



1. AGREEMENT TO TERMS

DURATRAY INTERNATIONAL PTY LTD ("Company") and the addressee named herein ("Buyer") agree that these terms and conditions ("Sale Conditions") shall apply to the supply of all goods sold and services provided ("Goods") by the Company to the Buyer despite any prior agreements, prior offers, dealings or trade usage, or any terms communicated by the Buyer to the Company. These Sale Conditions may only be amended by the written agreement of the parties.

2. QUOTATIONS/TENDERS

If the Company has provided a quotation or tender specifically for Goods and/or Services ("Quotation"):

- (a) these Sale Conditions shall apply to the Quotation, but in the event of any inconsistency the terms of the Quotation shall take precedence;
- (b) subject to paragraph (c), the price payable shall be the Company's price as at the date of the Buyer's acceptance of the Quotation; and
- (c) unless otherwise stated in the Quotation, the price set out in a Quotation shall remain valid for acceptance by the Buyer for thirty (30) days after the date of the Quotation or until such other time as may be advised by the Company in writing.

3. ORDERS

If the Company has not provided a Quotation:

- (a) the Buyer's order ("Order") is subject to acceptance in writing by the Company; and
- (b) the price payable for the Goods is the Company's current price as at the date of the Company's acceptance of the Order.

4. VARIATION OR CANCELLATION

After the Buyer's acceptance of a Quotation or the Company's acceptance of an Order:

- (a) no change in the specification of the Goods and/or Services shall bind the Company, unless the Company expressly agrees to the change in writing (including any amended price); and
- (b) if the Buyer cancels the Order for the Goods and/or Services, the Buyer must reimburse the Company for any loss, damage or expenses incurred by the Company in connection with or otherwise in anticipation of the supply or proposed supply of the Goods and/or Services.

5. CHARGES AND TAXES

Unless expressly stated otherwise, the price of the Goods and/or Services excludes all freight, transportation, shipping, insurance, packing, crating or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, goods and services, excise or other taxes, and the Buyer shall pay and indemnify the Company for those charges or taxes. If the Company expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the Quotation or acceptance of the Order.

6. PAYMENT

- (a) Except as otherwise expressly agreed or as stated in a Quotation, the Buyer shall pay for the Goods and/or Services upon placement of an Order or acceptance of a Quotation. Time shall be of the essence in respect of payment for the Goods and/or Services.
- (b) If payment is not made by the due date for payment, the Buyer shall pay to the Company on demand interest at the rate of one and a half (1.5%) percent calculated and capitalised monthly until paid.

7. GST

If a party makes a taxable supply in connection with the Sale Conditions, the supplier may, in addition to any other consideration recoverable in respect of the taxable supply, recover from the Buyer the amount of any GST on the taxable supply. Terms used in this clause have the meanings given in the A New Tax System (Goods and Services Tax) Act 1999.

8. DELIVERY

- (a) The Company will endeavour to deliver the Goods on or before the agreed date for delivery ("Delivery Date"), but:
 - (i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, war or any cause beyond the reasonable control of the Company; and
 - (ii) the Company will not be liable for any loss, damage or other liability (whether in contract, tort [including negligence] or otherwise) and whether directly or indirectly arising from the Goods not being delivered by the Delivery Date for any reason.
- (b) The Buyer must not return any of the Goods without the prior written approval of the Company. Any agreed returns may be subject to a 50% handling/restocking fee. Goods specifically manufactured by the Company to the Buyer's specification are non-refundable.

9. RISK AND PROPERTY IN GOODS

- (a) The Goods shall be entirely at the risk (including loss or damage) of the Buyer from the time of delivery of the Goods ex the Company works. The carrier of the Goods shall be taken to be the agent of the Buyer even if engaged or paid by the Company.
- (b) The Company retains full title to the Goods until the Company receives payment in full for those Goods and all other amounts owed by the Buyer to the Company.
- (c) Until the Buyer pays the Company in full for the Goods, the Buyer must:
 - (i) keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Company;
 - (ii) not use, install, resell, encumber or dispose of the Goods; and
 - (iii) hold the proceeds of any resale, disposal or other dealing with the Goods in breach of this clause separate from its own funds and in trust for the Company and account to the Company for those proceeds on demand.

10. INTELLECTUAL PROPERTY RIGHTS

The Buyer acknowledges that the Company retains ownership of its patents, designs, trade marks, copyright and other intellectual property embodied in the Goods and/or Services, and that the Goods embody confidential designs and know how of the Company. The Company grants the Buyer a non-exclusive licence to use the Goods for their intended purpose. The Buyer must not copy or modify the Goods without the Company's prior written consent.

11. WARRANTIES

The Company warrants that upon delivery and for the warranty period set out in the relevant Quotation (if any) the Goods shall comply substantially with the specifications set out in the technical data sheet for the Goods approved by the Buyer (if any), when the Goods are used for their intended purpose. The Buyer acknowledges that all specifications, drawings, and other particulars provided to the Buyer are approximate only. Any description, illustration, or other information contained in any catalogue or any website does not form part of any technical data sheet. The Company excludes all other warranties in relation to the Goods to the maximum extent permitted by law.

12. LIABILITY

The Buyer agrees that:

- (a) the Company shall not be liable for any error, omission or inaccuracy in any technical data sheet or other specification in relation to the Goods and/or Services;
- (b) the Buyer must satisfy itself as to the truth and accuracy of and may not rely for any purpose upon, any advice or information provided by or on behalf of the Company in connection with the Goods and/or Services (including their capabilities, use or operation) or the Sale Conditions;
- (c) except to the extent prohibited by law, the only remedy of the Buyer against the Company for any loss, damage or liability (whether in contract, tort [including negligence] or otherwise) of the Buyer in connection with the Sale Conditions, the Goods and/or Services, the Company's supply of the Goods and/or Services, or the Company's failure to supply the Goods and/or Services to the Buyer in accordance with the Sale Conditions shall be limited to the Company, at its option, replacing or repairing the Goods at the point of manufacture of the Goods, and reproviding the Services; and
- (d) the Company shall otherwise have no liability to the Buyer (whether in contract, tort [including negligence] or otherwise).

13. DEFECTIVE GOODS

- (a) Within fourteen (14) days after the Buyer's receipt of the Goods, the Buyer shall complete any inspection or testing required by it to conform the Goods comply with the Sale Conditions.
- (b) The Buyer must not use the Goods (other than to the extent reasonably necessary for the inspection and testing) before completing its inspection and testing.
- (c) If the Buyer does not comply with this clause, the Buyer shall be taken to have unconditionally accepted that the Goods comply with the Sale Conditions.

14. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

Where the Company incurs any extra costs in relation to the supply of the Goods and/or Services, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the Goods and/or Services caused by or as a consequence of any act or omission of the Buyer, the Company shall be entitled to increase the price by the amount of the extra costs incurred.

15. INDEMNITY

The Buyer must indemnify the Company, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising from any:

- (a) loss of or damage to any property or the death of or injury to any person in connection with the supply to or the Buyer's use of any of the Goods; or
- (b) infringement by the Buyer of the intellectual property rights of any person.

16. SUBCONTRACTING

Unless otherwise agreed in writing the Company may, without the Buyer's consent, engage subcontractors to carry out the whole of or any part of supply or manufacture of the Goods and/or Services.

17. DEFAULT, INSOLVENCY AND TERMINATION

If the Buyer:

- (a) commits a material breach of the Sale Conditions; or
 - (b) is or becomes insolvent or subject to any arrangement, assignment, composition or moratorium of debts with its creditors, management, receivership, liquidation, voluntary administration, winding up or other external administration;
- then the Company may, without affecting the Company's other rights:
- (i) immediately terminate the Sale Conditions by notice in writing to the Buyer; (ii) refuse, suspend or withhold any further supply of the Goods; (iii) enter upon (personally or by its agents) any premises in the possession or control of the Buyer and use reasonable force for the purposes of retaking possession of any of the Goods (title to which has not passed to the Buyer), in which case the sale of those Goods shall be taken to be terminated and the Company shall have no liability to the Buyer whether for trespass, negligence, payment of damages or compensation or otherwise;
 - (iv) terminate any credit arrangement with the Buyer, by notice in writing to the Buyer (in which case outstanding amounts will become immediately due and payable);
 - (v) forfeit any deposit paid for the Goods; or
 - (vi) if payment in addition to a deposit has been made by the Buyer in respect of any of the Goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to the Company or damages incurred by the Company as a result of the termination.

18. DUTIES, LEVIES, AND TAXES

The Buyer shall pay all taxes, levies, duties and assessments of every nature due in connection with the Goods and/or Services supplied and shall make any and all payroll deductions and withholding as required by law and hereby indemnifies and holds harmless the Company from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

19. GOVERNING LAW

The laws of the State or Territory in which the office of the Company which issued the Quotation or accepted the Order shall apply to the Sale Conditions and the parties submit to the jurisdiction of the courts in that State.

ADDITIONAL TERMS AND CONDITIONS FOR "MANUFACTURED GOODS"

20. MANUFACTURED GOODS

Where the Goods are to be manufactured by the Company to a specification prepared by or on behalf of the Buyer ("Manufactured Goods") the following clauses shall also apply.

21. PRICE FOR MANUFACTURED GOODS

Unless otherwise expressly agreed in writing b y the Company, the price for Manufactured Goods is subject to adjustment:

- (a) in accordance with any price variation formula notified by the Company to the Buyer with the Quotation for the Manufactured Goods or upon acceptance of the Order for the Goods; and
- (b) for increases in the Company's cost of labour after the date of the Quotation or acceptance of the Order.

22. BUYER'S EQUIPMENT

Where any tooling or other equipment is provided by or on behalf of the Buyer for use by the Company in the manufacture of the Manufactured Goods ("Buyer's Equipment"):

- (a) the Company shall have no responsibility and will not be liable for any nonconformity of the Buyer's Equipment to any drawings or specifications for the Manufactured Goods;
- (b) the Buyer must satisfy itself as to and ensure that the Buyer's Equipment shall be suitable for its intended purpose;
- (c) the Buyer acknowledges that the Company will not insure the Buyer's Equipment, and the Company shall have no liability (whether in contract, tort [including negligence] or otherwise) to the Buyer for or in connection with any loss of or damage to the Buyer's Equipment or any other goods or materials in the Company's possession in connection with the Manufactured Goods; and
- (d) the Buyer agrees to pay the Company, in addition to the price payable for the Manufactured Goods, any costs incurred by the Company in storing the Buyer's Equipment or carrying out repairs or alterations to the Buyer's Equipment.

23. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by the Company prior to their supply to the Buyer, the Buyer shall pay the costs of that testing (including the cost of certificates) or inspection in addition to the price for the Manufactured Goods, and the results of tests (including as to weight, size, quantity or composition of Manufactured Goods) and inspections shall be final and binding on the Buyer.

24. BUYER'S INFORMATION

Where the Buyer has provided to the Company any design, specification, process, method of working, or any other information in connection with the Manufactured Goods ("Buyer's Information"):

- (a) the Company shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Buyer's Information;
- (b) the Buyer grants to the Company an irrevocable licence to use all copyright, design right or other intellectual property in the Buyer's Information for any purpose connected with the Manufactured Goods;
- (c) the Buyer indemnifies the Company, its agents and employees against all claims, demands, actions, costs (including legal costs), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against the Company in connection with the use of the Buyer's Information (including for infringement of any intellectual property rights); and
- (d) the Company shall have no liability to the Buyer (whether in contract, tort (including negligence) or otherwise) in connection with any error, omission or inaccuracy in the Buyer's Information.

25. PAYLOAD POLICY

Variation occurs naturally in material density, fill factors, and loading equipment, so Duratray deems it necessary to establish a payload policy. This payload policy outlines the guidelines and limitations for the loading of Duratray dump bodies:

- The average monthly payload must not exceed the rated payload of the body
- 90% of all loads must be below 110% of the rated payload of the body
- 10% of all loads may be between 110% and 120% of the rated payload of the body
- No single payload may exceed 120% of the rated payload of the body. No exceptions allowed