

# TERMS AND CONDITIONS OF TRADE: SALE AND CREDIT

## 1. DEFINITIONS

The following terms shall have the following meaning;

**Anzor** means Anzor Fasteners (a limited partnership) ABN 86 739 974 496.

**Customer** means the person or entity that is the purchaser of the Goods;

**Goods** mean any goods, products or materials supplied by Anzor to the Customer from time to time under an Agreement;

**Price** is the amount payable by the Customer for the Goods supplied to the Customer by Anzor;

**Terms** means these terms and conditions of trade (unless the context otherwise required) includes any special terms agreed in writing between Anzor and the Customer.

## 2. TERMS

2.1 These Terms replace all trading terms and conditions which may have applied between Anzor and the Customer.

2.2 These Terms apply to all Agreements to the exclusion of any conditions or terms of purchase which the Customer may use or purport to apply to any Agreement.

2.3 Anzor may vary these Terms at any time by giving notice to the Customer.

## 3. OFFER (QUOTES) & AGREEMENT

3.1 All quotes are made on the basis of these Terms unless varied in the quote

3.2 A quote from Anzor to the Customer is valid for 30 days from the date of the quote, unless otherwise stated in writing.

3.3 Quotes are subject to availability of the Goods at the time the quote is accepted by the Customer.

3.4 Acceptance of a quote by the Customer constitutes acceptance of these Terms (without limitation).

3.5 An Agreement will only be formed after Anzor accepts an order from the Customer (whether by issue of Anzor's standard work order, performance of the Goods set out in the order or otherwise) and will be subject to these Terms.

## 4. DESCRIPTION OF THE GOODS

Any information (descriptions, drawings, images, quantities, weights, performance data, or dimensions included in any quotation, catalogues, websites, advertisements, illustrated matter or price lists) are approximates only and will not be binding unless and to the extent only that such details are specified in an Agreement with a Customer. Anzor will not be liable in the case where loss arises as a result of goods or information being different from that which is represented in the Anzor catalogue and other Anzor documents.

## 5. PRICE

5.1 Unless otherwise specified, quoted or listed Prices are exclusive of GST and are quoted on an "ex warehouse" basis, and freight and packaging charges are in addition to any price for Goods.

5.2 Anzor's prices are subject to alteration without notice. The Customer should confirm prices with Anzor before ordering.

## 6. PAYMENT TERMS

6.1 The Customer must pay the Price and all other sums owing in full prior to delivery of the Goods unless otherwise agreed to in writing by Anzor or if the Customer has a credit account then payment must be made in full within 30 days of the invoice date.

6.2 Anzor may from time to time vary the amount of the Customer's maximum Credit Facility and that such amount may not be exceeded at any time;

6.3 If at any time the amount due by the Customer to Anzor is in excess of the Customer's credit limit, the Customer must immediately pay the excess amount so as to bring the Customer within its credit limit;

6.4 Anzor may at any time without notice terminate or suspend the Customer's right to purchase the Goods upon credit;

6.5 In the event that the Customer fails to pay the Price or any other sum payable by the required time, and without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date:

a) Anzor may stop the supply to the Customer of any further Goods; and

b) if the Price for the Goods was subject to a discount, Anzor may reissue an invoice for the Goods at their full retail price and the Customer will be liable to pay the higher invoice amount;

c) the Customer must pay to Anzor interest on the Price (plus GST) and all other sums payable at a rate 5% higher than that National Australia Bank's overdraft rate for amounts exceeding \$100,000 from time to time, on monies due to Anzor from the date the Price was payable until such time it is paid in full;

d) Anzor may demand payment of the amount outstanding as well as payment in advance for any undelivered Goods before proceeding or making any further delivery of Goods.

6.6 A statement of indebtedness from Anzor to the Customer is binding and conclusive, except in the event of manifest error.

6.7 If the Customer defaults in paying any account or invoice, then the Customer must on demand pay all costs, charges and legal expenses (including costs between solicitor and own client) and including any collection costs incurred by Anzor in recovering payment from the Customer.

6.8 These Terms, together with the Credit Account Application, constitute the terms and conditions of the Credit account.

## 7. DELIVERY

7.1 The Customer must notify Anzor if the Customer does not receive any order within 4 working days of the order being given by the Customer to Anzor.

7.2 Any dates quoted for deliveries of the Goods are approximate only, given in good faith, and are not binding on Anzor.

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- 7.3 Anzor may deliver the Goods in instalments and the Customer remains liable to pay for the Goods so delivered.
- 7.4 Failure by Anzor to deliver any instalment shall not entitle the Customer to repudiate the contract as to any instalments already delivered or any remaining instalments yet to be delivered.
- 7.5 Anzor is not liable for any delay, failure or inability to deliver, however caused, or for any consequential loss or damaged suffered by the Customer.
- 7.6 If the Customer fails to take delivery of the Goods or fails to give Anzor adequate delivery instructions, the Goods shall be deemed delivered and Anzor may charge the Customer for the Goods and the reasonable costs associated with such failure and the storage or redelivery of the Goods.
- 7.7 Anzor may withhold or delay delivery at any time for any reason.

### 8. RETURNS

#### General Returns

- 8.1 Goods may be accepted for credit if returned to Anzor within 14 days of the date of delivery and accompanied by a request for credit quoting the original invoice/packing slip number, the purchase order number, date and reason for returns.
- 8.2 Prior notification by the Customer of the return of Goods is required and the acceptance of such Goods does not imply an agreement by Anzor to issue a credit note.
- 8.3 Returns are subject to inspection and approval by Anzor and will attract a handling and restocking charge. Freight will be at the expense of the Customer unless the Goods were supplied incorrectly by Anzor.

#### Warranty returns

- 8.4 Within 7 days of delivery of the Goods the Customer must notify Anzor in writing of any missing Goods, or defects, or errors which are or should have been apparent from a reasonable inspection at the time of delivery.
- 8.5 Notification by the Customer under clause 8.4 does not discharge the Customer from its obligation to make payment to Anzor.
- 8.6 If the Customer fails to notify Anzor in accordance with this Clause, the Customer is deemed to have accepted the Goods and will be liable to pay the full Price for the Goods.
- 8.7 If the Customer fails to notify Anzor in accordance with this Clause, the Customer is deemed to have accepted the Goods and will be liable to pay the full Price for the Goods.
- 8.8 If the Customer makes a valid claim in accordance with this clause 8 which is accepted by Anzor, then Anzor may at its sole discretion chose to do any of the following:
- replace the Goods (or the part in question); or
  - issue a credit note.
- 8.9 No credit will be given for Goods which have been:
- specially procured for the Customer;
  - specifically manufactured for or cut to the specifications of the Customer; or

- used, modified, damaged by the Customer, or not merchantable/sellable condition (as determined solely by Anzor)

### 9. GENERAL WARRANTIES EXCLUDED

- 9.1 The Customer acknowledges and agrees that it is their responsibility to ensure that the Goods purchased are appropriate for the Customer's particular purpose.
- 9.2 Unless a specific written representation about performance or outcome is made part of the Agreement, any expected results from the Goods communicated by Anzor to the Customer are Anzor's assessment of the most likely outcome for the Customer and do not and shall not be deemed to constitute a warranty or guarantee by Anzor that any expected results will in fact be achieved by the Goods.
- 9.3 Subject to the provisions of the Agreement, all any any express or implied terms, conditions, warranties and representations with respect to the standard, quality, condition, performance, fitness, durability or suitability of the Goods (except those expressly contained in these Terms or otherwise expressly agreed to in writing by Anzor) are to the extent that the same may be excluded by law, hereby expressly negative and excluded.
- 9.4 The Customer must satisfy itself as to the standard, quality and suitability of the Goods and the fitness of the Goods for the purpose(s) for which the Goods are being purchased and as to its compliance with the description (if any) of such Goods. Any description shall be by way of identification only and the use of a description shall not of itself make any Contract a contract of sale by description.
- 9.5 These Terms shall not exclude, restrict or modify or have the effect of excluding restricting modifying the application in relation to a Contract of all or any of the provisions of Division 1 of Part 3-2 of Schedule 2 to the Competition and Consumer Act 2010 ("the Act") or the exercise of right conferred by such a provision or any liability of Anzor for breach of a guarantee implied by such a provision but all other guarantees, condition or warranties which would or might otherwise be implied are hereby expressly excluded and negated.
- 9.6 To the extent that the Competition and Consumer Act 2010 permits Anzor to limit its liability for a breach of a guarantee implied pursuant to Division 1 of Part 3-2 of Schedule 2 of the Act, then unless Part 6 applies Anzor's liability for such breach including any consequential loss which the Customer or any third party may sustain or incur shall be limited, at the option of Anzor, to:
- the replacement or repair of the Goods supplied to the Customer;
  - the supply to the Customer of equivalent Goods; or
  - the payment of the cost of replacing or repairing the Goods or of having the equivalent Goods supplied again; whichever may be determined in the absolute discretion of Anzor.
- 9.7 The Customer must within thirty (30) days of the Customer first becoming aware of any facts giving rise to a claim against Anzor under clause 9.6 inform Anzor in writing, setting out the full particulars of the claim and deliver freight

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- prepaid to Anzor any allegedly defective Goods so as to enable them to be examined by Anzor.
- 9.8 The benefits of any warranty herein contained shall not apply in the case of:
- Defects in any Goods caused by the Customer's misuse or neglect; or
  - Goods, which have been altered, added to, otherwise modified or used for a purpose for which they were not intended without the prior written consent of Anzor.
10. **NO WARRANTY AGAINST CORROSION**  
While the goods are made from high quality materials which are designed to be resistant to corrosive environments, unless expressly stated, Anzor does not give any warranty regarding the Goods' resistance to corrosion.
11. **SUPPLY OF STAINLESS STEEL GRADES**
- 11.1 Most manufacturers will manufacture in a stainless steel that is very close to 304 in composition but which may have certain small differences to enhance ease of production. These grades include but are not limited to 302HQ, 301, 303, and 305 and Anzor may at its option supply these without prior notification.
- 11.2 Due allowance shall be made by the Customer for variations as a result of manufacturer's tolerances and Anzor does not accept any liability for such variations.
12. **TITLE**
- 12.1 Risk of damage, deterioration, or loss of the Goods will pass to the Customer at the time when the Goods are delivered to the Customer or, if the Customer wrongfully fails to take delivery of the Goods, the time when Anzor has tendered delivery of the Goods.
- 12.2 Title in the Goods shall not pass to the Customer until full payment is received by Anzor for the Price of the Goods and until all cheques and other instruments are honoured or met in full.
13. **CUSTOMER'S DEFAULT AND TERMINATION**
- 13.1 A "Default Event" will occur if the Customer:
- fails to pay any amount due to Anzor; or
  - breaches any other provision of the Agreement;
  - refuses the delivery of Goods;
  - makes or threatens to make any voluntary or involuntary arrangement with its creditors or becomes subject to any external administration;
  - enters or threatens to enter into liquidation, receivership, administration or bankruptcy;
  - is subject to any measure by a receiver or administrator in respect of the whole or part of its assets or is any distress or execution is levied on its assets; or
  - ceases, or threatens to cease, to carry on business.
- 13.2 If a Default Event occurs, Anzor may, without incurring any liability to the Customer, immediately take any of the following actions:
- suspend any further deliveries to the Customer under the Agreement;
  - terminate the Agreement without notice; or
- declare all amounts owing by the Customer to Anzor under any Agreement to be immediately due and payable.
14. **INDEMNIFICATION**
- 14.1 After delivery of the Goods to the Customer, Anzor shall not be responsible or liable to the Customer, and the Customer releases and discharges Anzor, (in the absence of any wilful or negligent act or omission on the part of Anzor) for and from any liability, claim, loss, damage, or expense of any kind or nature (including but not limited to loss of profits, earnings or income, direct, indirect, consequential, contingent or resulting liability, loss or damage whether to persons, property or otherwise) or death or injury caused by or arising out of or relating in any manner or incidental to the use of the Goods or the delivery of the Goods.
- 14.2 This indemnification will be interpreted and applied to the fullest extent permitted by law.
15. **PRIVACY ACT**
- 15.1 The Customer agrees and acknowledges that information provided by it to Anzor, may be used by Anzor and provided to a credit reporting agency for the purposes of assessing its suitability to enter into an Agreement.
- 15.2 The Customer agrees and consents to:
- Anzor obtaining a report about the Customer's commercial creditworthiness, from a business which provides information about the credit worthiness of persons, in accordance with Section 18L(4) of the Privacy Act;
  - Anzor obtaining from a credit reporting agency a credit report containing personal credit information about the Customer in relation to commercial credit provided by Anzor in accordance with section 18k(1)(b) of the Privacy Act;
  - Anzor obtaining a report or a reference about the Customer's commercial activities or commercial creditworthiness from any other third party;
  - the collection, use or disclosure of any personal information of the Customer by Anzor to any third party, including without limitation, credit providers or credit reporting agencies for the purposes of assessing the Customer's application for commercial credit, or for the purposes of assessing the Customer's suitability for the provision of a guarantee for any credit provided to the Customer, in relation to the collection of any overdue payment and to notify other credit providers of a default by the Customer, or where in the opinion of Anzor the Customer has committed a serious credit infringement;
- 15.3 The Customer may access their personal information held by Anzor upon request to the company by providing Anzor at least 14 days' notice.
- 15.4 The Customer acknowledges that the credit information referred to above may be used by Anzor, its legal representatives or authorised agents.

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### 16. **GUARANTEE AND INDEMNITY**

Any guarantors agree that:

- 16.1 Each guarantor personally jointly and severally guarantees payment to Anzor of all and any sums owed by the Customer to Anzor pursuant to these conditions including all payments due pursuant to clause 5; and
- 16.2 These conditions bind any guarantor;
- 16.3 No granting of time waiver or indulgence to the customer or failure to recover from the customer shall release any guarantor; and
- 16.4 As between any guarantor and Anzor each and every guarantor shall be deemed to be a principal debtor and indemnifies Anzor for any loss suffered and all sums payable to Anzor.
- 16.5 The person signing this application on behalf of the customer accepts full personal liability and guarantees payment by the customer. If the customer fails to make any payment or do any other thing that results in the vendor suffering loss the person signing on behalf of the customer agrees to pay all sums due and owing to Anzor.

### 17. **ASSIGNMENT AND SUBCONTRACTING**

The Customer may not transfer any of its rights and obligations under the Agreement to any other person without Anzor's prior written consent. Anzor may on written notice to the Customer transfer any or all of its rights or obligations under the Agreement to any other person or sub-contract any of its obligations under this Agreement.

### 18. **NO WAIVER**

The failure or delay by Anzor to exercise any of its rights under these Terms will not waive, vary or preclude Anzor from exercising that or any other right.

### 19. **SEVERABILITY**

Any part hereof being a whole part of a clause shall be capable of severance without affecting any other part of the Agreement.

### 20. **NOTICES**

Any party may serve notice on the other party by:

- a) giving it to the other party personally;
- b) leaving it at the other party's last known business address;
- c) sending it to the other party's facsimile number; or
- d) posting it to the other party's last known registered office or place of business.

### 21. **GOVERNING LAW**

The Parties irrevocably submit to the laws applicable in the State of Queensland and the courts of that State will have jurisdiction.