

TERMS & CONDITIONS

1. GENERAL

- a) In these terms and conditions “the Company” shall mean Akras Industries Pty Ltd ABN: 30 616 383 629 to which this application for credit is made and “the Customer” shall mean the entity which is applying for credit in the application.
- b) These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer’s order form or otherwise). The Customer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.
- c) All goods invoiced form part of these Terms and Conditions of Sale.
- d) In these Conditions of Sale, the singular shall include the plural and vice versa and reference to one gender shall include all other genders as the case may be.

2. PRICES

- a) A quotation, tender or price is valid for 30 days, but no contractual relationship shall arise until the Customer’s order has been accepted by the Company.
- b) Quotations are based on the current price of goods and services supplied by the Manufacturer of the relevant goods or services. If the relevant Manufacturer varies the price subsequent to acceptance of a given order, any increase in price will be passed on to the Customer.
- c) Unless specified to the contrary, prices quoted are exclusive of all GST, stamp duty and like levies or taxes and are ex-works.
- d) Any variation requested by the customer must be in writing. The Company will charge for, and invoice for, the requested variation as soon as the variation has been completed.

3. PAYMENT

- a) The Customer (approved account holders only) shall make payment to the company for all goods and services supplied within thirty (30) days from the date of invoice unless otherwise agreed in writing.
- b) Non account holders will be required to pay prior to the commencement of any works. The Customer acknowledges that time is of the essence regarding payment and that any breach of this term will enable the Company at its discretion to exercise all of its rights contained herein including (but without in any way limiting its rights) the right to cancel further credit and to take legal action for the recovery of all sums outstanding. A deposit as notified by the Company at the time of order is placed shall be payable by the Customer prior to works and services commencing, and such deposit is not refundable. The Customer shall not be entitled to without payment of any sums after they become due by reason of any right of set off or counter claim which the Customer may have or alleged to have or for any other reason whatsoever.
- c) The Company WILL NOT accept any Credit Cards.

4. INTEREST

- a) Should payment remain outstanding beyond the Company's payment terms at the Company's discretion as outlined in clause 3 above, the Customer agrees to pay interest on all amounts outstanding from the due date until the date of payment at a rate equal to 4% monthly above the overdraft rate being charged by the National Australia Bank on accounts under \$100,000.00 at the time of default.

5. COSTS

- a) Should payment remain outstanding beyond the Company's payment terms and at the Company's discretion as outlined in clause 3. The Customer agrees to pay all legal costs (on a solicitor/own Customer basis) and all Mercantile Agent's fees (including any commission payable on the payment of the debt) incurred by the Company as a result of non-payment of the debt.

6. DELIVERY

- a) Delivery dates are forecast as accurately as possible and every endeavour will be made to effect delivery by the delivery date specified, but may be subject to extensions without notice due to unforeseen delays caused by strikes, lock outs, breakdowns, accidents, delays in transport or in obtaining supplies, act of God, war, fire and other causes beyond the Company's control.
- b) To the fullest extent of the law, the Company will accept no responsibility for any loss of profits or damage arising out of non-delivery or failure to deliver the goods or services by the delivery date, non-fitness for purpose of any goods, unless previously agreed in writing.
- c) The Customer will pay all transport costs and insurances to deliver the goods and services to the Customer's premises in the State which the Customer trades.
- d) Delivery of the goods and services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- e) The Customer shall not be entitled to repudiate the agreement as a result of the failure of the Company to deliver the goods and services.

7. CLAIMS

- a) Upon delivery, it is the Customer's responsibility to check each delivery to ensure that the delivery is complete and in good condition. The Customer will be deemed to have accepted the goods and services as being in accordance with its order and received in good condition unless it notifies the Company in writing of any claim within seven (7) days of receipt of the goods and services.
- b) The Company will not accept any return of goods unless it has given prior written authorisation for the return and unless the returned goods are accepted by the Company's supplier. All warranty claims must be returned directly to the Company. The Customer is responsible for payment of any freight or delivery costs to return any goods to the Company unless the Company agrees to pay such costs on the basis that the goods were delivered in a damaged condition.

8. JURISDICTION

The proper law of all contracts arising between the Company and the Customer is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that State.

9. WARRANTY

- a) All warranties whether express or implied and whether statutory or otherwise with regard to the goods and services supplied by the Company as to quality, fitness for purpose or any other matter are hereby excluded except for those warranties that are incapable of exclusion by law.
- b) Where a manufacturer's warranty exists then the Customer may only rely on such a warranty and shall not be entitled to rescind or cancel the contract or sue the Company for damages or claim restitution arising out of any misrepresentation made to him by any servants or agents of the Company. The Customer acknowledges that it has relied on its own skill and judgement in deciding to enter into this agreement and has not relied on any representation, condition warranty, covenant, or promise made for and on behalf of the Company.
- c) Any warranty provided by the Company shall not cover any defect or damage which may be caused by:
 - I. Failure by the Customer to properly maintain any goods or services,
 - II. Failure by the Customer to follow instructions or guidelines set out by the Company,
 - III. Any use of the goods or services other than for its intended use,
 - IV. The continued use of the goods and services after any defect has become apparent,
 - V. Fair wear and tear, accident or act of God,
 - VI. Any Warranty provided by the Company shall be voided if it is found that the goods and services have been repaired, replaced or altered without the approval of the Company.

10. RETENTION OF TITLE

- a) The legal and equitable title to the goods and services will only be transferred from the Company to the Customer when the Customer has met and paid for all that is owed to the Company on any account whatsoever.
- b) The Customer acknowledges that until the Customer has met and paid all that is owed to the Company on any account whatsoever, the Customer holds the goods and services as bailee for the Company and that a fiduciary relationship exists between the Customer and the Company.
- c) If the Customer defaults, in addition to clause 11(b) the Company may take possession of the goods wherever the goods are located, and the Customer agrees that the representatives of the Company may enter upon the Customer's premises for that purpose.

- d) Notwithstanding the above (and upon agreement between parties) the Company may require the Customer to pay for goods or services not yet delivered, manufactured or carried out yet.

11. PERSONAL PROPERTY SECURITIES ACT 2009

- a) The terms “**Collateral**”, “**Debtor**”, “**Financing Change Statement**”, “**Financing Statement**”, “**Grantor**”, “**Proceeds**”, “**Secured Party**”, “**Security Agreement**” and “**Security Interest**” have the meanings given in the PPSA.
- b) The Purchaser acknowledges and agrees that by accepting these Terms and Conditions which form part of the Contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:
- I. The Company holds (as Secured Party) a Security Interest over all of the present and after acquired goods or services supplied by the Company to the Customer and any Proceeds of the sale of those goods or services (“Collateral”);
 - II. That any purchase by the Customer on credit terms from the Company or retention of title supply pursuant to clause 10 hereof will constitute a purchase money security interest as defined under section 14 of the PPSA (“PMSI”);
 - III. The PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods or services coming into existence;
 - IV. The Company will continue to hold a Security Interest in the goods or services in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods.
 - V. Any Company Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interest;
 - VI. Until title in the goods passes to the Customer, it will keep all goods supplied by the Company free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of the Company under the Contract or the PPSA; and
 - VII. In addition to any other rights under these terms and conditions or otherwise arising, the Company may exercise any and all remedies afforded to it as a Secured Party under chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Customer, to search for and seize, dispose of or retain those goods in respect to which the Customer has granted a Security Interest to the Company.
- c) The Customer undertakes to:
- I. Sign any further documents and provide such information which the Company may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
 - II. Indemnify and upon demand reimburse the Company for all expenses incurred in registering a Financing Statement on the PPS Register or releasing any Security Interests;

- III. Not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of the Company; and
- IV. Provide the Company not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details registered on the PPS Register to enable the Company to register a Financing Change Statement if required.
- d) The Company and the Customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Contract.
- e) The Customer hereby waives its rights to received notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- f) The Customer waives its rights as a Grantor and/or Debtor under sections 142 and 143 of the PPSA.
- g) Unless otherwise agreed in writing by the Company, the Customer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
- h) The Customer shall unconditionally ratify any actions taken by the Company under this clause 11.
- i) This clause 11 will survive the termination of the Contract to the extent permitted by law.

12. DEFAULT

The Customer will be in default if:

- a) The Customer breaches any of the Terms and Conditions.
- b) Payment for the goods and services has not been received by the Company by the due date of payment.
- c) The Customer being an individual commits an act of bankruptcy or becomes insolvent under administration.
- d) The Customer being a body corporate becomes an externally administered body corporate or has an application for winding up filed against it.
- e) The Company forms an opinion that the customer's credit worthiness or credit standing alters from that indicated in its application.
- f) If the Customer defaults, the Company may:
 - I. Refuse supply of goods or services,
 - II. Claim the return of any goods in the Customer's possession,
 - III. Without notice withdraw credit facilities,
 - IV. Without notice make all monies owing to the Company due and payable immediately.

13. FORCE MAJEURE

The Company is not liable for failure to perform the contract to the extent and for so long as the performance is prevented or delayed because of:

- a) Circumstances outside the Company's control,
- b) Failure of the Company machinery,
- c) Failure of a supplier to the Company,

- d) Failure due to unforeseen delays caused by strikes, lock outs, breakdowns, accidents, delays in transport, act of God, war, fire and other causes beyond the Company's control.

14. INTELLECTUAL PROPERTY

- a) The Company shall retain the copyright in all drawings of any products produced for the Customer unless otherwise agreed in writing.
- b) The Customer warrants to the Company that all documents provided by the Customer are accurate and that the Company is entitled to use all such documents for the purpose of the contract and that such use does not infringe any third party's intellectual property rights.
- c) The Customer indemnifies the company against all claims and all losses and damages incurred by the Company as a result of documents provided by the Customer to the Company for the purposes of or in the course of the supply of the goods and services breaching a third party's intellectual property rights.
- d) If the Customer receives confidential information from the Company the Customer may not use or disclose such information unless it receives the prior written consent of the Company, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

15. LIMITATION OF LIABILITY

- a) Subject to clause 15(a) the Company's liability to the Customer (and any party claiming through the Customer against the Company) for any claim or loss or damages (including legal expenses) made in connection with the contract, for contract, tort, (including negligence) under statute, in equity, or otherwise shall be as follows:

If the Company is in breach of a contract the Company's liability is strictly limited to:

- I. For goods, products or materials the cost of replacement of the defective goods as soon as reasonably practicable, or the repair of the defective goods or the repayment (or allowance) of the invoice price of the defective goods at the option of the Company,
- II. For services, to the provision of the services again or payment of the cost of having the relevant services provided again at the option of the Company.

The Company's liability for breach of a contract does not extend beyond the defective goods that are part of an order or otherwise.

Where loss or damage is not recovered by subparagraph 14(a), the Company is not liable to the Customer under statute, in equity, or in tort (including negligence or otherwise) for any loss or damage to a person or property arising from or caused in way by the goods.

The Company shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the goods.

"Indirect", special or consequential loss or damage includes:

- I. Any loss of income,
- II. Any loss of goodwill or reputation,
- III. Any loss of value of intellectual property

Any claim by the Customer in respect of defective goods or services and/or damaged goods must be made in writing within seven (7) days of the delivery of the goods or completion of the service.

The Company's obligations in the event of paragraph 14(a) applying do not include:

- I. The cost of removal of defective goods.
- II. The cost of installation of replacement for defective goods.
- III. Defects in goods caused by improper installation.

16. REPRESENTATION AND FITNESS FOR PURPOSE

Accept as expressly provided to the contrary, all representations, warranties, terms and conditions in relation to the goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law. The Customer agrees that if it is aware (or should be aware) that the goods or services, the subject of an order, are for a particular purpose (including but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics the Customer will clearly specify that purpose or those characteristics in any such order.

17. RETURN OF GOODS

Acceptance of the goods by the Customer shall be final and conclusive unless the Company agrees in writing to the return of goods within seven (7) days of delivery.

18. COSTS

The Customer may pay the Company all costs and expenses incurred by the Company in connection with the contract including legal expenses (on a solicitor-client basis), stamp duty and all other costs incurred in the recovery of monies owing by the Customer to the Company or in otherwise enforcing the Company's rights against the Customer under the contract.

19. RIGHTS OF THE COMPANY TO DISPOSE OF GOODS AND SERVICES

In the event that the Company retains or regains possession of the goods by the Customer and the Customer has not paid for the goods within the Company's terms of trade then the Company may dispose of the goods and may claim from the Customer any loss the Company has suffered in relation to the same.

20. CHANGE OF OWNERSHIP

The Customer agrees to notify the Company in writing of any change of ownership of the Customer within seven (7) days from the date of such change and indemnifies the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any change.



PTY LTD

ABN: 30 616 383 629

FABRICATORS IN HIGH NICKEL ALLOYS
AND EXOTIC MATERIALS

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Quality
ISO 9001



ISO 9001-2008
Lic No: QMS-42189
SAI Global

21. CANCELLATION

Orders placed with the Company cannot be cancelled without written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

22. LIEN

The Customer hereby acknowledges that the Company has a lien over all goods and services in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

23. CONSENT TO CREDIT CHECK – PRIVACY ACT

The Customer acknowledges and authorises the Company pursuant to the provisions of the Privacy Act to: -

- a) Seek from or give to a Credit Reporting Agency personal information about the Customer at any time after accepting these conditions: and
- b) Contact any trade references or other credit providers and acquire from them or give to them personal information in relation to the Customer and its credit worthiness.

24. SUB-CONTRACTING

The Customer hereby authorises the Company to sub-contract all or any part of the works that the Company has been contracted to carry out. The Company in doing so may require to agree to the sub-contractors' terms and conditions of trade and the carrying out of the work by the sub-contractor will deem the Customer also bound by those terms and conditions. The sub-contractor in agreeing to carry out the work on behalf of the Company shall also be deemed to have the benefit of these terms and conditions.

Agreed & Accepted by:

_____ Print full name

_____ Signature

_____ Company / Business Name

_____ Date