

Terms and Conditions of Trade

1. Acceptance and Application of Terms

- (a) In these terms, the term:
 - (i) 'Company' means ABBAS Ltd which includes Quality Gates and Balustrading; and
 - (ii) 'Customer' means the persons or company purchasing from the Company; and
 - (iii) 'goods and services' means (as the context requires) all present and after acquired property supplied by the Company, as detailed in the invoice supplied by the Company to the Customer, together with the proceeds of such goods and services.
- (b) These conditions shall apply to all goods and services supplied by the Company.
- (c) By requesting the Company to supply goods and services to the Customer, the Customer acknowledges and agrees that the Customer's written agreement to these terms forming part of each contract (as evidenced by the Customer's signature on the Company's credit application form, or quotation form, or electronic acceptance of the Company's quotation) is and constitutes a security agreement providing for both future advances and a security interest in favour of the Company in all of the Customer's present and after acquired property supplied by the Company.

2. Order and Returns

- (a) As the goods are custom made, no cancellation of an order will be accepted by the Company once the quote has been accepted by the Customer.
- (b) No goods will be accepted for return without prior consent of the Company and any claims must be made within 7 days of receipt of the invoice.
- (c) The Company may make a deduction to cover handling charges or for deterioration in the original quality or appearance of the goods.
- (d) If there is a conflict between the Customer's order and the Company's confirmation of order, the Company's confirmation of order (including these terms) will prevail.
- (e) An agent or representative of the Company is not authorised to make any representations, warranties or agreements that a senior executive of the Company has not confirmed in writing. The Company is not bound by unauthorised statements. Unauthorised statements cannot form a contract, or part of a contract, collateral to the contract recorded in these terms and the quote ('the contract').

3. Price

- (a) The price payable by the Customer in relation to goods and services ordered is the price specified at the date of contracting or quoting (as applicable). The price recorded in the quote may be increased by the amount of any increase in the cost of materials notified to the Company after the date of the quote.
- (b) The Customer shall, unless otherwise agreed, pay all GST or other taxes, duties and insurance on and in respect of the goods and services.
- (c) The Customer may not withhold the price or deduct or set-off any amount against the price.

4. Delivery and Risk

- (a) Delivery of goods shall be deemed completed when the Company gives possession of the goods directly to the Customer or his agent or to a carrier, courier or other bailee for delivery to the Customer.
- (b) The Company will make every effort to ensure delivery/installation of goods is on time but will not be liable for any loss or damage including (without limitations) consequential loss arising in any way from any delay in delivery/ installation, nor may the Customer cancel any order for late delivery.
- (c) Should the Company deliver goods by installments, each installment is deemed to be a separate contract on the same terms as the contract. If the Company fails to deliver, or makes defective delivery of, one or more installments, the Customer is not entitled to cancel the contract.
- (d) The Customer must make any claims for short deliveries or damaged goods within 7 days of delivery.
- (e) All risk in and for the goods shall pass to the Customer on delivery/ installation of the goods.
- (f) The time agreed for delivery/ installation shall not be an essential term of the contract unless the Customer gives written notice to the Company making time of the essence.

5. Payment

- (a) Full payment is required by the Customer no later than 7 days from the date of invoice. Unless otherwise agreed, a deposit of at least 30% of the price, or whole or part payment of the price in advance is required prior to commencement of fabrication of the goods by the Company.
- (b) Where the Company has agreed to extend credit to the Customer, payment is to be made in full on the 20th of the month following the date of invoice. The Company may withdraw credit arrangements at any time.
- (c) If payment is not made on the due date, the Company reserves the right to withhold further supply of goods and services until the Customer's account is paid in full.
- (d) The Company may charge daily interest on overdue balances at a rate of not more than 5% above the Company's principal bank's overdraft rate. Payment of default interest is without prejudice to the Company's other rights and remedies.
- (e) The Company reserves the right to allocate payments to any or all outstanding invoices.
- (f) The Customer shall pay any expenses including any solicitor's fees, debt collection fees, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in the contract.

6. Reservation of Title

- (a) Prior to receiving payment in full for all goods and services, title in any goods supplied by the Company will remain with the Company, even if the goods have been built in or permanently attached.
- (b) Until full payment, the Customer shall store goods in a way that clearly identifies them as property of the Company and it shall be the Customer's obligation to maintain insurance in respect of the goods.
- (c) If the Customer fails to pay on the due date, or is in breach of these terms, the Customer authorises the Company to enter any premises to recover goods in respect of which services have been provided or to which the Company holds title and to hold those goods pursuant to this clause.
- (d) The Customer indemnifies the Company for any losses or costs incurred in recovering such goods. In particular (but without limitation) the Customer is responsible for any damage caused in recovering goods (including any damage caused in recovering goods that have been built in or permanently attached). If the premises are the premises of a third party, the Company will enter and recover the goods as the Customer's agent. The Company will be entitled to sell any goods held by the Company and apply the proceeds towards amounts owed by the

Customer if the Customer has failed to pay any amount due within 14 days of a written demand or within 60 days of an amount becoming due (whether demanded or not).

- (e) This clause 6 is intended to protect the Company in the event of the default, insolvency, liquidation, or receivership of the Customer.
- (f) Where goods and services are retained by the Company pursuant to clause 6(c) the Customer waives the right to receive notice under s.120 of the Personal Properties Security Act 1999 ('PPSA') and to object under s.121 of the PPSA. The Customer grants to the Company a security interest in the goods and any after-acquired goods (including proceeds thereof) purchased from the Company in accordance with the contract, until payment has been received in full for the goods. The Customer agrees to provide any further information and to enter into any further documentation required to enable the perfection of the Company's security interest in the goods pursuant to the PPSA.

7. **Liability**

- (a) The Customer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and The Company is under no liability if they are not.
- (b) In the case of goods not of the Company's own manufacture, the Customer is entitled to only such benefits as the Company may receive under any guarantee given to the Company by the manufacturer of the goods.
- (c) The Company is not liable for;
 - (i) Failure to deliver/ install the goods by a specified date;
 - (ii) An event beyond the Company's control;
 - (iii) Testing the goods;
 - (iv) Any negligence, misrepresentation or other act or omission by the Company or its agents; or
 - (v) Any loss or loss of profit or damage resulting directly, or indirectly, from any of the above.
- (d) The Company shall not be liable for consequential or special damages under any circumstances.
- (e) Despite anything else, any liability of the Company arising under the contract will not exceed the value of the replaced goods in relation to which the liability has arisen.
- (f) Failure to deliver/ install on a specified date shall not entitle the Customer to repudiate the agreement and the Company shall not be liable for failure to deliver or for delay in delivery arising from any cause whatsoever beyond the Company's control. The Customer shall not be relieved of any obligations to accept or pay for goods by reason of any delay in delivery.

8. **Warranties**

- (a) The Company will use all reasonable care in providing goods and services and will endeavour to provide goods and services in accordance with industry standards. All warranties, conditions, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise and whether express or implied by customary practice, at law or under statute are excluded to the extent legally permitted. If the Customer on-sells the goods in respect of which services have been provided, the Customer will not make any warranty inconsistent with these terms.
- (b) If the Company fabricates the goods, the Company warrants fabrication and installation against faulty workmanship for a period of 6 months.
- (c) The Company warrants that the fabricated goods will substantially conform with the written specifications supplied by the Customer.
- (d) A claim under this clause must be made in writing to the Company within 6 months from the date of delivery/ installation of the goods and no claim can be made under this clause unless and until the price is paid in full. The Customer must also give the Company notice of any defect in the goods within 7 days of the defect becoming apparent.
- (e) The Company's liability under this clause will be limited in its sole discretion to;
 - (i) Restoring the goods in conformity with the written specifications supplied by the Customer; or
 - (ii) Replacing the goods.
- (f) Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of goods or parts of the goods as necessary to and from the place so specified.
- (g) The repair of the goods under this clause does not include the cost or removal of defective material and fixing replacement material.
- (h) The warranty under this clause does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended.
- (i) The Company will not be liable for goods which have been tampered with or modified without the Company's approval or which have not been stored or used in a proper manner.
- (j) The Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective goods.

9. **Prior Treatments/ Processes**

- (a) The Customer must advise the Company in writing if a good has been treated with any substance or subjected to any process that may affect the provision of goods or services by the Company. The Company will not be liable for failure of the service or for any damage, deterioration or diminution in value resulting to a good if services are unsuccessful due in whole or part to any such treatment or process which is not disclosed by the Customer.

10. **Intellectual Property**

- (a) Copyright and all other intellectual property rights in drawings, specifications and other technical information relating to the goods remain the property of the Company.
- (b) If any goods are supplied to the Customer's design, the Customer warrants that the manufacture and supply of the goods by the Company will not infringe any copyright or other intellectual property rights of any other person. The Customer agrees to indemnify the Company against all losses, costs, damages or liabilities incurred by the Company in the event of a claim being made that the manufacture or supply of those goods infringes the copyright or other intellectual property rights of any other person.

11. **Product Specifications**

- (a) Dimensions and specifications referred to in the contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the contract that the goods will correspond precisely with the dimensions, specifications or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

- (b) The Customer acknowledges that if the Company is required to match the colour or shade of the goods with a particular colour or shade, the colour or shade of the goods may not be an exact match. The Company will endeavour to ensure that any colour or shade variation is within limits agreed with the Customer or where there is no such agreement, is reasonable.

12. **Consumer Guarantees Act**

- (a) The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires goods and services from the Company for the purposes of a business in terms of section 2 and 43 of that Act.
- (b) This applies to all further on-selling and all subsequent Customers (other than 'consumers') are required to contract out of the Consumer Guarantees Act in respect to any further sales of the goods. The Customer will indemnify the Company for any damages or costs suffered as a result on non-compliance with this clause.

(c)

13. **No Waiver**

- (a) No delay or failure by the Company to act or insist on any right shall be regarded as a waiver and every right remains enforceable and may be exercised at any time.

14. **Privacy Act 1993**

- (a) The Customer authorises the Company to collect, retain, and use personal information (including disclosure to a third party) about the Customer for the purposes of, assessing the Customer's creditworthiness, debt collection and searching the PPSA Register for the purposes of the security.

15. **Personal Guarantee of Company Directors or Trustees**

- (a) If the Customer is a company or trust, the director(s) or trustee(s) signing the contract, in consideration for the Company agreeing to supply goods and services and grant credit to the Customer at their request, also sign the contract in their personal capacity and jointly and severally personally undertake as principal debtors to the Company the payment of any and all monies now or hereafter owed by the Customer to the Company and indemnify the Company against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in the contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of the contract and for payment of all sums due hereunder.

16. **PPSA:**

- (a) To the extent permitted by law, the Customer and the Company contract out of:
- (i) s114(1)(a) of the PPSA; and
 - (ii) The Customer's rights referred to in sections 107(2)(c), (d), (e), (h) and (i) of the PPSA
- (b) The Customer agrees to waive its right to:
- (iii) Receive notice by the Company pursuant to s114 of the PPSA;
 - (iv) Receive a statement of account pursuant to s116 of the PPSA;
 - (v) Recover a surplus pursuant to s117(1)(c) and s119 of the PPSA;
 - (vi) Have the contract reinstated pursuant to s133 of the PPSA;
 - (vii) Redeem the goods pursuant to s132 of the PPSA;
 - (viii) Reinstatement the security agreement pursuant to s133 and s134 of the PPSA: and/or
 - (ix) Receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to any security interest the Company may have in goods supplied to the Customer from time to time.
- (c) And must not:
- (x) Give the Company a written demand or allow any other person to give the Company a written demand, requiring the Company to register a financing change statement; or
 - (xi) Lodge a change demand or allow any other person to lodge a change demand, in each case in relation to a financing statement registered by the Company under the PPSA;
 - (xii) Enter into, or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by, or on behalf of, the Company;
 - (xiii) Consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the goods (whether in an accession or otherwise) which ranks in priority to the Company's rights as first ranking security holder.
- (d) The Customer agrees to indemnify the Company, upon demand, for all costs and expenses (including legal fees) incurred by the Company:
- (i) As a result of the occurrence of an event of default as such term is defined in the PPSA (including upon actual or attempted enforcement of any security interest granted to the Company by the Customer); and
 - (ii) In complying with any demand made under s162 of the PPSA.
- (e) The Customer shall promptly execute any document and provide any information required from time to time by the Company to enable them to take a perfected security interest in the goods and their proceeds in priority to all other secured parties.
- (f) The Customer will allow the Company to take possession (pursuant to s16 of the PPSA) of the goods if the Company, from time to time, deems it necessary to perfect or re-perfect its security interest.

17. **Miscellaneous**

- (a) The Company may change these terms by notice in writing to the Customer at any time.
- (b) These terms prevail over the terms of any purchase order or any terms or contract submitted by the Customer.
- (c) Where any provision of these terms (including, without limitation, any provision in clauses 6 and 15) is rendered void, unenforceable or otherwise ineffective by operation of law, that shall not affect the enforceability or effectiveness of any other provision of these terms.
- (d) The Customer is to execute documents and do such further acts as may be required by the Company to register the security interest granted to the Company under the contract under the PPSA or for any other purpose whatsoever.
- (e) Headings do not affect the interpretation of these terms.