

## Terms & Conditions of Sale

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### 1. Definitions & Interpretation

In this document, unless the context otherwise requires: 'Company' means ELTON GROUP PTY LTD ABN 59 099 878 878; 'Consignment Goods' means any items from the Company range placed with the Purchaser by the Company on consignment; 'Deposit' means a deposit specified in a Sales Order Confirmation or a Tax Invoice; 'Event of Default' occurs when the Purchaser or the Company becomes insolvent, commits any act of bankruptcy, makes an assignment for the benefit of creditors, is wound up, has an administrator, liquidator or provisional liquidator appointed, makes any arrangement or compromise with its creditors, is placed under official management or has a receiver appointed to the whole or any part of its assets or property; 'Goods' means any items from the Company product range the subject of a Sales Order Confirmation or Tax Invoice; 'Price' means the total order value specified in a Pro Forma Invoice, a Tax Invoice (where only one Tax Invoice is issued for an order) or Tax Invoices (where two or more invoices are issued in regard to an order); 'Purchaser' means that person, firm, company or body specified on an invoice and where it has done so as trustee then in its own right and in its capacity as trustee; 'Sales Order Confirmation' means a confirmation of an order received from a Purchaser which constitutes a pro forma invoice issued by the Company to the Purchaser relating to the proposed purchase by the Purchaser of the Goods from the Company that is not a Tax Invoice; 'Sold Goods' means any items from the Company product range purchased by the Purchaser from the Company; 'Tax Invoice' means a commercial invoice rendered by the Company to the Purchaser; and **headings** are for convenience only and shall not affect the interpretation of this document.

### 2. Sales Order Confirmations & Tax Invoices

Upon receipt of an order for Goods from the Purchaser (which the Company in its discretion is entitled to refuse to fulfil):

- 2.1 The Company may elect to issue a Sales Order Confirmation which will constitute confirmation of that order on the terms and conditions set out in that invoice and in these terms and conditions of sale and which will negate the terms and conditions forming part of any purchase order submitted to the Company by the Purchaser.
- 2.2 Upon receipt by the Company of written acceptance of the Sales Order Confirmation (**Acceptance**) and/or upon receipt of the Deposit specified in the Sales Order Confirmation a binding agreement for sale of the Goods will arise subject to the terms and conditions set out in that invoice and in these terms and conditions of sale (**Agreement**). Payment of the Deposit will be deemed to be acceptance of the terms of the Sales Order Confirmation and these terms and conditions of sale.
- 2.3 The Prices specified in the Sales Order Confirmation remain fixed for 7 days from the date of issue of the Sales Order Confirmation.
- 2.4 The Purchaser acknowledges and agrees that the Price specified in a Sales Order Confirmation may vary from a Price specified in a Tax Invoice or Tax Invoices arising from the same order as a result of adjustments to reflect any volumetric or quantity difference between volumes specified in the Sales Order Confirmation and those received from the Company's supplier in satisfaction of the order placed with that supplier for the Goods together with any changes in freight or insurance rates and any credit card surcharge due.
- 2.5 Subsequent to issue of a Sales Order Confirmation a Tax Invoice (or at the discretion of the Company, Tax Invoices) for the Goods will be issued by the Company to the Purchaser and delivery of the Goods will be subject to payment of the balance due under that Tax Invoice or those Tax Invoices in full prior to delivery.
- 2.6 The parties acknowledge that a Sales Order Confirmation is a pro forma invoice and does not constitute a Tax Invoice for GST or income tax purposes.
- 2.7 Should the Company elect not to issue a Sales Order Confirmation then upon receipt of an order for the Goods from the Purchaser the Company may issue a Tax Invoice for the Price or Tax Invoices for the Deposit and the balance of the Price.
- 2.8 Where a Sales Order Confirmation has not been issued then issue of a Tax Invoice or Tax Invoices and receipt of the Deposit or receipt of a bank guarantee securing the total due on a Tax Invoice in a form acceptable to the Company (**Bank Guarantee**) will constitute confirmation of that order and acceptance of the terms and conditions set out therein and in these terms and conditions and which will negate the terms and conditions forming part of any purchase order submitted to the Company by the Purchaser.

### 3. Delivery, Freight & Risk

- 3.1 Sold Goods shall be at the risk of the Purchaser from the date of delivery of the Goods by the Company to the Purchaser.
- 3.2 The Company shall deliver the Goods to the Purchaser at the address supplied by the Purchaser subject to receipt of payment as required by the Company of any amount outstanding under a Tax Invoice for the Goods. Freight costs will be borne by the Purchaser.
- 3.3 The Company shall not be obliged to deliver any Goods should the Purchaser be in default of payment in respect of any Goods previously delivered.
- 3.4 The Company's weights and measurements shall be conclusive evidence of the quantities of Goods delivered to the Purchaser. No complaint or claim on the part of the Purchaser with regard to quantity of Goods delivered shall be admissible unless made to the Company or its representative and noted on the delivery receipt at the time of delivery and confirmed in writing received by the Company within ten (10) days after delivery.
- 3.5 Where the Goods are to be manufactured in Australia against an order, delivery will normally be within 6 weeks of issue of a Pro Forma Invoice and payment of the Deposit. Where Goods are imported to order delivery will normally be within 12 weeks of issue of a Pro Forma Invoice and payment of the Deposit. The Purchaser acknowledges that these delivery periods are estimates only and that the Company provides no guarantee, representation, undertaking or warranty regarding the date that the Goods will be delivered to the Purchaser.
- 3.6 The Company may delay or cancel delivery or reduce the amount of Goods delivered if the Company is delayed in delivering or cannot deliver the Goods through circumstances beyond its reasonable control.
- 3.7 By acceptance of a Sales Order Confirmation and/or upon issue of a Tax Invoice or Tax Invoices the Purchaser agrees to be bound by these terms and conditions of sale. The Purchaser also acknowledges and accepts the product installation, fabrication and handling stipulations for the Goods detailed on the Company website at [www.eltongroup.com](http://www.eltongroup.com).

### 4. Reservation of Title & Personal Property Securities Act

- 4.1 Until payment has been made in full ownership of Sold Goods shall remain with the Company.
- 4.2 Until payment for Sold Goods has been made in full the relationship between the parties shall be fiduciary and the Purchaser shall hold Sold Goods as bailee for the Company.
- 4.3 The Purchaser shall not dispose or otherwise deal with the Sold Goods until payment has been made other than by sale in the ordinary course of its business in which case the Purchaser shall hold all proceeds of such sale on trust for the Company and, if required, in an account opened in the Company's name. In such case the Purchaser shall, if required, assign to the Company any rights to monies outstanding in respect of such sales.
- 4.4 The Purchaser grants to the Company a purchase money security interest, as defined in the Personal Property Securities Act 2009 (**PPSA**), in the Goods delivered from time to time by the Company to the Purchaser (whether Consignment Goods or Sold Goods) and any proceeds of sale of the Goods so delivered (**PMSI**) to secure the Company's Price for those Goods.
- 4.5 The Purchaser agrees not to do or to permit anything to be done that may result in the PMSI granted to the Company ranking in priority behind any other security interest.
- 4.6 The Purchaser will take such further steps which may reasonably be required by the Company to take further or better security under the PPSA in respect of the Goods and the proceeds of sale of those Goods or to maintain the effectiveness or priority of any security interest under the PPSA.
- 4.7 The Purchaser hereby waives the right to receive notice of a verification statement from the Company notifying the Purchaser of the registration of a security interest under the PPSA.
- 4.8 In these terms and conditions the following words have the respective meanings given to them in the PPSA: purchase money security interest, secured party, register, registration, financing statement, security interest and verification statement.

### 5. Manner of Payment

- 5.1 Payment for all Sold Goods and Consignment Goods must be made in accordance with the terms of each Sales Order Confirmation, Tax Invoice, or Tax Invoices and except where otherwise agreed in writing by the Company, the Company is not obliged to process an order or initiate shipment until either the invoice is or invoices are paid in full, the Company has received payment of the Deposit or where the Company has received a Bank Guarantee securing the total due Payment will be deemed not to have been made until the funds therefor have been cleared by the Company's bankers.
- 5.2 The Purchaser shall pay interest upon any amounts due but unpaid at the rate of three per centum (3%) per annum over current National Australia Bank overdraft interest rates, such interest to be calculated on a monthly basis from the date of default.

### 6. Cancellation, Return and Default

- 6.1 Where the Goods comprise of items manufactured and/or imported specifically to the order of the Purchaser ('made to order Goods') the Company shall not be obliged to (but may at its discretion and on the conditions nominated by it before it will do so) accept the cancellation of such an order or accept the return of the Goods (other than as may be agreed pursuant to clause 9).
- 6.2 If the Purchaser:
  - 6.2.1 *fails to pay the balance specified in a Sales Order Confirmation, a Tax Invoice or Tax Invoices, within the time specified, and fails to remedy such breach of the Agreement within a further 7 days of being requested to do by the Company;*
  - 6.2.2 *wishes to cancel any order for Goods prior to their dispatch; or*
  - 6.2.3 *suffers an Event of Default after issue of a Sales Order Confirmation or prior to payment of a Tax Invoice or Tax Invoices in full,* the Purchaser shall be in default under the Agreement and the Company may at any time terminate the Agreement and the Company may require the Purchaser to pay to the Company interest pursuant to clause 5.2 together with a cancellation fee of an amount not exceeding fifty per centum (50%) of the Price by means of any of the following:
    - 6.2.4 *forfeiture of some or all of any Deposit paid by the Purchaser;*
    - 6.2.5 *claim against some or all of a bank guarantee provided by the Purchaser's bank; or*
    - 6.2.6 *upon demand for the cancellation fee or any part not otherwise paid.*



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- 6.3 The Purchaser acknowledges that:
- 6.3.1 *the payment of a Deposit is reasonably necessary in order for the Company to protect its legitimate interests in supplying Goods to the Purchaser under the Agreement; and*
- 6.3.2 *in the event of cancellation of an order, any such cancellation fee constitutes a genuine pre-estimate of the Company's loss. The Company has agreed to enter the Agreement and supply Goods to the Purchaser only on the basis that the Purchaser has in turn agreed to so compensate the Company in the event of cancellation.*
- 6.4 If the Company suffers an Event of Default prior to delivery of the Goods to the Purchaser, the Purchaser may terminate the Agreement, in which case, any amounts paid by the Purchaser to the Company for the supply of the Goods (including any Deposit) must be returned by the Company to the Purchaser as soon as reasonably practicable following the date of any such notice.
- 7. Force Majeure**  
The Company shall not be liable for any losses occasioned by any cause that is not within its control and where within its control that is not able to be avoided by the exercise of reasonable diligence.
- 8. Warranties, Exclusions & Limitations**
- 8.1 Subject to the remainder of this clause 8, Goods are warranted to be free from defects in workmanship and materials for a period of seven years from the date of issue of a Tax Invoice by the Company for the Goods.
- 8.2 Provisions of the Competition and Consumer Act 2010 (as amended) and other statutes from time to time in force which apply to this Agreement may imply warranties or conditions or impose obligations upon the Company which cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the Company is entitled to do so its liability under those statutory provisions shall be limited at the option of the Company to:
- 8.2.1 *the replacement of Goods or the supply of an equivalent;*
- 8.2.2 *the payment of the cost of replacing Goods or of acquiring an equivalent;*
- 8.2.3 *the payment of the cost of having Goods repaired; or*
- 8.2.4 *the repair of Goods.*
- 8.3 Subject to clause 8.1, all conditions and warranties, express or implied, whether arising by statute or otherwise, as to the condition, suitability, capacity, quality, design, fitness for any purpose, safety of or title to Goods are hereby negated and excluded to the full extent permitted by law.
- 8.4 Subject to clause 8.1 and any applicable laws, the Company hereby excludes all liability for any loss, damage, death or injury of any kind whatsoever occasioned by the Purchaser in respect of the supply of Goods including direct, indirect, consequential or inconsequential loss, damage or injury of any kind whether due to the negligence of the Company or otherwise.
- 8.5 The warranty provided under clause 8.1 does not apply to damage resulting from faulty or incorrect installation or handling once delivered and/or incorrect finishing, application of incorrect chemicals, accident, alteration, misuse, tampering, negligence, abuse or wear and tear, use of incorrect or non-approved glues and/or primers (where applicable) and/or application to unsuitable substrate or failure to adequately prime substrate surface (where applicable).
- 8.6 Neither colour variation or inconsistency in different logs or blocks, colour change or damage due to exposure to direct or indirect light, heat and/or reaction to glues nor failure to finish surfaces adequately are considered defects. Exposure to direct sunlight should be avoided. The Company does not warrant product colour and consistency in these circumstances.
- 8.7 Failure to comply with the installation instructions, requirements, recommendations guidelines posted on the Company's website ([www.eltongroup.com](http://www.eltongroup.com)) on the page(s) relating to the product range of which the Goods form part and incorrect fabrication and handling will, subject to all applicable laws, not be considered a defect or defects.
- 8.8 Subject to all applicable laws, the Company excludes all liability for loss or damage arising from installation of the Goods, including by any installation contractor that may be recommended by the Company. The Purchaser agrees to conduct its own due diligence into any referred contractor and to accept full responsibility for its own choice of contractor.
- 8.9 The Company will use its best endeavours to pass on to the Purchaser the benefit of any warranties or guarantees it receives from its supplier in regard to the Goods.
- 8.10 Where Goods comprise timber veneer, polished samples of timber veneer surfaces supplied are not warranted as representative of the finished article. Variation of colour, pattern or consistency of Goods compared with samples, displays or illustrations are not warranted.
- 9. Claim Procedure**
- 9.1 Unless within 7 days of delivery of the Goods the Purchaser gives written notice that the Goods do not comply with the Agreement, the Goods will, unless otherwise agreed in writing by the Company and subject to all applicable laws, be deemed to have been in all respects supplied in accordance with the Agreement, and the Purchaser will be bound to accept and pay for the Goods accordingly.
- 9.2 Claims by the Purchaser that the Goods have not been supplied in accordance with the Agreement will only be considered by the Company if:
- 9.2.1 *the claim is made within 7 days of the date of delivery of the Goods;*
- 9.2.2 *representatives of the Company have been afforded a reasonable opportunity to inspect the relevant issue; and*
- 9.2.3 *the Goods are made available to be collected by the Company (in circumstances where the Company accepts the Goods have not been supplied in accordance with the Agreement).*
- 9.3 No claim whatsoever will in any event be considered by the Company once Goods have been installed, comingled with other goods or property or have otherwise been used or exploited by or on behalf of the Purchaser other than to the extent the Purchaser has a claim for a breach of the defects warranty in clause 8.1 or otherwise under any applicable law.
- 9.4 Until any such claim is accepted or denied by the Company the Purchaser shall retain possession of the Goods.
- 10. Proper Law**  
This Agreement and the rights, liabilities and obligations of the parties shall be governed by and construed in accordance with the laws of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of such State.
- 11. Entire Agreement**  
These terms and conditions and any Sales Order Confirmation comprise the whole of the agreement between the parties with respect to the sale of the Goods from the Company to the Purchaser.
- 12. Severance**  
If any provision of this Agreement should be held to be void or unenforceable, it shall be severed and such severance shall not affect any other provision.
- 13. No Waiver**  
No failure to exercise or delay in exercising any right or remedy on the part of the Company shall operate as a waiver nor shall any exercise or partial exercise of any right or remedy preclude any further exercise of any such right or remedy.
- 14. GST**  
If Goods and Services Tax ("GST") is imposed on any supply made by the Company to the Purchaser, the Purchaser must pay, in addition to any consideration for the supply, an additional amount calculated by multiplying the prevailing GST rate by that consideration.
- 15. Consignment Goods**
- 15.1 The Company may in its sole discretion agree to place Consignment Goods with the Purchaser upon receipt of a written order from the Purchaser in a form acceptable to the Company. Risk in Consignment Goods will pass to the Purchaser upon delivery of the Consignment Goods to the Purchaser or the Purchaser's nominated warehouse(s).
- 15.2 All Consignment Goods whether in transit or held in the Purchaser's nominated warehouse(s) remain the property of the Company until the earlier of:
- 15.2.1 *the Consignment Goods are sold, used or exploited by the Purchaser; or*
- 15.2.2 *the Consignment Goods have been paid for in full by the Purchaser.*
- 15.3 The Company agrees that the Purchaser is entitled to sell Consignment Goods in the ordinary course of the Purchaser's business to bona fide third party purchasers and that immediately prior to the time of sale by the Purchaser to a bona fide third party customer of the Purchaser (**Purchaser's Customer**) all property and title in that stock will be deemed to pass first to the Purchaser and then in turn to the Purchaser's Customer free of any claims or encumbrances. A sale by the Purchaser to the Purchaser's Customer will occur upon the issue by the Purchaser of a Tax Invoice to the Purchaser's Customer.
- 15.4 Within two business days of the end of each month the Purchaser will generate and provide to the Company a report of Consignment Goods sold to the Purchaser's Customers (in a format acceptable to the Company) during the immediately preceding month and the Company will render a Tax Invoice to the Purchaser for Consignment Goods sold during that month.
- 15.5 The Purchaser will maintain proper records and accounts of all transactions relating to dealings with Consignment Goods and make available such records and accounts for inspection by the Company on reasonable notice.
- 15.6 Should the Company request in writing giving no less than two business days' notice that the Company wishes to undertake a stocktake of all Consignment Goods held by the Purchaser then the Purchaser will do all such things as shall be reasonably necessary to allow the Company to undertake that stocktake in a timely manner which will be undertaken during business hours.
- 15.7 All Consignment Goods will be held by the Purchaser in the Purchaser's nominated warehouse until the Purchaser delivers same to a Purchaser's Customer.

