

# WEARPLATE AUSTRALASIA PTY. LTD.

ABN 47112308442

Telephone +614 02 4272 7227 | eMail: wearplate@icloud.com  
5 Prince of Wales Ave Unanderra NSW 2526 | Po Box 180 Jannali NSW 2226



**Boutique specialists in manufacture, production and fabrication of hard faced wear plate**  
Collaborative design specialists | bespoke production services | CNC plasma cutting

## TERMS and CONDITIONS of SALE

### 1. Interpretation and Definitions

1.1 In these Terms and Conditions :

“Company” or “Seller” means – WEAR PLATE (Australasia) Pty Limited.

“Customer” or “Buyer” means – the purchaser of Goods from the Company.

“Goods” means – all goods sold and/or delivered by the Company to the Customer

“Intellectual Property Rights” means – all patents, registered and unregistered designs, copyright, trade marks, knowhow and all other forms of intellectual property wherever in the world enforceable.

“Terms” means – these terms and conditions of sale.

### 2. Application and General

2.1 These Terms shall apply to all sales of Goods by the seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied upon by the Buyer, whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.

2.2 No variation, amendment, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.

2.3 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation to the Goods or the sale of Goods other than is contained in these Terms.

### 3. Prices

3.1 Prices are determined at the time of order from the current price list in effect at that time for standard Goods produced or acquired by the company – or –

3.2 By “Quotation only” basis for all non-standard Goods.

3.3 The price shall be the Retail Price less agreed discount, unless otherwise agreed in writing between the parties.

3.4 The price is exclusive of GST or any other applicable costs.

### 4. Payment

4.1 Payments are to be made to the Company without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.

4.2 The balance of the invoice price must be paid in full before delivery unless the Seller has approved credit terms.

4.3 The Seller may offer credit terms subject to satisfactory credit vetting of the Buyer. The offer of credit will be at the sole discretion and approval of the Seller.

4.4 Where credit is offered, payment of the price and GST (if applicable) and any other applicable costs, shall be within 30 days of the date of invoice supplied by the Seller, unless otherwise agreed in writing by the Seller.

4.5 The Seller shall be entitled to charge interest on overdue invoices, calculated on a daily basis at the rate of 1.5% per month, as from the date due for payment until the Company receives payment.

4.6 If payment of the price, or any part thereof, is not made by the due date, the Seller shall be entitled to:

- Require payment in advance of delivery in relation to any Goods not previously delivered;
- Refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery.

## **5. Description**

Any description given or applied to the Goods is given by way of identification and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer affirms that it does not in any way rely on any description when entering into the contract.

## **6. Sample**

6.1 Where a sample of the Goods is shown to, and inspected by the Buyer, the parties hereto accept that Such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

6.2 Any display product or sample inspected by the customer is solely for the Customer's convenience and does not constitute a sale by sample

## **7. Delivery**

7.1 The Customer must, within 5 days of being notified of their availability, collect or accept delivery of the Goods and pay the balance of the invoice price unless credit has been approved.

7.2 If the Customer fails to collect the Goods or accept delivery within 21 days of being notified of their availability, the Company may terminate this contract , keep any deposit paid, and resell the Goods.

7.3 The Company reserves the right to charge the Customer storage on goods not collected or delivered within 5 days of notification of their availability.

7.4 The Company shall make the Goods available for delivery on, or as close as possible to the date required by the Buyer.

7.5 The Company reserves the right to deliver the Goods in whole or part instalments, as well as to deliver prior to the date for delivery, and, in such event, the Customer must not refuse to take delivery of the Goods.

7.6 Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the contract with regard to the balance remaining undelivered.

7.7 The Customer to the Seller must report any damages, shortages, over deliveries and duplicated orders within 14 days of dispatch date.

## **8. Risk and Insurance**

8.1 The Goods are entirely at the risk of the Customer from the moment of dispatch from the Sellers collection point, even though title in the Goods has not passed to the Customer at that time

8.2 The Customer must, at its own expense, maintain the Goods and insure them for the benefit of the Company against theft, damage, breakdown, fire, water and other risks as from the moment of dispatch to the Customer and until title in the Goods has passed to the Customer.

## **9. Title**

9.1 Legal and beneficial ownership of the Goods will not pass to the Customer until such time as the Goods have been paid in full in cash or cleared funds.

## **10. Inspection**

10.1 Unless the Customer has inspected the Goods and given written notice to the Company within 2 days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.

## **11. Cancellations**

11.1 No order may be cancelled, modified or deferred without the prior consent Of the Company ( which is at the Company's sole discretion). If such consent is given, it is at the Company's election, subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation fee ( being not less than 20% of the invoice price of the Goods.)

## **12. Return of Goods**

12.1 All Goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed, and in which case the following terms apply –

12.2 Any returns must be authorised by an approved representative of the Company before any credit will be given.

12.3 Where the Seller agrees to accept the return of goods that are not damaged, the Buyer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit.

12.4 The Seller will not be obliged to accept any Goods that are damaged in any way.

12.5 Credit of amounts due or paid will only be given for goods that are in a saleable condition and re-saleable.

### **13. Limited Liability**

- 13.1 These Terms do not affect the rights, entitlements and remedies conferred by the Trade Practices Act 1974.
- 13.2 The Company is not subject to, and the Customer releases the Company from, any liability (including, but not limited to consequential loss or damage) because of any delay in delivery or fault or defect in the Goods. The Customer acknowledges that the Company is not :
- (a) responsible if the Goods do not comply with any applicable safety standard or similar regulation: and
  - (b) liable for any claim, damage or demand resulting from such non-compliance.
- 13.3 If any statutory provisions under the Trade Practices Act 1974, or any other statute, apply to the contract between the Company and the Customer ( Contract ), then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to :
- (a) replacement or repair of the Goods or the supply of equivalent Goods; or
  - (b) payment of the cost of replacement or repairing the Goods, or acquiring equivalent Goods; and
  - (c) in either case, the Company will not be liable for any consequential loss or damage, or other direct or indirect loss or damage.

### **14. Warranty**

- 14.1 All Goods supplied are covered by such warranties as are specified by the manufacturer and supplied subject to the product standards detailed by the manufacturer.
- 14.2 On discovery of any defect in the Goods, the Customer must immediately notify the Company in writing of such defect. The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so.
- 14.3 The provisions of any act or law (including, but not limited to the Trade Practices Act 1974) implying Terms, conditions and warranties, or any other terms, conditions and warranties that might otherwise apply to, or arise out of the Contract, are hereby expressly negated and excluded to the full extent permitted by law.
- 14.4 The Customer expressly acknowledges and agrees that it has not relied upon, and the Company is liable for any advice given by the Company, its employees, agents or representatives in relation to the suitability for any purpose of the Goods.

### **15. Intellectual Property Rights**

- 15.1 All intellectual property rights produced from, or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

### **15. Right to Enter Premises**

- 15.1 In any circumstance of non-payment or partial payment the Customer:
- (a) authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and
  - (b) assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

### **16. Force Majeure**

- 16.1 The Company will not be liable for any breach of contract due to any matter or thing beyond its control ( including, but not limited to, transport stoppages, transport breakdown, fire, flood, , earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention, or public authority, explosion or accident.)

### **17. Severability**

- 17.1 If any provision contained in these Terms is held by a court of competent jurisdiction to be invalid, unlawful or unenforceable, the validity and enforceability of the remaining provisions are not affected.

**18. Waiver of Breach**

18.1 No failure by the Company to insist on strict performance of any of these Terms is a waiver of any Right or remedy, which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

**19. No Assignment**

19.1 Neither the Contract, nor any rights under the Contract, may be assigned by the Customer without The prior written consent of the Company, which is at the Company's absolute discretion.

**20. Relationship of Parties**

20.1 Nothing in these Terms shall be construed as establishing or implying any partnership or joint venture between the parties or the Company as an agent of the Customer.

**21. Governing Law**

21.1 These Terms and the Contract shall be governed by the law of New South Wales and the parties submit to the courts of New South Wales in respect of any dispute arising.