

TERMS OF TRADE

These are the entire Terms and Conditions of Sale and supply of all goods and or services (collectively referred to as “the goods”) supplied by Rush Creek Pty Limited (ACN 082 555 066) and it’s related companies (all of which are referred to as “the Company”) to any person, firm or company placing an order with the Company for the purchase of any goods. Except as otherwise expressly agreed upon in writing between a duly authorised office of the Company and the Customer these terms and conditions shall apply notwithstanding any provision to the contrary which may appear on any order form or other document issued by any Customer.

GENERAL

1. All orders placed with the Company shall only be accepted subject to these terms and conditions. The Company reserves the right to review and amend these Terms of Trade from time to time. Written notification forwarded to the Customer by ordinary mail shall be deemed sufficient notification to bind the Customer to any revised or amended terms of sale for all orders placed by the Customer and accepted by the Company after receipt of such notification.
2. Goods and Services Tax (“GST”) Sales Tax or any other applicable tax or duty payable shall be paid or reimbursed by the Customer to the Company on demand and the Customer shall indemnify and keep indemnified The Company in respect of any sale of goods or the subsequent use of goods after the sale to the Customer.

PRICES

3. All prices shall be those referred to in the Company’s price lists and/or amendments current at the date of invoice and prices shall be subject to change without notice.
4. Unless otherwise quoted or stated on the invoice all prices are strictly nett.

TERMS OF PAYMENT

5. Payment is required in full upon delivery of the goods unless an application for credit has been completed and approved by The Company. The agreed terms of payment will be stated on the invoice. A 30 Day account will require payment within 30 days of the end of the month of invoice. A 7 day account will require payment within 7 days from the date of the invoice or date of delivery which ever is the later.
6. In the event the Customer is in default of the agreed trading terms, then the Company at its discretion will charge a late payment accounting fee of 2% per month ON THE TOTAL AMOUNT OUTSTANDING.
7. Further in the event the Customer is in default of these terms the Company reserves the right to place the account out for collection and to require the payment of cash upon delivery of any further goods. In this event the customer indemnifies the Company against all collection costs and legal fees and disbursements.
8. The Customer further agrees that in the event the Customer is in breach of these terms, the Company reserves the right to stop supply, without prejudice to any other rights it may have under these terms and the account is placed on hold until the account is returned to the agreed trading terms, and the Company agrees to recommence supply.
9. Customers having overdue accounts will be precluded from participating in any special deals, bonus payments, redemptions, rebates and all other incentive programs until their accounts are no longer overdue.

QUOTATIONS

10. Quotations are given based on the current market price. Acceptance outside the 30 day period will reflect current price fluctuations.

SPECIAL ORDERS

11. Special orders are classified as any order required outside normal stock lines. Such orders require a 50% deposit on placement of the special order(s). Such order(s) are to be collected within 7 days of completion. Storage fees will apply at a rate of \$10.00 per day over and above the final date for collection.
12. If the Customer cancels or alters any special order or part special order or a standard order with special material then the Company reserves the right to charge the Customer the costs of any special goods or materials already accrued for the order together with the cost of any labour to the date of such cancellation or alteration.

DELIVERY DATES

13. Delivery to site is based on a 30 minute turnaround. In the event that offloading exceeds this time, additional demurrage rates will apply.
14. Any date or time for delivery is an estimate only and the Company shall endeavour to affect delivery at the time or times required by the Customer but failure to do so will not confer any right of cancellation or refusal of delivery on the Customer or render the Company liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
15. The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery caused by strike, lockout, unavailability of materials, accidents to machinery, differences with workmen, breakdowns, shortages of supplies or labour, fires, flood, storms or tempest, transport delays, acts of God, restrictions or interventions imposed by any laws, regulations, governments or agencies or any other cause beyond the control of the Company or any other causes whatsoever.
16. The Company’s obligations to deliver shall be discharged on arrival of the goods at the Customer’s nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the goods upon delivery, provided that, if the Customer is unable to or unwilling to accept physical delivery of the goods when the goods are ready for delivery the Company shall be entitled to charge a fee for any delay experienced and arrange for the storage of the goods at the Customer’s risk and cost.
17. The Customer is responsible to ensure that the Customer or the Customer’s agent is on site to sign for the delivery, and further validate the quantity delivered. In the event that the customer or their agent is not on site to take delivery then the driver’s signature on the invoice denoting the time and date of the delivery will be deemed to be an acceptance by the Customer or it’s agent of delivery of the goods.
18. It is the responsibility of the Customer at point of sale to ensure suitable access at all times is available to the Company to make delivery to site. In the event the access provided is unsuitable then the Customer indemnifies the Company against any event occasioning the loss or damage as a result thereof. Further it is the responsibility of the Customer to ensure suitable directions are given for delivery to site. Failure to do so will render the customer liable for additional cartage charges incurred.
19. No credit claims will be approved unless they are received within 48 hours of delivery by telephone, and in writing within 7 days. Any claim received over and above this period will be at the absolute discretion of the Company, and its decision will be final and binding on the Customer.

PROPERTY AND RISK

20. Notwithstanding delivery of the goods or their installation, property in any given goods shall remain with the Company until the Customer has paid and discharged any and all other indebtedness to the Company including all taxes levies and duties. If any payment made is later avoided by the application of any statutory provision it shall be deemed not to reduce the Customer's indebtedness and shall be treated as if not paid.
21. The risk in the goods shall pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer and the Customer acknowledges that it is in possession of the goods solely as a bailee until payment as set out in clause 6 above is made in full and that any damage to the goods, however caused, following delivery is the responsibility of the Customer. Notwithstanding this the Company gives to the Customer a licence to install the goods.
22. The Customer grants to the Company and its agents an unrestricted right and licence to enter premises occupied by the Customer or where the Customer is working to remove the goods if they are the property of the Company without being liable for them to the Customer. Further the Company has the right to sell or dispose of the goods so removed (which have been not paid for in accordance with these terms and conditions) at its sole discretion and shall not be liable for any loss occasioned thereby.

RETURN OF GOODS OR CANCELLATION OF ORDER

23. In the event the customer requests to return goods, or cancel goods on order, then the Company reserves the right to charge a 25% handling fee on the amount involved plus the cost of cartage/freight. Further no return of goods will be accepted without prior approval of the Company, which will be given or withheld at the sole discretion of the Company.

LIMITATION OF LIABILITY

24. Except for those conditions or warranties implied or expressed by any Act of parliament or any other sale of goods or consumer protection legislation which may not be excluded, the Customer agrees that it has not relied on any inducement, representation or statement made by or on behalf of the Company in purchasing the goods and there are no implied conditions or warranties herein and no collateral contracts in connection herewith (except such as may be in writing and signed by an authorised representative of the Company). In no circumstances will the Company incur any liability in respect of liabilities to the consumer for a breach of a condition or warranty with respect to the sale of goods.
25. No statement or recommendation made or advice, supervision or assistance given by the Company, its employees, agents or representatives whether oral or written must be construed as or constitutes a warranty or representation by the Company or a waiver of any clause in these Terms of Trade. The Company is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.
26. Should the Company be liable for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (not being a condition or warranty implied by Section 69 of that Act) then its liability for a breach of any such condition or warranty express or implied shall be limited, at its discretion, to any one or more of the following:
 - 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 acquiring equivalent Goods;
 - d. the payment of the cost of having the Goods repaired.

FITNESS FOR PURPOSE

27. The Customer agrees that it does not rely on the skill or judgement of the Company in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose.

TERMINATION

28. In the event of the Customer failing to comply with any of these terms and conditions or being a natural person commits an act of bankruptcy, or being a corporation passes a resolution for winding up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for winding up, or if a liquidator or administrator is appointed, the Company may, in addition to exercising all or any of its rights against the Customer suspend any further deliveries and requires payment of all outstanding amounts within seven days and may immediately recover possession of any goods not paid for in accordance with these terms and conditions.

GOVERNING LAW

29. The Customer agrees that these terms and conditions shall be construed according to the laws and of the State or Territory as the Company may in its sole discretion determine. Proceedings may be instituted in such state or territory as the Company may in its sole discretion determine. Failing such determination the Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the state of New South Wales.

MISCELLANEOUS

30. The Customer agrees that service of any notice or court documents may be effected by forwarding same by pre-paid post or facsimile to the last known address of the Customer.
31. A certificate signed by a director, secretary, financial controller or credit manager of the Company shall be prima facie evidence of the amount of indebtedness of the Customer to the Company at that time.
32. The Customer acknowledges that any change in status of the Customer in relation to this account must be in writing and approved by the Company.