



A.D. Coote Standard Terms & Conditions

1. CONDITIONS OF SALE

These General Conditions of Sale shall apply to all sales or goods by A.D. COOTE & Co. (SHEETMETAL) PTY LTD (Coote) to the customer named hereon ('the customer').

2. The parties acknowledge that the Contract embodied herein is made in the State of Western Australia and shall be governed by the laws of that State. The parties agree to submit themselves to the jurisdiction of the Courts of The State of Western Australia.

3. PAYMENT

3.1 In respect of the customer's obligation to make payment for goods sold by Coote to the customer, time shall be of the essence.

3.2 Payment for goods sold by Coote to the customer shall be tendered no later than the expiration of the calendar month following the month of sale.

3.3 If a cheque (bank or otherwise) or other negotiable instrument is tendered as payment, payment shall be deemed to have been made on the date on which such cheque or other negotiable instrument is negotiated and cleared by Coote's bankers.

3.4 Any payments tendered by the customer to Coote shall be applied as follows:

- (a) Firstly towards any debits to the customer's account arising from the operation of Clause 5(b) (ii) hereof;
- (b) Secondly towards any debits to the customer's account arising from the operation of Clause 5(b) (i) hereof; and
- (c) Thirdly in satisfaction or part satisfaction of the oldest portion of the customer's account.

4. RISK AND RETENTION OF TITLE

(a) The goods are to be at the customer's risk and expense from the making of the contract;

(b) Notwithstanding the passing of risk, the property in the goods ordered does not pass to the customer until payment in full to Coote of all moneys owing for the goods and in respect of the goods;

(c) Coote's property rights in the goods will not be affected by the fact that the goods become fixtures attached to the premises of a third party. If Coote enters the premises of a third party for the purpose of reclaiming possession of the goods and incurs any liability to any occupier of the premises in connection with that entry the customer must indemnify Coote from that liability;

(d) Until payment in full to Coote of all moneys owing for the goods and in respect of the goods:

(i) the customer hold the goods as bailee for Coote and must, if requested by Coote, keep the goods separate from any other goods of the customer and distinctively marked as the property of Coote;

(ii) the customer is entitled to re-sell the goods in its ordinary course of trade to any sub-purchaser and that sub-purchaser will obtain good title, but as between the customer and Coote, the customer will hold the proceeds of that re-sale as trustee for Coote and in the event that payment in full to Coote of all moneys owing for the goods and in respect of the goods is not made by the customer to Coote, the customer will be deemed to have sold as agent of Coote and must account to Coote accordingly.

5. DEFAULT

If the customer defaults in making payment to Coote in accordance with these Conditions of Sale or, (being a corporation), has a Receiver, Receiver and Manager, Administrator, Liquidator (provisional or otherwise) or Controller appointed, or, (being a natural person), commits an act of bankruptcy, dies or becomes of unsound mind or permanently disabled:

(a) the whole of the sum then owing by the customer to Coote for all goods sold by Coote to the customer, shall immediately become due and payable and the customer shall not thereafter be entitled to purchase goods on credit from Coote unless Coote has agreed to same in writing, in which case, unless a contrary intention is shown in such agreement, the payment obligations contained herein shall apply; and

(b) Coote may in its absolute discretion debit the customer's account with:

(i) Interest calculated on the portion of the customer's account overdue from time to time at the rate of 2% per month from the date on which such default arose; and

(ii) All collection fees and commissions, administrative costs, out-of-pocket expenses and legal costs (calculated on a solicitor and own client basis) incurred by Coote as a direct or indirect consequence of such default.

(c) Coote, its employees, servants and/or agents hereby authorised by the customer to enter the customer's premises and retake possession of those goods for which payment has not been made without becoming liable for any loss occasioned thereby. Upon retaking possession of those goods for which payment has not been made Coote shall within a reasonable time inspect these goods and credit the customer's account with such sum as Coote in its absolute discretion considers to be a fair and reasonable value of the said goods after making due allowance for the price for which those goods were sold to the customer, the condition of the goods at the time of repossession and the costs incurred by Coote in connection with the repossession sorting and examination of the goods.

6. CLAIMS

6.1 Coote shall not be obligated to recognise nor shall it be responsible in law or in equity for any credit claims pertaining to short delivery or claims pertaining to damaged goods unless the Customer has given written notice to Coote within seven days of the date on which the goods in question were delivered to or collected by the customer.

6.2 Should the customer consider that it has any claim (other than claims of the nature referred to in Clause 6.1 hereof) against Coote which, having regard to these General Terms and Conditions, it is entitled to make, it shall;

(a) Immediately upon becoming aware of the circumstances giving rise to such a claim, notify Coote of the nature of the claim; and

(b) allow Coote, its servants or agents full and free access to the goods in relation to which the claim is made (or the place where the goods have been applied or used) for the purpose of conducting such tests and examinations as Coote may in its absolute discretion consider necessary to determine whether the claim is justified or not.



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6.3 The customer acknowledges and agrees with Coote that:

- (a) Methods and conditions of application and use of the good supplied are beyond the control of Coote; -
- (b) any advice, recommendation, information or services provided by Coote, its employees, servants or agents regarding the goods sold or the methods and conditions of application and use of the goods sold shall nor be construed as contractual conditions or warranties; and
- (c) Coote shall not subject to the warranties incorporated herein pursuant to Clause 9 hereof be liable to the customer for any lesser damage sustained by the customer as a consequence of any incorrect advice, recommendation, information or services provided by Coote, its employees, servants or agents regarding the goods sold or the methods or conditions of application and use of the goods sold whether such loss was caused by any act of negligence, act of recklessness or any breach of any duty of care which may be owed to the customer by Coote, its employees, servants or agents.

6.4 Subject to the warranties incorporated herein pursuant to Clause 9 hereof, the total liability of Coote. Its employee's servants and agents in limited to one or the other of the following at the option of Coote;

- (a) The replacement of the goods supplied or the supply of equivalent goods; or
- (b) The payment of the cost of replacing the goods or of acquiring equivalent goods; and does not extend to consequential loss or damage.

7. ORDERS

Any quotation made by Coote to the customer from time to time shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and Coote reserves the right to accept or reject in its absolute discretion any order which may be received by it. Until such time as Coote accepts in writing a written order submitted by the customer it shall not be obliged to supply to the customer the goods so ordered PROVIDED ALWAYS that if at any time the customer goes into default in respect of its payment obligations hereunder Coote may cancel or suspend any uncompleted order that has been accepted by Coote without being liable to the customer in any way whatsoever AND FURTHER PROVIDED that Coote shall not under any circumstances be responsible to the customer for a breach of its obligation to supply goods pursuant to an order that it has accepted which failure to supply is caused by matters beyond the reasonable control (including but without limiting the generality of the foregoing) acts of God, acts of any government, war or other hostility, national or international disasters, the elements, fire, explosion, power failure, equipment failure, strikes or lockouts, inability to obtain necessary supplies and the like and other force majeure occurrences.

8. WAIVER

No waiver by Coote of any one breach of these General Conditions of Sale shall operate as a waiver of another breach of the same or of any other Conditions of Sale and the doing and/or omission of any act, matter or thing whatsoever by Coote. its servants or agents (which but for this clause ought or might amount to a waiver of Coote's rights in respect of any such breach or default) shall not operate nor be deemed to be a waiver in any way of Coote's rights and powers in respect of such breach or default any rule of law or equity to the contrary notwithstanding.

9. WHOLE AGREEMENT

This document and any warranties implied by law which are not capable of being excluded or modified embody the entire understanding and the whole agreement between the parties hereto relevant to the subject matter hereof and, subject to the expressed terms contained on any written customer order and written acceptance thereof (which shall only apply to that particular order) all previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty with reference to the subject matter hereof or the intentions of either of the parties hereto are merged herein and otherwise are hereby excluded and cancelled.

10. AGREEMENT UNDER THE PRIVACY ACT 1968

The customer, being an applicant for credit, and the signatories to this application (The Signatory) agree that Coote may:

- (a) give a credit reporting agency personal information including identity particulars (as permitted by the Privacy Commissioner's determination issued under s.18E(3)); the fact that the customer has applied for credit and the amount, the fact the Coote is a current credit provider to the customer, advice that payments have become overdue for more than 60 days and collection action has commenced; advice that payments are no longer overdue; advice that cheques drawn by the Customer have been dishonored more than once; in specified circumstances that in the opinion of Coote the Customer has committed a serious credit infringement and, that credit provided to the customer by Coote has been paid or otherwise discharged;
- (b) receive a consumer credit report from a credit reporting agency and use the report for the purposes of; assessing an application made by the customer for commercial credit, assessing whether to accept the Signatory as a guarantor in respect of either a loan provided by Coote to a person other than the guarantor or a loan for which an application has been made by a person other than the proposed guarantor to Coote; and, the collection of payments that are overdue in respect of commercial credit provided to the customer by Coote;
- (c) give to or receive from another credit provider (including a bank) a report about the customer's or Signatory's consumer credit worthiness, credit standing, credit history or credit capacity for the purpose of: assessing an application by the customer for credit, notifying other credit providers of a default by the customer or Signatory; exchanging information with other credit provider as to the status of credit with Coote where the customer or Signatory is in default with other credit providers; and, assessing the customers or Signatory's credit worthiness