

ADDENDUM B – TERMS OF TRADE



ABN: 62 101 809 796

TERMS OF TRADE

Please read the following customer agreement. Use the scroll bar to view the rest of this agreement. By clicking the "Accept" button, you are consenting to be bound by and become a party to this customer agreement as the "Customer" on www.miamistainless.com.au (the 'Website'). If you do not agree to the terms and conditions of this agreement, you must not click the "Accept" button and you do not become a customer under this agreement. You may download, print and/or keep a copy of these Terms of Trade.

1. TERMS

- (1) All products sold by Miami Stainless Pty Ltd ('Miami Stainless') to the Customer are sold subject to the following terms and conditions. No variation, modification or substitution for these terms and conditions shall be binding on Miami Stainless unless specifically accepted by Miami Stainless in writing.
- (2) Any products whether through this Website or direct from Miami Stainless shall be on these general terms and conditions of trade with Miami Stainless which can be viewed and downloaded at any time by [clicking here](#).
- (3) Miami Stainless is committed to protecting the privacy and confidentiality of those using our Website and products. The Privacy Policy of Miami Stainless can be viewed at any time by [clicking here](#).

2. ORDERS

- (1) **Placement.** The Customer must place orders for products based upon the prices provided by Miami Stainless for stocks of the products on its Website (the 'Products') or **Miami Stainless' price catalogue**. An order may be placed via email and in accordance with the electronic procedures specified on the Website.
- (2) **Contract.** A contract comes into existence once written acceptance of a written or verbal order (the 'Order') from the Customer has been made by an authorised employee of Miami Stainless. The place of the contract is the place where the Order is accepted by Miami Stainless. Any Order not accepted by Miami Stainless will be regarded as having been refused by Miami Stainless. The Customer may not alter or modify the Order once the Order is accepted by Miami Stainless without the written consent of an authorised employee of Miami Stainless. The placement of an Order by the Customer and Miami Stainless' constitutes acceptance of these Terms of Trade.
- (3) **Terms.** The Customer must make payment for the Products required before any agreed manufacture of or dispatch of Products unless the Customer holds a credit account with Miami Stainless and in accordance with a credit application agreement between Miami Stainless and the Customer.
- (4) **Quotations.** All quoted prices on the Website or **Miami Stainless' price catalogue** are subject to change or withdrawal at any time prior to acceptance of an Order by Miami Stainless. Miami Stainless reserves the right to amend the price of the undelivered portion of the Products at any time prior to its acceptance of an Order by changing the price for a product on its Website. All quotations given by Miami Stainless in writing to a Customer are valid for a maximum period of thirty (30) days from the date of the quotation unless express notice is otherwise given by Miami Stainless.
- (5) **Invoicing and Payment.** Miami Stainless may issue an invoice to the Customer. The Customer must pay the purchase price on the invoice for the Products without any delay, counter-claim, abatement, deduction or set-off prior to delivery of the Products by Miami Stainless to the Customer. Miami Stainless shall be entitled to retain the Products until full payment for the Products has been received.
- (6) **Prices.** The price payable for the Products ordered will be the price specified in **Miami Stainless' price catalogue or on the Website at the time the Order is placed. All prices for the Products shall be in AU\$.** Miami Stainless reserves the right to vary its prices in its price catalogue or on the Website without notice. Special prices on bulk items are available on request and will be at the sole discretion of Miami Stainless. Prices are exclusive of Products and Services Tax (GST). Customers are liable to pay GST on all items, and will be charged at the applicable rate. Miami Stainless reserves the right to refuse large quantity Orders.
- (7) **Cancellation.** An accepted Order cannot be cancelled without the prior written consent of Miami Stainless. Where an Order is cancelled, the Customer indemnifies Miami Stainless against any losses incurred by Miami Stainless as a result of the cancellation, including, but not limited to, loss of profit from other Orders foregone as a result of the scheduling of the Order which has been cancelled.
- (8) **Additional Charges.** Miami Stainless may require the Customer to pay additional charges for costs incurred by Miami Stainless as a result of reliance on inadequate or incorrect information provided by the Customer. The imposition of additional charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in loss by Miami Stainless.

3. DELIVERY

- (1) Miami Stainless will use its best endeavours to deliver the Products in Australia within 14 days of acceptance of an Order and full payment for the Products.
- (2) At the sole discretion of Miami Stainless, delivery of the Products will take place when:
 - (a) the Customer or the Customer's nominated carrier (as agent for the Customer) takes possession of the Products at Miami Stainless' address; or
 - (b) Miami Stainless or Miami Stainless' nominated carrier delivers the Products to the Customer's address.
- (3) The Customer is responsible for the cost of delivery which is in addition to payment for the Products.

- (4) The Customer must make all arrangements necessary to take delivery of the Products otherwise Miami Stainless will be entitled to charge a reasonable fee in the event that redelivery is required.
- (5) Delivery to a third party nominated by the Customer is deemed to be delivery to the Customer.
- (6) Any date for delivery given by Miami Stainless is an estimate only and Miami Stainless will not be held liable financially or otherwise for failure to deliver on or before the quoted date unless a written guarantee of delivery has been issued by Miami Stainless.
- (7) Miami Stainless may in its absolute discretion refuse to provide or delivery Products where:
 - (a) payment for products Ordered by the Customer have not been paid on the due date for payment;
 - (b) Products are unavailable due to force majeure;
 - (c) credit limits cannot be agreed upon or have been exceeded; or
 - (d) payment for Products previously supplied to the Customer has not been received by Miami Stainless in accordance with its payment terms.

4. INSPECTION

The Customer shall inspect the Products upon receipt at its business premises and shall within three working days after receipt notify Miami Stainless of any discrepancies or other abnormalities it wishes to make a claim for in the absence of which the Customer shall be deemed to have accepted the Products.

5. RETURNS AND CLAIMS

- (1) The Customer is entitled to return a faulty Product. However, Miami Stainless do not provide refunds or replacements if the Customer changes its mind. The Customer can choose a refund or exchange if a Product has a major fault. If the fault is minor, Miami Stainless may elect to give the Customer a free repair instead of a replacement or refund.
- (2) In the event of incorrectly supplied Products, Miami Stainless will replace the Products supplied with the Products ordered. Where the correct Products are unable to be supplied Miami Stainless will reimburse the Customer for the cost of the incorrectly supplied Products.
- (3) You are responsible for returning the Product to Miami Stainless. Products will only be accepted for credit if returned within 45 days of date of delivery and must be accompanied by a request for credit quoting the original invoice and/or delivery docket number, the purchase Order number, date and reason for return.
- (4) Prior notification of the return of Products is required, at which point a returns and claims number will be allocated which must be quoted at the time of the return. The acceptance of such Products does not imply an agreement to issue a credit note. Products are subject to inspection and approval and will attract a 10% or \$20.00 (whichever is greater) handling and restocking charge. Freight will be at the expense of the Customer unless the Products were supplied incorrectly.
- (5) No credit will be allowed for:
 - (a) Products outside of our normal stock range which have been specially sourced at the Customer's request.
 - (b) Products which have been specially manufactured or cut to the specifications of the Customer.
 - (c) Products which have been used, modified, or damaged.
 - (d) Products with an alleged deficiency or discrepancy where the Customer has failed to open and check all items supplied within 14 days of delivery and report such a claim to Miami Stainless within 14 days.

6. RISK AND INSURANCE

- (1) Risk in the Products shall pass to the Customer on delivery of the Products to the Customer or into the custody of anyone apparently acting on behalf of the Customer whichever is sooner.
- (2) Miami Stainless is responsible for insurance of all Products up to the time of delivery. The Customer is responsible for insurance of all Products from the time of delivery.

7. TITLE

- (1) Ownership and title in the Products shall not pass to the Customer until the Customer has paid for the Products in full in accordance with this Agreement.
- (2) Notwithstanding that risk in the Products shall pass to the Customer as provided in paragraph 6, title to the Products shall remain with Miami Stainless until all monies owing by the Customer to Miami Stainless have been paid in full.
- (3) Where Products are supplied by Miami Stainless to the Customer without payment in full of all moneys payable in respect of the Products provided by Miami Stainless, the Customer:
 - (a) is a bailee of the Products until property in them passes to the Customer;
 - (b) irrevocably appoints Miami Stainless its attorney to do all acts and things necessary to ensure the retention of title to Products including the registration of any security interest in favour of Miami Stainless with respect to the Products under applicable law;
 - (c) must be able upon demand by Miami Stainless to separate and identify as belonging to Miami Stainless the Products supplied by Miami Stainless from other Products which are held by the Customer;
 - (d) must not allow any person to have or acquire any security interest in the Products;
 - (e) agrees that Miami Stainless may repossess the Products if payment is not made within 14 days (or such longer time as the Miami Stainless may, in its complete discretion, approve in writing) of the supply of the Products; and
 - (f) grants an irrevocable licence to Miami Stainless or its agent to enter the Customer's premises or premises under its control in Order to recover possession of Products pursuant to this paragraph.

- (4) Notwithstanding paragraph 7(3) the Customer may transfer, sell or dispose of Products to a third party in the ordinary course of business.

8. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- (1) This Agreement is a security agreement.
- (2) The interest of Miami Stainless in the Products and all proceeds from the sale of the Products by the Company to a third party is a security interest.
- (3) The Customer consents to Miami Stainless registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by Miami Stainless to facilitate registration.
- (4) Until such time as title in the Products has passed to the Customer as contemplated by clause 7 above, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Products in such a manner as to create a security interest over the Products in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Products in the ordinary course of business.
- (5) The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- (6) Miami Stainless and the Customer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of Miami Stainless's security interest in the Products or of this Agreement:
- (a) any requirement for Miami Stainless to give the Customer a notice of removal or accession;
 - (b) any requirement for Miami Stainless to give the Customer a notice of Miami Stainless' proposed disposal of the Products;
 - (c) any requirement for Miami Stainless to include in a statement of account, after disposal of the Products, the details of any amounts paid to other secured parties;
 - (d) any requirement for Miami Stainless to give the Customer a statement of account if Miami Stainless does not dispose of the Products;
 - (e) any right the Customer has to redeem the Products before Miami Stainless exercises a right of disposal;
 - (f) any right the Customer has to reinstate this Agreement before Miami Stainless exercise a right of disposal of the Products.
- (7) Expressions defined in the PPSA have the same meaning when used in this Agreement.

9. INTELLECTUAL PROPERTY RIGHTS

- (1) The Customer agrees that all right, title and interest in copyright, trade marks, database rights, patent rights, design rights and domain names relating to this Website or its Products or services are the property of, or vest on creation in, Miami Stainless or their respective owners.
- (2) The Customer must not use or infringe any intellectual property rights including any confidential information or trade secrets without the written consent of Miami Stainless or the respective owner of the intellectual property.
- (3) All intellectual property rights in respect of the Products remain Miami Stainless' property and the Customer may not use, reverse engineer, interfere with or alter them in any way.

10. INDEMNITY

The Customer will indemnify Miami Stainless against and agrees to reimburse if for any expenses it may incur in recovering or attempting to recover payment from the Customer for any amount which may from time to time be overdue. These costs include legal court, solicitors, debt collections agency commissions and fees.

11. WARRANTY AND LIABILITY

- (1) If the purchaser is defined as a consumer under the *Australian Consumer Law*, Miami Stainless provides the consumer guarantees to the purchaser as set out in the *Australian Consumer Law*. Consumer Guarantees under the *Australian Consumer Law* cannot be excluded but all other warranties, express or implied, are hereby excluded.
- (2) For a product supplied by Miami Stainless, a consumer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. A consumer is also entitled to have the product repaired or replaced if it is not of acceptable quality and the failure is not a major failure.
- (3) To the extent permitted by law, Miami Stainless is not liable for:
- (a) damage to a product it has supplied arising from external causes outside its control;
 - (b) normal wear and tear;
 - (c) deterioration or faults caused by or contributed to by the consumer, a third party or otherwise if a product has been used in a manner not in accordance with its function or design or otherwise misused, not installed in a proper manner, not maintained in accordance with the requirement of the product or due to, mechanical damage, incorrect maintenance, accidents or other adverse events not caused by the negligence or omission of Miami Stainless and its employees or agents;
 - (d) subject to the rights of consumers under a law which cannot be limited, the liability of Miami Stainless will be limited, at its option, to:
 - (i) the replacement of a defective product or the supply of an equivalent product;
 - (ii) the repair of a defective product; or
 - (iii) payment for the replacement or repair of a defective product.

- (4) Subject to the rights of consumers under a law which cannot be limited:
- (a) the total liability of Miami Stainless to a purchaser for a product will not exceed the invoice price of the product to the purchaser;
 - (b) Miami Stainless will not be responsible for the consequence of any representation made or advice given by its employees, agents or subcontractors in connection with the design, installation or use of a product and the purchaser agrees that all such advice is accepted by the purchaser entirely at its risk;
 - (c) Miami Stainless is not liable to the purchaser or anyone else in connection with a product or the supply of a product including without limitation for:
 - (i) any losses, costs, damages, expenses, claims, demands, actions, proceedings (including without limitation for damage to the product or injury to any person) arising from:
 - (i) delivery, loading or unloading of a product;
 - (ii) a failure to deliver or delay in delivering a product;
 - (iii) a failure to install a product in accordance with recommended fixing procedures by any person;
 - (iv) the removal of a defective product or the supply of a replacement product;
 - (d) any direct, indirect or consequential loss or damage, any loss of actual or anticipated profit or goodwill or other economic loss; and
 - (e) any claim, action or proceeding by a third party against the purchaser or any loss suffered by the purchaser as a result.
 - (f) The terms of the preceding clause apply unless the purchaser is a consumer and such loss or damage arises from the negligence or wilful misconduct of Miami Stainless or any of its officers, employees or agents.
 - (g) Purchasers are responsible for:
 - (i) deciding if a product is suitable for a particular purpose;
 - (ii) supply of correct product description or specifications to Miami Stainless;
 - (iii) compliance with all building, engineering and safety standards relating to the use of a product.
- subject always to the provisions of the *Australian Consumer Law* (to the extent to which it applies).

12. AGENCY AND ASSIGNMENT

- (1) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- (2) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume all duties and obligations of the Supplier owed to the Customer under these Terms of Trade.

13. DISPUTE RESOLUTION

- (1) If a dispute arises between the Customer and Miami Stainless, the following procedure applies:
 - (a) a party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this paragraph;
 - (b) a party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph;
 - (c) a party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (2) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavor to resolve the dispute as soon as possible and in any event within 5 Business Days (or other period as agreed).
- (3) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives the parties expressly agree to endeavor to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("ACDC") before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which is operating at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.
- (4) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.
- (5) The parties must hold confidential (unless otherwise required by law or at the direction of a Court of competent jurisdiction) all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

14. GENERAL

- (1) These Terms of Trade are governed by the laws of the State of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of such State.
- (2) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (3) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (4) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (5) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (6) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown in the Order or on a quote (or as varied pursuant to this paragraph) and delivered personally, sent by prepaid mail to the address of the addressee, sent by facsimile transmission to the facsimile number of the addressee, with acknowledgement of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee with acknowledgment of delivery.
- (7) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or email before 4.00 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (8) A party may only change its postal or email address or facsimile number for service by giving notice of that change in writing to the other party.