

# White Industries

## Standard Terms & Conditions



### 1. DEFINITIONS

In these terms the following defined terms apply:

**Company** means White Nominees Pty Ltd ABN 97 009 980643;

**Defective Goods** means a Good (or part thereof) that is defective solely because its design, materials contained within it or the way it is manufactured is faulty;

**Force Majeure** means events beyond the reasonable control of the Company and, without limitations includes strikes, lock-outs, slow downs, fire, riot, tempest, war, embargo, governmental act, regulation or request, accident, delay in transportation or inability to obtain necessary labour, materials or manufacturing facilities or default by any manufacturer, supplier, or subcontractor to the Company preventing or hindering the Company in due performance and observance of its duties and obligations under these terms;

**Goods** means any product delivered pursuant to these terms, including castings, equipment, materials and labour;

**GST** means any consumption tax imposed by Government, whether at point of sale or at some other occurrence, by whatever name, which operates during the term of these terms and includes without limitation a goods and services tax, an indirect tax and value added tax;

**Offer** means tender, quotation or any other offer to supply Goods;

**Price** means the price quoted in the Price Lists (published from time to time), Offer or the contract or sale price as the case may be.

**Purchaser** means the company, firm or persons to whom the Company's offer or invoice is addressed and includes successors in title and permitted assigns;

**Sale** means and includes the sale by the Company of Goods as well as any order or Offer made or given by the Company and any contract entered into between the Purchaser and the Company;

**Specifications** means the document containing technical information relating to the functionality and/or of criteria for the Goods;- and

**Warranty Period** means the period from dispatch of the Goods by the Company to the Purchaser up until the earlier to occur of either 18 months after such dispatch or 12 months after the Purchaser first places the Goods into service.

### 2. GENERAL

(a) These terms apply to every sale of Goods by the Company.

(b) Each tender or quotation by the Company is, notwithstanding any rule of law, an invitation to treat only and is not an offer by the Company to the Purchaser.

(c) The Company and the Purchaser agree that these terms constitute the entire agreement between them and that there are no other understandings, representations or warranties of any kind (express or implied) forming part of the agreement between the parties.

(d) Any condition contained in the Purchaser's order, which is inconsistent with, qualifies, or is contrary to these terms, is of no effect unless that condition is expressly accepted in writing by the Company.

(e) The applicable law of the contract is the law of Queensland.

(f) No alteration or variation of these terms is effective unless expressly stated in the Company's tender or quotation or in any other case agreed in writing by the Company.

### **3. OFFER**

(a) Unless otherwise advised in writing to the Purchaser any tender or quotation made by the Company remains valid for 30 days from the date it is made.

(b) Any variation, waiver or cancellation of the Purchaser's order is of no effect unless accepted in writing by the Company. If the Company accepts cancellation of an order then the Company may levy a handling charge of up to 10% of the Price.

(c) As per the Australian Standards, the quantity delivery of five percent over or under the specified quantity shall constitute fulfilment of order unless otherwise agreed to in writing.

(d) If the Purchaser and the Company agree to a variation in the quantity of the Goods, then the Purchaser will, in its absolute discretion, price the Goods either at the rate applicable to the original quantity or the revised quantity.

(e) The Purchaser must ensure that the Goods ordered are fit and suitable for the purpose or application for which they are required by the Purchaser and the Company is under no liability whatsoever if they are not.

(f) The Purchaser is solely responsible for obtaining all necessary permits to comply with all legislation, regulations, by-laws or rules having the force of law in connection with the installation and operation of the Goods.

(g) The prices quoted by the Company are only for the supply of those Goods specified in the quotation and tender and do not apply to any additional Goods supplied by the Company unless agreed in writing by the Company.

(h) Following submission of a tender or quotation the Company is not required to comply with any additional standards, specifications, rules or other requirements proposed by the Purchaser and if such additional standards, specifications, rules or other requirements are proposed by the Purchaser the Company reserves the right to decline to proceed with the tender or quotation or vary it (including the Price).

(i) Any technical assistance provided by the Company is at the Purchaser's expense unless the contract is inclusive of installation, erection or commissioning in which case any technical assistance provided by the Company pursuant to such installation, erection or commissioning is at the Company's expense.

(j) The Price of the Goods does not include training by the Company of the Purchaser's employees, servants or agents.

(k) Unless otherwise notified in writing to the Purchaser, the Goods are of standard design and the Company is not required to comply with tender specifications to the operation of the Goods.

(l) Drawings and documentation supplied by the Company are standard technical commercial literature.

### **4. PRICE**

(a) Unless otherwise agreed in writing, the Price for castings is generally quoted "Free Into Store" and Fabrication items exclude transport and delivery costs, Castings and Fabrication Items exclude customs excise duties and charges, sales taxes and GST all of which must:

i) be paid by the Purchaser; and

ii) if the Company disburses those costs, be refunded to the Company by the Purchaser. Without limitation, the Purchaser must pay to the Company on demand the GST payable by the Company for the Goods.

(b) The Price is subject to alteration without notice and the Price payable by the Purchaser for the Goods ordered is the Price applicable at the date the Goods are dispatched.

(c) The Purchaser must pay to the Company the Price for the Goods:

- i) at the address of the Company stated in the invoice;
- ii) within 30 days from end of month;
- iii) without set-off, discount or by way of exchange of the Purchaser's goods or services; and
- iv) in Australian dollars, unless otherwise agreed in writing by the Company.

(d) If any part of an invoice is disputed, the Purchaser must promptly pay the amount not in dispute according to applicable payment terms.

(e) Without prejudice to its rights to sue for payment or exercise any other remedy where any payment is not made on the due date, the Company has the right to charge interest on the outstanding amount at the interest rate prescribed by the Commonwealth Bank Index Lending Rate for overdrafts above \$100,000.00 plus 5%, calculated from the date of invoice to the actual date of full and final payment.

(f) Where the Purchasers' account is in arrears, the Company may demand payment of the arrears as well as payment in advance for any undelivered Goods before proceeding with manufacturing or making any further delivery of Goods under these terms or any other agreement or arrangement between the Company and the Purchaser

(g) Notwithstanding the above, the Company reserves the right to restrict or withhold the sale of further Goods on credit if the Company has reason to doubt the Purchaser's ability to pay for such purchases.

(h) The Company may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgments or invoice.

(i) All patterns will be retained until all outstanding accounts are paid in full.

## **5. TITLE**

(a) Until the Purchaser has paid the price for the Goods supplied under these terms:

- i) The Company is and remains the legal and equitable owner of the Goods;
- ii) The Purchaser holds the Goods as a fiduciary bailee for the Company and must store the Goods safely and in a manner that clearly shows the ownership of the Company; and
- iii) The Purchaser grants to the Company, its employees and authorised representatives an irrevocable licence to enter the Purchaser's premises (or any other premises either under the control of the Purchaser or where the Goods are stored on behalf of the Purchaser) at any time to inspect the Goods and, if the Purchaser defaults in paying for those Goods, to use reasonable force to take possession of the Goods without liability for trespass, negligence, payment of any compensation to the Purchaser or other person or otherwise. Any exercise of this right is without prejudice to any other rights the Company has against the Purchaser, including the right at all times to make a claim against the Purchaser for the invoiced price of the Goods, when due and payable.

(b) Clause 5(a) also applies until the Purchaser has paid all monies owing to the Company on any account whatsoever, including any costs incurred by the Company because of the Purchaser's failure to pay or late payment of any such monies and the costs incurred by the Company in recovering the Goods from the Purchaser.

(c) Notwithstanding clause 5(a), the Purchaser may, subject to clause 5(d), re-sell and deliver the Goods in the ordinary course of its business but if the Purchaser:

i) is paid for that sale, the Purchaser holds all of the proceeds of sale on trust for the Company and must promptly pay those proceeds to the Company (keeping them separate and identifiable from the Purchaser's other funds until it has done so);

ii) intermingles those proceeds of sale with the Purchaser's other funds, the Purchaser acknowledges that the Company has a beneficial interest in those intermingled funds to the extent of the monies owing by the Purchaser to the Company at any time; and

iii) is not paid for that sale, the Purchaser must assign to the Company, if the Company so elects by notice in writing, its claim against the person who bought the Goods from the Purchaser. For this purpose the Purchaser irrevocably appoints the Company as the Purchaser's attorney.

(d) The Purchaser's rights to re-sell the Goods pursuant to clause 5(c) cease if the Company exercises its right to the return of the Goods pursuant to clause 5. The Purchaser also acknowledges that any purported exercise of its rights under clause 5(c) once the Company elects to exercise its rights for the return of the goods (either by notice in writing to the Purchaser or by physical recovery of the Goods pursuant to clause 5(a)) would be outside the ordinary course of the Purchaser's business.

(e) If the Purchaser makes a new object from the Goods (whether finished or not), mixes the Goods with other goods or the Goods otherwise become part of other goods (Combined Goods) then clauses 5(a), 5(b) and 5(c) apply to the Combined Goods as if each reference in those clauses to Goods was a reference to Combined Goods. For these purposes, ownership of the Combined Goods passes from the Purchaser to the Company at the beginning of the first operation by which the Goods become Combined Goods.

(f) If the Purchaser pays for Goods by cheque then payment only occurs when all cheques have been presented and cleared in full.

(g) Notwithstanding the operation of this clause, risk in the Goods (including responsibility for insurance) passes to the Purchaser upon delivery of the Goods to the Purchaser. Delivery of the Goods to a carrier nominated by the Purchaser constitutes delivery to the Purchaser (regardless of who pays for freight).

(h) Each sub-clause of this clause is intended to operate separately from the rest. If any sub-clause of this clause is held to be invalid then it will be severed from the rest of the clause (which continues in full force).

## **6. DELIVERY**

(a) The Company will make all reasonable efforts to meet any date for delivery of the Goods agreed between the Company and the Purchaser. Where a delay in delivery is caused by Force Majeure the time for delivery is extended by a reasonable period.

(b) The Company reserves the right to dispatch the Purchaser's order in one delivery or by instalments. Where the Company acknowledges an order which provides for delivery by instalment the Company is entitled to separate payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment does not entitle the Purchaser to repudiate the contract as to any remaining instalments.

(c) All statements or forecasts of delivery times made by the Company are made in good faith but are estimates only, not commitments. The Company is not bound by any such estimate.

(d) Where the Purchaser requests a particular method of delivery and the Company agrees in writing then the Purchaser must pay for the cost of delivery by that method from the point of dispatch of the Goods by the Company. Otherwise the Company will select the method of delivery.

(e) The Company's liability for shortages in the quantity of the Goods is limited to making up the shortages. The company is not liable for any claim for shortages in quantity unless the Purchaser notifies the Company of the shortages in writing within 7 days of delivery and provides the Company a reasonable opportunity to take all necessary steps to investigate the claim.

(f) Claims made for damage or loss in transit must be made against the carrier in the prescribed manner.

(g) Prior to acknowledging delivery to the carrier the Purchaser must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Goods then the Purchaser must endorse the carrier's note accordingly.

(h) The Company is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the Goods both when the Company has not packed the Goods and when the Purchaser has nominated a carrier.

(i) Without limiting the generality of clauses 6(a) and (k), if delivery of the Goods by the Company is delayed by:

i) the Purchaser's failure to return to the Company within 14 days of the

submission date the drawings submitted by the Company; or

ii) the Purchaser varying the order after it has been accepted by the Company, the Company may in its absolute discretion review the order and vary the Price and delivery date accordingly.

(k) The Company is not liable to the Purchaser for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods.

## **7. WARRANTY**

### **Goods manufactured by the Company**

(a) The Company's liability for any Defective Goods, or for any loss, injury, or damage attributable thereto is limited to repairing or replacing, at the Company's option, those Defective Goods that arise within the Warranty Period PROVIDED THAT:

i) the Company is notified within 7 days of the alleged defect first coming to the Purchaser's notice and within the Warranty Period; and

ii) the Defective Good is returned promptly to the Company's work at the Purchaser's cost if the Company so requires and the Company will return the repaired or replaced Goods at the Company's cost to the original contract delivery point (unless otherwise arranged); and

iii) any unauthorised repairs or alterations to the Goods invalidates this warranty.

(b) This warranty does not cover damage from misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.

### **White Hub and Stub Axles (Product Range for the Agricultural Industry)**

(c) The Company warrants that the Hub and Stub Axles will perform in accordance with the Specifications.

(d) If, within 90 days after the Acceptance Date, the Purchaser notifies the Company in writing:

i) that the Hub and Stub Axles are not performing substantially in accordance with the Specifications; and

ii) of the alleged defects or errors, with sufficient particularity to enable the Company to remedy the defects or errors then the Company must at its own expense, commence to examine the Hub and Stub Axles within 1 month of notification and, as soon as practicable thereafter, rectify the defect or error or replace the Hub and Stub Axles.

(e) The warranty contained in Clause 7(c) and (d):

i) is subject to the Purchaser having fully complied with its obligations under these terms; and

ii) is not a warranty that the results obtained from the Hub and Stub Axles will be in accordance with the Purchaser's expectations; and

iii) does not operate where the substantial non-performance arises from the installation of the Hub and Stub Axles by the Purchaser, the nature or operation of the equipment on which the Hub and Stub Axles are used or the use of any materials not provided by the Company; and

iv) is subject to the Purchaser paying the Company's reasonable costs of its representatives travelling to the site where the Hub and Stub Axles are located (calculated at an hourly rate specified in advance by the Company plus actual travel costs and sustenance) where that site is 100 kilometres or more from the Company's principal place of business.

### **Other Goods**

(f) Subject to these terms, the Company will transfer and assign to the Purchaser all warranties that the Company has been given by the manufacturer or developer of any Goods not manufactured or developed by the Company.

### **8. GOODS RETURNED FOR CREDIT**

(a) The Purchaser may return Goods for credit only with the Company's prior written consent.

(b) The Purchaser must deliver to the Company Goods returned for credit free into store, unsoiled and undamaged and accompanied by a return of goods authority form (RMA) stating the original invoice number, the date of purchase and the reason for return.

(c) The Purchaser can not return for credit non-stock or indent items or Goods built to order.

(d) The Purchaser can not return for credit Goods more than 30 days from the date of delivery.

(e) Unless otherwise agreed in writing, the Purchaser must pay a restocking charge of 15% of their invoice amount upon Goods returned for credit.

(f) The Company will not give credit for the incorrect supply of Goods unless the Company receives written confirmation of the order from the Purchaser prior to dispatch of the Goods.

(g) The Company will not accept the return of Goods for credit if the total net Price exclusive of GST of Goods returned is less than \$250, except where the Goods are returned under warranty.

### **9. DRAWINGS AND DOCUMENTATION**

(a) Any descriptive specifications and drawings and any weights and dimensions furnished by the Company with any tender or quotation and any statement, description, illustration or other information in the Company's catalogues, price lists and other advertising matter are intended merely to give a general idea of the Goods and will not form any part of the tender or quotation.

(b) Following agreement to buy and sell Goods, if the purchaser requests and at its expense, the Company may (in its discretion) provide to the Purchaser certified drawings.

(c) Any studies, drawings or other documents submitted by the Company to the Purchaser remain the property of the Company and constitute the confidential information of the Company and the Purchaser must not use them for any purpose other than in accordance with these terms nor transmit them to third parties.

(d) If a tender or quotation is not completed, the Purchaser must return to the Company any studies, drawings or other documents submitted with the Company's offer within 14 days of expiry of the tender or quotation.

(e) Any performance figures stated in the tender or quotation are subject to the recognised tolerance and rejection limits applicable to those figures.

## **10. WORKS TESTS AND PERFORMANCE**

(a) Prior to delivery of the Goods, the Company may at its own expense carry out any tests on the Goods in accordance with the Company's standards for work testing. Any additional tests required by the Purchaser are at the Purchaser's expense.

(b) After 7 days notice that the Company is ready to conduct any test required by the Purchaser, the test may be conducted by the Company in the Purchaser's absence and the Purchaser is deemed to have been present.

(c) If the results of the tests are outside any performance limits specified in the contract the Company is allowed a reasonable time within which to rectify performance.

(d) The Company does not guarantee the performance figures stated in the tender or quotation unless such figures are expressly guaranteed by the Company in writing.

## **11. TERMINATION**

(a) The Company may terminate this agreement without notice if the Purchaser:

i) is in breach of a term of these terms and fails to remedy the breach within 14 days of notice in writing by the Company specifying the breach and requesting the Purchaser to remedy it; or

ii) has failed or refused to take delivery of the Goods or any part thereof and such failure or refusal continues for a period of 7 days after the Company advises the Purchaser that the Goods are ready for delivery; or

iii) is declared bankrupt, resolves to go into liquidation or has a petition for its bankruptcy or winding up presented or enters into a scheme or arrangement with its creditors or if any liquidator, receiver, official manager or administrator is appointed to the Purchaser or concerning any of its property.

(b) If such termination occurs then the Company is, after taking into account payments made by the Purchaser to the Company, entitled to payment for work done and expenditure made under these terms up to and including the date of termination and any direct and indirect loss suffered by the Company, including without limitation to the Company's loss of profit and the legal costs of the Company (on a full indemnity basis) incurred because of the termination or any prior breach and in exercising any rights and remedies as a consequence of the termination or any prior breach.

(c) Termination of these terms is without prejudice to the rights of the Company accruing up to the date of termination.

(d) If by reason of the operation of Force Majeure the Company is unable to perform or observe its obligations under these terms, the Company does not breach its obligations so long as Force Majeure continues to operate.

## **12. CANCELLATION**

If the Purchaser cancels or suspends any order of undelivered Goods without the Company's prior written consent, the Company is entitled to charge the following cancellation fees:

(a) where the Goods are listed in the Company's current Australian catalogue or price list for the time being as stock items, a cancellation fee of 15% of the Price; or

(b) where the Goods are listed in the Company's current Australian catalogue or price list for the time being as non-stock items, a cancellation fee of 100% of the Price; or

(c) where the Goods are not listed in the Company's current Australian catalogue or price list for the time being, a cancellation fee of 100% of the Price.

(d) Where the Goods are manufactured by the Company, the Company is entitled to liquidated damages assessed as follows:

- i) all cancellation costs associated with the return of Goods to suppliers; and
- ii) where manufacture of the equipment has commenced, all direct labour cost associated with work performed to date and the associated labour cost to dismantle components which are to be returned to suppliers; and
- iii) a charge of 25 % of contract value for recovery of administration and design costs, overhead recovery and loss of profit.

### **13. SEVERANCE**

If any provision or part of any provision of these terms is unenforceable then it will be severed from the rest and such unenforceability does not affect any other part of such provision or any other provision of these terms.

### **14. EXCLUSIONS**

(a) The Company is not liable under any circumstances whatsoever for:

- i) any injury, damage or loss, including consequential damage or loss (including without limitation loss of market, loss of profit or loss of contracts) whether to persons or property arising out of this sale or the Goods supplied pursuant to it including any defects therein or anything connected therewith or with repair or replacement or any other work related thereto and without limitation, the Company is not liable for any loss of profit or other special damage or consequential damages arising out of any latent or other defect in the Goods; or
- ii) any reduction in the Price for any shortages in any delivery, unless the shortage is noted by the Purchaser on the Company's delivery note for that delivery; or
- iii) or any loss of or damage to the Goods whilst in transit.

(b) If liability may not be excluded by this sale and where the Goods are not of a kind ordinarily acquired for personal domestic or household use or consumption then the liability of the Company for a breach of a condition or warranty implied by the Trade Practices Act (other than a condition or warranty implied by Section 69) is limited to repairing the Goods or at the Company's option, replacing the Goods or supplying equivalent Goods. In no event is the Company liable to the Purchaser or any third party, in contract or tort, for more than the Price.

### **15. INDEMNITIES, PATENTS AND DESIGN RIGHTS**

(a) The Purchaser warrants that any design or instructions furnished or given by it will not cause the Company to infringe any patent, registered design, trademark or copyright in the performance of this agreement.

(b) The Purchaser indemnifies the Company against all claims, damages and costs which arise out of any infringement by the Company of any patent, registered design, trademark or copyright as a result of any work carried out by the Company from any information, specifications, designs or other data supplied by the Purchaser.

(c) All patents, registered designs, trademarks or copyright held by the Company concerning the Goods remain the absolute property of the Company and must not be reproduced or disclosed without the Company's prior written consent. The Purchaser must not, without the Company's prior written consent, copy or allow others to copy any drawings, equipment or part thereof supplied by the Company.

(d) The Purchaser must indemnify the Company for any claims, demands, damages, proceedings, costs, charges and other expenses caused by, arising out of or in any way connected with any special, consequential, direct or indirect loss, damage, harm or injury suffered by any person arising out of this sale or the Goods supplied pursuant to it.

### **16. DISPUTES**



(a) A party who desires to submit a dispute for resolution shall commence the dispute resolution process by providing the other party with written notice of the dispute (Notice of Dispute). The Notice of Dispute shall contain a brief statement of the nature of the dispute ("Dispute") and the relief requested.

(b) The parties shall nominate the representatives attending the meeting and give written notice of the attendees to the other party at least four (4) days before the date of the meeting.

(c) The parties shall seek to resolve any Dispute by negotiation within fourteen (14) days after the date of the receipt by each party to the Dispute of the Notice of Dispute. The parties shall meet at a mutually acceptable time and place to exchange relevant information in an attempt to resolve the Dispute. The parties shall endeavour to resolve the dispute in good faith.

(d) If a party intends to be accompanied at the meeting by a lawyer, the other party's representatives shall be given written notice of such intention at least three (3) days in advance and may also be accompanied at the meeting by a lawyer.