

## **MIROTONE PTY LTD CONDITIONS OF QUOTATION AND SALE**

These are the standard conditions of sale which apply to every contract for the sale of products to customers. These conditions will only be varied as set out in clause 2(b)(ii).

**1. Interpretation** In these conditions, unless the context otherwise requires:

(a) **Company** means Mirotone Pty Ltd ABN 40 000 041 136 or Mirotone NZ Limited, NZBN: 9429040920863

(b) **Contract** means an agreement between the Customer and the Company for the supply of Goods to the Customer resulting from acceptance by the Company of an order by the Customer, whether that order is made orally or in writing;

(c) **Customer** means the person or company named in the sales invoice form or quotation;

(d) **Goods** means products of the Company ordered by the Customer; and

(e) **Quotation** means a quotation for the supply of Goods given by the Company to the Customer that differs from the Company's current price list.

### **2. Application of these conditions**

(a) The Customer's placement of an order constitutes acceptance of these conditions.

(b) These conditions:

(i) apply to and are incorporated into all Contracts;

(ii) may only be modified, excluded or supplemented by an express statement in writing signed by the Managing Director or General Manager of the Company, which if made, will take precedence over these conditions in the case of conflict or inconsistency;

(iii) supersede and are not modified, excluded or supplemented by any conditions of purchase stated verbally by or appearing on any document of the Customer. The Company's acceptance of an order does not amount to acceptance of any conditions given with that order unless the Customer receives a statement made in accordance with sub-clause 2(b)(ii).

### **3. Price**

(a) The price of the Goods is:

(i) if an order is made by the Customer within 30 days from the date of the Quotation or any other period stated in the Quotation, the price stated in a Quotation;

(ii) if a Quotation is not given or has expired prior to the Customer placing an order for Goods, the price stated in the Company's price lists applicable at the date of order;

(iii) is subject to any discount arrangement the Company may have agreed in writing with the Customer.

(b) The Customer must pay any GST payable on the supply of the Goods.

### **4. Terms of payment**

(a) The Customer must pay the Company in full for the Goods by:

(i) the time stipulated in writing by the Company including in any credit application; or

(ii) the 30th day of the month following the month of supply if no other time is stipulated in writing by the Company.

(b) If the Customer does not pay the Company in full for the Goods within the applicable time period in clause 4(a) the Company may, in addition to any other right of the Company, charge interest on any outstanding amount.

(c) The interest rate will be the rate equivalent to 2% more than the rate charged to the Company for overdraft accommodation by its bankers at that time. Interest accrues daily and will be calculated from the date payment is due to the date of full and final payment to the Customer. A payment by the Customer will be credited first against the interest accrued to the date of payment.

### **5. Delivery**

The Company:

(a) may deliver the Goods to the Customer in any number of instalments;

(b) is not liable for:

(i) late delivery or non-delivery of all or any instalment of the Goods. Any delivery times given by the Company to the Customer are estimates only;

(ii) any loss (including consequential loss), damage or delay suffered by the Customer or its customers arising from any late or non-delivery of, or loss or damage to all or any instalment of the Goods.

### **6. Passing of risk**

(a) The risk of loss or damage to the Goods will pass to the Customer at the time of delivery at the place specified by the Customer.

(b) The Customer must insure all Goods that are at the Customer's risk.

#### **7. Retention of title**

(a) Despite clause 6(a), title to and property in the Goods will not pass to the Customer until all amounts owed by the Customer to the Company are paid in full and until that time:

(i) the Company:

(1) retains title to and property in the Goods;

(2) may at any time enter the Customer's premises or any premises where the Goods are located without liability for trespass or any resulting damage and repossess the Goods; and

(3) keep or resell any Goods repossessed pursuant to 7(a)(i)(2);

(ii) the Customer:

(1) must not claim any lien over the Goods;

(2) is a bailee of the Goods and owes the Company the duties and liabilities of a bailee;

(3) must not supply any of the Goods to any person outside of its usual or ordinary course of business;

(4) must not allow any person to have or acquire any security interest in the Goods; and

(5) must properly store and insure the Goods.

(b) Despite Clause 7(a), if the Customer sells the Goods or any products incorporating any of the Goods (through manufacturing, construction or other process of its own or a third party) before paying the Company in full:

(i) it must hold that part of the proceeds of sale that represents the price of the Goods on trust for and as a fiduciary agent for the

Company immediately when they are receivable or are received; and

(ii) it must either pay the amount of the proceeds referred to in 7(b)(i) to the Company immediately when they are received or pay those proceeds into a separate identifiable account as trustee for the Company and pay the Company upon request.

(c) The Customer has no right to bind the Company to any liability to any person, by contract or otherwise.

(d) The property in returnable containers charged separately by the Company passes to the Customer with the contents when the Customer has paid in full but will be re-purchased at the sale price if they are returned (F.I.S.) in good order and condition and have not been reused.

#### **8. Communication errors**

The Company is not responsible for: any errors or omissions in connection with the supply of the Goods caused by a misunderstanding or oversight of oral instructions from a Customer.

#### **9. Cancellation of contract**

(a) The Customer has no right to cancel an order unless expressly stated in writing by the Company.

(b) If the Customer cancels an order in any circumstance:

(i) the Customer forfeits any deposit paid to the Company

(ii) the Customer must indemnify the Company against all losses arising from the order and cancellation.

#### **10. Return**

(a) The Customer has no right to return any Goods unless expressly stated in writing by the Company, with the exception of containers returned in accordance with clause 7(d).

(b) If the Customer returns Goods in any circumstance, the Customer must pay the Company any re-stocking fee charged by the Company.

#### **11. Acceptance**

(a) The Customer must notify the Company of any allegation that any Goods are not in accordance with the Contract within 48 hours from the Delivery Date if the non-conformance is obvious from the packaging or, if the Goods cannot be validated until actually used then within 48 hours after such use.

(b) The Goods will be deemed to be in all respects in accordance with the Contract and the Customer will be bound to pay for the Goods accordingly if the Customer does not notify the Company in accordance with clause 11(a).

#### **12. Default by Customer**

(a) The Customer is in default under a Contract if the Customer:

(i) does not pay the Company in full for the Goods within the applicable time period in clause

4(a);

- (ii) has its property seized under any distress or execution;
- (iii) enters into a scheme or arrangement with creditors;
- (iv) stops payment of or is unable to pay its debts when they fall due; or
- (v) is placed under any form of insolvency or bankruptcy administration,

(b) If the Customer is in default under clause 12(a), the Company:

(i) is released from all further obligations to comply with any outstanding obligations of the Company under each Contract;

(ii) will have no liability to the Customer arising out of any Contract;

(iii) may in addition to any other rights in the Contract or at law:

(1) recover damages from the Customer for the amount of the price of the Goods together with any other costs, interest payable under clause 4(b), and any charges or expenses incurred by the Company as a consequence of the Customer's default;

(2) repossess the Goods under clause 7(a)(i)(2);

### **13. Force Majeure**

Without limiting clause 5 the Company is not liable for any late delivery or non-delivery of all or any instalment of the Goods by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company.

### **14. Liabilities and Warranties**

(a) The Customer expressly acknowledges:

(i) that any advice, recommendation, information or services provided to the Customer by the Company, its employees, servants or agents is based on data appraised from the Company's or its agents' testing and research of the Goods in controlled conditions;

(ii) that there may be differences between the Customer's and the Company's

(1) conditions and methods of application, drying or curing of the Goods;

(2) substrates on which the Goods are used;

(3) products with which the Goods are used; and

(4) interpretation of results.

(iii) all Goods are not to be used in a mixed coating system other than with the Company's products in a manner approved by the Company;

(iv) that it must satisfy itself that the end results obtainable in its particular application conditions meet its requirements; and (v) that the Company makes no warranty and is not liable for any advice given by the Company, its employees, servants or agents in relation to the suitability for any purpose of the Goods and the Customer relies on such advice at its own risk.

(b) Subject to paragraph 14(d), unless otherwise agreed in writing by the Company:

(i) except as expressly provided to the contrary in this agreement, all terms, conditions, warranties, undertakings, inducements or representations whether expressed, implied, statutory or otherwise relating in any way to any Goods sold under the Contract are excluded; and

(ii) the Company will not be liable to the Customer for any loss or damage (including consequential loss or damage) however caused and whether directly or indirectly in respect of any Goods or any failure or omission by the Company to comply with its obligations under the Contract;

(c) The Company gives no warranty of freedom from patent infringement in relation to the use of any formula, information or advice given by it.

(d) Nothing in the Contract will exclude, restrict or modify any condition, warranty or liability which may at any time be implied by any Trade Practices, Fair Trading, Sale of Goods or Credit legislation or regulation or any other State or Federal law where to do so is illegal or would render any provision of the Contract void. In such cases and where permitted by the legislation the Company's liability in respect of any such provision will be limited at the option of the Company to any one or more of the following:

(i) in the case of goods:

(1) the replacement of the goods or the supply of equivalent goods;

(2) the repair of the goods;

(3) the payment of the cost of replacing the goods or of acquiring equivalent goods;

(4) the payment of the cost of having the goods repaired;

(ii) in the case of services:

(1) the supply of the services again; or

(2) the payment of the cost of having the services supplied again.

(e) The title to any Goods, any defective or replaced parts of the Goods will revert to the Company upon the replacement or repair of the Goods or such defective parts.