

# TERMS AND CONDITIONS OF SUPPLY

## 1. Definitions

In these terms and conditions of trade:-

"the Supplier" means Bearing Wholesalers (a Division of Bayswater Bearings Pty. Ltd.);  
"the Customer" means the person described as such in the invoice or any party to whom the Supplier supplies goods and/or services. In the event of the Customer being a company, the directors of the Customer acknowledge that they will be personally liable for any breach by the Customer of the contract or for non-payment of invoices by the Customer;

"the Price" means the Price specified in the invoice;

"Terms and Conditions" means these terms and conditions of supply.

## 2. Application of these Terms and Conditions

2.1 These Terms and Conditions shall be deemed to be incorporated in all contracts for the sale of goods by the Supplier to the Customer.

2.2 These Terms and Conditions shall not be varied without the express written consent of the Supplier.

## 3. Extension of Credit

Upon completion by the Customer of a Credit Application and Guarantee, the Supplier may, at its sole discretion, approve the extension of credit to the Customer. The Customer is not entitled to any extension of credit until it receives written notice from the Supplier stating that credit facilities have been granted.

## 4. Terms of Payments

4.1 Payment for goods shall be due within 30 days of the end of the month appearing on the invoice.

4.2 If any amount is outstanding after 30 days, the Supplier may charge of the Customer interest on such amount at the rate of 1.5% per month from the due date until the date of payment in full.

4.3 All payments made by the Customer to the Supplier will be applied as follows:-

4.3.1 first in or towards payment of any costs (including legal costs on a solicitor-own client basis), charges, expenses or outgoings incurred or paid by the Supplier in relation to any dishonoured cheque fees, collection costs or any action taken by the Supplier for the recovery of any amounts owing by the Customer to the Supplier;

4.3.2 secondly in or towards payment of any interest due or payable hereunder, and

4.3.3 thirdly, in or towards payment of the Customer's oldest debt owing to the Supplier.

4.4 If the Customer defaults in payment of any account on the due date all moneys which would become owing by the Customer to the Supplier at a later date for supply of goods shall be immediately due and payable without the requirement of any notice to the Customer.

4.5 The Supplier reserves the right to require the Customer to provide further security as a condition precedent to the continuation of supply and further reserves the right to alter the terms of payment at any time without notice and substitute cash with order or cash on delivery or any other terms.

4.6 The Supplier may, at its option, cease to supply any further goods if the Customer fails to make any payment by any due date.

## 5. Delivery

5.1 Any period or date for delivery stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best endeavours to meet any estimated delivery dates but in no circumstances whatsoever will the Supplier be liable for any loss or damage suffered by the Customer or any other person for failure to meet an estimated delivery date.

5.2 The Supplier is not liable for any loss or damage to the goods after delivery to the Customer.

5.3 Notwithstanding the provisions of clause 9 hereof, the risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods shall pass to the Customer immediately upon delivery of the goods to the Customer, or delivery on site to a property nominated by the Customer or as otherwise arranged with the Customer.

## 6. Placing Orders

All orders for goods are to be in writing (this requirement being able to be waived by the Supplier in the exercise of its discretion) and should include the order number and the name and signature of the person placing the order on behalf of the Customer. The Customer agrees that, in the event that it places an order with the Supplier's representative, then that representative is authorised to act as the agent of the Customer in completing an order form. In the absence of an order form, acceptance by the Customer of possession and/or delivery of the goods shall constitute acceptance or confirmation of previous acceptance of these Terms and Conditions to the exclusion of all other terms or provisions.

## 7. Warranty

The Customer acknowledges that the Supplier is supplying goods which have been manufactured by third parties. The Customer shall be entitled to the benefit of any Manufacturer's Warranty in respect of such goods. The Customer acknowledges that the Supplier accepts no responsibility whatsoever for any Manufacturer's Warranty or any claim howsoever arising from the use of these goods, whether singularly or in combination with other products.

## 8. Returns and Claims

8.1 The Customer shall inspect the goods immediately upon receipt and shall within 7 days of receipt, give notice to the Supplier in writing of any matter or thing by reason whereof the Customer alleges that the goods are not in accordance with the order failing which the Customer shall be bound to accept the goods.

8.2 All goods returned must be in original condition.

8.3 The Supplier will not be responsible for the quality or fitness of goods once they have been processed or on-sold by the Customer.

8.4 The Customer acknowledges that the Customer has not made known to the Supplier the purpose for which the Customer proposes that the goods sold under this invoice are intended to be used.

8.5 Goods specially procured by the Supplier for the Customer are not returnable.

8.6 The Supplier's liability will be limited on any claim to the Price of the goods in concern.

## 9. Passing of property

9.1 All goods are to remain the property of the Supplier as legal and equitable owner and no property in or title to any goods supplied will pass to the Customer until payment has been made in full for all goods supplied by the Supplier.

9.2 Failure to make payment by the due date will, without prejudice to any other available remedies, entitle the Supplier to repossess the goods from any premises where they may be. For the purpose of repossessing the goods, the Customer hereby grants an irrevocable licence to the Supplier, its employees or agents, to enter upon such premises as the Supplier reasonably suspects the goods may be located, using such reasonable force as is necessary, and the Customer will indemnify the Supplier from and against any liability to any third party in respect of any damage caused, and from and against all actions, proceedings, claims, demand, costs, damages and expenses, howsoever arising.

9.3 The Customer may in the ordinary course of its business sell and deliver the goods in which the property remains with the Supplier to any third party as the Supplier's agent in a fiduciary capacity and for the account of the Supplier. Any moneys received by the Customer with respect thereto shall be held by the Customer upon trust for the Supplier notwithstanding the fact that it is not deposited into a separate bank account. The Customer will upon request assign to the Supplier the legal title of any right against any third party arising out of such sale. The Customer will be entitled to receive from the Supplier by way of commission the excess of the proceeds of sale over the amounts due to the Supplier from the Customer.

9.4 Notwithstanding the foregoing, the Supplier will be entitled to bring action against the Customer for the price of the goods in the event of non-payment by the Customer by the due date as if the property in the goods had already passed to the Customer and will also have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the goods to the Customer as from the date of such notice.

## 10. Insolvency and Default

10.1 The Supplier may by notice in writing to the Customer terminate any contract with the Customer so far as unperformed by the Supplier forthwith if:-

10.1.1 the Customer commits any breach of any of these conditions or any other contract with the Supplier;

10.1.2 the Customer or any guarantor of the Customer compounds with or negotiates for any composition with its creditors generally;

10.1.3 being an individual the Customer dies, becomes permanently incapacitated, or has a trustee appointed or a receiving order made against him or commits any act of insolvency;

10.1.4 being a body corporate or legal person, the Customer or any guarantor of the Customer calls any meeting of its creditors or has a liquidator, provisional liquidator, official manager, mortgagee, mortgagee's agent, receiver or administrator or all or any of its assets appointed or enters into any liquidation (other than solely for reconstruction or amalgamation while solvent) or commits any other act of insolvency; or

10.1.5 the financial position of the Customer, or some other fact or circumstance, leads the Supplier to believe on reasonable grounds that the Customer is likely to materially fail to complete its obligations under any contract with the Supplier.

10.2 In the event of such termination:-

10.2.1 the Customer will forthwith on demand deliver to the Supplier any goods which are in the possession or control of the Customer but in which the property remains with the Supplier and, in default thereof, the Supplier will be entitled to repossess the same in accordance with clause 9.2 of these Terms and Conditions and the Customer shall indemnify the Supplier from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and

10.2.2 the Supplier will be entitled by notice in writing to the Customer to declare immediately due and payable any amounts outstanding from the Customer to the Supplier under this or any other agreement (such sums thereby becoming forthwith due and payable); and

10.2.3 the Supplier may claim damages from the Customer for breach of contract and claim legal costs on a solicitor-own client basis.

10.3 Any termination will be without liability on the part of the Supplier for any and all direct or indirect loss or damage thereby caused to the Customer, or to any other person.

## 11.

### Applicable Law

The parties agree that these Terms and Conditions and every contract connected therewith shall be governed by the law of the State of Victoria and the parties hereby submit to the jurisdiction of the Victorian courts.