

**SHEETMETAL TOOLING TECH PTY  
LIMITED ACN 114 470 629**

**TERMS OF TRADE**

**DEFINITIONS**

In this Contract, unless the context otherwise requires, the following words have these meanings: Company means Sheetmetal Tooling Tech Pty Limited ACN 114 470 629; Contract means the Terms of Trade, the relevant Order and any Invoice(s) relating to the Order; Credit Application means a written credit application with the Company for the provision of credit by the Company to the Purchaser; Purchaser means: (a) if the Purchaser has provided the Company with a Credit Application, the Purchaser specified in the Credit Application; or (b) if the Purchaser has not provided the Company with a Credit Application, the Purchaser specified in the Order; **Delivery Fee** means: (a) the amount specified in the Order or otherwise notified to the Purchaser from time to time together with all costs (including all costs of transportation, insurance and obtaining clearances) associated with the export or shipment of the Goods; or (b) if no amount is specified in the Order or notified to the Purchaser from time to time, the sum determined by the Company; Goods means the goods and/or services supplied by the Company to the Purchaser as indicated in the Order; GST means the rate of goods and services tax payable pursuant to the GST Act; GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder; Intellectual Property Rights means all intellectual property rights of any kind including patents, designs, trade marks, circuits, copyright, service marks, trade names, business names, brand names, inventions, discoveries, trade secrets, know-how and all moral rights (whether allowable now or at some point in the future), an application for, or right to apply for registration or renewal of, an intellectual property right, and in each case whether registered or unregistered (and whether capable of registration or not) and any similar or equivalent rights or interests in Australia elsewhere; Invoice means a Tax Invoice if GST applies to the items in the invoice, otherwise a non-Tax Invoice; Order means any agreement (verbal and/or written) between the Company and the Purchaser for the supply of the Goods. Unless otherwise specified by the Company, an Order has no set form and could be comprised of an email/emails, order by phone or fax or a combination of

same; PPS means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder; Price means the price payable for the Goods together with any GST; Tax Invoice means an invoice that complies with the GST Act; Terms of Trade means these terms of trade (as may be varied from time to time).

**INTERPRETATION**

In this Contract, unless the context otherwise requires: (a) headings are for convenience only and do not affect the interpretation of this Contract; (b) words importing the singular include the plural and vice versa; (c) reference to a "person" includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (d) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and bylaws issued after that statute; (e) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or any part of it; (f) where the day on which any thing is to be done is not a business day, that thing must be done on the next business day (with a "business day" being any day except a Saturday, Sunday or public holiday in Sydney, New South Wales); (g) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation; (h) all references to "\$" or "dollars" are to the lawful currency of Australia; (i) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

**QUOTATION**

A quotation by the Company is an invitation (but not an offer) to the Purchaser to trade with the Company. The Purchaser may use the quotation to submit an Order to the Company. Prices given in any quotation by the Company are applicable to that quotation only and will not apply in any other instance, unless confirmed in writing by the Company. Quotations are valid for the period specified in the quotation or, if no period is specified, fourteen (14) days from the date of issue by the Company and only in respect of the matters set out in the quotation. The Purchaser must keep all quotations issued by the Company strictly secret and must not disclose the contents of any such quotation to any third party unless the Purchaser

has obtained the prior written consent of the Company to do so.

**GST**

All amounts payable by the Purchaser to the Company, unless otherwise stated in writing, exclude GST. The Purchaser must pay any applicable GST to the Company in addition to the amount payable at the same time as the amount to which it relates is payable.

**APPLICATION AND SEPARATE CONTRACTS**

These Terms of Trade apply to every Order between the Company and the Purchaser for the Goods (even if not attached or referred to in an Order). Each Contract is a combination of these Terms of Trade and the relevant Order and each such Contract constitutes a separate and independent agreement. Any action taken in respect of one Contract does not automatically affect any or all other Contracts.

**PURCHASER ORDERS**

The Company is not obliged to accept any Order. The Contract shall only be or be deemed to have been entered into between the Company and the Purchaser for the supply of Goods when the Order has been accepted by the Company (which may be done in writing, verbally or by the Company commencing to fulfil the Order). The Company is entitled to assume that anyone on behalf of the Purchaser who places an Order with the Company has full power and authority to bind the Purchaser.

**PURCHASER OBLIGATIONS**

The Purchaser is solely responsible for ensuring that it provides the Company with accurate and complete information in respect of its Order and supplies the Company with all relevant designs, instructions, approvals, drawings, plans, specifications, computer-aided design ('CAD') data and samples relating to its Order. The Purchaser agrees to promptly provide such information and documentation as is requested by the Company to enable the Company to supply the Goods. The Company is not liable to the Purchaser for any loss or damage of any kind suffered by the Purchaser as a result of any failure or delay by the Purchaser in providing such information or documentation and the Company shall be entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such failure or delay.

**INCONSISTENCY**

If there is any inconsistency between the Terms of Trade and the Order, the

terms of the Order prevail to the extent of the inconsistency. Further, if there is: (a) any inconsistency between any designs / instructions / approvals / drawings / plans / specifications / CAD data and any samples provided by the Purchaser, the designs / instructions / approvals / drawings / plans / specifications / CAD data will prevail to the extent of the inconsistency; (b) if there is any inconsistency between the designs / instructions / approvals / drawings / plans / specifications and any CAD data, the CAD data will prevail to the extent of the inconsistency.

Apart from an Order that matches the quotation given by the Company, any terms or conditions put forward by the Purchaser in respect of the Goods are null and void and of no effect unless accepted by the Company in **writing**.

#### **VARIATIONS TO ORDER**

If the Purchaser wishes to revise or change in any way the Contract after acceptance by the Company, the Company reserves the right to revise the Price and/or any other aspects of the Contract to take account of such changes. The Company is not obliged to accept any variations put forward by the Purchaser after the Contract has been accepted by the Company.

#### **VARIATIONS TO TERMS**

The Company may vary these Terms of Trade from time to time, in which case those new terms of trade shall apply to every new Order after the Purchaser is notified in writing of the new terms of trade. Subject to the foregoing and any other provision of these Terms of Trade, any variation, amendment or consent to departure by any party from the Contract shall have no force or effect unless agreed in writing by the Company.

#### **PAYMENT**

The Purchaser must make payment of the Price for the Goods in accordance with the time period specified on the Order or, if no such time is specified, within thirty (30) days from the date of the Invoice. Subject to the foregoing, any amount payable by the Purchaser to the Company under this Contract is payable within the time period specified for payment in the Contract or, if no time period is specified, then within the timeframe specified in the Invoice. All times for payment are of the essence.

#### **BOND**

Notwithstanding anything to the contrary in the Contract, the Company may require the Purchaser to pay a bond up to the value of the unpaid

portion of the Contract at any time. The Company can draw down against this bond from time to time to pay any amounts due to it. The Purchaser must pay the bond within 7 days of request. The Company can request a bond on more than one occasion. Any bond monies left after the Company has received all monies payable to it in respect of this Contract will be promptly refunded to the Purchaser.

#### **DESCRIPTIONS**

Any description of the Products including any specifications, illustrations, drawings, data, dimensions and weights are approximate only and are given by way of identification only. To the fullest extent permitted by law, the use of that description does not constitute a sale by description and does not form part of an order unless agreed by the Company in writing.

#### **MERCHANT FEE, INTEREST AND DELIVERY FEE**

If any payment is not made by the due date and is later paid by credit card, the Purchaser agrees that the Company may also charge and deduct from the credit card any merchant fees that apply. In addition to and without prejudice to any other rights or remedies of the Company, interest may apply to any payment not made on time at the rate of 10% per annum for the relevant period calculated daily. In addition to the Price, the Purchaser must pay the Delivery Fee to the Company at the same time and in the same manner as the Price is payable. If an Order is delivered in instalments or to more than one location, the Company may charge a separate Delivery Fee for each such instalment or location as the case may be.

#### **CREDIT APPLICATION**

If the Purchaser has provided the Company with a Credit Application, the Purchaser agrees that: (a) the Company may change, suspend or terminate the provision of credit or limit the amount of credit available from time to time at any time in the Company's sole discretion; (b) it is the responsibility of the Purchaser to monitor its credit and the Company is not required to notify or inform the Purchaser if its credit with the Company is in excess of any "estimated monthly spend" specified in the Credit Application; (c) the Company may extend (at its discretion) credit to the Purchaser beyond the "estimated monthly spend" specified in the Credit Application.

#### **CREDIT REPORTING**

The Purchaser agrees in favour of the Company that: (a) the Company may make such enquiries as it sees fit in order to satisfy itself as to the creditworthiness of the Purchaser; (b) the enquiries may include applying to and obtaining from any credit reporting agency a credit report of the Purchaser which may contain personal information, in accordance with s18K(1)(b) of the Privacy Act 1988 (Cth) ('Act'), and to obtain a report containing information from a person or business which provides information about the commercial creditworthiness of a person in relation to credit provided by the Company, in accordance with s18L(4) of the Act; (c) the Company is authorised in terms of s18N(1)(b) of the Act to disclose information of a report received by it and to exchange information with other credit providers for the purpose of notifying other credit providers of a default by

the Purchaser, assessing an application for credit by the Purchaser, and assessing the creditworthiness of the Purchaser; (d) the Company may give information about the Purchaser or the Purchaser's business to a credit reporting agency for the purpose of obtaining a credit code report, and/or to allow the credit reporting agency to create or maintain a credit information file about the Purchaser or the Purchaser's business; (e) by signing below in acceptance of these terms, the Purchaser will be giving consent to the Company disclosing the Purchaser's information to a credit reporting agency as outlined above; (f) the Company may use or disclose any personal information provided to or collected by or accumulated by the Company for any purpose whether it is related to the primary purpose of collection of the information or not and including disclosure of the personal information to related body corporates of the Company; and (g) if any personal information provided to the Company is inaccurate, incomplete or not up to date, or such personal information becomes inaccurate, incomplete or not up to date at a later time, the Purchaser will promptly notify the Company in writing of the changes that need be made to that information.

#### **INDEMNITY**

To the fullest extent permitted by law, the Purchaser indemnifies the Company against any loss, cost, damage or expense (including legal costs and disbursements and debt collection agency fees on a full indemnity basis), and any claims,

demands, suits, actions and proceedings suffered, paid or incurred by the Company, resulting from or arising out of any breach of the relevant Contract by the Purchaser or the cancellation of any Order or Contract by the Purchaser (including if cancelled with the consent of the Company). To the fullest extent permitted by law, the employees and directors of the Company may rely on this indemnity.

#### **CANCELLATIONS BY PURCHASER**

Once an Order has been accepted by the Company, the Contract arising from it may only be changed or cancelled with the written consent of the Company and in accordance with such terms that the Company may specify. The Purchaser's attention is drawn to the "indemnity" provisions of these Terms of Trade in respect of such cancellation.

#### **FAULTS/ERRORS POLICY**

The Purchaser must inspect the Goods immediately upon the earlier of receipt or collection and, if the Goods are damaged or not otherwise in conformity with the Contract relating to their supply the Purchaser must: (a) immediately notify the Company in writing providing full details of the fault/error; (b) allow the Company or its representatives to attend at the place where the Goods are located to inspect the Goods; (c) promptly provide such information and documentation as is reasonably requested by the Company relating to the alleged fault or error; (d) allow the Company to take away the Goods for further inspection or testing. To the fullest extent permitted by law, the Purchaser is deemed to have accepted that the Goods are undamaged and in conformity with the Contract if it has not provided the Company with a written notice in accordance with this clause and, in those circumstances, the Company shall be entitled to refuse any claim made by the Purchaser. This clause does not derogate from the provisions relating to the passing of risk and, for clarity, this clause does not make the Company liable for anything that occurs after risk has passed.

#### **SUSPENSION**

If the Purchaser breaches any provision of the relevant Contract or fails or delays in performing its obligations then in addition to and without prejudice to any other rights or remedies of the Company (including exercising a right of termination), the Company may suspend the performance of its obligations under that Contract until such breach is rectified without being

liable to the Purchaser for any loss or damage of any kind suffered by the Purchaser as a result of such suspension. The Company shall be entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such suspension.

#### **TERMINATION**

If a party: (a) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or external controller appointed to it; (b) becomes bankrupt, insolvent or is wound-up; (c) has a resolution passed for its winding-up or commits an act of insolvency or bankruptcy; (d) enters into any scheme or arrangement with its creditors; (e) breaches an essential term of the Contract; (f) breaches a term of the Contract that is not capable of remedy; or (g) subject to the foregoing, breaches a term of the Contract that is capable of remedy but is not so remedied within fourteen (14) days of written demand; then the other party by written notice may terminate the relevant Contract immediately. Termination shall not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination.

#### **LIMITATION OF LIABILITY**

To the fullest extent permitted by law: (a) the Company shall not be liable to the Purchaser for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of the Company irrespective of whether or not the Company was made aware of the possibility of such loss; (b) all express and implied warranties, terms and conditions in relation to the obligations of the Company including those implied by use, trade, custom or otherwise are hereby excluded; (c) the Purchaser agrees that the Company is not liable or responsible for any loss or damage that the Purchaser suffers or incurs due to circumstances beyond the reasonable control of the Company; (d) subject to the foregoing, the Company's total liability to the Purchaser for breach of its obligations to the Purchaser (including due to negligence) are strictly limited to, in the case of the goods component of the Goods, replacing or resupplying the goods or paying for the cost of replacing or resupplying the goods (for

clarity, all Delivery Fees and costs associated with dismantling and/or reassembling the goods must be met by the Purchaser) and, in the case of the services component of the Goods, re-supplying the services or paying for the cost of re-supplying the services.

#### **INTELLECTUAL PROPERTY**

The Purchaser warrants that in respect of any designs, instructions, approvals, drawings, plans, specifications, CAD data, samples or anything else supplied by or on behalf of the Purchaser which relates to the creation or development of the Goods does not infringe the Intellectual Property Rights of any third party.

#### **STORAGE, DELIVERY AND CANCELLATION BY THE COMPANY**

The Company is entitled to deliver the Goods as soon as they are ready for delivery (but not before any date agreed with the Purchaser). If the Company notifies the Purchaser the Goods are ready for delivery, the Purchaser requests the Company to hold the Goods on its behalf and the Company agrees to hold the Goods, such Goods will be held by the Company at the Purchaser's sole risk, and the Company shall be entitled to charge storage fees (for such amount as is reasonably determined by the Company) in respect of the Goods so stored. If the Company agrees to hold the Goods, it does so on such terms as the Company may specify to the Purchaser from time to time.

Unless otherwise agreed by the Purchaser and the Company, the Company shall be entitled to deliver the Goods in one or more lots. Where there is a part delivery, the Company shall be entitled to Invoice the Purchaser for pro-rata progress payments in respect thereof. The pro-rata amount is as determined by the Company. Although the Company will use reasonable endeavours to provide the Goods by the due date for delivery, this time is not of the essence. The Company shall not be liable to the Purchaser for any loss or damage of any kind suffered by the Purchaser arising out of any failure by the Company to provide the Goods on the agreed or specified date or within a reasonable time.

#### **PASSING OF RISK AND RETENTION OF TITLE**

Risk in respect of loss, damage or destruction to the Goods passes to the Purchaser on the earlier of: (a) if the Purchaser collects the Goods, at the time of collection; (b) if the Purchaser requests the Company to hold the Goods on its behalf and the Company agrees to hold the Goods, at the time

of the Company's consent; (c) if the Goods are being delivered by the Company, at the time of delivery to the relevant address. If Goods are collected, held or delivered in part, then risk passes in respect of so much of those Goods as are collected, held or delivered as the case may be in accordance with the foregoing.

Despite the passing of risk, the Company retains full title to the Goods until such time as all payments required to be made by the Purchaser under all Contracts between the Company and the Purchaser are received by the Company, and the Company reserves the right in the event of non-payment of any amounts due by the Purchaser under the Contract to retrieve the Goods from the Purchaser including by entering any premises where the Goods are stored and the Purchaser agrees that the Company shall not be liable for trespass as a result or for any damage caused in removing the Goods from the premises. If the Company seeks to register a security interest arising under any Contract, the Purchaser agrees to promptly sign such reasonable documentation and promptly perform all reasonable acts necessary in order to enable the Company to effect that registration.

#### PPS

(a) Each Contract constitutes a "security agreement" for the purposes of the PPS; (b) For the purposes of s115 of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to: (i) contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142, 143 and 144 of the PPS; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS; (c) To the fullest extent permitted by law, the Purchaser hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.

#### NON-EXCLUSIVITY

The Purchaser acknowledges the Company may supply third parties with products the same as or similar to the Goods.

#### FORCE MAJEURE

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, the Company is unable to perform in whole or in part any of its obligation, the Company shall be relieved of that obligation to the extent and for the period that it is so unable to perform and is not liable to the Purchaser for

any loss or damage of any kind suffered by the Purchaser arising out of such inability to perform. In addition, the Company is entitled to a reasonable extension of any timeframe applicable to its obligations as a result.

#### MISCELLANEOUS

(a) This Contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia; (b) Any legal action or proceedings with respect to this Contract against any party or any of its property and assets may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State; (c) Subject to the express written terms of the Contract, the Contract shall confer rights and benefits only upon a person expressed to be a party and not upon any other person; (d) The Purchaser shall not transfer, sub-contract or assign its rights or obligations under this Contract without the prior consent in writing of the Company. The Company may sub-contract any of its obligations under the Contract without notice to or consent from the Purchaser; (e) The failure to exercise or delay in exercising by any party of any right conferred by the Contract shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party; (f) Subject to the terms of the Contract, the rights of a party conferred by the Contract are cumulative and are not exclusive of any rights provided by law; (g) Each party shall execute all documents and perform all acts necessary to give full effect to the Contract; (h) the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither party shall, after the Contract has been entered into, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract; (i) Any provision of the Contract which is prohibited or unenforceable in any jurisdiction shall, as to that

jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction; (j) No provision of the Contract shall merge on completion of the Contract.