

### **Standard Terms and Conditions of Supply**

In these standard terms and conditions of supply: "Arcus" refers to Arcus Wire Group Pty Ltd (ABN 25 000 465 163); "Customer" refers to the person, firm or company ordering or buying the Goods or Services from Arcus; "Goods" means all products, including wire rope, fittings, tools, rod systems, balustrades, marine rigging, and any other goods supplied by Arcus to the Customer; and "Services" means any services supplied by Arcus to the Customer.

#### **1 Offer and acceptance**

- 1.1 Any marketing material, price list, quotation or tender given to the Customer by Arcus is merely an invitation for the Customer to place an order with Arcus. Quotations are valid for 14 days unless otherwise specified.
- 1.2 Each order placed by the Customer with Arcus does not give rise to a binding commitment until accepted by Arcus. Arcus is not obliged to accept any order from the Customer. Arcus may accept the order by written confirmation or by delivery and in the case of delivery, only as to the portion of the order actually delivered. If an order is accepted, Arcus will carry out the order and the Customer must pay for the Goods and/or Services in accordance with these terms and conditions.

#### **2 Application of these terms and conditions**

- 2.1 These terms and conditions govern all supplies of Goods and Services by Arcus to the Customer, unless otherwise clearly agreed in writing signed by Arcus and the Customer.
- 2.2 These terms and conditions take precedence over any terms or conditions set out in any communication or document of the Customer regardless of the date or time of the communication or document, unless otherwise agreed by Arcus in writing.

#### **3 Cancellation and return of Goods**

- 3.1 If the Customer wishes to cancel or change all or part of an order after it has been accepted by Arcus, the Customer must put the request in writing. No cancellations or returns will be accepted without prior written agreement from Arcus, which Arcus may provide or withhold in its discretion (including imposing conditions).
- 3.2 Arcus will not consider a request to cancel an order after despatch of the Goods to the Customer unless the Customer returns the Goods to Arcus with the original invoice number and upon payment of Arcus' re-stocking charge of 15% of the invoice price of the returned Goods.
- 3.3 The Customer acknowledges that Arcus' re-stocking charge under clause 3.2 is reasonable and represents a genuine pre-estimate of Arcus' expenses and loss resulting from the Customer's cancelled order.
- 3.4 If Arcus initially agrees to accept delivery of any returned Goods this does not mean Arcus is bound to agree with the requested cancellation. Arcus may do such things that are required to check that the Goods are in good order and condition and to ensure it is commercially realistic for Arcus to re-sell them.
- 3.5 Arcus will not accept the cancellation of any order for, or return of, used or customised Goods or Goods supplied to special order (including orders for cut-lengths of wire or chain).
- 3.6 Returned Goods must be returned by way of prepaid freight with the original invoice and in original condition, in the original packaging, at the cost of the Customer.

#### **4 Price**

- 4.1 The price payable by the Customer for each of the Goods and Services supplied is the price set out in the quotation or tender given to the Customer by Arcus, or if no quotation or tender is given then in the price list published by Arcus as at the date the Customer places its order, unless otherwise agreed. Arcus reserves the right to correct any obvious errors in any quotation, tender or price list, whether technical or otherwise.
- 4.2 The minimum order value is \$50 exclusive of GST.
- 4.3 Unless otherwise expressly stated in a quotation or price list, all prices for the Goods and Services do not include any sales tax, goods and services tax, stamp duty and other excises and duties that may be imposed in relation to these terms and conditions or the

supply of the Goods and Services by Arcus to the Customer. Each of these is payable by the Customer and if paid by Arcus, the Customer must reimburse Arcus on demand.

## **5 Payment and credit**

- 5.1 Unless the Customer has written approval for credit, all payments must be made by way of electronic funds transfer or credit card or as otherwise agreed between the parties, before the corresponding order is despatched.
- 5.2 Arcus may give the Customer credit, but it is not obliged to do so, even if Arcus has previously given the Customer credit.
- 5.3 Credit terms are subject to acceptance of an application for credit and validation of trade references, and are strictly 30 days from the date of invoice and the Customer is bound by these and any other conditions that Arcus and the Customer agree to for giving the Customer credit.
- 5.4 Arcus may decline to give the Customer further credit at any time. If Arcus does so, all amounts that the Customer owes Arcus on any account become immediately payable.

## **6 Late payment**

- 6.1 If any amount that the Customer owes to Arcus is not paid by the due date then:
  - (a) all amounts the Customer owes to Arcus become immediately payable despite any previously agreed credit terms or conditions;
  - (b) Arcus may suspend or cancel any undelivered orders to the Customer; and
  - (c) Arcus may charge the Customer interest on any amount outstanding, commencing on the day after the due date for payment and ending on the date when the payment is received by Arcus. The interest rate charged is to be calculated by adding 5% to the cash rate target specified by the Reserve Bank of Australia on each day the payment is due; and (d) the Customer must pay all collection costs including but not limited to bank and legal expenses and debt collection commissions incurred in obtaining payment for any amounts owing to Arcus by the Customer.

## **7 Delivery**

- 7.1 Unless otherwise agreed by Arcus in writing Goods are delivered ex-warehouse.
- 7.2 Any times quoted for delivery are to be treated as estimates only, involving no contractual obligations unless a guarantee in writing has been given by Arcus for the delivery on a specific date.
- 7.3 Arcus reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 7 days after a request by Arcus for that information.
- 7.4 In the absence of special cartage instructions or if requested by the Customer, the Goods will be shipped by Arcus' regular carriers and the cost of delivery and all other associated costs will be charged to the Customer.

## **8 Risk**

- 8.1 Risk of loss or damage to any Goods supplied to the Customer under a particular order passes to the Customer at the time the Goods are delivered.

## **9 Retention of title**

- 9.1 Arcus remains the owner of all Goods that Arcus supplies to the Customer or on behalf of the Customer until the Customer has paid all amounts in respect of all Goods which are owing to Arcus by the Customer.
- 9.2 Until the Customer becomes the owner of the Goods in accordance with clause 9.1:
  - (a) the Customer holds the Goods as Arcus' agent and bailee and the Customer owes Arcus a fiduciary duty in respect of the Goods;
  - (b) the Customer must store the Goods on the Customer's premises separately from the Customer's own goods or goods of any other person and in a manner which makes them readily identifiable as Arcus' Goods; and
  - (c) Arcus may enter, by Arcus' employees or agents, on any premises where the Goods are situated, or where Arcus reasonably believes them to be situated, and retake possession of the Goods, if the Customer defaults in paying any part of the price or associated charges for them or the Customer becomes or resolves to become subject to any form of insolvency or administration.

- 9.3 The Customer may re-supply the Goods to any person or entity before the Customer has paid all amounts which are owing to Arcus provided that:
  - (a) the re-supply is in the ordinary course of the Customer's business;
  - (b) all money received by the Customer for the Goods will be held by the Customer on trust for Arcus; and
  - (c) the Customer must either:
    - (i) pay the money immediately when it is received by the Customer; or
    - (ii) deposit the money into a bank account and hold it as trustee for Arcus.
- 9.4 The Customer's permission to enter premises under clause 9.2(d) is irrevocable and the Customer agrees that Arcus' employees or agents may enter those premises at any reasonable time after default of payment by the Customer or before default if Arcus believes a default is likely.
- 9.5 Arcus will not be liable, in contract or in tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken under this clause 9, except where any costs, damages, expenses or losses arise as a result of Arcus' negligence.

## **10 Sale by specification**

- 10.1 The Customer must ensure that the Goods are suitable for the purposes intended before using the Goods for those purposes. Except to the extent expressly specified by Arcus in writing, Arcus sells the Goods by specification and the Customer decides for what purpose to use or re-supply the Goods. To the extent Arcus expressly specifies in writing a purpose for which the Goods are suitable, Arcus sells the Goods for use only as specified for that purpose. Arcus is not liable for any loss or damage caused by persons seeking to fit unsuitable Goods.
- 10.2 Arcus reserves the right to vary the specifications or performance criteria of any Goods from time to time and to obtain Goods from different sources, at Arcus' absolute discretion. Arcus may do that without notifying the Customer provided Arcus has reasonable grounds for believing that the alternate Goods being offered are substantially similar to that previously offered or represents an improvement.

## **11 PPS Law**

- 11.1 This clause 11 applies to the extent that these terms and conditions provide for or contain a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law") (or part of it).
- 11.2 The Customer agrees, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to Arcus' security interest secures as a 'purchase money security interest' ("PMSI") the purchase price of all collateral supplied to the Customer. This clause does not limit what other amounts are secured under these terms and conditions.
- 11.3 The parties agree that payments will be applied in the following order:
  - (a) to obligations that are not secured, in the order in which those obligations were incurred;
  - (b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
  - (c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- 11.4 Arcus may register its security interest as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which Arcus requires for the purposes of:
  - (a) ensuring that Arcus' security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling Arcus to gain first priority (or any other priority agreed to by Arcus in writing) for its security interest; and
  - (c) enabling Arcus to exercise rights in connection with the security interest, and to assure performance of its obligations, the Customer hereby gives Arcus an irrevocable power of attorney to do anything Arcus considers the Customer should do under these terms and conditions.

- 11.5 The rights of Arcus under these terms and conditions are in addition to and not in substitution for Arcus' rights under other law (including the PPS Law) and Arcus may choose whether to exercise rights under these terms and conditions, and/or under such other law, as it sees fit.
- 11.6 In respect of Goods that are not used predominantly for personal, domestic or household purposes, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these terms and conditions:
  - (a) sections 95 (notice of removal of accession to the extent it requires Arcus to give a notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
  - (b) section 130 (notice of disposal to the extent it requires Arcus to give a notice to the Customer);
  - (c) section 132(3)(d) (contents of statement of account after disposal);
  - (d) section 132(4) (statement of account if no disposal);
  - (e) section 135 (notice of retention);
  - (f) section 142 (redemption of collateral); and
  - (g) section 143 (re-instatement of security agreement).
- 11.7 The following provisions of the PPS Law confer rights on Arcus:
  - (a) section 123 (seizing collateral);
  - (b) section 126 (apparent possession);
  - (c) section 128 (secured party may dispose of collateral);
  - (d) section 129 (disposal by purchase); and
  - (e) section 134(1) (retention of collateral).
- The Customer agrees that in addition to those rights, Arcus shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under these terms and conditions and the Customer agrees that Arcus may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 11.8 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 11.9 The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing Arcus the benefit of section 275(6)(a) and Arcus shall not be liable to pay damages or any other compensation or be subject to injunction if Arcus breaches this sub-clause.
- 11.10 The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the collateral other than with the express written consent of Arcus.

## **12 Statutory warranties**

- 12.1 Terms, conditions, warranties, guarantees and other obligations implied by law that cannot be excluded, restricted or modified apply to the extent required by that law.
- 12.2 Arcus excludes all other conditions, warranties, guarantees and obligations which would otherwise be implied concerning the activities covered by these terms and conditions.
- 12.3 Where Arcus is permitted to limit its liability, to the extent permitted by law, Arcus' sole liability for breach of contract, breach of statutory duty, breach of a condition, warranty, guarantee, negligence, or other tort or other obligation implied by law in relation to the supply of the Goods or Services is limited to any one of the following as Arcus decides:
  - (a) in the case of Goods it supplies:
    - (i) the replacement of the Goods or the supply of equivalent goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
    - (iv) the payment of the cost of having the Goods repaired; and

- (b) in the case of Services Arcus supplies:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.
- 12.4 The Customer buys all Goods from Arcus, not for personal domestic or household use or consumption. The Customer buys all goods from Arcus either for the purpose of re-supply or for the purpose of using the Goods up or transforming the Goods, in trade or commerce, in the course of a process of production or manufacture, and is therefore not a 'consumer' for the purposes of the CCA.

### **13 Other limitations**

- 13.1 The Customer does not rely on any representation, warranty or other provision made by or for Arcus which is not expressly stated in these terms and conditions, including any terms and conditions sought to be imposed by the Customer.
- 13.2 Except for its liability under clause 11, Arcus is not liable (nor are its employees, contractors and agents) for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:
  - (a) arising out of any breach of any implied or express term, condition or warranty; or
  - (b) suffered as a result of Arcus' negligence (or that of its employees, contractors or agents).
- 13.3 The liability of a party under these terms and conditions (whether arising in contract, tort or by statute) is to be reduced by the same proportion as represents the proportion of the loss or damage caused or contributed to by the other party, its contractors or agents.

### **14 Privacy**

- 14.1 Each party must comply with the privacy laws in Australia, including the Privacy Act 1988 (Cth), in respect of all personal information collected from or disclosed to the other during the performance of its obligations under these terms and conditions.

### **15 Miscellaneous**

- 15.1 Arcus is not responsible for any delay to the supply of Goods or Services caused by something outside Arcus' reasonable control including but not limited to accidents, strikes, pandemics, transport difficulties or stock shortages.
- 15.2 These terms and conditions can only be varied by one of Arcus' authorised officers signing a document which states the variation. These terms and conditions may only be changed by Arcus from time to time by Arcus giving notice of the change to the Customer. Notice is deemed given (whether or not actually received) when Arcus does any of the following:
  - (a) sends notice of the change to the Customer at any address (including an email address) supplied by the Customer;
  - (b) or publishes the amended terms and conditions on Arcus' website.
- 15.3 If Arcus varies these terms and conditions under clause 15.2, the Customer may terminate any agreement incorporating these terms and conditions by giving Arcus 30 days written notice.
- 15.4 In these terms and conditions, no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these terms and conditions or any part of them.
- 15.5 Each agreement which include these terms and conditions is deemed to be an agreement made in and governed by the laws in force in New South Wales, and the parties submit their disputes to the non-exclusive jurisdiction of the courts of New South Wales.
- 15.6 In these terms and conditions a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

**Last Updated: October 2019**