

## GENERAL TERMS AND CONDITIONS OF SALE OF CALDIC AUSTRALIA PTY LTD.

### 1. Definitions

In these general terms and conditions of sale the following terms shall be given the following meanings:

**"Australian Consumer Law"** means the Australian Consumer Law pursuant to the *Competition and Consumer Act 2010* (Cth);

**"Buyer"**: the person or company to whom Caldic delivers goods and/or to whom Caldic provides services or has agreed on this with Caldic, as well as the person or company that has given Caldic an order of another nature.

**"Corporations Act"** the *Corporations Act 2001* (Cth).

**"General Terms and Conditions"**: these general terms and conditions of sale.

**"Group Company"**: Caldic and any other company that is a Related Body Corporate.

**"Caldic"** means Caldic Australia Pty Ltd ACN 079 159 327 and/or affiliated undertakings.

**"Agreement"**: any and all agreements between Caldic and the Buyer relating to the purchase of goods and/or the take-up of services by the Buyer from Caldic through a relevant purchase order and corresponding sales order from Caldic confirming the purchase order as well as any other order that the Buyer gives to Caldic; the term Agreement shall also be taken to mean an agreement for the purchase of goods and/or the take-up of services, whereby any part-delivery arising from the agreement must also count expressly as a (separate) Agreement.

**"Order"** means any order, email, or other document issued by the Buyer, detailing instructions or other aspects such as goods and services requested to be provided by Caldic to the Buyer.

**"PPSA"**: the *Personal Property Securities Act 2009* (Cth).

**"Related Body Corporate"** has the meaning given to it in section 50 of the *Corporations Act*.

### 2. Applicability

- 2.1. The General Terms and Conditions shall apply to all offers and quotations from Caldic, to the Agreement.
- 2.2. Departure from and/or supplements to the General Terms and Conditions can only be agreed upon expressly and in writing.
- 2.3. The Buyer's General Terms and Conditions, howsoever referred to, shall not apply.
- 2.4. Where the content of the Agreement differs from the content of the General Terms and Conditions, the content of the Agreement shall prevail.
- 2.5. Notwithstanding Clause 2.2 Caldic may amend or supplement the Agreement and General Terms and Conditions, provided that Caldic must:
  - (a) not make any amendments to the Agreement and the General Terms and Conditions in respect of a Order that has already been accepted by Caldic;
  - (b) not make amendments to the Agreement and General Terms and Conditions which apply with retrospective effect;
  - (c) use reasonable endeavours to immediately notify the Buyer of any such amendments, which in the reasonable opinion of Caldic, are detrimental to the Buyer's material rights and obligations under the Agreement and the General Terms and Conditions;

If Caldic notifies the Buyer of any such amendments to the Agreement and the General Terms and Conditions, the Buyer may terminate the Agreement by providing written notice to Caldic within 14 days of being notified of the changes to the Agreement and the General Terms and Conditions. The amendments and/or supplements shall otherwise be binding on the Buyer from the moment that the Buyer is notified of these amendments and/or supplements in writing unless the Buyer terminates the Agreement in accordance with this clause 2.5.

### 3. Offer / Formation of the Agreement

- 3.1. All (price) quotations and offers from Caldic shall always be without obligation and can be revoked or amended by Caldic at all times prior to Caldic confirming an order or instruction in writing under clause 3.2, by providing written notice to the Buyer.
- 3.2. The Agreement shall only come into effect once Caldic has confirmed an order or instruction from the Buyer in writing.

### 4. Prices

- 4.1. Unless expressly agreed otherwise in writing, the agreed prices shall be exclusive of GST (goods and services tax) and other governmental taxes. Caldic shall be entitled to charge the Buyer separately for all reasonable costs associated with the delivery which must be communicated to the Buyer in writing at or prior to Caldic providing an offer/quotation to the Buyer in respect of an Order.
- 4.2. Unless expressly agreed otherwise in writing, the Buyer shall be charged:
  - 4.2.1. the prices that are detailed in the offer/quotation that was provided to the Buyer from Caldic in respect of the relevant Order that has been accepted by Caldic; or
  - 4.2.2. if no prices were provided with the relevant offer/quotation of an Order accepted by Caldic, the most recent price list provided by Caldic to the Buyer prior to Caldic's acceptance of the relevant Order.
- 4.3. All prices charged by Caldic shall be based on the price-determining factors that were known at the time of issuing the offer/quotation.
- 4.4. Subject to clause 4.5, Caldic shall be entitled to amend its prices for any new Orders or elements thereof or for goods or services, in order to reflect any changes in price-determining factors which Caldic could not have reasonably foreseen, such as prices of raw materials, wages, currency exchange rates, or any increase in GST or other governmental tax. However:
  - 4.4.1. Caldic must not amend the prices in respect of goods or services of a purchase order that has been accepted by Caldic; and
  - 4.4.2. must use reasonable endeavours to immediately notify the Buyer of any amendments to the prices of goods or services under clause 4.4 and in such circumstances the Buyer may, in its discretion:
    - 4.4.2.1. request a reduction in the scope and scale of the Order; or
    - 4.4.2.2. terminate the Agreement by providing Caldic with written notice within 14 days of being notified of the amendments to the prices under clause 4.4.

- 4.5. Unless expressly agreed otherwise in writing, the prices shall be ex warehouse.

## 5. Payment / Security

- 5.1. Unless expressly agreed otherwise in writing, all Caldic invoices must be settled by the 20th of the month following the date of invoice, without any discount or setoff.
- 5.2. Subject to clause 5.1, Caldic shall be entitled to make partial deliveries and, in connection with those deliveries, to send part-invoices. Caldic shall be entitled at all times to demand full or partial payment in advance for any delivery/provision of goods and/or services or any partial delivery or partial provision.
- 5.3. Unless otherwise agreed in writing, payment shall be made in Australian Dollars (AUD) by bank transfer into an account to be nominated by Caldic. Additional charges reasonably incurred by Caldic as a result of payment by the Buyer in a currency other than AUD shall be borne by the Buyer.
- 5.4. If the price is fixed in a currency other than AUD, the corresponding amount in AUD at the time of payment shall not be less than the price in AUD at the time the Agreement came into effect.
- 5.5. In the event of late payment from the Buyer, Caldic will charge the Buyer interest at a rate of 2.5% per month on any amount not paid to Caldic by the due date. If the Buyer fails to pay within 30 days of Caldic giving the Buyer written notice notifying the Buyer of the overdue amount, all of the Buyer's outstanding debts due to Caldic at that moment shall become repayable on demand.
- 5.6. The Buyer shall be obliged to pay all legal costs (on a solicitor/client basis) and all debt recovery costs reasonably incurred by Caldic due to the fact that the Buyer failed to comply with its obligations properly and on time.
- 5.7. As a condition to Caldic accepting an Order from the Buyer, the Buyer agrees to provide security - or additional security if applicable - in respect of payments to be made by the Buyer (future and present) due to Caldic. Caldic shall be entitled, acting reasonably and in good faith, to determine the form and terms of any security to be provided by the Buyer. If Caldic, acting reasonably and in good faith, believes that the Buyer shall be unable to fulfil its financial obligations and Caldic has notified the Buyer of such concerns and the Buyer refuses to provide (additional) security reasonably required by Caldic, Caldic shall be entitled to suspend execution of the order, without prejudice to its statutory rights to suspend performance. If
- the Buyer subsequently provides any additional security required by Caldic; or
  - Caldic no longer reasonably believes that the Buyer shall be unable to fulfil its financial obligations,
- then Caldic will end any suspension of the execution of the order accordingly.
- 5.8. 5.8 Payments by the Buyer shall be applied first of all to charges and interest owed (in this order) and then to principal sums, with old debts taking precedence over new ones.
- 5.9. 5.9 Subject to the express warranties provided in the Agreement and these General Terms and Conditions, all warranties and guarantees made to the Buyer, expressly, by statute or otherwise, are (subject to the Competition and Consumer Act 2010 (Cth)) expressly excluded and disclaimed.

## 6. Delivery / Transfer of risk

- 6.1. The agreed or quoted delivery times shall never be a final deadline, unless expressly agreed otherwise. If the delivery time is exceeded this shall therefore not constitute a default on the part of Caldic and can thus not lead to an obligation to pay damages on the part of Caldic. The Agreement cannot be dissolved on account of the delivery time being exceeded, unless Caldic fails to deliver - after the expiry of the delivery period - within a reasonable time period, as notified by the Buyer in writing. A reasonable time period within the meaning of the previous sentence shall be at least one (1) month.
- 6.2. The Buyer is obliged to take delivery of the goods provided they are delivered in accordance with clause 6.1, are free from material defect and are the goods described in the Order.
- 6.3. Unless expressly agreed otherwise in writing, goods shall be delivered by Caldic "ex works", as set out in the Incoterms

2020 or at any rate the most recent version of the Incoterms at the time of signing the Agreement.

- 6.4. If the Buyer fails to take delivery of goods that have been presented for delivery in accordance with the Agreement (or if the Buyer fails to do so on time), for whatever reason, all costs incurred in vain by Caldic, in connection with the presentation for delivery of the goods, plus (if any) additional costs of carriage, safekeeping and storage, shall be borne by the Buyer. Transfer of risk shall also take place when Caldic presents the goods for delivery in accordance with the Agreement, even if the Buyer does not take delivery of the goods, for whatever reason.

## 7. Packaging

- 7.1. If, in departure from Clause 6.3 of the General Terms and Conditions, it has been agreed that Caldic shall arrange the transport of the goods on behalf of the Buyer, the means of transport, dispatch, packaging etc. shall be determined by Caldic, without Caldic being liable, if no further instructions have been given to Caldic by the Buyer, which were accepted by Caldic in writing.
- 7.2. The packaging, insofar as not intended for one-off use, including, but not limited to, pallets, crates, containers and other transport resources, shall remain the property of Caldic, even if the Buyer pays a deposit for these. The Buyer shall therefore not be entitled to make the packaging available to third parties.
- 7.3. The packaging may not be used for purposes other than its intended use.
- 7.4. The Buyer shall be obliged to return the packaging, in so far it is not single use, as soon as possible but no later than within two (2) months of delivery by Caldic to the Buyer, sorted and cleaned. The costs in connection with the foregoing shall be borne by the Buyer.
- 7.5. In the event of loss of, or damage to, the packaging, other than caused by Caldic or a person for whom Caldic is responsible, the Buyer's claim to a refund of the deposit shall lapse and the Buyer shall be obliged to reimburse Caldic for the loss or damage, minus the deposit.

## 8. Obligation to inspect / Claims

- 8.1. The Buyer shall be obliged to thoroughly inspect/check (or have someone else inspect/check) the goods delivered to it by Caldic and/or the goods delivered (and as repaired) by Caldic, immediately after delivery, to make sure they are correct and complete, in order to verify whether the goods comply with the Agreement. The inspection and/or check carried out by the Buyer shall be fit for purpose. It may include inter alia an odour check, and/or a visual inspection. If the goods delivered are to be used in chemical processes and/or are food additives, the Buyer shall be obliged to carry out their own (or have someone else carry out) a laboratory analysis in order to verify the composition of the delivered goods, unless this is not reasonably feasible for the Buyer.
- 8.2. Any and all details and information provided by Caldic in its printed matter on, inter alia, the suitability and application of the delivered goods, shall not release the Buyer from its obligation to carry out its own checks and tests (or have someone else carry these out), as set out in Clause 8.1.
- 8.3. Complaints from the Buyer about an incorrect or incomplete execution of an order must be submitted to Caldic in writing within eight (8) days of the date on which the goods were (or should have been) delivered or the services were (or should have been) provided, or in the case of goods in which there has been a latent defect complaints must be raised within eight (8) days of such defect having been discovered.
- 8.4. The Buyer's complaint must give a clear and accurate description of the alleged breach of Caldic. Submitting a complaint shall not automatically release the Buyer from its payment obligation.
- 8.5. The right to any claim for defects or incorrect or incomplete execution of an order identified by the Buyer in accordance with clause 8.1 shall be reduced if there is evidence that a defect has arisen in an item due to installation, dismantling or repair (other than by or on behalf of Caldic) which is otherwise wholly or partly the result of actions taken by or on behalf of the Buyer.
- 8.6. The Buyer shall permit Caldic or its agents reasonable access its premises to inspect/check the goods and facilities in which

the goods are stored in the event of a claim made in accordance with this clause 8.

## 9. Guarantee

If Caldic acquires product at the direction of the Buyer, for on-supply to the Buyer, shall, subject to clause 13, not be deemed to have assumed any warranty, guarantee or other representations of the supplier vis-à-vis the Buyer. Caldic shall not, under any circumstances, be obliged to claim on behalf of the Buyer under any third party supplier's guarantee that the supplier has issued in respect of any goods delivered by Caldic to the Buyer. Caldic shall, if appropriate and to the extent it can reasonably be expected of Caldic, make reasonable attempts to enable the Buyer to claim under the relevant supplier's guarantee.

## 10. Retention of title

- 10.1. All goods delivered by Caldic shall remain the property of Caldic until the Buyer has paid in full all sums owed to Caldic pursuant to the Agreement and/or other agreements, including any interest and charges.
- 10.2. In the event of late payment by the Buyer, Caldic shall be entitled to take back the goods that belong to Caldic, without any authorisation needed and wherever these may be, at the Buyer's expense. The Buyer shall be obliged to fully cooperate.
- 10.3. If there is any accession, confusion of property, specification or any other processing or treatment of the goods delivered to the Buyer under retention of title, as a result of which Caldic loses, or might lose, title to a good, the Buyer shall, at Caldic's first request, cooperate as necessary to create a right of pledge (either non-possessory or not) on the goods in question for the benefit of Caldic.
- 10.4. The Buyer shall be obliged to notify Caldic immediately of any third-party attachment on goods delivered under retention of title.
- 10.5. The Buyer shall be entitled to sell and deliver the goods delivered under retention of title in the normal performance of its business, on the condition that the Buyer informs third parties, if applicable, in writing of Caldic's retention of title. Subject to the foregoing the Buyer shall never be entitled in any way to encumber and/or give on loan (for consumption) and/or part with the goods delivered under retention of title.
- 10.6. For the purposes of the PPSA:
  - (a) terms used in these clauses 10.6 to 10.9 that are defined in the PPSA have the same meaning as in the PPSA.
  - (b) These terms are a security agreement and Caldic has a purchase money security interest in the in each part of the goods to the extent of the purchase price for that part.
  - (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer to any particular time.
  - (d) The Buyer must do whatever is necessary in order to give a valid security interest over the goods that is able to be registered by Caldic on the Personal Property Securities Register.
- 10.7. Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under Sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 157 of the PPSA.
- 10.8. To the extent permitted by the PPSA, the Buyer agrees that:
  - (a) The provisions of Chapter 4 of the PPSA that are for the benefit of the Customer or which place obligations on Caldic will apply only to the extent that they are mandatory or Caldic agrees to their application in writing.
  - (b) Where Caldic has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 10.9. The Buyer must immediately, upon Caldic's request:
  - (a) do all things and execute all documents necessary to give effect to the security interest created under this agreement; and
  - (b) procure from any person considered by Caldic to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Caldic may at any time require.

## 11. Intellectual property

- 11.1. All intellectual property rights in respect of the delivered goods and services provided shall rest with Caldic. The Buyer shall not be permitted, without the prior written consent of Caldic, to reproduce, communicate to the public or imitate the goods, in whole or in part.
- 11.2. The Buyer may only sell the goods from Caldic under the figurative mark, trademark, trade name and specifications under which the goods were delivered. The Buyer shall not be entitled to amend the properties of the goods that it has bought from Caldic, which shall include *inter alia* labelling, overprinting and instructions.
- 11.3. The Agreement shall not include any transfer or licensing of any intellectual property rights in connection with goods delivered to the Buyer, or services provided to the Buyer, and the accompanying documents.

## 12. Non-disclosure

- 12.1. The Buyer shall be obliged to observe absolute confidentiality with respect to all information from Caldic (including ideas, knowledge, trade secrets, data, procedures, materials, samples etc.) of which it becomes aware in the context of (the performance of) the Agreement and which is confidential to Caldic or which the Buyer reasonably believes to be confidential in nature. The Buyer shall restrict access to such information to the persons that need it for (the performance of) the Agreement. Subject to prior written consent from Caldic the Buyer shall not disclose such information or any part thereof to any person, firm, company or other entity and the Buyer shall not use such information or any part thereof other than for (the performance of) the Agreement.
- 12.2. The non-disclosure obligation set out in Clause 12.1 shall not apply to information in respect of which the Buyer is able to demonstrate, based on written evidence, that such information:
  - (a) was entirely in its possession prior to disclosure, and that the Buyer at that time was not bound by a non-disclosure obligation vis-à-vis Caldic or a third party; or
  - (b) was already generally known or available at the moment of disclosure by Caldic or became so afterwards, other than as a result of an act or omission on the part of the Buyer; or
  - (c) was acquired by the Buyer from a third party that was not bound by a non-disclosure obligation in respect of that information; or
  - (d) was developed independently by the Buyer without using the information disclosed by Caldic; or
  - (e) must be made public by the Buyer, pursuant to the law, any rule or regulation of a government-approved body, or a binding judgment from a court or other public authority, which is not open to appeal. In that case the Buyer shall notify Caldic promptly in writing so that the scope of disclosure by the Buyer, in consultation with Caldic, can be kept to what is strictly necessary.
- 12.3. The Buyer shall be obliged to impose the same obligation as set out in Clause 12.1 on its employees or third parties that it has engaged in the performance of the Agreement. The Buyer shall be responsible for ensuring that employees/third parties do not breach this non-disclosure obligation.

## 13. Liability / Indemnity / Insurance

- 13.1. Subject to any obligations Caldic may have at law or otherwise as provided by the Agreement and these General Terms and Conditions, Caldic shall not be liable for any loss or damage on the part of the Buyer, unless such loss or damage is directly caused or contributed to by Caldic.
- 13.2. Where permitted and to the full extent permitted by law, Caldic's liability under any consumer guarantee under the Australian Consumer Law or similar provision in the law of any State or Territory, is limited to, at Caldic's option:
  - (a) in the case of goods, the repair or replacement of those goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods; and
  - (b) in the case of services, supplying those services again, or paying the cost of having the services supplied again.

**13.3.** The Buyer shall indemnify Caldic against all claims from a third party, for whatever reason, in connection with the goods delivered by Caldic to the Buyer as well as services provided to the Buyer, unless a claim from a third party was caused by Caldic or otherwise to the extent contributed to by the act or omission of Caldic.

**13.4.** Without prejudice to the Buyer's obligations under the Agreement and the General Terms and Conditions, the Buyer shall ensure that there is adequate insurance to fully cover the indemnity obligations vis-à-vis Caldic, pursuant to Clauses 13.3 and 14.1 plus any other obligations and liabilities under the Agreement. The Buyer shall allow inspection by Caldic of its insurance policies at first request.

**13.5.** Caldic shall not be liable for the Buyer failing to store or maintain the goods in accordance with relevant industry standards.

#### **14. (Government) regulations**

**14.1.** The Buyer shall be obliged, in respect of the goods delivered by Caldic, to comply with all applicable international and national use and safety regulations and (governmental) regulations. All penalties, loss or damage and/or other consequences as a result of the Buyer's failure to comply with such regulations shall be borne by the Buyer.

The Buyer shall indemnify Caldic against all claims from third parties, including governmental bodies, which are the result of the Buyer's breaching of its obligations under Clause 14.1. This indemnity will not apply to the extent that the relevant claim was caused by Caldic.

#### **15. Force Majeure**

In the event of *force majeure* on the part of one party, compliance with the Agreement shall be fully or partially suspended for the duration of the force majeure period, without parties being obliged to compensate each other. If the force majeure situation is reasonably expected to last longer than three (3) months or has already lasted three (3) months, the other party shall have the right to dissolve the Agreement with immediate effect and without legal intervention, by registered letter, without giving rise to any claim for damages. Force majeure on the part of Caldic shall, in any event, be taken to mean:

- (a) circumstances relating to people and/or materials, which Caldic employs/uses, or is in the habit of employing/using, in the performance of the Agreement, which are of such a nature as to render performance of the Agreement impossible, or (to render performance of the Agreement) onerous and/or disproportionately expensive for Caldic, to such extent that complying with the Agreement can no longer, or cannot immediately, be expected of Caldic;
- (b) strikes, lack of personnel, production interruptions;
- (c) import and/or export hindrances, State measures;
- (d) the circumstance that Caldic does not obtain goods or services relevant to goods and services that it is to provide itself, or does not obtain these properly or on time;
- (e) fire, water damage, flood, extreme weather conditions, infectious diseases;
- (f) war, threat of war, riots etc.

#### **16. Suspension / Dissolution**

**16.1.** Caldic shall be authorised to suspend performance of the Agreement or to terminate the Agreement by a written statement without legal intervention (and with immediate effect) (without Caldic being obliged to pay any compensation) in the event of:

- (a) a failure by the Buyer to comply with a material obligation under the Agreement and/or the General Terms and Conditions, including a failure by the Buyer to comply with (one of) its obligations under one (or more) sub-paragraphs, and that breach:
- (b) is incapable of remedy; or
- (c) if capable of remedy, continues for 14 days after Caldic gives the Buyer written notice requiring the breach to be remedied.
- (d) (an application for) moratorium on payments or insolvency of the Buyer;

- (e) a guardianship order against the Buyer or the Buyer going into administration;
- (f) sale or discontinuation of the Buyer's business;
- (g) revocation of the Buyer's licences and/or permits that are necessary for the performance of the Agreement; or
- (h) attachment on a significant portion of the Buyer's business assets.

**16.2.** Caldic shall be entitled to retain goods from the Buyer that Caldic has in its possession for any reason, until the Buyer pays Caldic all sums that it owes on any basis to Caldic.

**16.3.** All (future) claims that Caldic may have or acquire against the Buyer in the instances cited in Clause 16.1 above, shall become payable on demand, in full.

**16.4.** If the Buyer wishes to invoke termination of the Agreement, it must do so by registered letter in which letter the ground(s) for termination are clearly stated.

#### **17. Subcontracting / Transfer**

**17.1.** The Buyer shall not subcontract the performance of its obligations arising from the Agreement and the General Terms and Conditions, either in whole or in part, to third parties without prior written consent from Caldic.

**17.2.** The Buyer shall not transfer, either in whole or in part, its rights and obligations arising from the Agreement and the General Terms and Conditions to third parties, without prior written consent from Caldic which must not be unreasonably withheld.

**17.3.** Caldic may only assign or transfer, its rights and obligations arising from the Agreement and/or the General Terms and Conditions to another Group Company or third party if it has first provided written notice to the Buyer of its intention to transfer such rights and obligations under the Agreement and/or the General Terms and Conditions. In such circumstances, the Buyer may, at its discretion, terminate the Agreement and the General Terms and Conditions by providing 28 days written notice to Caldic. Termination of the Agreement and General Terms and Conditions under this clause 17.3 is without prejudice to any right or obligation under this Agreement and General Terms and Conditions that arose before termination, or that is intended to survive termination.

#### **18. Invalidity of one or more provisions**

**18.1.** The invalidity of a provision in the Agreement and/or the General Terms and Conditions shall have no bearing on the validity of the other provisions of the Agreement and the General Terms and Conditions.

**18.2.** If and insofar as a provision in the Agreement and/or the General Terms and Conditions should become invalid, or be unacceptable by standards of reasonableness and fairness under the given circumstances, a provision shall apply which is acceptable to both, having taken into consideration all circumstances.

#### **19. Applicable law and competent court**

The legal relationship between Caldic and the Buyer is governed and construed under the law in the State of Victoria. Any legal action in relation to this Agreement and the General Terms and Conditions against any party or its property may be brought in any court of competent jurisdiction in the State of Victoria.

#### **20. Final provision**

The English text of the General Terms and Conditions shall constitute the sole authentic text. In the event of a discrepancy between the English text and a translation into a foreign language, the English text shall prevail.