

1. Definitions

- 1.1 "Seller" shall mean Suhner Pty Ltd, Abrasive Expert, or any associated Company.
- 1.2 "Buyer" shall mean the Buyer and any person or Seller acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer.
- 1.5 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations.
- 1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of goods shall constitute acceptance of the terms and conditions laid out herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable.
- 2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorized statements.

3. Goods

- 3.1 The Goods shall be as described on the invoices, quotation, work authorisation sales order as any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that; any such discrepancy in quantity shall not exceed 5% and the Price shall be adjusted pro rata to the discrepancy.
- 3.3 In the case of second-hand Goods, the Buyer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

4. Price And Payment

- 4.1 At the Seller's sole discretion.
 - a) The Price shall be as indicated on invoices provided by the seller to the Buyer in respect of Goods supplied; or
 - b) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Seller's current Price List
 - c) The Price of the Goods shall be the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the seller's quotation within thirty (30) days.
- 4.2 At the Seller's sole discretion, a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods / Services and shall become immediately due and payable.
- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotations, or any other order forms, If, no time is stated the payment shall be on delivery.
- 4.4 Should payment not be received by the Seller on or before the stated payment date the Seller reserves the right to.
 - a) Claim interest on any overdue tax invoices at the rate of 4% per month, and/or
 - b) Claim, from the Buyer, any and/or all costs which are incurred by the Seller for the recovery of any overdue amounts.
- 4.5 At the Seller's sole discretion payment may be due at the date of this agreement.
- 4.6 At the seller's sole discretion, for certain approved Buyer's payment will be due at the end of 30 days following the day the invoice was dated or by the end of that month following.

4.7 At the Seller's sole discretion, payment for approved Buyers shall be made by instalments in accordance with the Seller delivery/payment schedule.

The Seller may withhold delivery of the Goods until the Buyer has paid for them, in which event payment shall be made before the delivery date.

Payment will be made by cash on delivery, or by bank cheque, or by electronic transfer, or by credit card, or by direct debit, or by any other method agreed to between the Buyer and the Seller.

4.8 The Price shall be increased by any amount of GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

4.9 The seller reserves the right to charge a 2% fee (subject to change without notice) for any payment made by credit card, but especially if paying an outstanding approved trading account.

5. Delivery of Goods

5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods wherever they are tendered for delivery, or delivery of the Goods/Services shall be made to the Buyer at the Seller's address.

5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.

5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date of payment of the Price. The carrier shall be deemed to be the Buyer's agent.

5.4 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.

5.5 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.

5.6 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.

5.7 The failure of the seller to deliver shall not entitle either party to treat this contract as annulled.

5.8 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

5.9 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them promptly) the Buyer shall be bound to accept delivery and to pay for the Goods in full if delivery shall be tendered at any time within 1 month of the delivery date.

6. Risk

6.1 If the Seller retains of the property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.

6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice in any of its other rights or remedies under these terms and conditions (including the right to receive payment of the Balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:

- i first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid.

- ii second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise.
- iii third, in payment of any other sums payable to the Seller by the Buyer on any account.
- iv fourth, any balance is to be paid to the Buyer.

7. Defects

7.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage, or failure to comply with the description of quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Return of Goods

8.1 At the Seller's sole discretion Goods may be returned by certain approved Buyers for exchange or credit of the Price provided that:

- a) The Goods are returned within 30 days of delivery date; and
- b) The Goods are in a saleable condition. The Seller reserves the right to apply a 20% restocking fee against the value of the goods.

8.2 For defective Goods which the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods, or repairing the Goods, or refunding the Price provided that:

- a) the Buyer has complied with the provisions of clause 7.1.
- b) the Seller will not be liable for Goods which have not been stored or used in a proper manner.

9 Warranty

9.1 Our Goods come with guarantees that cannot be excluded under Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9.2 The Warranty against any manufacture fault is one year from the date of invoice to the user.

9.3 The Warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

9.4 The Seller will not be liable to repair any defective Goods and at its own discretion may:

- (a) notify the manufacturers of the Goods of any defect notified by the Buyer; and
- (b) request the manufacturers to repair or replace any defective Goods.

10. The Commonwealth Trade Practices Act 1974 and Fair-Trading Acts

10.1 Nothing in this agreement is intended to have the effect of contracting out of any of the applicable provisions of the Commonwealth Trade Practices Act 1974 or The Fair-Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Buyers Disclaimer

11.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgment, and that the seller shall not be bound nor responsible for any term, condition or

other warranty given by the manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

12. **Default & Consequences of Defaults**

- 12.1 The Seller reserves the right to apply Interest on overdue invoices which shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.75% per calendar month and shall accrue at such a rate as well as before any judgment.
- 12.2 If the Buyer defaults in payment of any invoice due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all costs of collection including (but not limited to) the cost of a collection agency.

13. **Title**

- 13.1 It is the intention of the Seller and agreed to by the Buyer that property in the Goods shall not pass until:
- a) The Buyer has paid all amounts owing for the Goods; and
 - b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller, and that the Goods, or proceeds of the sale of the Goods, shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 13.2 It is further agreed that:
- a) The Buyer shall not deal with the money of the Seller in any way which may be averse to the Seller.
 - b) Until such time as the ownership of the Goods shall pass from the Seller to the buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - c) If the Buyer fails to return the Goods to the Seller, then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied, or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods without being responsible for any damage thereby caused.
 - d) The Buyer shall not charge any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - e) The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - f) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.

14. **Security and Charge**

- 14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- a) Where the Buyer and and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- b) Should the Seller elect to proceed in any manner in accordance with this clause and/or subclauses, the Buyer and/or Guarantor (if any) shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- c) To give effect to the provisions of clause [14 (a) and b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether register able or not) including such other terms and conditions as the Seller and/or nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute any and all documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. **Cancellation**

- 15.1 The Seller may cancel these terms and conditions or cancel delivery of the Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

16. **Privacy Act 1988**

- 16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Buyer and/or the Guarantors agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
 - a) To assess an application by the Buyer.
 - b) To notify other credit providers of a default by the Buyer.
 - c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - d) To assess credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1998).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time.
 - a) Provision of Goods and Services.
 - b) marketing of Goods and Services by the Seller, its agents, or distributors in relation to the Goods and Services.
 - c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods and Services.
- 16.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
 - a) to obtain a consumer credit report about the Buyer; and or
 - b) allow the credit reporting agency to create or maintain a credit information file about the Buyer.

17. **Lien and Stoppage in Transit**

- 17.1 Where the Seller has not received or been tendered the whole of the Price, or payment has been dishonoured, the Seller shall have:
- a) a lien on the Goods
 - b) the right to retain them for the Price while the Seller is in possession of them.
 - c) a right of stopping the Goods in transit whether delivery has been made or ownership has passed; and
 - d) a right of resale.
 - e) the foregoing right of disposal.

18. Unpaid Sellers rights to dispose of Goods

- 18.1 In the event that:
- a) the Seller retains possession or control of the Goods; and
 - b) payment of the Price is due to the Seller; and
 - c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this agreement; and
 - d) the Seller has not received the Price of the Goods, then, whether the property of the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

19 Intellectual Property

- 19.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller and shall only be used by the Buyer at the Seller's discretion.
- 19.2 Conversely, in such a situation, where the Buyer has supplied drawings, the Seller in its sale conditions may look for an indemnity (the specifications and design of the Goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

20. General

- 20.1 If any provision of these terms and conditions shall be invalid, void, or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 20.2 All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affects the Goods supplied.
- 20.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 20.4 The Buyer shall not set off against the Price amounts due from the Seller.
- 20.5 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, the change will take effect from the date on which the Seller notifies the Buyer of such change.
- 20.6 20.7 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Goods.

Terms & Conditions

7.11.2023

SUHNER[®]

A handwritten signature in black ink, appearing to read 'S Sigmund', written in a cursive style.

Stephen Sigmund
General Manager
Suhner Australia Pty Ltd