

### 1. **ORDERS**

Each order placed by a customer ("Customer") is an offer by the Customer to purchase goods from Cathodic Anodes Australasia Pty Ltd ("Supplier") upon and subject to these Terms and Conditions ("Terms") to the exclusion of all other terms and conditions unless expressly agreed to by the Supplier and the Customer in writing. A contract is made on acceptance of the Customer's order by the Supplier, which may be by the issuance of an order confirmation or supply of all or part of the goods ordered.

### 2. **ACKNOWLEDGEMENT**

The Purchaser agrees to have the Supplier supply goods. The Purchaser acknowledges that it has read and agrees with these terms and conditions. The Supplier is not bound by any terms and conditions contained in any document issued by the Purchaser unless expressly accepted in writing. In any event, these terms and conditions take precedence over any such document and in the event of any inconsistency these terms and conditions prevail.

### 3. **QUOTATIONS**

Where a written quotation has been given by the Supplier then that price does not include Goods and Services Tax (GST) unless it expressly specifies otherwise. A written quotation issued by the Supplier is valid for a period of 30 days or sooner if revoked by the Supplier. The Supplier may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer to sell comprised in the written quotation.

4. Once the quotation has been accepted by the Purchaser it cannot be cancelled except at the absolute discretion of the Supplier and with its written authorisation. The quantity, quality and description of the goods and/or services provided by (or intended to be provided by) the Supplier is as specified in a written quotation given by it.

5. Where in the period between acceptance of a quotation by the Purchaser and delivery or installation of goods, the Supplier incurs an increase in the cost of producing, delivering or supplying the goods, it reserves the right to increase the quoted price at any time prior to the delivery. If this occurs the Supplier will provide written notification to the Purchaser and the Purchaser agrees to accept such an increase in price.

### 6. **PRICE**

- (a) Prices quoted are based on the Supplier's estimated cost of materials, labour and where applicable, delivery at the time of quotation and may be altered without notice to the Customer if there is any increase in the Supplier's costs between the date of quotation and the date of delivery. All goods will be charged at the prices ruling at the date of delivery unless the Supplier agrees otherwise in writing.
- (b) Subject to Clause 7 prices of the goods quoted may include applicable import duties, sales tax, levy, charges or other impositions ("Taxes"). Taxes not included may be added to the invoice as a separate charge and must be paid by the Customer.

### 7. **GST**

Unless otherwise specified, all amounts payable under these Terms are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply the amount payable for the Taxable Supply will be the amount specified plus GST. In this clause the terms "GST" and "Taxable Supply" have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

### 8. **PAYMENT**

- (a) Subject to Clause 8(c), all invoices issued by the Supplier for goods are due and payable in full by the Customer in accordance with the payment terms specified in the relevant invoice issued by the Supplier. Time is of the essence for payment.
- (b) Interest is payable on all moneys not paid by the due date at a per annum rate of 14% calculated and payable daily compounded from the due date until the moneys are paid in full. The Customer must pay all costs and expenses (including legal costs calculated on a Solicitor Client basis and mercantile agents' costs), which may be incurred by the Supplier in the attempted recovery of overdue amounts.
- (c) The Supplier reserves the right to require payment in cash in full before delivery.

### 9. **DELIVERY**

- (a) Goods will be delivered:
  - (i) Unless otherwise agreed, in the case of Australian resident Customers when delivered to the Customers' works; and
  - (ii) In all other cases, on the INCOTERMS (as published from time to time by the International Chamber of Commerce) specified in the Supplier's Contract Form, which INCOTERMS are hereby incorporated into these Terms.
- (b) Subject to Clause 9(a), if the Supplier agrees to arrange for the dispatch of goods to a delivery point requested by the Customer, all costs of delivery will be borne by the Customer. Goods so dispatched by the Supplier will be at the Customer's risk and the Supplier is under no obligation to insure the goods while in transit.
- (c) The Customer must ensure that there is prompt turnaround of any rail wagon, container or road transport vehicle used for the delivery of goods, and indemnifies the Supplier against any loss, cost or expense incurred by the Supplier relating to any delay in turnaround.
- (d) The Customer is not relieved of any obligation to accept or pay for goods because of any delay in delivery.

- (e) The Supplier is not liable for any loss incurred as a result of delay in or failure to supply goods or to observe any of these Terms due to an event of force majeure being any cause or circumstance beyond the Supplier's reasonable control, including but not limited to:
- (i) an act of God or public enemy, lightning, fire, flood, explosion, malicious or accidental damage;
  - (ii) strike, lockout or other labour difficulty;
  - (iii) delays in transport or breakage, accident or other damage to machinery;
  - (iv) lack of production capacity or unavailability or shortage of raw materials, labour, power supplies or transport facilities;
  - (v) failure or inability to obtain licences or the effect of any applicable laws, orders, rules or regulations of any government or competent authority; or
  - (vi) restrictions or prohibitions by any government or any semi-government authorities or embargoes.
- (f) If the Supplier determines that it is or may be unable to deliver within a reasonable time or at all the relevant contract may be cancelled by the Supplier. If the Supplier cancels the contract, the Customer has no claim against the Supplier for any damage, loss, cost or expense.

#### 10. **INSTALLMENTS**

The Supplier reserves the right to deliver by instalments. Failure by the Supplier to deliver any instalment will not entitle the Customer to cancel the balance of the order. If the Customer defaults in payment for any instalment, the Supplier may elect to treat the default as a breach of contract relating to each other instalment.

#### 11. **INSPECTION**

The Customer must notify the Supplier immediately of any defect in the goods of which it becomes aware after delivery and will take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect. If the Customer transforms the goods and sells the transformed goods, the Customer undertakes to the Supplier that it will impose on the acquirer of the transformed goods an obligation to immediately notify the Customer and the Supplier of any defect in the transformed goods of which it becomes aware after delivery and to take all reasonable steps to mitigate loss (if any) arising as a consequence of the defect.

#### 12. **CLAIMS FOR WRONGFUL DELIVERY**

Any claim by the Customer for short or wrongful delivery of the goods must be notified to the Supplier in writing within 21 days after delivery of the goods. Any claim which the Customer does not notify within that time (time being of the essence) may be taken to have been absolutely waived at the Supplier's discretion.

#### 13. **STORAGE**

If the Customer does not collect the goods or give delivery instructions within 7 days after being informed that the goods are available for collection or being asked for delivery instructions:

- (a) at the Supplier's discretion, the Customer must pay to the Supplier the costs of storage (as certified by an officer of the Supplier) for the period for which the goods remain uncollected; and
- (b) without limiting paragraph (a) or the Supplier's other rights under these Terms, the Supplier may sell or dispose of the goods in such manner and on such terms as it thinks fit and the Customer must pay to the Supplier the amount of any loss, cost, charge or expense in respect of the sale or disposal (as certified by an officer (as defined in the *Corporations Act 2001 (Cth)*), manager or authorised representative (each an "Officer") of the Supplier) including, without limitation, any loss on the price of the goods compared with the invoice price payable by the Customer.

#### 14. **RISK AND PROPERTY**

- (a) The risk of loss or damage to the goods will pass to the Customer on delivery or dispatch pursuant to Clause 9.
- (b) Property in and ownership of the goods will not pass from the Supplier to the Customer until payment in full of the purchase price of the goods and all other moneys owing to the Supplier by the Customer on any account.
- (c) Until property and ownership passes to the Customer:
  - (i) the Customer must insure the goods on its own behalf and on behalf of the Supplier;
  - (ii) the Customer holds the goods as fiduciary bailee and agent for the Supplier;
  - (iii) if the Customer alters the goods by subjecting them to any manufacturing or other process, or mixes the goods with other products or items so that the goods are no longer separately identifiable, then the Customer holds such part of the proceeds of such manufacturing or other process as relates to the goods in trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier and at the time of payment of such proceeds to the Supplier the Customer's obligation to pay the amount owed for the goods will be discharged;
  - (iv) the goods must be stored separately from goods on the Customer's premises not supplied by the Supplier and in a manner to enable them to be identified and cross-referenced to the Supplier's invoices;
  - (v) the Supplier, its employees and agents, are entitled to enter the Customer's premises at any time upon giving written notice to inspect the goods;
  - (vi) unless otherwise notified in writing by the Supplier and subject to paragraph (f), the Customer is authorised to sell the goods in the ordinary course of the Customer's business; and
  - (vii) if the goods are resold, or products using the goods are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for the Supplier. Such part of the book debts and proceeds shall be deemed to equal in dollar terms the amount owed by the Customer to the Supplier at the time of receipt of such book debts and proceeds.

- (d) If payment for the goods is not made by the Customer to the Supplier within 30 days after the due date specified in the relevant invoice, the Customer must deliver the goods to the Supplier on demand. If the Customer does not comply with such a demand, the Supplier, its employees or agents, are entitled:
- (i) to enter the Customer's premises at any time and to do all things necessary in order to take possession of the goods and the Customer;
    - (a) must procure the consent of all other persons having any interest in the premises where the goods are situated to entry onto these premises by the Supplier, its employees or agents; and
    - (b) it indemnifies the Supplier against any claim, loss, liability, cost and expense that may be incurred or sustained by the Supplier, its employees or agents, as a result of the entry of those premises where the goods are situated; and
  - (ii) with or without taking possession of the goods, to sell them or otherwise deal with them as the Supplier sees fit.  
The Customer must pay to the Supplier all costs and expenses incurred by the Supplier (including legal costs calculated on a Solicitor Client basis and mercantile agent's costs) in respect of any enforcement of these Terms, or recovery or attempted recovery of either or both the money owing by the Customer to the Supplier or possession of the goods.
- (e) The Customer acknowledges that the goods are not intended to become affixed to any premises and must ensure that the goods may be removed from those premises without causing damage of any kind to the premises.
- (f) The Customer's right to hold and sell the goods immediately ceases if any of the events described in Clause 18 occur. In any such case, and without the need for notice or demand by the Supplier, the Customer acknowledges that any sale or purported sale of the goods is not in the ordinary course of the Customer's business and the proceeds of any goods sold in such circumstances are, to the extent of the money owing, be held on trust for the Supplier by the administrator, controller, liquidator, trustee or similar officer, as the case may be or if there is no such officer, by the Customer
- (g) Any provision of this Clause 14, which is prohibited or unenforceable in any jurisdiction, is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Clause 14 nor affect the validity or enforceability of that provision in any other jurisdiction.

#### 15. CLAIMS FOR WRONGFUL DELIVERY

Any claim by the Customer for short or wrongful delivery of the goods must be notified to the Supplier in writing within 21 days after delivery of the goods. Any claim which the Customer does not notify within that time (time being of the essence) may be taken to have been absolutely waived at the Supplier's discretion.

#### 16. PRIVACY

The Customer consents to and authorises the Supplier to:

- (i) request a credit report containing information about the Customer's consumer or commercial credit arrangements from a credit reporting agency for the purposes of assessing any application for credit in connection with the supply of goods under these Terms;
- (ii) give a credit reporting agency information permitted under the *Privacy Act 1988 (Cth)* to allow the credit reporting agency to create and maintain a credit information file containing information about the Customer;
- (iii) use a credit report about the Customer provided by a credit reporting agency to collect overdue payments from the Customer;
- (iv) notify and exchange information about the Customer with other credit providers and any collection agent of the Supplier;
- (v) provide or pass on any information about the Customer to parties to whom the Supplier may transfer all or part of its business; and
- (vi) otherwise collect, maintain, use and disclose any personal or sensitive information of the Customer.

#### 17. LIABILITY OF SUPPLIER AND CUSTOMER

- (a) Except only for rights, which the Customer has in respect of the supply of goods under the *Trade Practices Act 1974 (Cth)* and other applicable laws and which cannot be lawfully, excluded, restricted, modified or limited, the Customer agrees that:
- (i) the Supplier will not be liable for any loss (other than in accordance with Clause 15) which the Customer suffers, incurs or is liable for in connection with supply of the goods under these Terms; and
  - (ii) all conditions and warranties whether statutory or otherwise are excluded in relation to goods provided by the Supplier.
- (b) Where the Supplier is not permitted under the *Trade Practices Act 1974 (Cth)* or other applicable laws to exclude, restrict or modify its liability for the breach of a condition or warranty that is implied by the *Trade Practices Act 1974 (Cth)* or any other applicable laws but is permitted to limit its liability for the breach of such condition or warranty, the Supplier's liability is limited to any one of the following as determined by the Supplier:
- (i) the replacement or repair of the goods; or
  - (ii) the supply of equivalent goods; or
  - (iii) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods.
- (c) The Customer acknowledges that it has not relied on any representation made by the Supplier nor any person purporting to act on its behalf, which has not been expressly stated in these Terms. The Customer indemnifies the Supplier against all loss incurred by the Supplier in connection with any act or omission of the Customer including, but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the goods.

**18. TERMINATION**

If the Customer:

- (a) being an individual, dies, becomes mentally and physically incapable of managing his or her affairs, commits an act of bankruptcy or makes a composition with or assignment of his or her property in favour of creditors; or
- (b) being a company:
  - (i) stops or suspends or threatens to stop or suspend payment of all or a class of its debts; or
  - (ii) is insolvent within the meaning of the *Corporations Act 2001(Cth)*; or (iii) a court is required by reason of the *Corporations Act 2001(Cth)* to presume that it is insolvent; or
  - (iv) fails to comply with a statutory demand (within the meaning of the *Corporations Act 2001 (Cth)*); or
  - (v) goes into liquidation; or
  - (vi) an administrator is appointed or any step preliminary to the appointment of an administrator is taken by any person; or
  - (vii) a controller within the meaning of the *Corporations Act 2001 (Cth)* or similar officer is appointed to all or any of its assets or undertaking; or an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- (c) in the sole opinion of the Supplier, becomes unable to meet its financial commitments as and when they become due and payable ; or
- (d) is in breach of any of these terms , the Supplier may, at its opinion, suspend its obligations under, or terminate, any contract with the Customer without prejudice to any rights it may have such contract.

**19. SUBCONTRACTING**

The Supplier reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the goods or any materials or services to be supplied.

**20. ASSIGNMENT**

The Customer will contract as principal and not as agent for any person, and may not without the Supplier's prior written consent assign any of its rights or obligations under this or any other contract.

**21. CANCELLATION**

If the Customer cancels any order or refuses to accept all or any of the goods in an order other than in the circumstances permitted in these Terms, the Customer will be liable for any resulting direct and indirect damage or loss suffered by the Supplier. If the goods have been or are in the process of being manufactured or produced specifically for the Customer, the Customer must pay to the Supplier the full invoice price of the goods and any costs incurred by the Supplier less the current scrap value of the goods as determined by the Supplier.

**22. CHARGE OVER CUSTOMER'S PROPERTY**

As a security for payment to the Supplier of all moneys payable by the Customer, the Customer charges in favour the Supplier all of the Customer's interests in freehold and leasehold property both current and later acquired. The Customer irrevocably appoints each Officer as its attorney to do all things necessary to create, execute and register each such charge.

**23. TRUSTS**

These Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.

**24. WAIVER**

Failure by the Supplier to insist on strict performance of any term, warranty or condition of the contract will not be taken as a waiver of it or of any rights the Supplier may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

**25. NOTICES**

All notices to be given by a party under these Terms must be in writing and may be given to the other party by hand delivery, prepaid post, or facsimile addressed to the other party at its last known address or facsimile number or as specified by the other party. Any notice given under these Terms is be deemed to have been received by the person to whom it was sent;

- (a) In the case of hand deliver, upon delivery;
- (b) In the case of prepaid post, three days after dispatch; and
- (c) In the case of facsimile, upon completion of successful transmission.

**26. RETURNABLE CONTAINERS**

The containers are hired by the seller for the term of the agreement and therefore are required to be maintained in good order and condition and appropriately secured. The buyer therefore is required to ensure the security and care of the containers. The buyer shall ensure that empty containers are collapsed and ready for collection at the time of order delivery and that appropriate paperwork is completed confirming the return of containers for each and every return delivery. Any losses of, or significant damage to containers attributable to the buyer will be required to be reimbursed by the buyer to the seller. The buyer shall not stack the containers more than two (2) containers high.

27. **MISCELLANEOUS**

If any Clause (or part thereof) of these terms and conditions is unenforceable, illegal or void, the parties agree that the part of the Clause (which is so unenforceable, illegal or void) will be severed and the remaining provisions remain in force.

28. **GOVERNING LAW**

The law of the State of Queensland applies to these terms and conditions. The parties agree that the contract between them (of which these terms form part) has been formed within the State of Queensland in Australia. The parties irrevocably submit to the jurisdiction of the State of Queensland, Australia.