

STANDARD TERMS AND CONDITIONS OF SALES

- 1. Contract**

These Conditions set out the conditions pursuant to which **Nanokote Pty Ltd** (“the Company”) has agreed to sell and deliver goods to the buyer, and should be read in conjunction with the key commercial terms agreed between the parties, such as, without limitation, the description of the goods, the place and terms of delivery, the price, currency and terms of payment, and any special conditions. Such commercial terms, together with these Conditions, shall constitute the contract between the parties (“the Contract”).
- 2. Quotations and Acceptance of Orders**

Orders shall be deemed to be an offer by the buyer, and are only binding on the Company on the earlier of (i) the Company sending the buyer an acknowledgement of order in writing, or (ii) the Company commencing the manufacture of goods in order to fulfil the order. Any quotations made by the Company are without obligation.
- 3. Quality**

3.1 The Company warrants that at the time the goods leave the Company’s factory or warehouse they will comply with the standard specification of the Company agreed by the parties. The Company shall not be liable for breach of this warranty unless the Company receives from the buyer written notice of the breach within [21] days after delivery of the goods, and the Company is given a reasonable opportunity thereafter to examine the goods.

3.2 The Company shall not be liable for any breach of the warranty contained in Condition 3.1 to the extent that: (i) the buyer makes any further use of the goods after giving notice pursuant to Condition 3.1; or (ii) any defect leading to such breach arises because the buyer has breached Condition 8.

3.3 Buyer shall inspect and conduct appropriate quality control checks on the goods within [21] days of delivery after which they are deemed delivered in full pursuant to the required specification.
- 4. Prices and Payment Guarantee**

Buyer shall make payment to the Company in accordance with the law applicable from time to time against receipt of an appropriate invoice. Prior to delivery the Company can demand advance payment or a payment guarantee in a form required by the Company.
- 5. Delivery**

5.1 The Company will arrange delivery of the goods to, and the buyer will accept delivery of the goods at, the agreed place of delivery and according to the terms of delivery set out in the Contract.

5.2 Delivery dates are estimates only and (subject to Condition 9) late delivery shall only entitle the buyer to terminate the Contract and/or claim damages if the buyer has served notice, such notice demanding delivery of the late goods within not less than 15 days from the estimated delivery date, and the Company has failed to comply with such notice.

5.3 Each delivery of goods shall constitute a separate contract and any breach thereof shall not entitle termination of the Contract as a whole.
- 6. Ownership and Risk**

6.1 The goods are at the risk of the buyer from the time of delivery.

6.2 Title in all goods supplied by the Company shall remain in the ownership of the Company and be held by the buyer only as bailee until the buyer has paid the price to the Company (and any GST or equivalent sales tax thereon). The buyer may resell or process the goods as part of the normal conduct of its business, unless the Company has asked the buyer to return the goods.

6.3 All intellectual property rights in and relating to the goods, their manufacture, development or creation (including improvements thereto) shall be or remain vested in the Company (whether or not commissioned by the buyer) and the buyer will, at the request and cost of the Company, do any act and execute any documents necessary to confirm such rights in or transfer such rights to the Company.
- 7. Payment**

7.1 Payment shall be made in full and in cleared funds within the period stated in the Contract. Late payment shall entitle the Company to terminate the Contract in whole or in part.

7.2 The buyer may not for any reason suspend payment or make any deduction by way of set-off.

7.3 If the buyer fails to pay the Company any amount payable under the Contract by the due date for payment the buyer shall be liable to pay interest to the Company on the outstanding amount at the rate of two (2) per cent over one month of the Company’s principle bank rate.
- 8. Duty of care**

The buyer shall at all times handle the supplied goods with reasonable care and in conformity with the Company’s oral or written instructions as to storage, use or maintenance of the goods, and shall perform no actions which might affect the quality or safety of the goods or the reputation of the Company’s brands.

Buyer fully accepts all risks associated with overseas use and sale of the goods including compliance with such applicable laws and regulations.
- 9. Liability**

9.1 The Company’s total liability for any claim however arising in connection with the performance or non-performance of this Contract shall be limited to an amount equal to the value of the goods in relation to which the claim arises, net of value added tax or any equivalent sales tax.

9.2 The Company shall not be liable for any claim however arising for: (i) loss of profits, goodwill, production, business, and anticipated savings and third party contracts; or (ii) for consequential or indirect loss.

9.3 The buyer shall indemnify the Company against all third party claims, losses, costs (including legal costs), penalties and damages brought against, suffered or incurred by the Company in relation to the goods arising directly or indirectly out of any acts or omissions of the buyer, its employees or agents.

9.4 All warranties, representations, guarantees, conditions and terms, other than those expressly set out in the Contract, whether express or implied by statute, common law, trade usage or otherwise, and whether written or oral, are hereby expressly excluded to the fullest extent permissible by law.

9.5 Representations about the goods, directions for their use, and marketing claims that can be made about the goods, are made in good faith, but the Company shall not be liable for such representations. It is for Buyer to be satisfied (by trial processing if necessary) as to fitness or suitability of goods for any particular purpose. Save that the Goods will comply with the specifications no warranty is given by the Company as to their quality or fitness for any particular purpose.

9.6 Notwithstanding anything to the contrary in the Contract, nothing in these Conditions shall exclude, restrict or limit the Company’s liability for (i) death or personal injury resulting from the Company’s negligence and (ii) fraud, nor affect a consumer’s statutory rights.
- 10. Confidentiality**

10.1 The buyer shall not disclose to any other party any confidential information belonging to the Company or any associated company of the Company (including, without limitation, specifications, samples, formulae, manufacturing processes, know-how and any technical or economic information), or use such information for any purpose except as expressly authorised in writing by the Company, during the Contract and for ten years thereafter.

10.2 In order to protect the proprietary and confidential nature of the Company’s goods the following restrictions apply to the use of its goods: (i) save as may be reasonably required for safety purposes the buyer shall not analyse or have analyses, or permit or knowingly facilitate the analysis of, any sample or good supplied to buyer pursuant to the contract, and (ii) buyer shall not copy or permit the copying of goods.
- 11. Force Majeure**

11.1 If, as a result of force majeure (as defined in Condition 11.2), the Company is not able to comply with its obligation to deliver, then the Company shall be entitled, without being in default, to postpone delivery of the goods until such time as the force majeure has terminated.

11.2 Force Majeure means any event which is beyond the reasonable control of the party affected such as, without limitation, acts of God, war, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, containers, transportation or labour, strike, lockout or injunction, compliance with laws or regulations and breakage of machinery or apparatus.
- 12. Termination**

The Company may terminate, without prejudice to accrued rights, all or part of the Contract (i) by 30 days written notice, or (ii) by written notice with immediate effect if the buyer is in arrears of any amount owed to the Company; or the buyer becomes bankrupt or insolvent, or the buyer is in breach of contract and does not remedy such breach (if remediable) within 30 days of receiving notice of the breach.
- 13. General**

13.1 If any provision of the Contract is found by any court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

13.2 Failure or delay by the Company in enforcing any provision of the Contract will not be a waiver of any of its rights under the Contract.

13.3 Any variation or amendment to these Conditions shall be in writing and signed by the relevant the Company salesman and a member of the Company’s Legal Department.

13.4 The buyer shall not be entitled to assign any of its rights or obligations under the Contract, without the prior written consent of the Company.
- 14. Law and Jurisdiction**

The Conditions shall be governed by the law of Australia. Any dispute, claim or question arising out of or in connection with the Contract shall be settled through negotiations amongst the parties. If no agreement can be reached, any party is entitled to initiate the dispute to a Court of Law in Victoria, Australia