

AUSTRALIAN FORGE PTY LTD – TRADING TERMS & CONDITIONS

1. INTERPRETATION

Reference in these terms to:-

- (a) "ACL" means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- (b) "Allocation" means the allocation of particular Goods to an order placed by You.
- (c) "Australian Forge" means Australian Forge Pty Ltd ACN 167 089 269 ABN 43 167 089 269 and its successors and assigns.
- (d) "Goods" or "Services" refers to goods or services supplied by Australian Forge to You.
- (e) "PPSA" means the Personal Property Securities Act 2009 (Cth).
- (f) "You" means the person supplied with Goods or Services.

Terms used in these Terms and Conditions which have defined meanings in the PPSA or ACL have the same meanings in these Terms and Conditions.

2. PRICE

- 2.1 The "price" of Goods and/or Services will be the then current price as determined by Australian Forge and notified to You.
- 2.2 All prices are GST inclusive.
- 2.3 The price of Goods is exclusive of freight and delivery charges.

3. LIABILITY

Where You comprise more than one person, each such person shall be jointly and severally liable to Australian Forge under these Terms and Conditions.

4. PAYMENT

- 4.1 Unless otherwise agreed by the parties in writing payment shall be made by You within 14 days from the date of invoice.
- 4.2 Australian Forge reserves the right to recover from You a default charge on overdue amounts over 90 days from date of invoice, calculated on a daily basis at the rate 15% per annum from the date of invoice upon the outstanding balance of the price and payable by way of liquidated damages for breach of contract.
- 4.3 You must pay all costs and expenses (on a solicitor/client basis) reasonably incurred by Australian Forge arising out of any breach by you of these Terms and Conditions.

5. SUPPLY

- 5.1 Every endeavour will be made by Australian Forge to supply the Goods and/or Services within the period, if any, requested by You but no liability is accepted by Australian Forge for delay in delivery or non-delivery.
- 5.2 Australian Forge reserves the right at its discretion to discontinue supply to You at any time.

6. RISK

- 6.1 Risk in the Goods shall pass to You upon Allocation by Australian Forge or its third party supplier if applicable. You are responsible to insure the Goods from the time of Allocation.
- 6.2 Without limiting the generality of the previous subclause, You bear all risk in transit/carriage of the Goods after Allocation irrespective of whether such transit/carriage is arranged by You, Australian Forge or applicable third party supplier.

7. EXAMINATION & RETURNS

- 7.1 You are responsible for examination of the Goods upon delivery or collection. Any alleged damage, deficiency or non-conformity with order must be reported as soon as reasonably possible and You must allow Australian Forge to inspect the Goods as soon as practical.
- 7.2 Goods which are not subject to defect or non-conformity with order will not ordinarily be accepted for return but should Australian Forge elect (at its discretion) to accept a return You will be notified of any applicable restocking, handling, freight or other charges that will apply.

8. TITLE AND TRANSFER

- 8.1 Title in Goods shall remain with Australian Forge until You have paid all monies due to Australian Forge on any account whatsoever. Until that time You must:-
 - 8.1.1 At all times ensure that Goods are marked in a way that will enable their identification as property of Australian Forge;
 - 8.1.2 Except as mentioned in clause 8.2 not purport to mortgage, charge, transfer, convey or otherwise deal with Goods without the prior consent of Australian Forge;
 - 8.1.3 At all times allow Australian Forge access to Goods to inspect them and to re-take possession at its discretion and indemnify Australian Forge against all claims whatsoever (including claims of trespass) arising out of the exercise or purported exercise of rights under this clause;
- 8.1.4 Insure Goods; and
- 8.1.5 Account to Australian Forge for all proceeds of Goods including any insurance proceeds.
- 8.2 You shall be entitled to sell or consume Goods in the ordinary course of your business subject to -
 - 8.2.1 In the case of a sale of Goods You must hold the proceeds of sale on trust for Australian Forge; and
 - 8.2.2 Your right to deal with Goods shall cease automatically if You-
 - (a) breach any provision of these conditions of sale;
 - (b) cease to or threaten to cease to carry on your business; or
 - (c) become the subject of any form of insolvency administration whether formal or informal.

9. PPSA

- 9.1 You hereby grant to Australian Forge a Security Interest in all present and after acquired Goods and their proceeds (including any accounts and accessions) to secure all monies owing to Australian Forge now and/or in the future by You.
- 9.2 You agree that:
 - (a) Australian Forge will continue to hold a Security interest in the Goods in accordance with the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other Goods;
 - (b) You will do all the things necessary to enable Australian Forge to perfect and maintain its security interest including providing all information Australian Forge requires to register a Financing Statement or Financing Change Statement on the Personal Properties Securities Register ("PPSR") as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
 - (c) You will not change your name, ACN or ABN or other details required on the PPSR, without first notifying Australian Forge;
 - (d) Australian Forge need not give You any notice required under the PPSA unless the requirement to give notice cannot be excluded;
 - (e) You must pay any and all costs, expenses and other charges incurred, expended or payable by Australian Forge in relation to the filing, discharge or necessary amendment of any Financing Statement or Financing Change Statement;
 - (f) You will not allow security interests to be created or registered over the Goods in priority of the security interest(s) held by Australian Forge;
 - (g) To the extent the law permits them to be excluded Sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA shall not apply.

10. CONSUMER GUARANTEES

- 10.1 If Goods and/or Services are supplied to You as a Consumer, the ACL provides for You to have the benefit of consumer guarantees which cannot be excluded. You will be entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You will also be entitled to have goods and/or services repaired, replaced or re-supplied if they fail to be of acceptable quality and the failure does not amount to a major failure.
- 10.2 To the extent permissible by law, the liability of Australian Forge in respect of a breach of a consumer guarantee or any warranty made under these Terms and Conditions for any Goods and/or Services not of a kind ordinarily acquired for personal, domestic or household use is limited at the option of Australian Forge. In the case of Goods to -
 - (a) replacing Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods;
 - (c) the payment of the cost of replacing Goods or of acquiring equivalent Goods; or
 - (d) the payment of the cost of having Goods repaired in the case of Services to -
 - (a) the supplying of the Services again; or (b) the payment of the cost of having the Services supplied again
- 10.3 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and Australian Forge is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate You for:
 - (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party; or
 - (d) any special, indirect or consequential loss or damage of any nature whatsoever; arising out of the Australian Forge supply of Goods and/or services to You or caused by Australian Forge's failure to provide or delay in providing Goods and/or Services.
- 10.4 To the extent permitted by law, You acknowledge that:-
 - (a) Australian Forge shall not be responsible for damage or fault in performance arising out of incorrect or inappropriate operation or use of the Goods by You.
 - (b) You have not relied upon any representation made by Australian Forge which has not been made in writing as an express term of any relevant agreement for the supply of Goods or Services or upon any descriptions or illustrations or specifications contained in any catalogue or advertising material supplied by Australian Forge.
 - (c) You have relied entirely upon your own evaluation of Goods or Services and Australian Forge gives no warranty as to fitness for purpose for your intended application.
 - (d) It is your responsibility to ensure that You and any other user of Goods understands and follows all safety rules, precautions and instructions. A general safety manual is available for download from www.australianforge.com.au.
 - (e) If the Goods or Services (or any part thereof are supplied to Australian Forge by a third party supplier, any warranty available to You in relation to those Goods or Services (or part thereof if applicable) shall be limited to the redress of Australian Forge against the third party supplier in respect of any alleged fault or defect therein.
 - (f) Freight in all warranty claims is payable by You and any applicable warranty registration must be current for warranty claims to be considered.

11. REVIEW & SEVERANCE

- 11.1 Australian Forge reserves the right to review these Terms and Conditions from time to time. You will be notified of any change by email and such revised Terms and Conditions will apply to all Goods or Services supplied to You after such notification.
- 11.2 If any provision of these Terms and Conditions is invalid or unenforceable for any reason, that provision will be severed and will not affect the legality or enforceability of the remaining Terms and Conditions.