

OneTemp Pty. Ltd.

TERMS & CONDITIONS OF SALE

All quotations, offers and contracts are subject to the Terms & conditions given below to the exclusion of all others unless otherwise agreed by a Director of OneTemp Pty. Ltd. in writing. Any statement made on any form issued by the customer shall not operate to defeat the intent of these Terms & Conditions.

1. DEFINITIONS

OneTemp means OneTemp Pty. Ltd. ABN 54 494 200 913 and includes its successors and assigns;

"Customer" means the person whose order is received by OneTemp together with his or her heirs executors administrators successors and assigns;

"Products" means the Products supplied by OneTemp Pty. Ltd.;

"Quotation" means the quotation by OneTemp Pty. Ltd. to the customer for the supply of the Products; and

"Price" means the price for the Products appearing in the Quotation.

2. PRICE

"Quotations are subject to acceptance within 30 days of the date of Quotation and thereafter are subject to review by OneTemp GST is not included in Price and shall be payable by Customer in addition to Price. Customer acknowledges that Price is based upon customs duties and exchange rates applying at the date of Quotation or if there is no written Quotation, the date of receipt by OneTemp of customer's order. OneTemp may increase Price to the extent that the cost of supplying Products is increased by 3% as a result of increases in customs duties and exchange rates.

3. DELIVERY

OneTemp shall deliver Products by making them available at its warehouse to Customer and unless otherwise provided in writing in Quotation, Products dispatched from OneTemp's warehouse shall be at the customers expense and risk.

The delivery records of OneTemp shall be prima facie proof of delivery of Products in the quantity and of the description stated in Quotation in good order to Customer.

The date of delivery stated (if any) on Quotation is the estimated date of delivery only and OneTemp shall be under no liability for any loss or damage howsoever arising if Products are not delivered by that date.

OneTemp shall not be liable to Customer for any loss, damage, or expense suffered or incurred by Customer if OneTemp cannot carry out any of its obligations hereunder because:

It is unable to obtain the necessary materials to produce or manufacture Products:

Events beyond its or its suppliers or contractors control affect directly or indirectly OneTemp's ability to deliver Products or otherwise comply with a contract with Customer.

OneTemp's responsibility of Products ceases on signing of the delivery docket. If Customer fails to sign the delivery docket, Products will be deemed to have been delivered in good order and condition unless shortage, damage or other fault is reported by Customer to OneTemp within 24 hours of the delivery and confirmed in writing by Customer to OneTemp within 7 days of that date.

Where OneTemp delivers Products by more than one shipment, each shipment shall be deemed to be sold under a separate contract. Any failure on the part of OneTemp to deliver within the time stated shall not entitle Customer to repudiate the contract with regard to the balance remaining undelivered.

4. LIABILITY LIMITATION

The total of any claims made by Customer for defective workmanship, defects as a result of Products supplied by OneTemp or any other losses or damages incurred by Customer as a result of any act or omission of OneTemp shall be limited to Price, or the amount of loss or damage incurred, whichever is the lesser.

5. WARRANTY OF QUALITY

Products are guaranteed against faulty workmanship, materials or design for a period of 12 months from the date of delivery or longer if specified in writing after which OneTemp has no further liability whatsoever.

Any complaints regarding the quality of Products supplied must be made in writing to OneTemp within 7 days of delivery of Products. If OneTemp is satisfied that Products are of legally inadequate quality, it may replace Products or reimburse Customer to the extent of price.

OneTemp shall not be liable for any loss or damage whether direct or consequential resulting from the use or application of Products or from further processing of products, whether due to defects in Products or otherwise even if such loss or damage is the result of the negligence of OneTemp.

Where the Trade Practices Act 1974 implies conditions or warranties into the contract arising from or incorporating these conditions, the liability of OneTemp in the event of a breach of such a condition or warranty (other than a condition or warranty implied by section 69 of that Act) shall be limited, subject to section 68A of the Act, to:

In the case of goods, the repair or replacement of the goods, at OneTemp's option and in the case of services, the re-supply of the services.

All other implied conditions and warranties are hereby excluded to the full extent permitted by law.

6. PAYMENT

Customer must pay Price in full with its order unless credit terms have been previously arranged in writing in which case payment must be made on or before the last day of the month which immediately follows the month in which the Products were delivered to Customer. Time shall be of the essence in respect of the payment of Price.

Overdue amounts may be subject to interest from the date payment was due but without prejudice to OneTemp's right of recovery. Customer shall also reimburse all costs and expenses including legal costs (on a solicitor/client basis) incurred by OneTemp in the collection of any overdue account.

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7. TITLE AND RISK

The ownership of, title to and all legal and beneficial property in Products delivered to Customer shall only be transferred to Customer upon payment in full to OneTemp of all amounts whatsoever payable by Customer. Risk shall pass to Customer upon delivery. Until such time as all amounts whatsoever outstanding to OneTemp have been paid in full, the relationship between the parties shall be fiduciary and Customer shall hold Products as bailee for OneTemp.

OneTemp authorizes customer to sell in the ordinary course of business Products that have not been paid for but only as agent for OneTemp and only after Customer has sold all other Products of the same description (not being OneTemp's Products) belonging to Customer. Customer shall hold any claims Customer has against a third party in respect of any such sale on trust for OneTemp. OneTemp need not be bound by any contracts with third parties to which Customer is a party. Until such time as all amounts whatsoever outstanding to OneTemp by Customer have been paid in full, Customer shall hold any funds received from any disposition by Customer of any OneTemp products in trust for OneTemp. Notwithstanding any terms of credit that may be granted to Customer by OneTemp, Customer shall account to OneTemp for the price of OneTemp products once the OneTemp products are resold by Customer and the proceeds of sale received by Customer.

Customer shall at all times store any OneTemp Products that have not been paid for in such a manner that they are clearly identifiable as being the property of OneTemp. In any event, records shall be kept by Customer of any OneTemp Products in the possession of Customer including but not limited to serial numbers (if any) and sufficient records shall be kept or practices adopted by Customer to enable OneTemp to identify its property. If for any reason OneTemp products become mixed with non-OneTemp Products such that OneTemp products cannot be clearly identified, the parties hereby agree that Customer shall be deemed to have disposed of the non-OneTemp Products first.

All agreements as to the granting of credit by OneTemp (if any) to Customer shall automatically terminate and all amounts whatsoever outstanding to OneTemp by Customer shall be immediately due and payable by customer to OneTemp upon occurrence of any of the following events:

- If Customer commits any act of bankruptcy or compounds or makes any arrangements with his creditors or executes a bill of sale over any of his goods or if any execution or distress is levied upon the goods of Customer;
- If Customer being a company is wound up either compulsorily or voluntarily or a receiver of its assets is appointed; and
- If Customer fails to pay all amounts whatsoever to OneTemp as and when they become due and payable by Customer to OneTemp
- If before or after Products are supplied to Customer they or any of them become a constituent or component of another product, OneTemp shall have all legal and beneficial title and interest in such aforesaid product as if they were Products supplied Pursuant to Clause 7 hereof.

8. WARRANTIES AND LIABILITY

OneTemp will use its best endeavors to comply with its obligations under these conditions, however, it will not be liable to Customer for any reason whatsoever including for breach of these conditions unless such breach is serious and deliberate, and in that case, its liability is limited to the amount contained in Quotation.

9. CANCELLATION OF ORDERS

Customer shall not cancel any order placed with OneTemp for Products without the written consent of OneTemp and payment to OneTemp of any loss incurred by OneTemp as a result of such cancellation.

10. CREDITS

Products usually stocked and listed in OneTemp's current price lists may with OneTemp's prior written agreement be credited to 80% of the invoice value thereof if returned within 14 days of delivery free into OneTemp's warehouse in the original packing in an unsoiled and undamaged and re-saleable condition accompanied by a dispatch note stating OneTemp's relevant invoice number, date of purchase and reason for return. OneTemp reserves the right to refuse to credit any Products returned if the claim is considered unjustified after inspection. Products made to special order cannot be credited.

11. VARIATIONS

Variations to the contract made by Customer following receipt of Customer's order shall be subject to adjustment for Price, date of delivery and any additional expenses incurred by OneTemp.

12. INSTALLATION

Where a Contract includes installation or commissioning of plant for Customer, OneTemp's liability is limited to correct installation and proper operation of equipment supplied by OneTemp. OneTemp shall not accept any responsibility whatsoever for the proper functioning of any equipment or services provided by others and if damage to OneTemp's equipment is caused by others the cost of repair or replacement thereof shall be borne by Customer.

13. DATA AND PERFORMANCE

All drawings and printed matter accompanying Quotation or in customer's possession before or after it accepts Quotation are informative only. Performance figures are based on OneTemp's experience and are such as OneTemp would expect to obtain on testing and no liability in respect of any variation thereto shall be accepted by OneTemp unless such performance figures have been specifically guaranteed by OneTemp in writing in which case the performance figures will be subject to recognized tolerance and rejection limits. It shall be Customer's responsibility to ensure that the capacity and performance of Products are sufficient and suitable for Customers' purposes.

14. ENTIRE CONTRACT

These terms and conditions and Quotation comprise the entire contract between OneTemp and Customer and no amendment thereto shall be binding unless made in writing provided that any clerical errors may be corrected by OneTemp.

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