



## Terms and Conditions of Sale

Last Reviewed 1/4/2023

We will only supply goods to you on the following terms and conditions unless we agree, in writing, to vary these terms and conditions.

### 1. Payment

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- 1.1. All invoices are due and payable as per the date stated on the invoice. Be aware that Machinery purchase is outside of the 28 day trading terms extended to credit customers, and is covered by the terms on the back of your purchase invoice.
- 1.2. We reserve the right, to charge a fee for overdue payments, credit card payments, cancellation of orders, manual processing of payments, and to pass on bank fees imposed on payments.
- 1.3. Should you fail to pay your invoices by the due date then:
  - (a) we may charge interest on any overdue invoices at the rate fixed for unpaid judgment amounts under the *Civil Procedure Act 2005 (NSW)*, calculated and payable daily, compounded from the due date until the invoice is paid in full; and
  - (b) you will pay all our costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.

### 2. Settlement discount

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You may take advantage of a discount for early settlement of accounts at the rates agreed between us from time to time provided:

- (a) payment in full takes place within the time specified; and
- (b) you do not have any other invoices outstanding beyond their due date at the time of payment.

### 3. Prices and delivery

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- 3.1. Our prices are subject to change without notice.

- 3.2. GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the invoice. We state on the face of the invoice whether or not the prices shown on the invoice are inclusive or exclusive of such tax.
- 3.3. Whilst we will use all reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of your order or to claim compensation by reason of our failure to comply with your delivery requirements or minor variations to the goods.
- 3.4. Should circumstances beyond our control prevent or hinder delivery, we will be free from any obligation to deliver goods while such circumstances continue. For as long as such circumstances exist, we may, at our option, cancel, rescind or terminate all or any part of the contract or keep the contract on foot until such circumstances have ceased. Such circumstances beyond our control include, but are not limited to: strikes, lockouts, rebellions, fire, acts of God, shortages of raw materials, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.
- 3.5. We reserve the right to over-supply or under-supply any order within reasonable limits. You will pay for any such over-supply at the unit price for the delivered goods.

#### **4. Reservation of title**

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- 4.1. Notwithstanding delivery of the goods to you, until you pay for the goods in full and any other goods previously supplied to you by us:
- (a) legal title to the goods will remain with us;
  - (b) the risk in the goods will pass to you on delivery to you or your agent;
  - (c) the relationship between us and you will be fiduciary;
  - (d) you will:
    - (i) hold the goods as bailee for us;
    - (ii) keep the goods separate from other goods; and
    - (iii) label the goods so that they are identifiable as the goods of us;
  - (e) with our consent (which is given), you are at liberty to sell the goods, in the ordinary course of your business, provided that the money resulting from the sale will:
    - (i) be held in a separate account in trust for us;

- (ii) not be mingled with other money;
- (iii) not be placed into an overdrawn account; and
- (iv) you account to us for those proceeds; and
- (f) in the event that you use the goods in some manufacturing or construction process of your own or of some third party then you will hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for us. Such part will be deemed to equal in dollar terms the amount owing by you to us at the time of receipt of such proceeds.

4.2. You are not an agent of us in any sale of the goods by you.

4.3. You must insure the goods.

4.4. If you make default under these terms and conditions, we may without demand retake possession of the goods and may without notice sell the goods on such terms and in such manner as we determine and will be entitled to deduct all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, you irrevocably authorise and license us and our servants and agents to enter any premises where any goods may be stored and to take possession of the goods.

## 5. PPSA

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5.1. Unless otherwise defined in these terms of sale, capitalised terms and expressions used in this clause have the meanings given to them in the *Personal Property Securities Act 2009 (Cth)* (PPSA).

5.2. You acknowledge and agree that you grant to us a Security Interest in the goods and their Proceeds, including any Accounts, Accessions and Commingled Goods, by virtue of clause 4 of these terms of sale.

5.3. You acknowledge that any purchase by you on credit terms from us, or any retention of title supply pursuant to these terms of sale attaches on delivery of the relevant goods and constitutes a Purchase Money Security Interest.

5.4. You agree that:

- (a) these terms of sale or, subject to us giving you at least 7 days' notice, such other terms and conditions as we may adopt from time to time, apply to the supply of goods by us to you to the exclusion of all other terms and conditions of sale or purchase to the extent permitted by law and constitute a Security Agreement pursuant to the PPSA;
- (b) no variation to these terms of sale will be of any effect unless agreed to by us in writing;

- (c) the goods supplied by us secure the payment of the purchase price of those goods and of any other goods supplied by us with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
  - (d) you will do all the things necessary in our reasonable opinion, including providing all information we require, to register a Financing Statement or Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest;
  - (e) you will not change your name or ABN or other details required in respect of registration, or maintenance of registration, of each Security Interest on the Register, without first notifying us in writing;
  - (f) you waive your right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of any Security Interest created pursuant to these terms of sale; and
  - (g) you must pay our costs of any discharge or necessary amendment of any Registration. We reserve the right to charge an administration fee for registration, or maintenance of registration, of any Security Interest arising under these terms of sale.
- 5.5. If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, you agree that Sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.
- 5.6. To the maximum extent permitted by law, you contract out of, and waive any rights you may have pursuant to, Sections 95 and 96, and if the provisions of Chapter 4 of the PPSA would otherwise apply, Sections 117, 118, 121(4), 123, 129(2) and 130 of the PPSA.
- 5.7. In addition to any other rights under these terms of sale, we may exercise any and all remedies set out in the PPSA including, without limitation, entry into any building or premises owned, occupied or used by you, to search for and seize, dispose of or retain those goods in respect to which we have a Security Interest. In this regard, you acknowledge that Sections 126, 128, and 129(1) of the PPSA relating to seizure of goods and disposal of seized goods apply.
- 5.8. You agree with us that neither of us will disclose any confidential information of the kind referred to in Section 275(1) of the PPSA and that this clause 5.8 constitutes a *confidentiality agreement* within the meaning of Section 275(6)(a) of the PPSA.
- 5.9. You waive any rights you may have under Section 275(7)(c) of the PPSA to authorise disclosure of any confidential information that is protected from disclosure under clause 5.8.

- 5.10. You appoint and authorise us as your attorney to sign in your name all documents which we reasonably consider necessary to enforce or protect our rights and powers under these terms of sale and to protect, preserve and enforce our rights under the PPSA.

## **6. Acceptance of Goods**

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- 6.1. You will inspect the goods immediately upon delivery to you or upon collection of that order by your agent or courier as the case may be.
- 6.2. All claims against us regarding the quality, nature, fitness, suitability, conformance with description or defects of the goods must be made in writing to the Seller within 7 days of delivery. We do not accept liability for any such claim not made in accordance with these terms of sale.
- 6.3. In the event of justified objection notified by you to us in accordance with these terms of sale, we may, at our option:
- (a) reduce the purchase price by agreement with you;
  - (b) accept the return of the goods and, subject to the goods being returned in the same condition as when they were delivered to you, refund to you the purchase price; or
  - (c) replace the goods

and no additional claims of any nature whatsoever may be made against us.

## **7. Risk**

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- 7.1. Notwithstanding the provisions of clauses 4 and 5, you accept all risk of loss and damage of the goods, whether caused by you or not, following delivery of the goods.
- 7.2. Where, in accordance with these terms, we accept return of any goods, risk in those goods will revert to us upon delivery of the goods to us or upon collection of the goods by our agent or courier as the case may be.
- 7.3. Any of your property under our custody or control will be entirely at your risk as regards loss or damage caused to the property or by it.

## **8. Return of goods**

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- 8.1. We will not accept returns for credit without prior authorisation.

8.2. Any goods which you return for credit will only be accepted if they are in the original packaging, in pristine order and condition and accompanied by documentation showing:

- (a) your name, address and account number;
- (b) our invoice number;
- (c) reason for return; and
- (d) our authorisation number.

8.3. If we authorise the return of goods, the goods must be carried by our nominated carrier at your cost.

## **9. Withholding supply**

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We reserve the right, irrespective of whether or not an order has been accepted and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:

- (a) we have insufficient goods to fulfil the order;
- (b) the goods ordered have been discontinued; or
- (c) we have determined, in our absolute discretion, that credit should no longer be extended to you.

## **10. Minimum orders**

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We reserve the right to specify the minimum order value which we will accept from time to time and to impose a surcharge should you require delivery of goods having a value less than the minimum order value.

## **11. Modifications to labels**

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You may not, without our written consent, alter, remove or obliterate any labels which we attach to the goods.

## **12. Intellectual property rights**

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You acknowledge that you do not have any intellectual property rights, whether by way of copyright or registered design or otherwise, in the goods and that we retain ownership of all such intellectual property.

### **13. Advice and Information**

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Any advice, recommendation, information, assistance or service given by us in relation to goods sold or manufactured by us or their use or application is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty of accuracy, appropriateness or reliability and we do not accept any liability or responsibility for any loss suffered from your reliance on such advice, recommendation, information, assistance or service.

### **14. Competition and Consumer Act 2010 (Cth)**

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The terms in these conditions of sale that exclude or limit the owner's liability will apply only to the extent permitted by law. Provisions of the *Competition and Consumer Act 2010 (Cth)* (as amended) and other statutes from time to time in force cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. These conditions of sale must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the owner is entitled to do so, its liability under those statutory provisions will be limited at its option to:

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.

### **15. Governing law**

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15.1. The laws of NSW govern our trading.

15.2. You agree with us to submit to the non-exclusive jurisdiction of the Courts of NSW and the Federal Court of Australia and agree that any legal proceedings may be heard in those courts.

### **16. Claims**

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16.1. Any claims by you for short delivery must be made within 7 days of the delivery.

16.2. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 7 days of delivery.

## **17. Clerical errors**

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We reserve the right to correct clerical errors without notification.

## **18. *We, our and us***

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The expressions *we*, *our* or *us* mean, whether severally or jointly and severally, Hado Pty Ltd ATF Intersales Unit Trust (ABN 64 160 069 925) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001 (Cth)*) and whether such body corporate is trading under the relevant company name or under any trading or business name.