

## Product Terms and Conditions of Sale

These terms and conditions of sale apply to the supply of any product ("Product") by H.B. Fuller Company Australia Pty Ltd ACN 003 638 435 of 16-22 Redgum Drive, Dandenong South, Victoria, Australia ("H.B. FULLER") to the purchaser of them ("Buyer") except where they are varied by agreement between H.B. FULLER and Buyer prior to the supply of the Product. Only these terms and conditions are binding upon H.B. FULLER and those otherwise agreed to in writing by H.B. FULLER and Buyer and those, if any, which are imposed by law and which cannot be excluded by these terms and conditions. All previous negotiations, representations, warranties, arrangements and statements (if any) whether express or implied, including any collateral agreement or warranty between Buyer and H.B. FULLER, are excluded and cancelled.

### 1. Limited Warranty; Disclaimer; Limitation of Warranties and Remedies.

H.B. FULLER warrants to Buyer that the Product will be manufactured in accordance with the H.B. FULLER specifications. These specifications are available upon request.

TO THE EXTENT PERMITTED BY LAW:

- a) This warranty does not cover test data or any defects, damages or other harm caused to any extent or in any way by (i) the failure of Buyer or Buyer's customers to follow any applicable H.B. FULLER instructions, if any, or (ii) the abuse or misuse of the Product.
- b) THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONDITIONS AND WARRANTIES, EXPRESS OR IMPLIED.
- c) H.B. FULLER EXPRESSLY DISCLAIMS ANY OTHER CONDITIONS AND WARRANTIES, INCLUDING CONDITIONS AND WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- d) ALTHOUGH H.B. FULLER MAY SUGGEST A PRODUCT OR DEVELOP A PRODUCT, IT IS THE RESPONSIBILITY OF BUYER TO TEST AND DETERMINE THE SUITABILITY OF THE PRODUCT FOR ANY INTENDED USE OR PURPOSE.
- e) FOR ANY VALID CLAIM PRESENTED BY BUYER UNDER THIS WARRANTY, H.B. FULLER WILL REPLACE THE PRODUCT, OR AT ITS OPTION, REFUND OR CREDIT THE PURCHASE PRICE.
- f) THIS REPLACEMENT/REFUND REMEDY IS BUYER'S EXCLUSIVE REMEDY AGAINST H.B. FULLER.
- g) BUYER AGREES THAT NO OTHER REMEDY (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY OR ANY OTHER INCIDENT OR CONSEQUENTIAL LOSS OR OTHER ECONOMIC LOSS OR H.B. FULLER LIABILITY FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES) WILL BE AVAILABLE TO BUYER FOR CLAIMS ARISING OUT OF A BREACH OF WARRANTY REGARDLESS OF THE LEGAL THEORY (CONTRACT, TORT, STATUTE OR OTHER).
- h) IN NO EVENT WILL H.B. FULLER BE OBLIGED TO PAY DAMAGES TO BUYER FOR ANY AMOUNT EXCEEDING THE PRICE THAT BUYER PAID FOR THE PRODUCT WHICH, OR THE USE OF WHICH, GIVES RISE TO THE DAMAGES.
- i) Notwithstanding the above, in the event that the supply of the Product to Buyer constitutes the supply of goods to a consumer under the Australian Competition and Consumer Act 2010 ("Act"), nothing in these terms and conditions restricts, excludes, or modifies the application of the Act. Otherwise H.B. FULLER, to the extent permitted by the Act, limits its liability for the loss of Purchaser (including indirect, special or consequential loss) to, at H.B. FULLER's sole option, any one or more of: (i) the replacement of the Products or the supply of equivalent goods; (ii) the repair of the Products; (iii) the payment of the cost of replacing the Products or of purchasing similar goods; or (iv) the payment of the cost of having the Products repaired.
- j) This Agreement confers no rights or remedies on any third parties, whether as third party beneficiaries or otherwise.

### 2. Pricing.

- a) All prices are quoted in Australian Dollars (\$) unless otherwise specified in writing.
- b) All quotations are based on current costs of production and are subject to amendment without notice before or after acceptance to meet any cost variation between the date of the quotation and the date of completion of the order.
- c) All prices quoted do not include any tax or duty that may be payable by Buyer. The prices shown in the price list as distributed by H.B. FULLER from time to time are subject to alteration without notice.
- d) The price list distributed by H.B. FULLER from time to time must not be construed or operate as an offer or obligation to sell but is an invitation to treat only and H.B. FULLER reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

### 3. Delivery.

- a) Deliveries will be ex works H.B. FULLER's manufacturing facility or warehouse, unless otherwise designated by H.B. FULLER and the Products are at Buyer's risk and delivery cost from that point.
- b) H.B. FULLER will not be liable for any delay in production or delivery due to any cause whatsoever beyond the reasonable control of H.B. FULLER.
- c) H.B. FULLER will not be liable for any damage to, or loss of, the Product following delivery to the ex works point, including any damage or loss in transit. If H.B. FULLER is unable to supply Buyer's total order these terms and conditions will apply to the supply of all and each part of the order.
- d) Upon delivery of the Products, Buyer must inspect the Products and within seven days deliver to H.B. FULLER notice in writing of any claim against H.B. FULLER. If no such notice is received by H.B. FULLER within those seven days, the Products are deemed to be in all respects in accordance with the order and Buyer is bound to accept and pay for the same accordingly and Buyer has no claims for any damage to, or loss of, Product following delivery to the ex works point.

### 4. Orders.

- a) All orders placed by Buyer are subject to acceptance by H.B. FULLER.
- b) Unless otherwise agreed, delivery times will be from the date of receipt of Buyer's purchase order.

- c) Should Buyer cancel an order after work has been commenced, Buyer will pay a reasonable charge for the work completed and materials used. H.B. FULLER may cancel or suspend all or any part of an order if amounts owing by Buyer are overdue or if there is the appointment of receiver, receiver and manager, liquidator or mortgagee in possession to the business of Buyer or if Buyer becomes insolvent or enters into any form of insolvency administration within the meaning of the Corporations Act 2001.
5. **Terms of Payment and Price.**
- a) Subject to approval and continuation of credit by H.B. FULLER, the terms of payment are thirty days from the end of the month of invoicing.
- b) Prices will be in accordance with H.B. FULLER's prices in effect at the date of shipment. Pricing errors may be corrected by H.B. FULLER at any time.
- c) Any taxes or other charges imposed upon the purchase or resale of the Products will be paid by Buyer.
- d) H.B. FULLER may refuse orders or require prepayment in full if all prior invoices are not paid in full or if H.B. FULLER reasonably deems such steps necessary to secure payment.
- e) Buyer may not withhold payment of any part of the price because of any dispute or claim. All payments that are past due will be subject to interest calculated from the date the payment fell due until the date of payment at a rate that is 2% higher than the overdraft rate charged or that would be charged by H.B. FULLER's bankers to it and such interest is payable on demand.
- f) Upon any default by Buyer under these terms and conditions, all sums due (whether invoiced or not) to the Company on any account for Products will become immediately due and payable. Buyer further agrees to pay to H.B. FULLER all reasonable and necessary costs of collection hereunder, including reasonable attorney's fees.
6. **Security and Collection.**
- a) As security for payment hereunder, Buyer hereby grants H.B. FULLER a security interest in all Products supplied by H.B. FULLER to Buyer.
- b) Buyer will:
- i. sign any further documents and/or provide any further information, such information to be complete, accurate and up-to-date in all respects, which H.B. FULLER may reasonably require to register a financing statement on the Personal Property Securities Register;
  - ii. reimburse H.B. FULLER for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register; and
  - iii. give H.B. FULLER not less than 14 days' prior written notice of any proposed change in Buyer's name and/or any other change its details.
- c) Buyer and H.B. FULLER agree that neither of them is required to disclose any information of a kind referred to in section 275(1) of the Personal Property Securities Act ("PPSA") that is not in the public domain.
- d) Despite any statement to the contrary by Buyer, every payment to H.B. FULLER in respect of the Products must be taken as a payment:
- i. first, of any debt which is not the subject of a security interest in favour of H.B. FULLER;
  - ii. secondly, of the amounts held by Buyer in trust for H.B. FULLER or subject to a security interest in favour of H.B. FULLER, to the extent that the trust or security interest is not a purchase money security interest under the PPSA or was not perfected by registration within the time specified by section 62 of the PPSA;
  - iii. thirdly, of the amounts held by Buyer in trust for H.B. FULLER or subject to a security interest in favour of H.B. FULLER of amounts, to the extent that the trust or security interest is a purchase money security interest under the PPSA perfected by registration within the time specified by section 62 of the PPSA;
  - iv. fourthly, for any Products that Buyer has sold but for which it has not received the proceeds; and
  - v. fifthly, for whatever Products Buyer has not sold as H.B. FULLER elects.
- e) Buyer waives any right to receive notice of any verification statement issued under the PPSA.
- f) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these terms and conditions, H.B. FULLER and Buyer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to the contract out of, other than sections 117, 118, 120, 123, 126, 128, 129 and 134(1), do not apply to the enforcement of that security interest.
- g) Buyer will insure and keep insured all Products supplied by H.B. FULLER in Buyer's possession or control from time to time against risk of loss or damage by hazards normally insured against.
- h) Upon the appointment of receiver, receiver and manager, liquidator or mortgagee in possession of the business of Buyer or if Buyer becomes insolvent or enters into any other form of insolvency administration within the meaning of the Corporations Act 2001 or upon payment not being made by Buyer on agreed payment terms H.B. FULLER is granted an irrevocable license to enter Buyer's premises for the purpose of repossessing the Products then in the possession of Buyer.
7. **Acknowledgement.**
- Buyer acknowledges and agrees with H.B. FULLER that:
- a) use of the Products supplied is beyond the control of H.B. FULLER;
- b) any advice, recommendation, information or services provided by H.B. FULLER, its employees, contractors or agents regarding the Products sold and their use are not construed as contractual conditions or warranties; and
- c) H.B. FULLER is not, subject to the warranties incorporated under clause 1, liable to Buyer, for any loss or damage sustained by the Buyer as a consequence of any incorrect advice, recommendation, information or services provided by H.B. FULLER, its employees, contractors or agents regarding the Products sold or the methods or conditions of applications and use of the Products 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 Buyer by H.B. FULLER, its employees, contractors or agents.

**8. Privacy Act Authority.**

Buyer irrevocably authorises H.B. FULLER, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of Buyer from time to time including (but without limitation) the making of enquiries of persons nominated as trade referees, the bankers of Buyer or any other credit providers (collectively "the information sources") and Buyer hereby authorises the information sources to disclose to H.B. FULLER such information concerning Buyer which is within their possession and which is requested by H.B. FULLER.

**9. GST.**

If a party ("Supplier") makes a taxable supply ("Supply") under these terms and conditions in respect of which goods and services tax has not been included, then the recipient of that Supply must also pay to the Supplier, at the same time as the consideration for the Supply is paid or otherwise given to the Supplier, an additional amount equal to any goods and services tax payable in respect of that Supply. The Supplier's right to payment under this paragraph is subject to a tax invoice being delivered to the recipient of that Supply to enable the recipient to claim input tax credits for the Supply.

**10. Force Majeure.**

- a) "An event of force majeure" means any event or circumstance whether arising from act of God, natural causes, fire, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining raw material, energy or other supplies or access to land and labour disputes, any act of government including ministerial decisions, changes in legislation and acts of any government department or statutory authority (but not including any obligation to make a payment) beyond the control of a party and which the party is not able to overcome.
- b) If an event of force majeure occurs which adversely impacts upon the ability of H.B. FULLER to perform its obligations under any contract with Buyer, H.B. FULLER is not liable for any delay or failure to perform its obligations.
- c) If an event of force majeure occurs which adversely impacts upon the ability of Buyer to perform its obligations under any contract with H.B. FULLER, Buyer is not liable for any delay in performing its obligations, but no occurrence of an event of force majeure will effect the obligation of Buyer to pay for Products which have been delivered to Buyer or to another destination nominated by Buyer.
- d) If an event of force majeure occurs, the party claiming to be affected by that event must immediately notify the other party in writing and take all reasonable steps to mitigate the effects of the event of force majeure.
- e) Nothing in this clause requires H.B. FULLER to take any action that would require it to settle any strike, labour dispute or other dispute of any nature, if in its judgment alone, that would not be in its best interests.

**11. Vienna Sales Convention.**

The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to goods supplied by H.B. FULLER to Buyer under these terms and conditions nor do any terms or conditions express or implied by the Vienna Sales Convention form part of these terms and conditions.

**12. Miscellaneous**

- a) The failure by H.B. FULLER to insist upon observance by Buyer of any term of these terms and conditions will not be deemed a waiver nor amount to a waiver of any subsequent breach.
- b) If any of these terms and conditions is held to be invalid, void, unenforceable or illegal for any reason, these terms and conditions will otherwise remain in full force and effect apart from such provision which is deemed to be deleted or modified to overcome that objection.
- c) These terms and conditions are governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the Victorian and Australian courts.