buyer assigning its property for the benefit of its creditors or having a receiver or official manager appointed to any of its assets; or
the buyer failing to make any payment to Starwell in due date; or
the buyer being in breach of any of these terms and conditions;

then in any such event, Starwell shall without prejudice to any other remedies have the legal right to:

cease production of the goods for the buyer; and/or
decline to deliver the goods or any balance of the goods still due under this contract; and/or
stop any goods in transit; and/or

otherwise cease to perform any of its obligations to the buyer; and/or

terminate the agreement without incurring any liability at Law or in Equity and without prejudice to its rights to recover amounts owing to it by the buyer and/or damages; and/or

enter into any premises and repossess any goods already delivered and whether or not property in such goods has passed to the buyer in respect of

which the buyer shall indemnify and keep indemnified Starwell for all damages for which Starwell may be responsible; and/or

recover from the buyer the contract price together with default interest in of all goods delivered and for freight, storage, handling and other expenses

incurred by Starwell including any extra costs and expenses incurred by Starwell as a result of the buyer refusing or being unable to accept the goods

for any reason on or after the date on which they are ready for deliveries; and/or

to sell elsewhere and charge the buyer with any resultant loss.

WARRANTY AND LIABILITY OF STARWELL

If the goods are not of a kind ordinarily acquired for personal, domestic or household use, liability of Starwell for breach of any conditions or warranty implied by the Trade Practices Act 1974 (other than by Section 69) and/or the Sale of Goods Act 1896 shall be limited to one of the following at seller's option:

the replacement of the goods or the supply of equivalent goods; or
the repair of the goods; or
the payment of the cost of replacing the goods or of acquiring equivalent goods; or
the payment of the cost of having the goods repaired.

To the full extent permitted by law, all other warranties or liabilities imposed or implied whether by law or by statute are expressly negatived. The buyer shall assume all risk and liability resulting from the use of the goods either alone or in conjunction with other goods or materials, even if Starwell had or should have had prior knowledge of the use to which the goods would be put.

MISCELLANEOUS

The buyer consents to this agreement being governed and construed in accordance with the laws of the State of Queensland and the buyer submits to the jurisdiction of the Courts at Brisbane.

All notices to be served upon the buyer shall be deemed to be duly served if left at or sent by ordinary prepaid post or facsimile transmission to the last known address of the buyer.

The buyer shall be deemed to have received any notice two (2) days after posting or upon receipt of the facsimile transmission confirmation.

The buyer shall not assign any rights or obligations under this agreement without the prior written consent of Starwell.

Any variations to the terms and conditions of this agreement must be expressly agreed in writing by the general manager of Starwell.

No waiver of Starwell of any default of the buyer under performance of any obligation or condition of this agreement shall be deemed to be a waiver of that or any other obligation or condition.

The singular shall include the plural and vice versa, words importing any gender shall include every other gender, and where there is more than one buyer, the buyer shall be bound to Starwell jointly and severally.

FREIGHT

Deliveries to Brisbane and the Gold Coast are to be free.

All deliveries to all other places using carriers including buyer preferred carriers are to be paid by the buyer unless otherwise agreed between the parties.