



METSEL PTY LTD – CONDITIONS OF SALE

1. Interpretation

Unless the context deems otherwise, in these Conditions of Sale:

a. **Act of Default** means:

- i. the Customer breaches the Contract;
- ii. the Customer suspends or ceases to carry on all or substantially the whole of its business;
- iii. the Customer is or becomes unable to pay its debts as and when they fall due or is otherwise presumed to be insolvent by the law;
- iv. a judgement against the Customer for the payment of monies remains unsatisfied for seven days;
- v. the Customer suspends or threatens to suspend payment of its debts generally;
- vi. the making of an application or the making of any order, or the passing of any resolution, for winding up or the bankruptcy of the Customer other than where the application or order (as the case may be) is set aside within 14 days;
- vii. the appointment of a receiver or a receiver and manager or other insolvency official to the whole or a substantial part of the property or assets of the Customer;

viii. the entry by the Customer into any compromise or arrangement with creditors; or

ix. any event occurs with respect to the Customer that has a similar effect to the events mentioned in Clause 1.1.a.iii to 1.1.a.viii.

b. **Conditions of Hire** means the document entitled, “*METSEL PTY LTD CONDITIONS OF HIRE*”.

c. **Conditions of Sale** means this document entitled, “*METSEL PTY LTD – CONDITIONS OF SALE*”.

d. **Consideration** means the amounts payable by the Customer to Metsel in consideration for the supply of Goods as set out in clause 5.a.

e. **Contract** means the contract for the supply of Goods by Metsel to the Customer as set out in clause 4.

f. **Customer** means the person described as “*Customer*” in the Quote.

g. **Due Date** means the date that the Consideration is payable as set out in clause 5.c.

h. **Goods** mean any goods to be supplied by Metsel to the Customer pursuant to the Contract.

i. **Instalment** means each and every constituent part of the Goods to be supplied by Metsel pursuant to a Contract whereby the Goods are to be supplied in parts, with each part to be supplied on a different date or to a different location.

j. **Invoice** means a tax invoice issued by Metsel to the Customer for Goods supplied under the Contract as set out in clause 5.b.

k. **Metsel** means Metsel Pty Ltd ACN 614 056 889.

- l. **Offer** means the offer by the Customer to Metsel for the supply by Metsel of Goods to the Customer as set out in clause 3.a.
 - m. **Silo** means the silo (if any) in which the Goods are delivered.
 - n. **Site** means the Customer's nominated location for the delivery of Goods or Silos.
 - o. **Quote** means the invitation to treat which Metsel provides to the Customer which sets out the terms Metsel will be willing to consider in an Offer made to it by the Customer for the supply of Goods and Silos as set out in clause 2.
 - p. No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
 - q. A reference to:
 - i. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority; and
 - ii. a person includes the person's executors, administrators, legal personal representatives, successors, assigns and persons substituted by novation.
- iii. if applicable, the Conditions of Hire; and
 - iv. if applicable, the documents providing for any credit account held by the Customer with Metsel.
- b. For the avoidance of doubt, the Quote:
 - i. is an invitation to treat by Metsel on the terms set out in the Quote and has no binding effect on the parties until the Contract is formed; and
 - ii. does not constitute an offer to supply Goods on the terms set out in the Quote and cannot be accepted by the Customer.

3. Offer

- a. The Customer may present Metsel with an offer for it to supply the Customer with Goods in accordance with the terms set out in the Quote by providing an executed Quote to Metsel (**Offer**).
- b. Metsel will consider all Offers that are presented to Metsel by the Customer within 1 month of the Offer's issue date. Notwithstanding this, Metsel is under no obligation to accept any Offer.

4. Contract

Upon Metsel advising the Customer that it agrees to supply the Goods in accordance with the terms of the Offer, or words to that effect, a contract will be formed between the Customer and Metsel for the supply of Goods on the terms set out in the Offer subject to any variations agreed between the parties in relation to the same (**Contract**).

5. Invoice and payment

2. Quote

- a. On the request of a Customer, Metsel may provide a Quote to the Customer which will be deemed to incorporate the terms set out in the following documents:
 - i. the document entitled, "Quotation";
 - ii. these Conditions of Sale;

- a. In consideration of Metsel supplying the Goods to the Customer, the Customer agrees to pay Metsel the amounts set out in the Contract (**Consideration**) upon the issue of an Invoice by Metsel to the Customer.
- b. Metsel may issue an invoice for the Goods to be supplied under the Contract (**Invoice**):
 - i. if the Goods are to be supplied in one single delivery, for the full Consideration upon the Contract being formed pursuant to clause 4;
 - ii. if the Contract requires Metsel to deliver Goods in Instalments, on each date that an Instalment is delivered for that part of the Consideration that the Instalment represents; or
 - iii. if the Goods are to be collected by the Customer pursuant to clause 6.c and an Invoice has not already been issued in relation to the same, then upon the deemed delivery of those Goods pursuant to clause 6.c.iii.
- c. The Consideration must be paid on or before the earlier of:
 - i. the date specified on the Invoice; or
 - ii. the date the Goods are delivered
(Due Date).
- d. The Customer agrees to pay Metsel interest of 7.5% per annum on all overdue Invoices.

6. Delivery of Goods and Silos

- a. Metsel will deliver the Goods and Silos to the Site at the time and date that is specified in the Contract or if the Contract requires Metsel to deliver

Goods and Silos on multiple dates and times, at those dates and times.

- b. The Customer warrants that suitable and safe access to the Site will be provided to Metsel, its employees and agents to enable them to deliver the Goods and Silos to the Site at the delivery dates and times set out in the Contract or otherwise agreed between the parties.

c. If:

- i. Metsel is unable to deliver the Goods and Silos to the Site because there is no suitable and safe access to the Site at the agreed delivery dates and times, to be determined at Metsel's sole discretion; and

- ii. the Customer is unable to provide suitable and safe access to the Site for delivery within 48 hours after the first attempted delivery (**Redelivery Period**),

then:

- iii. the Goods and Silos shall be deemed to be delivered on the expiry of the Redelivery Period;

- iv. Metsel is no longer required to deliver the Goods and Silos and the Customer agrees to collect the Goods and Silos from Metsel at a date and location to be agreed with Metsel prior to collection;

- v. Metsel shall store the Goods and Silos until the Customer collects the Goods and Silos; and

- vi. the Customer agrees to pay Metsel all costs and expenses in relation to the storage of the Goods and Silos and such costs and expenses may form a part of an Invoice issued by Metsel.

7. Access to Site and accommodation of Silos

- a. The Customer warrants that suitable and safe access to the Site will be provided to Metsel, its employees and agents to enable them to deliver the Goods and Silos to the Site and to collect the Silos from the Site at the dates and times set out in the Contract or otherwise agreed between the parties.
- b. If the Goods are to be delivered in Silos, the Customer acknowledges that Metsel has made no warranties or representations about the suitability of the Silos for the Site and agrees and warrants that the Site can safely and suitably accommodate and support the Silos without modification to the Silos.

8. Title to Silos

Metsel holds all the rights, title and interest in the Silos at all times and the Customer's use and possession of them must be pursuant to the Conditions of Hire.

9. Passing of risk and title

- a. Risk of damage to or loss of the Goods passes to the Customer on delivery, including deemed delivery under clause 6.c.iii.
- b. Title in the Goods does not pass to the Customer until:
 - i. Metsel receives all amounts due and payable by the Customer to Metsel, including all those amounts due and payable under Invoices issued, in cash or cleared funds; and
 - ii. in relation to Goods delivered in Silos, the Goods have been transferred from the Silo.

- c. Where title to the Goods remains with Metsel, the Customer:

- i. will not be entitled to use, remove, dispose of, transfer or otherwise deal with such Goods after the shelf life of the Goods has passed;
- ii. must not remove, deface or obscure any identifying mark or packaging on or relating to the Goods (in the case of bagged Goods); and
- iii. must keep them insured against all risks for their full price from the date of delivery.

- d. For the avoidance of doubt, the Customer is required to pay for the Goods ordered even if they are never transferred from the Silo and title never passes to the Customer.

10. Breach

If the Customer commits an Act of Default, then:

- a. all sums owed by the Customer in respect of the Goods will be immediately due and payable; and
- b. Metsel may:
 - i. suspend all further supply of Goods, whether in Instalments or otherwise;
 - ii. treat all outstanding orders as cancelled;
 - iii. terminate the Contract and all other contracts with the Customer and claim damages for any resulting loss incurred; and
 - iv. take possession of any Goods to which title has not passed to the Customer. To give effect to this, the Customer grants Metsel with an irrevocable licence to enter

upon the Site to take possession of any Goods.

11. Legal costs

The Customer agrees to pay, on an indemnity basis, all legal and enforcement costs, disbursements and expenses incurred in and incidental to any failure or default by the Customer in observing or performing its obligations under the Contract, including any Act of Default.

12. Variations

a. Subject clauses 12 and 10.b.iii, this Contract may only be varied or cancelled by written agreement between the parties and in relation to Metsel, must be executed by its Chief Executive Officer.

b. Metsel may, in its absolute discretion:

i. if required by law, alter the Goods or amend the specifications of the Goods;

ii. amend the quantity of the Goods to be delivered under the Contract by up to 10%;

iii. increase the price of the Goods to reflect increases due to:

A. cost increases to Metsel that is beyond the control of Metsel including labour costs;

B. changes in delivery dates, quantities or specification of the Goods requested by the Customer; or

C. any delay caused by the Customer.

c. If Metsel amends the quantity of the Goods to be delivered under clause 12.b.ii, it will make a pro rata adjustment to the Invoice issued in respect of those Goods as follows:

i. if the quantity of Goods delivered is less than the quantity of Goods specified in the Contract, the Invoice shall be reduced by the proportion that is referable to the reduced quantity of Goods delivered; and

ii. if the quantity of Goods delivered is more than the quantity of Goods specified in the Contract, the Invoice shall be increased by the proportion that is referable to the increased quantity of Goods delivered.

d. If Metsel increases the price of the Goods in accordance with clause 12.b.iii.A, then the Customer may cancel the Contract within seven days of the Customer receiving from Metsel notice of the price increase.

13. Security

a. The Customer acknowledges that clause 9.b constitutes a Purchase Money Security Interest under the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

b. In consideration of Metsel agreeing to supply the Goods to the Customer, the Customer charges all of its present and after acquired property as security for the performance of the Customer's obligations under the Contract, including its obligation to pay the Consideration, and consents to Metsel:

i. lodging a caveat or caveats over all its present or after-acquired real property; and

ii. registering a security interest (in the form of a general security agreement) on the Personal Property Securities Register as defined under the PPSA in relation to any security interest

contemplated or constituted by the Contract; and

- iii. registering a specific security interest agreement as defined in the PPSA over any specific property which the Customer has agreed in writing with Metsel to be charged.

14. Customer's rights to refuse Goods

- a. Subject to the Customer's rights under the Australian Consumer Law, Metsel will not replace, repair or refund the cost of any Good except where:
 - i. there is a defect in the quality or condition of the Goods delivered; or
 - ii. the Goods delivered do not correspond with the general specifications specified under the Contract

(Faulty Goods).

- b. Claims the Customer makes to Metsel to replace, repair or refund the cost of any Good that the Customer alleges to be Faulty Goods will only be valid and considered if:
 - i. they are in writing providing adequate details for why the Goods are Faulty Goods;
 - ii. made within 7 days of the Goods being delivered to you; and
 - iii. the Customer has paid all Invoices due and payable.
- c. Without limiting clause 14.a, the Customer agrees that it is not entitled to refuse the Goods or any Instalment solely because:
 - i. the Goods were not delivered at the specified date and time;

- ii. the quantity of the Goods delivered were different to the quantity of Goods to be delivered under the Contract; or
- iii. any previous Instalment was rejected pursuant to this clause 14.

15. Force Majeure

- a. Any delays in or failure of performance by Metsel shall not constitute a breach of the Contract if and to the extent such delays or failures of performance are caused by occurrences which are unforeseen at the time the Contract was entered into, are unable to prevent and are beyond the control of Metsel including but not limited to:
 - i. default of Metsel's suppliers or subcontractors;
 - ii. acts of God;
 - iii. expropriation or confiscation of facilities;
 - iv. compliance with any order or request of any governmental authority;
 - v. act of war or rebellion or sabotage and resulting damage;
 - vi. unavoidable fires, floods, explosions, or accidents; or
 - vii. riots, strikes or other industrial action

(Force Majeure Event).

- b. If Metsel is wholly or partially unable to perform its obligations under the Contract because of a Force Majeure Event then, as soon as reasonably

practicable after the Force Majeure Event arises, Metsel must notify the Customer of:

- i. the extent to which Metsel is unable to perform its obligations under the Contract;
 - ii. the steps Metsel is taking to mitigate, minimise or manage the adverse effects of the Force Majeure Event on the performance of its obligations under the Contract; and
 - iii. an estimate of any additional cost, time or resources required by Metsel to enable it to re-commence complete performance of its obligations under the Contract.
- c. Until Metsel can re-commence complete performance of all of its obligations in accordance with the Contract, Metsel will continue to perform its other obligations under the Contract that remain unaffected by the Force Majeure Event to the extent reasonably practicable.
- d. Metsel may terminate the Contract immediately by notice in writing if:
- i. the delay arising directly from the Force Majeure Event continues or is likely to continue for more than 60 days from the date it is first notified under clause 15.b; or
 - ii. in any case, if Metsel determines in its absolute discretion that it is unable to perform its obligations under the Contract.

16. Liability

- a. Metsel shall not be liable for any indirect or consequential loss arising from and in connection with the supply of Goods under the Contract including:

- i. loss of profits;
- ii. loss of production;
- iii. loss of revenue;
- iv. loss of use;
- v. loss of contract;
- vi. loss of goodwill; or
- vii. loss of opportunity,

whether or not that loss or damage was caused by an act, omission or default of Metsel or its agents, arising from:

- viii. the delivery of the Goods and Silos to the Site;
 - ix. the accommodation and collection of the Silos from the Site; or
 - x. any delay in delivering the Goods and Silos to the Site.
- b. The maximum liability of Metsel for any reason, whether arising in common law, tort (including negligence), contract, pursuant to statute or any other cause of action, shall not exceed the Consideration.

17. Severance

If any part of the Contract is or becomes void or unenforceable, that part is or will be severed from the Contract to the extent that all parts that are not or do not become void or unenforceable remain in full force and in effect and are unaffected by that severance.

18. Notices

- a. In addition to any lawful means, a notice may be given by:
 - i. being personally served on a party;

- ii. being left at the party's current address for service;
 - iii. being sent to the party's current address for service; or
 - iv. emailing to a party's current email address for service.
- b. If a communication is given by:
- i. post it is taken as received if posted within Australia to an Australian address three business days (in the place of receipt) after posting and in any other case five business days (in the place of receipt) after posting; or
 - ii. email, that communication is taken to be received at the time and date recorded on the send confirmation unless an undeliverable notice is received from the sender's email server.

19. Governing law

- a. The Contract is governed by the laws of Western Australia and if applicable, the Commonwealth of Australia.
- b. Metsel and the Customer irrevocably submits to the non-exclusive jurisdiction to the courts of Western Australia and if applicable, the Commonwealth of Australia.