

TERMS & CONDITIONS OF SALE

Rack Technologies is a subsidiary of Preformed Line Products Australia.

1. APPLICATION

- 1.1. These Terms apply to all goods sold by the Company.
- 1.2. No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
- 1.3. The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Goods or the sale of the Goods other than as contained in these Terms.

2. TERMS OF PAYMENT

- 2.1. Prices are subject to change on thirty (30) days notice.
- 2.2. Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement.
- 2.3. Payments are to be made within thirty (30) days of the date of the Company's statement or invoice, whichever is the earlier.
- 2.4. Interest is payable on all overdue accounts calculated on a daily basis at the rate of 2% per month as from the due date for payment until payment is received by the Company.
- 2.5. The Company will charge a handling fee of \$100 or such other greater amount for orders of an invoice value under \$1,000 or such higher amount as the Company determines.

3. PROPERTY IN GOODS

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

4. RE-SALE OF GOODS

- 4.1. If the Customer is a re-seller then, subject to sub-clause 4.2.4, the Customer has the right to sell the Goods in its own name at full market value and in the ordinary course of business.
 - 4.2. Until the amount payable to the Company in respect of the Goods has been paid in full in cash or cleared fund:
 - 4.2.1. the Customer will hold the Goods only as bailee for the Company;
 - 4.2.2. the Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons and so as to clearly show that they are the property of the Company;
 - 4.2.3. the Customer must indemnify the Company from and against any Claim incurred or suffered by the Company arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession of them by the Company; and
 - 4.2.4. any sale of the Goods under clause 4.1 will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Company's Customer against its customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.
 - 4.3. The Customer must ensure that the Goods are stored in accordance with any reasonable direction or instructions from the Company and, without the prior
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written consent of the Company, must not treat, alter, or incorporate the Goods into or with another product of the Company or any third party, or otherwise vary the Goods as supplied by the Company.

- 4.4. If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to most recent).
- 4.5. On the resale of the Goods by the Customer, the Customer must ensure that any contract between the Customer and its customer limits or excludes any liability of the Company to such customer on no less favourable terms than the Company's liability to the Customer under clause 19 or on more limiting terms.
- 4.6. Despite clause 4.5, the Customer must indemnify the Company from and against any Claim incurred or suffered by the Company arising out of the resale of the Goods by the Customer.

5. INCORPORATION OF GOODS

- 5.1. If the Customer uses the Goods in some manufacturing or construction process of its own or on behalf of some third party and receives monies from time to time in respect of such use then the Customer must hold a portion of such monies received, calculated in accordance with clause 5.2, in trust for the Company.
- 5.2. The portion referred to in clause 5.1 will be so much of the monies received as equals the amount owing by the Customer to the Company at the time of the receipt of such monies by the Customer.
- 5.3. Money received by the Customer excludes any debts due to other parties by the customer but not yet paid by the Customer.
- 5.4. In the circumstances outlined in clause 5.1, the Customer must not assign or deal with its debts in any way prior to payment of the moneys receivable by the Customer in respect of the Goods as their use as described in clause 5.1 prior to their payment to the Company.

6. INSTALLATION OF GOODS

- 6.1. All Goods must be handled, mounted and installed:
 - 6.1.1. by an appropriately licensed technician/tradesman; and
 - 6.1.2. in accordance with:
 - 6.1.2.1. the manufacturer's directions, if any;
 - 6.1.2.2. the relevant Application Procedure
 - 6.1.2.3. the applicable industry standard,as the case may be.
- 6.2. If any Goods are not handled, mounted or installed in accordance with clause 6.1 then, subject to any statutory provision or other general law obligation to the contrary, the Company will not be liable for any defect or fault in the Goods or for any loss or damage to the Customer caused by the Goods.

7. DEFAULT

If:

- 7.1. the Goods are not paid for in accordance with these Terms or any other written agreement between the Company and the Customer;
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- 7.2. the Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods; or
- 7.3. any other event occurs which in the Company's opinion is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of Insolvency Representative to the Customer's undertaking), then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any Contract relating to the Goods and the bailment referred to in clause 4.2.1.

8. RIGHT TO ENTER PREMISES

In any of the circumstances referred to in clause 7, the Customer:

- 8.1. authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), 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
- 8.2. 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.

9. ADMINISTRATION & RECEIVERSHIP

In any of the circumstances referred to in clause 7.3:

- 9.1. neither the Customer nor its Insolvency Representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's ownership of the Goods, without the Company's prior written approval;
- 9.2. the Customer, its Insolvency Representative and every other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Goods to the Company immediately or immediately on his appointment, as the case may be, at its or his expense; and
- 9.3. if the Goods are returned to or collected by the Company, the Company will within twenty-eight (28) days, account to the Customer or its Insolvency Representative for all monies received for the Goods from the Customer less the Company's reasonable administration charges, expenses incurred and loss of profits involved.

10. CUSTOMER AS TRUSTEE

If the Customer carries on business as trustee of a trust then the Customer warrants that:

- 10.1. the Customer enters into a Contract or Contracts to purchase the Goods as trustee of a trust;
- 10.2. the Customer has all requisite powers to enter into a Contract under these Terms;
- 10.3. the beneficiary of the trust approves the purchase of the Goods on the terms of the Contract; and
- 10.4. the assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer for the purchase of the Goods.

11. GOODS AND SERVICES TAX

- 11.1. GST is not included in the quoted price.
 - 11.2. If GST is imposed on the Company in respect of the Goods then the Customer must pay the amount of such GST to the Company in addition to the quoted price.
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- 11.3. The Company must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.

12. CUSTOMS DUTIES, TARIFFS AND LEVIES

All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing indicates otherwise.

13. DELIVERY

- 13.1. Availability dates are estimates only, but the Company will use its best endeavours to maintain these estimates.
- 13.2. If the place of delivery to or collection of the Goods by the Customer is within Australia then the Company will, at the Customer's request, arrange for the delivery of the Goods at the Company's expense.

14. DELIVERY BY INSTALMENTS

- 14.1. The Company reserves the right to deliver the Goods in whole or by instalments as well as to deliver prior to the date for delivery and in any such event the Customer must not refuse to take delivery of the Goods.
- 14.2. Where the Goods are delivered by instalments, each instalment is sold under a separate Contract.
- 14.3. 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 of the Goods remaining undelivered.

15. RISK

- 15.1. The Goods are entirely at the risk of the Customer from the moment the Goods leave the Company's premises or physical custody.
- 15.2. The Customer must at its own expense, maintain the Goods and insure them for the benefit of the Company for their full replacement value against theft, destructions, fire, water and other risks, as from the moment of delivery to or collection by the Customer until property of and title to the Goods have passed to the Customer.
- 15.3. The Customer must take all reasonable measures to ensure that the Company's title to the Goods is in no way prejudiced. If any of the Goods are lost, destroyed or damaged, any insurance proceeds relating to the Goods in respect of such event that are received by the Customer are held on trust for the Company and must be paid to the Company immediately on receipt but only up to the amount that the Customer owes the Company in respect of those Goods.

16. INSPECTION

Unless the Customer has inspected the Goods and given written notice to the Company within seven (7) 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.

17. RETURN OF GOODS

- 17.1. No returns will be accepted unless the Company has previously agreed in writing. If the Company agrees to the return of Goods, they must be unsoiled, undamaged and in a resaleable condition (or Customer pays for all costs of replacement or repair) and delivered at the Customer's expense to the Company's premises unless otherwise agreed by the Company in writing.
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- 17.2. Goods imported especially for the Customer or non-standard equipment made to special order cannot under any circumstances be returned and/or credited.

18. CANCELLATION OF ORDER

No order may be cancelled, modified or deferred without the prior written consent of the Company (which is at the Company's sole discretion) and if consent is given, then such consent will, at the Company's election, be subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation and restocking fee (being not less than 10% of the invoice value of the Goods).

19. COMPANY'S LIABILITY LIMITED

- 19.1. The Customer acknowledges and agrees that:
- 19.1.1. the Customer has determined that the Goods are fit for the purpose for which the Customer requires them;
 - 19.1.2. the Customer has the right to inspect the Goods in accordance with clause 19 to satisfy itself that the Goods are fit for purpose and/or are of merchantable and acceptable quality;
 - 19.1.3. the Customer has not relied on the Company's skill and judgment in selecting the Goods; and
 - 19.1.4. the Company is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any Claim resulting from such non-compliance.
- 19.2. The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to Consequential Loss or Damage, removal costs or re-installation costs or liability for loss of use or profit) arising from any delay in delivery or defect or fault in the Goods or any negligence by the Company in relation to the Goods (including but not limited to their manufacture), to the full extent permitted by law.
- 19.3. If, despite clause 19.2, the statutory provisions under the *Competition and Consumer Act 2010* (Cth), the *Sale of Goods Act 1923* (NSW) or any other act or the general law impose on the Company a liability for a defect or fault in the Goods 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:
- 19.3.1. replacement or repair of the Goods;
 - 19.3.2. supply of equivalent Goods; or
 - 19.3.3. payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods,
- and in any case:
- 19.3.4. the Company will not be liable for any Consequential Loss or Damage or any other loss or damage; and
 - 19.3.5. the Company's total liability to the Customer is limited to the invoice value of the Goods.

20. WARRANTIES AND WARRANTY CLAIMS

- 20.1. The Company warrants that the Goods are free of substantive defects.
 - 20.2. The Company also warrants to the Customer that the Goods will be supplied in an undamaged condition.
 - 20.3. Except for any guarantees imposed by the *Competition and Consumer Act 2010* (Cth) and the warranties stated in clauses 20.1 and 20.2, the provision of any other act or law implying terms, conditions, guarantees and/or warranties which might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.
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- 20.4. On discovery of any defect in the Goods, the Customer must notify the Company in writing of such defect.
- 20.5. All warranty claims must be received by the Company within thirty (30) days of the day of delivery. This warranty extends only to the Customer and to no other person.
- 20.6. The Customer's failure to provide written notice to the Company within the required time of any alleged breach of the above warranty will release and discharge the Company from any obligation or liability for that breach of warranty.
- 20.7. The Customer must not carry out any remedial work to allegedly defective Goods without first obtaining the written consent of the Company to do so otherwise all of the Company's warranties will be voided to the full extent permitted by law.
- 20.8. The warranties stated in clauses 20.1 and 20.2 do not apply in circumstances where the Customer treats, alters, incorporates the Goods into or with another product of the Company or any third party, or otherwise varies the Goods as supplied by the Company.

21. CATALOGUES

Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, form no part of the Contract between the Company and the Customer, and are not binding on the Company.

22. CUSTOMER'S PROPERTY

- 22.1. All Customer's property in or under the Company's custody or control will be entirely at the Customer's risk in regard to loss or damage from any cause whatsoever.
- 22.2. The Company will have a first and paramount lien upon all Customer's property (including but not limited to dies provided by or manufactured for the Customer) which is in the Company's possession or control until all accounts due to the Company by the Customer are paid in full.
- 22.3. The Company may sell any of the Customer's property on which the Company has a lien if:
 - 22.3.1. a sum in respect of which the lien exists is presently payable:
 - 22.3.2. the Company has, not less than fourteen (14) days before the date of the sale, given the Customer a written notice setting out, and demanding payment of such part of the sum in respect of which the lien exists as is presently payable; andthe Customer has failed to pay the sum referred to in the notice.
- 22.4. The proceeds of the sale will be applied by the Company:
 - 22.4.1. firstly to cover the costs of the sale;
 - 22.4.2. secondly in payment of such part of the sum in respect of which the lien exists as is presently payable; and
 - 22.4.3. by way of accounting to the Customer.

23. TOOLING

- 23.1. If the Company agrees to supply Tooling to the Customer then the Tooling remains the property of the Company and despite the fact that the Customer may have borne or contributed to the cost of the development and manufacture of the Tooling.
- 23.2. The Company reserves the right to recall the Tooling from the Customer at any time.

24. PERSONAL PROPERTY SECURITY

- 24.1. The Customer acknowledges that if the Company has a security interest in:
- 24.1.1. the Goods;
 - 24.1.2. the proceeds of the Goods;
 - 24.1.3. the Customer's property referred to in clause 22.1; and/or
 - 24.1.4. the Tooling,
- for the purposes of the PPSA then the Company may register its security interest in the Goods, proceeds, Customer's property and/or Tooling, as the case may be, on the PPSR.
- 24.2. The Customer undertakes, at its own expense, to promptly do anything (such as supplying information) which the Company requests and reasonably requires the Customer to do for the purposes of ensuring that the security interest is enforceable, perfected or otherwise effective.
- 24.3. The Customer acknowledges that if the Company has a security interest in the Goods, proceeds, Customer's property and/or Tooling, as the case may be, then the Company may register its security interest on the PPSR and the Customer, in accordance with section 157(3)(b) of the PPSA, waives the right to receive notification of the registration.

25. COPYRIGHT

- 25.1. The Customer warrants that:
- 25.1.1. the drawing of any extruded shape submitted by the Customer; and
 - 25.1.2. any Tooling made in accordance with such drawing; and
 - 25.1.3. any article of extruded design made from such Tooling,
- does not infringe the rights of any third party (whether copyright, registered design pattern, trademark, confidential information or otherwise) or breach any applicable law.
- 25.2. In the event of any Claim or order for costs (including legal expenses on a solicitor and client basis) referable to the rights and/or laws referred to in clause 25.1 being made or brought against the Company, the Customer must fully indemnify the Company and keep the Company indemnified from and against same.

26. SAMPLES

Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

27. SPECIFICATIONS

- 27.1. Unless otherwise agreed in writing, the Goods are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Goods or, if no such specification has been published or set out, subject to such specification as is normally regarded as being commercially acceptable.
- 27.2. Where any specification for the Goods are to be supplied by the Customer, they must be supplied in a reasonable time to enable the Company to complete delivery by the date for delivery.

28. CONTRACT

- 28.1. The terms of the Contract between the parties are wholly contained in these Terms and any other writing signed by both parties.
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- 28.2. The Contract under these Terms is deemed to have been made at the Company's place of business in Sydney, New South Wales and any cause of action is deemed to have arisen there.
 - 28.3. The Contract is governed by the law of New South Wales.
 - 28.4. The Customer irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from those courts about any proceedings in connection with these Terms and waives any right to object to proceedings being brought in those courts for any reason.
 - 28.5. The provisions of the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 does not apply to any Goods supplied by the Company to the Customer.

29. **FORCE MAJEURE**

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's 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 of public authority, explosion or accident).

30. **DISPUTE RESOLUTION**

- 30.1. The Company and/or the Customer must not commence any court proceedings in respect of a dispute arising out of these Terms unless it has complied with this clause 30.
- 30.2. Should at any time a party assert that a dispute exists between the parties arising out of or in connection with these Terms, then that party must submit a written notice ("**Notice of Dispute**") to the other party specifying:
 - 30.2.1. the nature of the dispute that has arisen;
 - 30.2.2. the major issues for determination; and
 - 30.2.3. the relief or outcome being sought.
- 30.3. Within seven (7) days from receipt of the Notice of Dispute, the other party must provide a written response ("**Notice of Response**") stating its position in relation to the dispute, including:
 - 30.3.1. any additional issues that should be referred for determination; and
 - 30.3.2. any comment on the relief or outcome referred to in the Notice of Dispute.
- 30.4. During the fourteen (14) day period after the Notice of Response is issued, the parties must take reasonable steps to seek to resolve the dispute.
- 30.5. If the dispute is not resolved within the period referred to in clause 30.4 then the parties must, within an additional fourteen (14) days agree to refer the dispute to a single expert for determination.
- 30.6. If the parties are unable to agree on a expert within the time stipulated in clause 30.5, then either party may refer the dispute to an expert as nominated by Unisearch Expert Opinion Services, for determination.
- 30.7. The determination of the expert:
 - 30.7.1. must be in writing, accompanied by reasons; and
 - 30.7.2. will be final and binding on the parties as to any findings of fact relating to any matter arising from these Terms.
- 30.8. The parties are to bear their own costs of the dispute and the costs of the expert are to be borne by the party found to be at fault by the expert and, in the event that no such finding is made, the costs are to be borne by the parties equally.

31. **WAIVER OF BREACH**

No failure by the Company to insist on strict performances 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.

32. NO ASSIGNMENT

Neither the Contract nor any rights arising 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.

33. SEVERABILITY

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

34. INTERPRETATION

In these Terms:

- 34.1. **"Claim"** means a claim, action, suit, demand, proceeding, damage, loss, cost, expense or liability incurred or suffered by the Company.
 - 34.2. **"Company"** means Preformed Line Products (Australia) Pty Limited ABN 27 004 533 877 and its successors and assigns.
 - 34.3. **"Consequential Loss or Damages"** means all or any of the following:
 - 34.3.1. loss of profit;
 - 34.3.2. loss or denial of opportunity;
 - 34.3.3. loss of use;
 - 34.3.4. loss of revenue;
 - 34.3.5. loss of production;
 - 34.3.6. loss of labour;
 - 34.3.7. loss of access to markets;
 - 34.3.8. loss of goodwill;
 - 34.3.9. loss of anticipated savings;
 - 34.3.10. loss of business reputation including future reputation;
 - 34.3.11. loss arising from adverse publicity;
 - 34.3.12. damage to credit rating;
 - 34.3.13. removal costs;
 - 34.3.14. re-installation costs;
 - 34.3.15. commissioning costs;
 - 34.3.16. increase in operating costs;
 - 34.3.17. increase in maintenance costs;
 - 34.3.18. financial costs;
 - 34.3.19. any indirect, remote, abnormal or unforeseeable loss;
 - 34.3.20. any consequential loss or damage not included in the above; and
 - 34.3.21. any similar loss whether or not in the reasonable contemplation of the parties at the time entry into the Contract, and in any case whether arising out of contract or tort (including negligence) or by statute or otherwise, at law or in equity.
 - 34.4. **"Contract"** means the contract for the sale of the Goods by the Company to the Customer.
 - 34.5. **"Customer"** means the party to whom the Company has agreed to sell the Goods.
 - 34.6. **"Goods"** means the goods agreed to be sold by the Company to the Customer.
 - 34.7. **"GST"** means the Goods and Services Tax imposed by a *New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act and/or regulations.
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- 34.8. **“Insolvency Representative”** includes but is not limited to a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person.
 - 34.9. **“PPSA”** means the *Personal Property Securities Act 2009* (Cth).
 - 34.10. **“PPSR”** means the personal property security register created under the PPSA.
 - 34.11. **“Terms”** means these terms and conditions of sale as amended from time to time.
 - 34.12. **“Tooling”** means any tooling supplied by the Company to the Customer from time to time.
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