

GENERAL CONDITIONS OF SALE

DEFINITIONS

1. Unless the context otherwise requires:

Agreement means these Terms and Conditions of Sale which apply to the supply of Goods by the Seller to the Buyer.

Buyer means the party to whom the Seller has agreed to supply Goods pursuant to the Agreement.

Consequential Loss means loss of profits, loss of revenue, loss of opportunity and any other similar losses.

Consumer Rights is defined in clause 34

Goods means the goods and/or services agreed to be supplied by the Seller and purchased by the Buyer pursuant to the Agreement.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Intellectual Property means all intellectual and industrial property, whether registered or not, existing anywhere in the world, including patents, designs, trademarks, copyright, trade secrets and confidential information.

Order means an order for Goods in accordance with clause 4.

Other Deliverables is defined in clause 21(2).

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

PPS Law means:

- (1) the PPSA;
- (2) any provision of the PPSA or regulations made at any time under the PPSA;
- (3) any amendment to any of the above, made at any time; or
- (4) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

Seller means CDG Imports Pty Ltd, trading as: Direct Seeding & Harvesting Equipment; or Armstrong Machining.

FORMATION OF CONTRACT

2. Unless otherwise agreed by the parties in writing, this Agreement applies to any supply of Goods by the Seller to the Buyer.
3. The Buyer will be deemed to have accepted this Agreement if it:
 - (1) signs this Agreement;
 - (2) orders Goods from the Seller after receiving a copy of this Agreement;
 - (3) accepts the delivery of any Goods which are accompanied by an invoice referencing this Agreement; or
 - (4) otherwise communicates acceptance of this Agreement to the Seller.

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ORDERS

4. All Orders must be in writing and:
 - (1) be:
 - (A) delivered in person or sent by post to the place specified by the Seller; or
 - (B) sent by facsimile or email to the number or address specified by the Seller;
 - (2) clearly specify the Goods which are being ordered; and
 - (3) be in the form specified by the Seller from time to time.
5. An Order will not be deemed to be accepted by the Seller unless the Seller acknowledges that acceptance to the Buyer in writing or supplies the relevant Goods to the Buyer.
6. The Buyer may not revoke or cancel an Order unless the Seller fails to accept the Order or supply the relevant Goods within 28 days in accordance with clause 5.

PAYMENT AND PRICING

7. The terms of payment are net cash 30 days from the date of invoice, unless otherwise agreed to by the Seller.
8. The Seller may amend its standard price list from time to time without notice to the Buyer. The Buyer may request the current price lists from the Seller at any time. If the Buyer places an order following the date of any such amendment, then the prices for the ordered Goods will be the listed prices at the date of that order, and the Seller will give notice of the amended prices to the Buyer prior to fulfilling the order.
9. Stamp duty, government charges of any kind and GST are all for the Buyer's account in addition to the quoted price.
10. The Buyer must pay for all delivery costs (including any courier charges, insurance fees and packaging costs), unless otherwise agreed to by the Seller.

INTEREST

11. If the Buyer fails to pay an invoice by the due date for payment then, in addition to any other rights pursuant to this Agreement or at law, the Seller may charge interest (accruing daily) at a rate of 10% per annum on the outstanding amount.

INSPECTION, ACCEPTANCE AND CLAIMS

12. The Buyer shall inspect the Goods immediately upon the arrival and shall within ten (10) working days give notice to the Seller of any matter or thing by reason thereof the Buyer alleges that the Goods are not in accordance with the specified requirement.
13. If the Buyer fails to give such notice, then, subject to clause 34, the Goods shall be deemed to be in all respects in accordance with the specified requirement and the Buyer shall be bound to pay for the same accordingly.
14. Subject to clause 34, no claim by the Buyer shall be recognised unless made in writing and received by the Seller within ten (10) working days after receipt of Goods by the Buyer.

TITLE AND RISK

15. Title to the Goods shall remain with the Seller until all monies owing by the Buyer to the Seller have been paid in full (whether such monies are payable under a specific contract or on any other account).
16. The risk in the Goods passes to the Buyer at the time of delivery.
17. Until such time as title in Goods has passed to the Buyer in accordance with clause 15, the Buyer must:

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- (1) hold the Goods as bailee for the Seller, subject to this clause 17;
 - (2) store those Goods separately and mark them so that they are clearly and easily identifiable as the Seller's property and, if Supplier requests, inform the Seller of the location of the Goods;
 - (3) keep the Goods free from any charge, fee or other encumbrance;
 - (4) not sell or lease those Goods to any third party;
 - (5) subject to clause 34, indemnify the Seller against any claim arising out of the possession, use or disposal of the Goods by the Buyer or repossession or attempted repossession by the Seller.
18. If payment for any Goods held on bailment is not received within the timeframe required by this Agreement then, subject to clause 34 and without prejudice to any other legal rights that the Seller may have against the Buyer:
- (1) the Buyer must return those Goods to the Seller at the Buyer's own cost, or pay for those Goods in full, within 5 days of a notice to do so by the Seller;
 - (2) the Buyer must give full access to all the books of accounts and other documents relating to those Goods (including the Buyer's dealings with those Goods) within 2 days of a notice to do so by the Seller;
 - (3) the Seller may enter the Buyer's premises and retake possession of those Goods on 2 days' notice, without liability for trespass; and
 - (4) the Seller may suspend any of its obligations under this Agreement in respect of those Goods.

TERMINATION

19. Either party may terminate this Agreement if:
- (1) the other party commits a material breach of the Agreement (which, in the case of the Buyer, includes non-payment within the timeframes required by this Agreement); or
 - (2) the other party becomes bankrupt, has an administrator, a receiver or a receiver and manager appointed, goes into liquidation (whether voluntarily or otherwise), or is wound up, dissolved or declared insolvent.
20. If this Agreement is terminated in accordance with clause 19:
- (1) the termination will be without prejudice to any other rights that the party which is terminating the Agreement may have against the other party;
 - (2) the Seller may exercise its rights under this Agreement in respect of any non-payment or breach by the Buyer, regardless of whether the non-payment was reason for the termination; and
 - (3) subject to clause 34, the Seller will have no further obligation to sell or supply any Goods to the Buyer.

INTELLECTUAL PROPERTY

21. The Seller retains the sole and exclusive ownership of all Intellectual Property:
- (1) in the Goods;
 - (2) in any other goods, documents or things (including designs, drawings, instructions or specifications) which are supplied by the Seller pursuant to this Agreement (**Other Deliverables**); and
 - (3) which are otherwise created or used by the Seller under this Agreement.
22. The Buyer must not, and must ensure that its personnel do not, use, reproduce or disclose such Intellectual Property without the express consent in writing from the Seller.

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23. To the extent that Intellectual Property subsists in the Goods or any Other Deliverables, the Seller grants the Buyer a royalty-free, perpetual, non-exclusive licence to use that Intellectual Property solely in respect of the use of those Goods and Other Deliverables by the Buyer as a part of its normal business operations.

CONFIDENTIAL INFORMATION

24. If the Buyer receives any information from the Seller which is not available to the public, or is otherwise by its nature confidential (including, but not limited to, the Seller's price lists and any Other Deliverables), the Buyer must not use or disclose such information unless it receives the prior written consent of the Seller, such information enters the public domain (other than as a result of a breach of this clause) or the use or disclosure is required by law.

INSURANCE

25. The Buyer must keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to the Buyer until the time that title to the Goods passes to the Buyer. The Buyer holds the proceeds of that insurance on trust for the Seller up to the amount it owes the Seller in respect of those Goods, and must keep such proceeds in a separate account until the liability to the Seller is discharged and must immediately pay that amount to the Seller.

FORCE MAJEURE

26. The Seller shall not be responsible for non-delivery or delay in delivery of any Goods caused by force majeure and the Buyer and the Seller shall be excused from performance of their respective obligations when and to the extent such performance is delayed or prevented by force majeure.
27. If the Buyer's need for the Goods is reduced or suspended solely as a result of force majeure, and notification is given to the Seller within 5 days of the force majeure and prior to delivery by the Seller, the Buyer shall be entitled to cancel the applicable order.
28. For the purposes of this Agreement, **force majeure** shall include natural disasters, civil disasters, political event, change of legal/political environment, business disruption, accidents, earthquake, flood, hurricane or typhoon, tornado, tsunami, volcanic eruption, wildfire/bushfire, landslide or avalanche, fire, flood, storm, earthquake, terrorist acts, revolt, war, financial markets disturbances, changes of regime or tax or regulatory authority, energy failure, external telecommunications failure, and/or failure of transport systems.

USE OF GOODS

29. Subject to clause 34:
- (1) the Buyer assumes all risks and liabilities for consequences arising from the use of the Goods whether singly or in combination with other goods and indemnifies the Seller in respect of any such use; and
 - (2) it is the responsibility of the Buyer to ensure that the Goods when used by him/her are not damaged and no liability will be accepted by the Seller for the consequences of the use of damaged Goods by the Buyer.

WARRANTY EXCLUSIONS

30. Subject to clause 34, the Seller provides no warranties or representations in relation to the Goods and all conditions, warranties or other terms (express, implied, statutory or otherwise) are excluded, or limited, to the fullest extent permitted by law.
31. Without limiting clause 30, if any conditions or warranties apply to the Goods as a result of the Consumer Rights, then the Seller will (subject to clause 34) only be liable for a breach of those conditions or warranties:
- (1) if the Buyer:
 - (A) notifies the Seller of the breach as soon as possible and, in any event, within 14 days of becoming aware of the breach; and

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- (B) within 14 days of giving a notice under clause 31(A), returns the relevant Goods to the Seller (at the Seller's cost) in their original condition; and
- (2) to the extent that the breach was not caused or contributed to by:
- (A) any improper handling, installation, storage or use of the Goods by a person other than the Seller or the Seller's personnel or authorised agents;
- (B) the Buyer's failure to comply with, and use the Goods in accordance with, this Agreement and all applicable laws, regulations and industry standards; or
- (C) the Buyer's failure to use and operate the Goods under normal conditions in accordance with this Agreement and any documents or written instructions provided with the Goods.

LIMIT OF LIABILITY

32. Subject to clause 34, the Seller's liability to the Buyer is limited, at the Seller's option, to:
- (1) refunding the purchase price for the relevant Goods;
- (2) replacing or repairing the relevant Goods; or
- (3) paying for the cost of replacing or repairing the relevant Goods.
33. Subject to clause 34, the Seller excludes all liability not covered under clause 32, including any Consequential Loss.

CONSUMER LAW

34. The Seller acknowledges that the Buyer may, in some circumstances, also have rights as a consumer under the Australian Consumer Law and other laws which cannot be excluded, modified or restricted (**Consumer Rights**). These rights may relate to conditions, warranties and guarantees in relation to the Goods.

Nothing in this Agreement, including clauses 13, 14, 17(5), 18, 20(3), 29, 30, 31, 32, 33 and 47, excludes, restricts or modifies any Consumer Rights that the Buyer may have.

PRIVACY

35. The Seller only collects personal information about the Buyer and the Buyer's representatives (**Personal Information**) as is necessary for purposes related to the sale or anticipated sale of the Goods.
36. The Seller only holds, uses and discloses Personal Information for purposes related to the sale or anticipated sale of the Goods, or for related purposes which might be reasonably expected. This may mean that the Seller discloses Personal Information to its related bodies corporate, third parties (such as insurers and legal advisors) or as required by law.
37. The Buyer can choose not to provide Personal Information to the Seller. However, the Seller may not be able to supply the Goods to the Buyer in these circumstances.
38. Occasionally, the Seller may use Personal Information to contact the Buyer or its representatives directly (whether via telephone, email, post or otherwise) to keep them up-to-date with the Seller's range of products and services. By entering into this Agreement, the Buyer consents to the Seller contacting it for these purposes. However, if at any time the Buyer does not want the Seller to use its Personal Information for these marketing purposes, it can opt out by contacting the Seller.
39. The Seller will not disclose any Personal Information to any third parties (other than related bodies corporate) for marketing purposes.
40. The Buyer or its representatives may contact the Seller to access any Personal Information held in relation to them, to make any corrections to such Personal Information or to make privacy related complaints.

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PERSONAL PROPERTY SECURITIES

41. Words and phrases used in clauses 42 to 44 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
42. If the Seller determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Buyer consents to the Seller effecting and maintaining a registration on the register (in any manner the Seller considers appropriate) in relation to any security interest contemplated or constituted by this Agreement in the collateral (the **Seller's Collateral**) and the proceeds arising in respect of any dealing in the Seller's Collateral. The Buyer agrees to sign any documents and provide all assistance and information to the Seller required to facilitate the registration and maintenance of any security interest.
43. Neither the Seller nor the Buyer will disclose information of the kind mentioned in section 275(1) of the PPSA or any information contained in this Agreement and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.
44. Clause 43 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
45. The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.
46. If the PPSA applies to this Agreement and Chapter 4 of the PPSA would otherwise apply to the enforcement of this Agreement, the Buyer agrees that sections 95, 118, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142, 143 of the PPSA will not apply to the enforcement of this Agreement.

ENTIRE AGREEMENT

47. Subject to clause 34, this Agreement:
 - (1) constitutes the complete and exclusive statement of the agreement and understanding between the Seller and the Buyer with respect to the subject matter hereof;
 - (2) supersedes all prior arrangements between the Parties either written, oral or established through a course of dealings between the Parties; and
 - (3) will take priority in the event of any inconsistency between this Agreement and any of the Buyer's purchase order forms or other documents.

VARIATION

48. This Agreement cannot be varied except in writing signed by duly authorised officers of the Seller and the Buyer.

GOVERNING LAW

49. This Agreement shall be governed by and construed in accordance with the law in effect in Western Australia and the Parties accept the jurisdiction of the courts of Western Australia in relation to any dispute between them.