



GENERAL TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Terms of Sale;

- (1) "the Company" shall mean STACE Pty Ltd A.B.N. 58 103 397 762;
- (2) "the Customer" shall mean the addressee of this document;
- (3) "the Contract" shall mean these Terms of Sale as varied by any tender or other written quotation submitted by the Company to the Customer;
- (4) "a Consumer Transaction" shall mean a transaction for the supply of goods or services to a "Customer" as defined by the Trade Practices Act 1974 (as amended).

2. CONTRACT PRICE

- (1) The Contract Price shall be the price of the goods quoted by the Company in writing.
- (2) Any tender or quotation submitted by the Company shall be valid for a period of thirty days from the date of issue after which time acceptance of any order placed is subject to written confirmation by the Company.
- (3) Unless otherwise stated all prices quoted do not include freight, insurance or G.S.T. charges.

3. TERMS OF PAYMENT

Payment for goods purchased from the Company must be on a cash with order basis. However if an approved account has been established with the Company, payment must be made within thirty (30) days from the end of the month of invoice unless otherwise stated on the Company quotation form or invoice. If the Customer fails to pay the amount to the Company when it is due, then the Company will have the following rights in addition to any other rights it may have:

- (1) To charge interest on the amount owing as from the date it becomes due at the rate of 2% above the prevailing rate charged by the Commonwealth Bank to prime borrowers on overdraft accounts in excess of \$100,000.
- (2) To suspend deliveries to the customer whether under this contract or otherwise until all amounts due, including any interest payable thereon, have been received.
- (3) to terminate the contract in relation to goods that have not been delivered.

All costs relating to any legal action taken by the Company to recover moneys due from the Customer will be payable by the Customer. If the Customer makes default in any payment, commits any act of Bankruptcy or enters into voluntary liquidation, the Company may at its option, withhold further deliveries or cancel the contract without prejudice to its rights hereunder.

4. DELIVERY

- (1) Availability of stock shall be as quoted by the Company subject to receipt of prior orders.
- (2) Unless otherwise agreed in writing the Company will not accept cancellation of any order due to late delivery, nor shall it be liable for consequential damages of any kind arising out of late delivery or non delivery.



GENERAL TERMS AND CONDITIONS OF SALE

Page 2 of 4

5. CHANGES IN CUSTOMER SPECIFICATION

If after commencement of design, production or manufacture by the Company any specific changes are requested by the Customer cost of such changes shall be borne by the Customer and the delivery time stipulated in either the Company's tender or quotation may be extended by the Company.

6. PASSING OF TITLE AND RISK DAMAGE IN TRANSIT AND RE-POSSESSION

- (1) The Customer acknowledges and agrees that this Contract is an entire Contract for the supply of goods which at the option of the Company may be delivered by instalments.
- (2) In the event the Company delivers the goods to the Customer in more than one instalment each instalment shall be accepted and paid for by the Customer notwithstanding delivery or non-delivery of any other instalment in accordance with Clause 3(b).
- (3) Title to the goods sold shall not pass to the Customer until payment has been received in full by the Company.
- (4) Notwithstanding anything herein contained, the goods shall be at the Customer's risk from the time of dispatch from the Company's store and the Customer hereby indemnifies the Company against any and all loss or damage occasioned to the goods, for whatever cause occurring after such time.
- (5) The Company will not insure any deliveries unless instructed in writing to do so the costs of which will be borne by the Customer.
- (6) Whilst the contract price remains unpaid the Customer shall hold the goods as bailee for the Company and as such is subject to fiduciary obligations to account to the Company for the goods and their proceeds.
- (7) In the interpretation of this contract nothing herein contained shall be taken as excluding, restricting or modifying the Company's rights of lien over the goods as an unpaid seller conferred by the Goods Act 1958 (Victoria) and in this connection the Company expressly reserves the rights of disposal of the goods and re-sale of the goods.
- (8) If the Customer shall fail to pay for the goods in full by the due date or if the Customer becomes bankrupt or commits any act of bankruptcy or compounds with its Creditors or goes into liquidation whether voluntary or otherwise or has a Receiver or Manager appointed the Company is irrevocably authorised at any time thereafter to enter upon any premises where the goods are situated and take possession of and remove same and in this regard the Customer shall do or cause all things to be done as necessary to effect re-possession of the goods by the Company.

Provided always that nothing herein contained shall be taken to imply that the goods are sold "Ex-Store" for the purposes of the Sales Tax Assessment Act.

7. THE CUSTOMER COVENANTS AND AGREES WITH THE COMPANY THAT

- (1) It shall, immediately upon delivery, examine the goods delivered and in the event such examination discloses any defect or damage to the goods the Customer shall report same to the Company in writing within ten (10) days of delivery failing which no claim for such damage or defect will be entertained by the Company.



GENERAL TERMS AND CONDITIONS OF SALE

Page 3 of 4

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- (2) It shall not undertake any installation or dismantling of equipment sold in the absence of any prior consultation with the Company.
 - (3) It shall operate and maintain any equipment or parts sold hereunder in accordance with the operation, maintenance or parts manuals issued to the Customer with the equipment.
 - (4) The Customer shall ensure that any maintenance or repairs to the goods sold shall be effected under the supervision of an appropriately qualified person.
 - (5) In the event of failure or breakdown of the equipment:
 - (a) the Customer shall immediately report any such failure or breakdown to the Company, and
 - (b) if the equipment is stored or housed in any manner which renders the equipment inaccessible it shall take such steps as are necessary to render the equipment accessible to the Company's servants and agents.

8. THE COMPANY COVENANTS AND AGREES WITH THE CUSTOMER THAT

- (1) Unless otherwise stated in the Company's quotation or tender, all equipment supplied is of a standard design and manufacture and according to the quoted standards inspected and, where applicable, submitted to its standard test before dispatch which tests have been conducted by the Company or the manufacturer.
- (2) Except as hereinafter provided the Company shall not be liable for any contingent, consequential, indirect, special, punitive or similar damages or for any injury to person or property whether arising under a breach of warranty or contract or negligence (commission, omission or advice) or other tort, strict liability, or otherwise and howsoever caused.
- (3) Subject to the Customer's compliance with Clause 7 hereof the Company shall only be liable for any direct loss caused to the Customer arising from defects in the goods sold which defects are attributable to faulty design, materials and workmanship.
- (4) The Liability of the Company in respect of Consumer Transactions shall, at the option of the Company, be limited to:
 - (a) in the case of goods to any one or more of the following;
 - (i) the replacement of the goods or supply of equivalent goods,
 - (ii) the repair of goods,
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods,
 - (iv) the payment of the cost of having the goods repaired, or
 - (b) in the case of services:
 - (i) to the supplying of services again, or
 - (ii) the payment of the cost of having the services supplied again.
- (5) The Company will not accept any responsibility or liability for goods returned by the Customer unless prior arrangements have been made with the Company for their acceptance.
- (6) Unless the goods are returned to the Company pursuant to a Service Contract with the Customer or pursuant to a contract to trade in equipment pursuant to a separate contract for sale, the Customer is responsible for all freight and cartage charges to the Company's store.



GENERAL TERMS AND CONDITIONS OF SALE

9. GENERAL PROVISIONS

- (1) No term or provision of this agreement may be amended or varied unless such amendment or variation is reduced to writing and signed by the Company.
- (2) Nothing herein contained shall be taken as excluding, restricting or modifying the application of any provision of Division 2A of Part V of the Trade Practices Act 1974 (as amended).
- (3) In the event that any provision of this agreement or its application to any person or circumstance is or is found to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the other provisions of the Contract or the application of such provisions to any person or circumstance and the said other provision shall remain in full force and effect.
- (4) This agreement shall be governed by and construed in accordance with the laws for the time being in force in Western Australia and the parties hereto irrevocably submit to the jurisdiction of the Courts of that State including any Courts having appellate jurisdiction therefrom.
- (5) The waiver by either of the parties hereto of a breach or default of the other party hereto of any of the provisions of this Contract shall not be construed as a waiver of any succeeding breach or default of the same or any other provision of this Contract and shall not impair the exercise of any rights accruing to it under this contract thereafter, nor shall any delay or omission on the part of any of the rights accruing to it under this Contract operate as a waiver of any breach or default by the other party hereto of any of the said provisions.
- (6) If either party hereto is at any time delayed, hindered, deferred or prevented by any circumstances whatsoever (except financial) which is not within its immediate control (including any industrial action or threat thereof) from performing any of the obligations for complying with any of the Terms and Conditions hereof it shall be excused from its failure to so perform or comply for such period as is reasonable having regard to the nature and effect of the particular circumstance in each case.
- (7) The warranties herein contained are extended by the Company only to the first user of S.T.A.C.E. Equipment and may not be transferred or otherwise assigned to any other person.
- (8) Clerical errors whether in computations or otherwise in any relevant document including any invoice shall be corrected and requisite adjustments made between the parties.
- (9) Where the Customer cancels all or part of any order prior to the commencement of production of the goods and/or tooling it shall pay to the Company as liquidated damages an amount equal to 10% of the price of the cancelled goods and/or tooling set out in the Company's quote or tender.
- (10) Where the Customer cancels all or part of the order after commencement of production and/or tooling it shall pay to the Company as liquidated damages the full price of the goods and/or tooling cancelled less the current scrap value thereof.
- (11) These Terms and Conditions are to take precedence over any Terms and Conditions of the Customer and the terms of any head Contract entered into by the Customer.