

## General Conditions of Sale

The standard terms & conditions set out below ("terms") apply to the supply of all goods & services by Taiyo Membrane Corporation Pty Ltd and/or MakMax Australia Pty Ltd.

### 1. DEFINITIONS AND INTERPRETATIONS

"Seller" means Taiyo Membrane Corporation Pty. Ltd. and/or MakMax Australia Pty. Ltd.

"Buyer" means the company, firm or individual named in the quotation.

"Quotation" means any Letter of Offer or Pricing Estimate made by the Seller to the Buyer.

"Contract" means the agreement made in writing, between the Buyer and the Seller for the provision of work.

"Delivery" means delivery of goods by the Seller to the Buyer.

"Work" includes the supply of goods and services specified in the Contract or Quotation or any other goods & services.

"Authorised Representative" is a company director empowered to act an authorised signatory.

### 2. QUOTATIONS

- 2.1. All Quotations are based on market rates at the time of preparation. If at any time after that date, costs increase, the Seller may alter the price accordingly.
- 2.2. Quotations are valid for 14 days unless agreed otherwise.
- 2.3. Quotations may be revised or withdrawn by The Seller at any time prior to acceptance or their lapsing.
- 2.4. Quotations are subject to the availability of supplies, materials, and labour.

### 3. ACCEPTANCE OF OFFER

- 3.1. Acceptance of Offer shall be by signing the Letter of Offer or Quotation and issuing a Purchase Order or similar document to The Seller.
- 3.2. Where confirmation of order is delayed by Contract Negotiation or delays in Contract Execution, The Seller reserves the right to re-price the Quotation and/or resubmit an updated Programme of Works to account for any changes to the cost and availability of supplies, materials, shipping and labour.

### 4. CONTRACT FORMATION

- 4.1. These terms apply to all Contracts and Quotations to the exclusion of all terms, conditions, counteroffers, or amendments, written or oral, set out in the order or otherwise proposed at any time by the buyer.
- 4.2. No conditions, representatives, or warranties, written or oral, whether contained in the Buyer's order or otherwise proposed shall apply to the Contract or Quotation unless co-signed and agreed to The Seller's authorised representative.
- 4.3. Where the buyer has proposed different terms not agreed to in writing by The Seller's authorised representative, delivery to the Buyer by The Seller constitutes a counteroffer on our original terms and acceptance of Delivery is deemed to constitute an unqualified acceptance by the Buyer.
- 4.4. The Buyer need not otherwise communicate this acceptance to The Seller.

### 5. TERMS OF PAYMENT

- 5.1. The Buyer shall pay a deposit of 50% of the total contract price with confirmation of order unless The Seller otherwise agrees.
- 5.2. The Buyer shall pay by or Electronic Funds Transfer (EFT) into The Seller's bank account on or prior to Delivery for all goods sold unless The Seller otherwise agrees.
- 5.3. If The Seller agrees to extend credit to the Buyer, the Buyer shall make full payment within fourteen (14) days of the date on the relevant invoice.
- 5.4. Time for the payment shall be of the essence. If the Buyer fails to make payment in accordance with this clause, The Seller shall, in addition to all its other rights be entitled to:
  - 5.4.1. suspend the supply of Work.
  - 5.4.2. revoke any credit extended to the Buyer;
  - 5.4.3. charge default interest at the rate of 1.5% per month calculated on monthly balances on any money due but unpaid to be computed from the date due for payment;
  - 5.4.4. treat the Contract as repudiated;
  - 5.4.5. pursue the Buyer for recovery of all outstanding moneys in a court of competent jurisdiction;
  - 5.4.6. recover all costs associated with the collection of overdue amounts including but not limited to legal fees, disbursements and other costs.
- 5.5. If the client terminates the project at any time for any reason, The Seller reserves the right to charge including margin for works, including any design, administration, procurement, or manufacturing work undertaken up to the date of termination.
- 5.6. Liquidated and/or consequential damages will not apply.

## 6. TITLE

- 6.1. The Seller shall retain title to goods supplied to the Buyer until the goods, the subject of the Contract, are paid in full.
- 6.2. Until the goods are paid for in full, the Buyer shall hold goods solely as bailee for The Seller.
- 6.3. Until the goods are paid for in full, the Buyer shall store the goods, safely, securely and in a suitable environment separately from its own goods, and those of any other person and in a manner which clearly identifies the goods as the property of The Seller.
- 6.4. Notwithstanding that The Seller retains title of the goods in accordance with this clause; its rights as unpaid, The Seller shall not be affected.
- 6.5. The Buyer is not permitted to dispose of the goods until they are paid for without the specific consent in writing of The Seller.
- 6.6. In the event that The Seller consents to the disposal of the goods, the moneys resulting from sale are to be specifically earmarked and placed into a separate account until payment in full has been made to The Seller.
- 6.7. Until the goods are paid for in full, The Seller authorises the Buyer to sell the goods on but only as an agent for The Seller.
- 6.8. In the event that the Buyer defaults in payment of moneys to The Seller, commits an act of bankruptcy, enters into liquidation, has a receiver or manager appointed over all or any part of its assets, or becomes insolvent, The Seller shall be entitled without prejudice to any other remedy to repossess the goods belonging to it and to enter any premises without notice for this purpose.
- 6.9. The Seller reserves the right to terminate this retention of title clause and pursue the Buyer for the price of the goods delivered to the Buyer.
- 6.10. The event that The Seller retakes possession of the goods pursuant to clause 6.8 hereof or the goods are returned to the to The Seller with or without its consent and those goods are damaged and not in the same condition as when sold, The Seller reserves the right to sue the Buyer for the difference between the value of the goods retaken or returned and the price for the goods as delivered.

## 7. RISK AND DELIVERY

- 7.1. All goods shall be at the risk of the Buyer from the time they are received at the nominated delivery address of the buyer, or collected from The Seller by the Buyer's nominated agent.
- 7.2. The Seller reserves the right to make deliveries in installments and the Contract shall be severable as to any such installments.
- 7.3. Subject to any terms, conditions, warranties and indemnities implied which by law cannot be excluded, restricted, limited or modified, The Seller shall not be liable for any loss or damage of any kind whatsoever (including injury or death to any person or loss or damage to property);
  - 7.3.1. Whether suffered or incurred by the Buyer or third person or persons where such loss or damage arises directly or indirectly from the goods or any information or assistance or other services supplied by The Seller including, without limiting the generality of the foregoing, any generality of the foregoing, any financial loss or damage;
  - 7.3.2. The Buyer shall indemnify and keep indemnified The Seller from all losses, claims, actions, demands, proceedings, damages, costs, charges and expenses in respect of or in relation to the death of or injury to or illness of any person or persons or loss of or damage to property cause by or in connection with or arising out of the use of the goods, information, assistance or other services or in the employment of any person in connection therewith. This includes consequential damage or losses.
- 7.4. For supply only orders, delivery by The Seller further than the curb alignment, at the Buyer's request, shall be at the sole discretion of The Seller but in all cases the Buyer shall be liable for any loss or damage or injury caused to or sustained by any person or persons by reason of arising out of or in any way connected with such entry or delivery and The Seller shall at all times be indemnified by the Buyer in respect of any such liability. For such services being arranged on the Buyer's behalf, The Seller shall be entitled to charge the Buyer for labour for loading or unloading the goods at The Seller's current charges.
- 7.5. The Seller shall not in any way be liable for any loss or damage suffered as a result of a delay or failure to effect delivery of the goods.

## 8. INSTALLATION

- 8.1. Unless agreed otherwise between The Buyer and The Seller, The Buyer requests The Seller to act as its agent for the purpose of erecting and installing the goods.
- 8.2. Unless agreed otherwise The Buyer is responsible for providing a secure, fully fenced-off work area with access to power, water, skip bins and site amenities for the Sellers workers.
- 8.3. The Buyer must provide The Seller with clear unimpeded and safe access for The Seller's plant, equipment, materials and labour and a suitable laydown and assembly space for working.
- 8.4. The Seller, or an agent appointed by The Seller, shall make all reasonable steps to protect work from damage and deterioration during installation.
- 8.5. The Seller, or an agent appointed by The Seller, shall make all reasonable steps to protect the surrounding area from damage and deterioration during installation.
- 8.6. Notwithstanding 8.4 and 8.5, unless agreed otherwise, The Buyer is responsible for all making good of surrounding finishes and surfaces following the installation of The Seller's works.
- 8.7. After completion of The Sellers works and its workers demobilising from site, protection of the installed works is the client's responsibility.

## 9. MINIMUM STANDARDS

- 9.1. Upon completion of tensile membrane structure installation, The Seller, or The Seller's agent, will promptly undertake a site review with The Buyer or Buyer's agent, and agree any defects requiring attention;
  - 9.1.1. Membrane repairs, if required, shall be executed in such a way that they are visually discrete, eg. 1 small patch (150mm x 150mm) per 750m<sup>2</sup> of installed membrane is deemed acceptable by industry standards.
  - 9.1.2. An inspection of the membrane shall be conducted to ensure minimal wrinkles present. Wrinkles of 250mm or less and in fewer than 3 locations per 750m<sup>2</sup> of installed membrane is deemed acceptable by industry standards.
- 9.2. The Seller, or The Seller's agent, will ensure all required closures, gutters and weather flaps are installed and sealed.

## 10. ACCEPTANCE AND RETURN

- 10.1. Goods delivered shall for all purposes be deemed to have been accepted no later than seven (7) days from the date of each Delivery.
- 10.2. No goods may be returned to The Seller unless The Seller previously agrees in writing to accept such returns. Any such return shall be made in a manner acceptable to The Seller and at the Buyer's risk as to loss or damage.

## 11. LIMITATION OF LIABILITY

- 11.1. The liability of The Seller with respect to any Work is limited to the price for that Work.
- 11.2. These terms do not exclude any implied terms which by virtue of Division 2 Part V of the Trade Practices Act 1974 (as amended) may not be excluded to the extent that non-excludable conditions or warranties are implied into this agreement.
- 11.3. The Seller's liability for any breach shall be limited to:
  - 11.3.1. in the case of goods, at the discretion of The Seller the cost of replacing the goods, acquiring equivalent goods, or having the goods repaired; and
  - 11.3.2. in the case of services, the cost of having the services supplied again.
- 11.4. The goods as subject of this Quotation or Contract are warranted against faulty workmanship and/or material for a period of twelve (12) months from the date of Delivery provided that the warranty shall be void in the following circumstances:
  - 11.4.1. as a result of erection of the goods in wind conditions in excess of design or the application of excessive external forces;
  - 11.4.2. as a result of installation (unless installed by The Seller) or maintenance not carried out in accordance with instructions from The Seller;
  - 11.4.3. as a result of staining to fabric due to atmospheric conditions, over-hanging trees, improper cleaning or any cause not attributed to the fabric;
  - 11.4.4. as a result of willful, malicious damage or on-site neglect.
- 11.5. The Seller's liability to the Buyer in respect of the fabric shall not exceed the fabric supplier's liability in respect of any fabric supplied.

## 12. VARIATIONS

- 12.1. If at any time the Buyer wishes to cancel or alter an order and The Seller, at its sole discretion, accepts the cancellation or alteration, The Seller may charge the Buyer for all costs and losses it has incurred in connection with the cancellation or alteration.
- 12.2. No variation of these terms or any Contract or Quotation shall be valid unless agreed in writing by The Seller's Authorised Representative.
- 12.3. The Seller reserves the right to change the design details and methods of meeting specifications without reference or notice to the Buyer.

## 13. ERRORS

- 13.1. The Seller reserves the right to correct clerical errors in computation, typing or otherwise in The Seller's creative assets, both digital and printed or in any quotation, invoice, delivery docket, credit note, or specification produced by it.

## 14. REPRESENTATIONS

- 14.1. Any advice, recommendations, information, or representation however made by or on behalf of The Seller relating to Work in any way, is given in good faith or without any acceptance of liability by The Seller.

## 15. GOVERNING LAW AND JURISDICTION

- 15.1. These terms, the Contract and Quotation shall be governed and constructed in accordance with relevant state laws and the parties hereby submit to the non-exclusive jurisdiction of the courts of the State.

## 16. SEVERABILITY

- 16.1. The Buyer and The Seller agree that if all or part of any one or more provisions of the Contract or Quotation are held to be invalid or unenforceable that portion shall be deemed to be deleted from the Contract or Quotation and shall not affect the validity or enforceability of the remaining provisions.

## 17. HEADINGS

- 17.1. Headings are for reference purposes only and shall not affect the interpretation of construction of the Contract or Quotation.