

# Eriez Magnetics Pty Ltd – Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Seller" shall mean Eriez Magnetics Pty Ltd [ACN: 008451885] its successors and assigns or any person acting on behalf of and with the authority of Eriez Magnetics Pty Ltd ("Eriez").
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" shall mean the person (or persons), or entity, Eriez requires to guarantee all money due and payable to Eriez under this agreement.
- 1.4 "Deposit" shall mean the deposit required as part of the Seller's agreement to supply the Goods.
- 1.5 "Goods" shall mean Goods supplied by the Seller to the Buyer (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 the Seller to the Buyer.
- 1.6 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 "Price" shall mean the cost of the Goods as set out in clause 3 of this agreement.

## 2. Acceptance

- 2.1 The Buyer acknowledges receipt of these terms and conditions at the same time that it received Eriez's initial quote for the Goods. The Buyer accepts that the Seller will sell the Goods and the Buyer will buy the Goods and accept delivery of the Goods on and subject to these terms and conditions.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for payment of the Price.
- 2.3 These terms and conditions are irrevocable and can only be amended with the written consent of the Seller and the Buyer.
- 2.4 The Buyer agrees to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.

## 3. Price And Payment

- 3.1 At the Seller's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price, and the Buyer agrees to accept the changed Price, in the event of a variation to the Seller's quotation for reasons beyond the Seller's control including, but not limited to, currency fluctuations, changes to contractual arrangements, or changes paid for raw materials, resources, and or labour.
- 3.3 If a Deposit is required, this agreement, and the obligations imposed on the Seller under this agreement, are subject to and conditional upon the Buyer's payment of the Deposit immediately at the request of the Seller.
- 3.4 Time for payment for the Goods is of the essence and will be stated on the Seller's invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the end of the month in which an invoice is issued.
- 3.5 Payment will be made by cash, bank cheque, direct debit, or otherwise at the direction of the Seller.
- 3.6 The Buyer and the Seller agree that the sale of the Goods under this agreement is a taxable supply within the meaning of the GST Act. The Buyer and the Seller represent to each other that they are registered, or required to be registered, for GST. The Buyer and the Seller agree that the Price is exclusive of GST. In addition to the Price, and subject to receipt of a valid tax invoice, the Buyer shall pay or reimburse to the Seller at the same time that it pays the Price or part thereof, any GST payable by the Seller in respect of the taxable supply made under this agreement. In this clause 'GST Act' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), defined words in the GST Act have the same meaning if used in this clause and 'GST' includes penalties and interest.

## 4. Delivery Of Goods

- 4.1 At the Seller's sole discretion delivery of the Goods shall take place when:
- (a) the Buyer takes possession of the Goods at the Seller's address; or
- (b) the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
- (c) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 4.2 The Buyer must pay or reimburse the Seller immediately on demand for any delivery costs that the Seller may incur in the delivery of the Goods to the Buyer. The costs of delivery are in addition to the Price unless otherwise specified.
- 4.3 The Buyer shall take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and or storage.
- 4.4 Delivery of the Goods to the Buyer's third party nominee is deemed to be delivery to the Buyer for the purposes of this agreement.
- 4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these terms and conditions.
- 4.6 The failure of the Seller to deliver shall not entitle either party to treat this agreement as repudiated.
- 4.7 The Seller shall not be liable for any loss whatsoever including any lost production, indirect, consequential or third party loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## 5. Risk

- 5.1 Despite anything to the contrary in these terms and conditions, all risk in the Goods passes to the Buyer on delivery. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

## 6. Title

- 6.1 The parties agree that ownership of the Goods remains vested in the Seller and shall not pass to the Buyer until:
- (a) the Seller has received payment of the Price, plus all delivery costs, for the Goods, and
- (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all agreements between the Seller and the Buyer.
- To secure payment of all money due and payable to the Seller under this agreement, the Buyer grants to the Seller a security interest in the Goods in favour of the Seller. The Goods security is in consideration of delivery of the Goods before payment in full of the Price. The Buyer promises to pay all money under this agreement when payment falls due and payable. The Buyer acknowledges that the security interest granted in this clause may be registered with the Personal Properties Security Register.
- 6.2 Receipt by the Seller 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 the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that until the Seller receives the Buyer's payment of the Price plus any delivery costs in full:
- (a) the Buyer may not grant, create or allow another security interest, charge, or lien over the Goods nor pledge the security of the Goods and agrees not to sell or otherwise dispose of the Goods;
- (b) where practicable the Goods shall be kept separate and identifiable until all obligations of the Buyer are met;
- (c) until such time as ownership of the Goods shall pass from the Seller to the Buyer, the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller, and upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease;
- (d) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made;
- (e) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land or premises owned, occupied or used by the Buyer, or any such land or premises as the invitee of the Buyer, where the Goods are situated, and take possession of the Goods;
- (f) all available monies, after ordinary operating expenses and taxes of the Buyer's business and before allocation to other creditors of the Buyer's business, are to be held on constructive trust for the Seller;
- (g) the Seller may issue proceedings to recover payment of any money due and payable under this agreement notwithstanding that ownership of the Goods may not have passed to the Buyer; and
- (h) until such time that ownership of the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products and or entitled to the receipt of the profits from those end products.

## 7. Buyer's Disclaimer

- 7.1 This agreement is the entire agreement between the Buyer and the Seller regarding the Goods and supersedes all previous agreements, communications and representations regarding the Goods. The Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.
- 7.2 The Buyer warrants that the Goods will be supplied in accordance with the Seller's quotation and or the Buyer's specifications. The Buyer hereby foregoes any right to make any claim or demand against the Seller for Goods manufactured to the Sellers quotation and or the Buyer's specifications or that are not used in accordance with the Seller's guidelines together with Goods that are faulty, break down, damaged or suffer loss due to misuse, environmental conditions, site conditions, use for a purpose other than as specified, over-loading, accidents, alterations, modifications, overhauling, use of non-conforming replacement parts, lack of proper maintenance, continued use of the Goods after any defect becomes apparent or ought to become apparent, acts of God or by the Buyers own negligent act or omission.

## 8. Defects

- 8.1 The Buyer shall inspect the Goods on delivery and shall within fourteen (14) days notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the Seller's quotation and or the Buyer's specifications. The Buyer shall give the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods do not meet the Seller's quotation and or the Buyer's specifications are defective in any way. If the Buyer fails to comply with these provisions the Goods shall be deemed free from any defect or damage and to otherwise comply with the Seller's quotation and or the Buyer's specifications.
- 8.2 For defective Goods, or Goods that do not comply with the Seller's quotation and or the Buyer's specifications, which the Seller has agreed in writing that the Buyer may reject, the Seller's liability is limited to either (at the Seller's discretion) repairing the Goods or replacing the Goods with similar or comparable Goods.
- 8.3 The Seller will not be held liable for damage to Goods that have not been stored in a proper manner or not used within the specifications of the Buyer in accordance with the guidelines of the Seller in a proper and workmanlike manner.

## Eriez Magnetics Pty Ltd – Terms & Conditions of Trade

- 9. Returns**
- 9.1 Returns will be accepted providing that:
- (a) the Buyer complies with the provisions of clause 8.1; and
  - (b) the Seller agrees in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Buyer's cost within thirty (30) days of the initial delivery date; and
  - (d) the Goods are returned in the condition in which they were delivered together with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 The Seller may (in its sole and unfettered discretion) accept the return of Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any freight.
- 10. Warranty**
- 10.1 Subject to the Buyer's proper care and maintenance of the Goods by an expert repairer the Seller warrants that the Goods will be free from any defect in material and workmanship for a term of one year from initial delivery. To the extent permitted by law, the Seller's liability under this warranty is limited to ensuring that any such repairs are made and does not extend to any lost production, indirect, consequential or third party loss. This warranty ends one year after delivery of the Goods. This warranty is not transferrable. This warranty is given in lieu of all other express or implied warranties. No agent or employee of the Seller is authorised to extend or broaden the scope of this warranty. The Buyer is responsible for properly operating and maintaining the Goods in accordance with any guidelines and instructions the Seller provides. Maintenance services should be performed frequently, especially if the Goods are subject to severe operating conditions. This warranty does not cover fault, break down, damage or loss due to misuse, environmental conditions, site conditions, use for a purpose other than as specified, over-loading, accidents, alterations, modifications, overhauling, use of non-conforming replacement parts, lack of proper maintenance, continued use of the Goods after any defect becomes apparent or ought to become apparent, acts of God or by the Buyers own negligent act or omission. Additionally, this warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of this warranty. In respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Buyer's claim.
- 11. The Competition and Consumer Act (2010)**
- 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act (2010) and or each of the States and Territories of Australia equivalent, except to the extent permitted by those Acts where applicable.
- 12. Intellectual Property**
- 12.1 Where the Seller has designed, drawn or written documents for the Goods for the Buyer, then the copyright in those designs and drawings and documents remains vested in the Seller. The Buyer may not infringe upon the intellectual property rights of the Seller, including, without limitation, the unauthorized reproduction in a material form of the Goods in part or in whole or making unauthorized derivatives of the Goods in part or in whole.
- 12.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 13. Default & Consequences Of Default**
- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 13.2 If the Buyer defaults in payment of any part of the Price when it falls due and payable, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor own client basis or any of the Seller's collection agency costs.
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these terms and conditions. The Seller will not be liable to the Buyer for any loss whatsoever including any lost production, indirect, consequential or third party loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 13.4 If any account remains overdue after thirty (30) days or any other length of time agreed to by the terms of the purchase agreement, then an additional amount of the greater of \$500.00 or 10.00% of the amount overdue (up to a maximum of \$2,500) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
  - (b) the Buyer 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 Buyer or any asset of the Buyer.
- 14. Guarantee**
- 14.1 The Seller may require one or more directors of the Buyer to guarantee the Buyer's performance of this agreement if the Buyer is a proprietary limited company and the Buyer must procure that one or more of its directors guarantee the Buyer's performance of this agreement.
- 15. Cancellation**
- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever including any lost production, indirect, consequential or third party loss arising from such cancellation.
- 15.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation. This includes cancellation charges of a minimum twenty percent (20%) of the contract amount for inspection and restocking of the Goods.
- 16. Privacy Laws**
- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and or Guarantor/s in relation to any credit that may be provided by the Seller.
- 16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency to assess the credit worthiness of the Buyer and/or Guarantor/s.
- 16.3 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Buyer's and/or the Guarantor's credit, payment and/or status in relation to payment of the Goods in the event of default; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer and/or Guarantor; and/or
  - (d) enabling the daily operation of Buyer and/or Guarantors' account and/or the collection of amounts outstanding by the Buyer's in relation to the Goods.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Buyer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) an equitable charge on the item;
  - (b) the right to retain the item for the Price while the Seller is in possession of the item;
  - (c) a right to sell the item with sale proceeds applied firstly to all amounts owing to the Seller under these terms and conditions,
- 17.2 The equitable charge of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 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 Victoria and are subject to the jurisdiction of the courts of Victoria.
- 18.3 The Seller shall be under no liability to the Buyer for any loss whatsoever including any lost production, indirect, consequential or third party loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 18.4 In the event of any breach of this agreement by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
- 18.5 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.



Eriez Magnetics Pty Ltd  
21 Shirley Way  
Epping, Victoria 3076  
(03) 8401 7400  
www.eriez.com.au