



KEMBLA

STANDARD CONDITIONS OF SALE FOR GOODS

All quotations, offers, supply and sales of product are made by the Company and orders are accepted by the Company (whether express or implied) only on condition that the terms and conditions contained herein and in the price list published from time to time shall apply to the exclusion of all other terms and conditions, save insofar as any special terms and conditions are expressly agreed to in writing by the Company and the Customer, or as may be designated by the Company from time to time in respect of specified products.

1. INTERPRETATION:

Whenever stated, "Company" means Metal Manufactures Limited (ACN: 003 752 641) trading as MM Kembla (incorporated in New South Wales) and includes its servants or agents, "Customer" shall mean the person, persons, firm or company to whom the quotation is addressed or making the offer for this sale and shall include their legal representatives, administrators, successors and or permitted assignees. Delivery to the Customer shall be deemed to have occurred in the case of delivery C.I.F., on the date confirmed on board appearing on the bill of lading for the items and, in any other case, on the date upon which the items are delivered to a carrier for conveyance to the Customer, "items" shall include cable, metals materials, products, equipment, installations, samples, prototypes and experimental or preliminary work or the provision of services.

For the purposes of clause 15, and in conformity with the Australian Consumer Law, a "consumer" is a customer who acquires goods or services if, and only if, the price for the goods or services is Forty Thousand Dollars (\$40,000.00) or less or the goods or services in question are of a kind ordinarily acquired for personal, domestic or household use or consumption. A customer, who acquires goods for resupply or for the purpose of using them/transforming them in trade or commerce, does not acquire as a "consumer".

Clause headings following clause numbers do not form part of the Company's terms and conditions and are provided only for reference.

2. VALIDITY:

The price list to which this schedule is attached or refers will remain open for acceptance for the period stated in the Company's offer. If the validity period has expired, the Company's offer shall lapse and prices will be subject to review at the time the order is placed.

The Company's offer may be revised in whole or part, or withdrawn prior to expiration of the validity period or acceptance of the offer by the Customer.

3. ACCEPTANCE:

An offer by the Company shall become binding upon the Company only upon receipt of an unconditional written acceptance in such form as the Company may require. Order forms and other documents provided to the Company by the Customer as confirmation of orders previously placed must be clearly marked with the word 'Confirmation'. Confirmation documents not so marked will be treated as original orders.

4. INSPECTION, TESTING & CERTIFICATION OF COMPLIANCE:

Selected items, at the Company's option are subject to inspection by the Company or the supplier the Company represents before despatch. Orders for items which must comply with International or Australian Standards (eg, SAA, BS, ASTM) must specify details of the standard. If tests are to be performed at the Customer's request the order must specify details of the routine or special tests and whether test certificates are required.

All tests and inspections shall be carried out by the Company's personnel at the Company's works and are final and binding unless prior agreement in writing is given to the Company.

5. DELIVERY DURATION & QUOTED DELIVERY OR COMPLETION TIMES:

- (a) Delivery or completion time or times stated by the Company are estimates based on present production commitments, availability of materials, labour, transport and other contingencies.
- (b) Delivery or completion estimates should be checked upon placement of the order. Such times are to be treated merely as estimates not involving any contractual obligation, unless the Company has expressly confirmed its agreement in writing and any such contract shall be subject to the Company not being delayed by instructions, or lack of instructions, or by industrial disputes, or by any cause whatsoever beyond its reasonable control.

6. CANCELLATION OR DEFERRAL OF ORDER:

Should an order be placed it cannot be cancelled or delivery deferred unless prior agreement in writing is given by the Company and then only on terms which will indemnify the Company against loss.

7. PROTOTYPES, SAMPLES, DRAWINGS, TOOLS:

The Company agrees to submit at the Customer's request prototypes, samples, preliminary work and/or work produced in an experimental way provided that these items are available.

Such items will be considered an order and will be charged to the Customer's account unless otherwise specified.

All drawings, specifications and schedules prepared by the Company shall remain the property of the Company. Copyright is reserved accordingly and no copies may be made or extracts taken without the prior written consent of the Company.

Should an order be placed, all tools, dies, jigs and other equipment used in the manufacture of items by the Company for the Customer shall remain the sole property of the Company and may, unless otherwise agreed to by the Company be used by the Company in manufacturing items for other Customers.

8. PRICES:

All items will be priced subject to the following provisions unless otherwise specified in writing by the Company:

The Company's price is based on:

- (a) the price stated in the published price list in respect of orders received and accepted within the dates stated in the most current price list on and between the effective date of the price list and the last date for the placement of valid orders, and

- (b) prices are subject to adjustment for variances in the cost of insurance, freight and, where the Company accepts any order less than the minimum quantity either in weight or size stipulated in the price list.

9. OTHER CHARGES

All items are subject to the following provisions:

- (a) Freight charges ex works to the port of destination are included in the price for the item purchased as specified in the current price list, unless otherwise specified in the price list. The Company shall nominate the carrier or carriers ex works to the port of destination.

Carriage at or beyond the port of destination and all costs and charges in relation thereto shall be the responsibility of the Customer.

- (b) Insurance charges covering the items ex works to the port of destination are included in the price for the items purchased as specified in the current price list, unless otherwise specified in the price list. The insurer shall be as nominated by the Company.

Insurance of the items at or beyond the port of destination and all costs and charges in relation thereto shall be the responsibility of the Customer.

10. PACKING, METHOD OF DELIVERY & POINT OF DELIVERY:

Should an order be placed, the sale of all items will be subject to the following conditions:

- (a) The method of delivery will be as nominated in the Company's offer unless otherwise specified.
- (b) The Customer at his own expense shall provide all necessary facilities, labour and equipment to offload the items at the nominated point of delivery unless otherwise specified.

11. ERRORS IN COMPANY DOCUMENTS

Clerical errors and misprints in computation, typing or otherwise in the Company's documents including catalogues, price lists, delivery docket, invoice or statement or credit note shall be subject to correction by the Company by means of re-issue of the document or by adjusting dockets with reference to the original transaction.

12. PAYMENT & DEFAULT

- (a) Domestic Customers
Customers in Australia and New Zealand, hereafter referred to as "domestic customers" shall pay for all items ordered in accordance with credit and account facilities established and agreed to by the Company.
- (b) Export Customers
- i. Customers shall pay for all items ordered in the currency stipulated in the current price list at the date of order by an irrevocable letter of credit payable thirty (30) days after shipment (as hereafter defined), drawn on a bank approved by the Company and provided to the Company with Customer's order.
 - ii. The letter of credit shall be upon terms acceptable to the Company and shall be in an amount equal to the Company's purchase price for the items ordered by the

Customer as set forth in the price list current as at the date of order.

- iii. For the purposes of these items the term "shipment" means the date confirmed on board appearing on the relevant Bill of Lading in respect of the items so shipped.
- iv. Default in payment shall enable the Company to take possession of the items for which a default in payment has occurred, to suspend deliveries, or cancel undelivered orders and to take proceedings for the recovery of outstanding amounts, without prejudice to any other claims the Company may have for breach of these terms & conditions of sale.

13. PROPERTY & RISK:

- (a) Property in the items shall pass to the Customer at the time the items are paid for by the Customer unless otherwise agreed in writing by the Company.
- (b) Until the Company has received payment in full for the items the Customer shall hold the items and any goods into which the items are converted by any process as bailee for the Company.

The Customer may deal with the items in the ordinary course of its business and the Customer shall if called upon to do so assign to the Company its entitlement to the sale price obtained therefore.

- (c) This provision shall operate so as to create a purchase money security interest and the Customer will, if required by the Company, sign or do everything necessary to allow the Company to properly effect the registration of such interest in accordance with the Personal Property Securities Act 2010.
- (d) Risk in and to the items shall pass to the Customer on shipment.
- (e) Items purchased from the Company shall be identified or held in a manner which enables them to be readily distinguished from items purchased from other suppliers.

14. CUSTOMER CLAIMS, COMPLAINTS & DISPUTE SETTLEMENT:

No claim for any alleged shortage in quantity, length or weight will be considered unless the carrier's delivery document is endorsed with full particulars of the alleged damage or shortage and notice in writing is given to the Company and the carrier within twenty-four (24) hours of receipt of the consignment. Customers' complaints or grievances will be given respectful and sympathetic consideration as well as technical assessment by the Company, if applicable. In the event, however, of any dispute or difference arising between the Customer and the Company in connection with the sale which cannot be settled by direct negotiation the same shall be referred to the arbitration in Australia of a person mutually agreed upon or failing agreement of some person nominated by the New South Wales State Chamber of Commerce. The submission shall be deemed to be a submission to arbitration within the meaning of any arbitration act, or any statutory modification or re-enactment thereof.

15. WARRANTIES:

Subject to the following provisions, all items that are the subject of a sale are warranted against faulty materials and manufacture for a period of twenty-five (25) years from the time of purchase or if agreed in writing between the Company and the Customer for a period of twenty-five (25) years from the time of installation.

Consumer Warranty against defects pursuant to *Competition and Consumer Regulations 2010*

- (a) *'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'*
- (b) The benefits to the consumer under this warranty are in addition to other rights and remedies of the consumer under consumer legislation in relation to the goods or services to which this warranty relates.
- (c) In relation to KempresTMTools:
- i. At the time of purchase the Consumer will be provided with a warranty registration card for completion,
 - ii. The Consumer must fill it out to ensure warranty validation and prompt service response,
 - iii. The Consumer must retain a copy of its warranty registration card and original receipt/invoice as proof of purchase,
 - iv. The Consumer must send a copy of the warranty registration card to the Company within thirty (30) days of purchase, either by email to csckembla@kembla.com.au or facsimile 1800 817 846, as detailed on the warranty registration card.
- (d) What the Consumer must do to be entitled to a warranty claim:
- i. In order to claim under warranty the Consumer must notify the Company of any major or minor failure or if the goods fail to be of an acceptable quality, within thirty (30) days of noticing the fault. This warranty is valid up to twenty-five (25) years after purchase and/or installation of the product.
 - ii. The Consumer should call the national customer service response (8am – 5pm Monday to Friday excluding public holidays), on 1800 804 631 to give the Company notice of its claim and details (in relation to KempresTM Tools) of its warranty card registration and provide proof of purchase.
- (e) Honouring the Warranty
- i. The Company agrees to assess any claim under warranty within sixty (60) days of receiving notification of a claim.
 - ii. The Company will notify the consumer of the assessment and provide them with information regarding replacement or repair of goods.
- (f) Claiming under the Warranty
- i. If the goods are small enough to be mailed to the Company then the consumer will bear the costs of mailing or delivering the goods. If the goods are found to be in need of repair or the Company opts to replace the goods

then the Company will also reimburse the consumer for the reasonable costs of sending/delivering the goods to the Company. The consumer should retain all receipts for the purpose of being reimbursed for its expenses.

- ii. If the warranty claim relates to installed goods, the Company will offer a free initial inspection and service of the goods.

16. DISCLAIMERS

- (a) Product data, design details and performance figures contained in the Company's published literature and advice given by the Company is provided only as a guide to available information and the Company does not accept any liability whatsoever (including arising from negligence) for its accuracy and for injuries, expense or loss or for the results obtained by the Customer if the Customer relies upon such information or advice it is entirely at the Customer's own risk.
- (b) All orders are accepted on the understanding that the Customer will be responsible for determining that the items sold or manufactured by the Company are suitable for a particular application.
- (c) If any defect or failure in the items supplied becomes apparent under proper use within twenty-five (25) years from the date of dispatch and the Company is notified of the details, the Company will either supply fresh goods in replacement or, at its option, arrange repair of the original item free of charge, provided the Company and the supplier are satisfied that the defect or failure is due solely to faulty workmanship or the use of faulty materials.
- (d) Owing to the obligations placed upon it, the Company reserves the right not to accept liability for deficiencies, damaged or faulty items, or errors in dispatch, unless notice in writing is given to the carrier and the Company within twenty-four (24) hours from receipt of the consignment. Neither can it accept any claim for loss of items advised but not delivered unless notice is given in writing to the Company and the carrier within seven days of the date of the advice note, or in the case of exported items, if within a reasonable time from the date of shipment.
- (e) Neither the Company nor the supplier the Company represents shall be liable for, nor is any guarantee or other undertaking given or implied in respect of, any act or omission by the Company in respect of the following:
- i. if performance figures are not obtained unless the specification to which the Company is working lays down such figures or unless the Company has made specific guarantee in writing;
 - ii. for any injury loss or damage suffered by the Customer, which may in any degree be attributed to the use of items or installation supplied by it or to the adoption of data, design, materials or advice given by the Company as to the use of the items or installation notwithstanding any want or care on the part of the Company in compiling or giving any advice or information;

- iii. for liquidated damages suffered by the Customer or others consequent to the supply of items later than the date of dispatch confirmed by the Company, unless expressly confirmed in writing by the Company;
 - iv. for loss, damage or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockouts or delay in obtaining raw materials through shortage or advantage in price there of or any other cause beyond the control of the Company;
 - v. for any loss or damage, direct or consequential, or for any accident, or the effects of any accident or other expenses sustained by the Customer or any other person, arising from any defect or failure in items supplied by it where consumer legislation does not apply.
- (f) Where the Company's suppliers are prepared to offer the acceptance of any damages, this will be relayed to the Customer in the event of non payment of damages or dispute regarding damages, the Company shall advise details to the supplier and shall pass any proposals for settlement to the Customer.
- (g) The Customer's rights to indemnify or compensation shall, to the extent permitted by consumer legislation be limited to the cost of replacement of the items, obtaining equivalent items, or having the items repaired, whichever is the lowest.
- (h) Subject to clause 17 the provisions contained in this clause 16 are in lieu of and exclude all other warranties, conditions and liabilities, expressed or implied, whether under common law statute or otherwise, in relation to items supplied by the Company, and no variation of these provisions shall be binding on it unless expressly accepted in writing by the Secretary of the Company.

17. ALTERATION OF CONDITIONS & OTHER AGREEMENTS:

No employee, servant or agent of the Company is authorised to alter, vary or waive these Terms and Conditions or any one or more of them by oral agreement. The Customer acknowledges and agrees that nothing contained in any terms and conditions of purchase or acquisition which might apart from the provision of this clause have applicable to the purchase of items by the Customer shall take precedence over or amend or in any way affect these Terms and Conditions. The Customer confirms his acceptance of this provision by taking delivery of the items and agrees not to subsequently attempt to amend, add to, or override the provisions hereof, in particular, it is expressly agreed by the Customer that the contractual conditions (if any) of the Customer are excluded in their entirety. These Terms and Conditions are to be read as including any Terms and Conditions of Sale specified by the Company's suppliers. Where such conditions differ from the above Conditions, the Company's Terms and Conditions shall override, unless objection is notified to the Company Secretary in writing not more than seven days after the date of this sale.

18. CUSTOMER'S STATUTORY RIGHTS:

These conditions, warranties and disclaimers are subject to the rights and remedies in respect of the items which the Customer has under the Competition & Consumer Act 2010 (Cth) and other State and Territory laws and shall apply to the extent not otherwise expressly excluded by such legislation.

19. GOODS & SERVICES TAX:

If a goods and services tax or similar value added tax ("GST") is at any time levied or imposed on or in respect of any supply made under or in accordance with this Agreement, the amount payable for that supply shall be increased by the amount of GST so levied or imposed.

It is a condition of any payment required to be made for any taxable supply made under or in accordance with this Agreement that the recipient of such payment has issued a GST tax invoice.

20. SUPPLIER'S DETAILS FOR WARRANTY:

Metal Manufactures Limited
 Head Office
 Gloucester Boulevard
 Port Kembla NSW 2505
 Phone: 1800 804 631
 Fax: 1800 817 846
 Email: csckembla@kembla.com.au