

B.P. Coghlan T/A Finline Fabrications – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Seller" shall mean B.P. Coghlan T/A Finline Fabrications and its successors and assigns.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer if a Limited Liability Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Customer subject to clause 4 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Services and/or Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.4 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 unauthorised statements.
3. **Goods**
- 3.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Customer.
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 of the Goods shall (subject to clause 4.2) be the Sellers quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Sellers quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery/completion of the Goods/Service.
- 4.4 The Seller may withhold delivery of the Goods until the Customer has paid for them, in which event payment shall be made before the delivery date.
- 4.5 At the Seller's sole discretion, payment for approved Buyers shall be due on thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct deposit or by any other method as agreed to between the Customer and the Seller.
- 4.7 The Price shall be increased by the amount of any 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.
5. **Delivery Of Goods / Services**
- 5.1 Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at the Sellers address.
- 5.2 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 for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 5.3 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.
- 5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.5 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;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 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.
6. **Risk**
- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed prior to risk in them passing to the Customer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. 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.
7. **Defect/Returns**
- 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 or 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.
- 7.2 For defective Goods which the Seller has agreed in writing that 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 provided that:
 - (a) the Buyer has complied with the provisions of clause 7.1;
 - (b) the Goods are returned at the Buyers cost within seven (7) days of the delivery date;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.
- 7.3 The Seller may (in its discretion) accept the Goods for credit but this will incur a handling fee of 30% of the value of the returned Goods plus any associated freight.
8. **Customers Disclaimer**
- 8.1 The Customer 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 Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
9. **Warranty**
- 9.2 For Goods not manufactured by the Seller 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.
- 9.3 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.
- 9.4 For Goods manufactured by the Seller the warranty remains valid for a period of 12 months from the purchase date and is strictly limited to faulty workmanship.
- 9.5 Warranty is limited to the normal use of the Goods and improper use or use other than that for which it was intended immediately voids warranty.
- 9.6 The Seller reserves the right to refuse claims for warranty repairs if the Goods have been used in any way other than that for which it was intended.
- 9.7 The Seller reserves the right to refuse warranty repairs if the Goods have not been appropriately cared for or have been neglected.
- 9.8 Warranty does not cover normal wear and tear.
- 9.9 The Seller reserves the right to refuse claims for warranty repairs.
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 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. **Intellectual Property**
- 11.1 Where the Seller has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion.
- 11.2 Conversely, in such a situation, where the Customer 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). Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Seller then the Customer 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.
- 11.3 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyers order
12. **Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own Buyer basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.
- 12.4 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer;then without prejudice to the Seller's other remedies at law
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
13. **Title**
- 13.1 It is the intention of the seller and agreed by the Customer that property in the Goods shall not pass until
 - (a) The Customer has paid all amounts owing for the particular Goods, and
 - (b) The Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer, 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 Customer are met.
- 13.2 It is further agreed that:
 - (a) Until such time as 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.
 - (b) 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.
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 Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Customer 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 its sub-clauses, the Customer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) To give effect to the provisions of clause [14.1 (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, namely EC Credit Control Pty Limited as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of 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 name as may be necessary to secure the said 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 all or any 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 Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 If the Buyer wishes to cancel prior to delivery of goods and the deposit has been paid, The Buyer forfeit that deposit.
16. **Privacy Act 1988**
- 16.1 The Customer 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 Customer and Guarantor/s in relation to credit provided by the Seller.
- 16.2 The Customer and/or the Guarantor/s agree that the Seller may exchange information about Customer 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 Customer;
 - (b) To notify other credit providers of a default by the Customer;
 - (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
 - (d) To assess the credit worthiness of Customer and/or Guarantor/s.
- 16.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer 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 Customer and Seller or required by law from time to time:
 - (a) provision of Services & Goods;
 - (b) marketing of Services and or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services and Goods.
- 16.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer, and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
17. **Unpaid Sellers Rights To Dispose Of Goods**
- 17.1 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 contract; and
 - (d) the Seller has not received the Price of the Goods,then, whether the property in the Goods has passed to the Buyer or has remained with the Seller 14 days following delivery, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal
18. **Lien & Stoppage in Transit**
- 18.1 Where the Seller has not received or been tendered the whole of the price, or the 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 or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.
19. **General**
- 19.1 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.
- 19.2 All Services/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 affect the Services/Goods supplied.
- 19.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Service Provider the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Service Provider exceed the Price of the Services.
- 19.5 The Customer shall not set off against the Price amounts due from the Seller.
- 19.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.7 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, that change will take effect from the date on which the seller notifies the Customer of such change.
- 19.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.