

Terms of Sale

1. Definitions

In these Terms of Sale:

Consequential Loss means any loss of revenue, loss or profit (whether direct or indirect), loss of reputation, loss of business, loss of opportunity or loss of goodwill, or any indirect, consequential or punitive loss or damage, irrespective of whether such loss or damage was within the contemplation of the parties at the time the Contract was formed or arises naturally from the event giving rise to the loss or damage.

Contract means the contract between CPE and the Customer for the supply on the terms referred to in clause 2.3;

CPE means Crushing Plant & Equipment Pty Ltd ABN 80 008 274 253;

Credit Terms means the terms and conditions applicable to any credit application to CPE signed by or on behalf of the Customer;

Customer means the person or entity who has ordered goods or services from CPE;

delivered shall, in relation to the goods or any part of them, mean delivery to the Customer in accordance with the terms for delivery set out in the Quotation or Invoice and, where no delivery terms are set out in a Quotation or Invoice, shall mean when CPE notifies the Customer that the goods are available for collection by the Customer from a location advised by CPE;

delivery date means the delivery date for the goods specified in a Quotation or Invoice;

Delivered Goods means such goods which have been delivered to the Customer but, in respect of which, ownership in, and title to, has not yet passed to the Customer;

Force Majeure means anything beyond the control of CPE which prevents CPE from meeting its obligations under the Contract;

goods means any goods, parts, inventory or personal property forming part of the supply;

GST has the meaning given to that term in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Invoice means a tax invoice provided by CPE to the Customer relating to the supply;

Invoiced Amount means the price for the supply (plus GST and any other taxes) as set out in an Invoice;

Order means any purchase order, request or order for the supply issued to CPE by the Customer;

PPSA means the *Personal Property Securities Act 2009 (Cth)*;

PPSR means the Personal Property Securities Register created and governed by the PPSA;

price means the price for the supply (plus GST and any other taxes) as specified in the Quotation or an Invoice;

Quotation means a quote for the supply provided by CPE to the Customer which has subsequently formed the basis of an Order by the Customer;

Secured Money means all money which the Customer is or may become actually or contingently liable to pay to CPE under or in connection with the supply;

services means the services to be performed by CPE as part of the supply;

services delivery date means the delivery date for the performance of the services specified in a Quotation or Invoice;

supply means the supply of goods and the performance of any services by CPE as set out in the Quotation or an Invoice;

tax invoice has the meaning given to that term in the GST Act;

warranty period means the period commencing on delivery of the goods to the Customer and expiring on the earlier of:

- (a) 3 months after delivery; and
- (b) the goods having been used or operated for more than 500 hours.

2. Contract formation

2.1 The parties agree that any Quotation is an invitation to treat and any Order is an offer by the Customer for CPE to provide the supply.

2.2 Upon CPE accepting an Order or issuing an Invoice, a Contract for the supply is formed.

2.3 The terms which apply to the Contract are:

- (a) such terms expressly set out on an Invoice;
- (b) such terms expressly set out on a Quotation;
- (c) these Terms of Sale; and
- (d) the Credit Terms.

The above terms are referenced in order of priority such that the first referenced terms shall prevail over later referenced terms to the extent of any inconsistency.

2.4 Any terms proposed by the Customer, including any set out or referred to in an Order, do not apply unless such terms are expressly included in the terms referred to in clause 2.3.

2.5 Acceptance of delivery of the goods or commencement of the services forming part of the supply will be deemed conclusive evidence of Customer's acceptance of these Terms of Sale.

2.6 These Terms of Sale may not be varied or amended except as set out in a Quotation or an Invoice or otherwise agreed in writing and signed by a duly authorised representative of CPE.

3. Supply, inspection and acceptance

3.1 CPE will provide, and Customer will accept, the supply for the price.

3.2 CPE will use reasonable endeavours to ensure the goods are delivered by the delivery date and, if no delivery date is specified, then within a reasonable time of the Contract being formed.

3.3 CPE will use reasonable endeavours to perform the services by the services delivery date and, if no services delivery date is specified, then within a reasonable time of the Contract being formed.

3.4 CPE may partially perform or deliver the supply and claim payment for such partial performance or delivery. Any such partial performance or delivery will not invalidate the remainder of the Contract.

3.5 If the Customer fails to take delivery of any of the goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the goods to be delivered on time the goods will be deemed to have been delivered on the delivery date and (without prejudice to its other rights) CPE may:

- (a) store or arrange for storage of the goods until actual delivery or sale in accordance with this clause and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or
- (b) following written notice to the Customer, sell any of the goods at the best amount reasonably obtainable in the circumstances and charge Customer for any shortfall below the price.

3.6 Customer will inspect all goods upon delivery and will, within 48 hours of delivery, give notice to CPE if the goods do not meet the description of the goods forming the supply. If CPE does not receive notice in accordance with this clause 3.3, then the goods will be deemed delivered and accepted by the Customer.

3.7 Where any goods do not meet the description of the goods forming the supply, CPE will accept return of the goods provided that the Customer arranges and pays for freight of the goods to CPE.

3.8 Where the Customer otherwise wishes to return any goods, it is at CPE's discretion as to whether it will accept return of such goods. Where CPE accepts return of the goods, it may charge a handling fee equal to 20% of the price for those goods or such higher charge required by CPE's supplier or the manufacturer of the goods.

3.9 Any goods which have been specifically purchased, manufactured, machined or cut to size or the Customer's specification may not be returned.

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3.10 Notwithstanding the other parts of this clause 3, where the Customer is in default under the Contract or under the Credit Terms or any other contract between the Customer and CPE, then CPE shall be entitled to suspend the performance of its obligations under the Contract or terminate the Contract by providing written notice to that effect to the Customer.

4. Payment

4.1 CPE will provide the Customer with an Invoice and the Customer must pay the Invoiced Amount applicable to the supply within 30 days of the end of the calendar month in which the Invoice is dated.

4.2 Interest accrues daily on all amounts overdue for payment from the day immediately following the relevant due date up to the date of actual payment. The rate of interest is a rate equal to 1.5% per month calculated on a daily basis.

5. Title and Risk

- 5.1 Risk in the goods passes from CPE to the Customer on delivery.
- 5.2 Ownership in, and title to, the goods remains with CPE and does not pass to the Customer until CPE has received full payment of the price for those goods and any amount payable to CPE under clause 4.2.
- 5.3 The Customer must insure the Delivered Goods for their full replacement value; must name CPE as an additional insured on the respective policy of insurance; and must provide CPE with evidence that it has complied with these obligations immediately on request.
- 5.4 The Customer must store the Delivered Goods separately from any other goods, parts, inventory or personal property and must ensure the Delivered Goods are easily identifiable as the property of CPE.
- 5.5 The Customer irrevocably authorises and licences CPE to enter onto any premises at which the Delivered Goods are stored to inspect the Delivered Goods and, if the Customer is in default under clause 4, to re-take possession of the Delivered Goods.

6. Purchase Money Security Interest

- 6.1 The Customer charges all of its right, title and interest in, to and under, the Delivered Goods to CPE to secure the full and prompt payment of the Secured Money to CPE. The Customer agrees with CPE that the Contract constitutes a purchase money security interest for the purposes of the PPSA.
- 6.2 The Customer unconditionally and irrevocably consents to CPE registering a financing statement on the PPSR against the Customer in any manner CPE considers appropriate in order to protect its rights and interests created by clause 6.1.
- 6.3 To the extent the law permits, in respect of the purchase money security interest created by clause 6.1, the Customer and CPE agree to contract out of all provisions of the PPSA which the PPSA permits them to contract out of and they each waive any rights they would otherwise have under the PPSA to receive any notices from the other party.
- 6.4 Without limitation to clause 6.3, the Customer waives its right to receive any verification statement it would otherwise be entitled to receive in relation to any financing statement which is registered against it by CPE on the PPSR.
- 6.5 A certificate signed by or on behalf of CPE will be conclusive evidence against the Customer, in the absence of manifest error, as to the amount of Secured Money stated in the certificate.
- 6.6 The Customer must reimburse CPE (on a full indemnity basis) upon demand for:
 - (a) any registration fees which are paid by CPE in connection with clause 6.2; and
 - (b) all and any expenses incurred by CPE in connection with any exercise or attempted exercise of any power, right, authority, discretion or remedy conferred on CPE under these Terms of Sale or the PPSA (including without limitation CPE's legal costs and debt collection costs).

7. Manufacturer's Changes

- 7.1 All samples, drawings, data sheets, descriptive matter, specifications and advertising issued by CPE (or the manufacturer of the goods) and any descriptions or illustrations contained in CPE's or the manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods represented by or described in them. They do not form part of the Contract.
- 7.2 CPE or the manufacturer may make any changes to the specifications, design, materials or finishes of the goods which:
 - (a) are required to conform with any applicable safety or other statutory or regulatory requirements; or
 - (b) do not materially affect their quality or performance.

8. Force Majeure

- 8.1 If CPE's performance of its obligations under the Contract is affected by Force Majeure it will advise the Customer, specifying the nature and extent of the Force Majeure and use reasonable endeavours to minimise the impact of the Force Majeure.
- 8.2 If a Force Majeure continues for more than 90 days, either party may terminate the Contract without liability to the other party by providing the other party with written notice to that effect.

9. Currency and Contingencies

- 9.1 Where any goods are imported into Australia by CPE for delivery to the Customer and, due to fluctuations in exchange rates, the cost of those goods to CPE increases between the time of the Order and the time that payment is made for those goods by CPE, such increase in costs will be reimbursable by the Customer to CPE.
- 9.2 Any duty, charge, sales tax, impost or other expenditure which is not applicable at the time CPE issues a Quotation or Invoice but which is subsequently levied on CPE as a result of the introduction of any legislation, regulation or government policy, shall be payable by the Customer.

10. Warranty

- 10.1 Where the Customer proves to the reasonable satisfaction of CPE that services performed by CPE were defective or were not performed with due skill and care (**Defective Services**), CPE will, at its option, either re-perform those services at no charge to the Customer or refund the price paid by the Customer for those services. However, CPE will be under no obligation to re-perform the services or refund the price paid for the services where the Customer fails to notify CPE of the Defective Services within 3 months of the services having been performed.
- 10.2 Where the Customer proves to the reasonable satisfaction of CPE that goods delivered by CPE are defective in materials or workmanship (**Defect**), CPE will, at its option, repair or replace such goods at no charge to the Customer. However, CPE will be under no obligation to repair or replace the goods where:
 - (a) the Customer fails to notify CPE of such Defect within the warranty period;
 - (a) the Defect is attributable to any fair wear and tear relating to the goods;
 - (b) the goods have been improperly altered in any way, or have been subject to misuse or unauthorised repair;
 - (c) the goods have been improperly installed or connected (other than by CPE);
 - (d) any maintenance requirements relating to the goods have not been complied with; or
 - (e) any instructions as to storage of the goods have not been complied with.
- 10.3 CPE's obligation in clause 10.2 is subject to the goods being returned to CPE at the Customer's cost.
- 10.4 Any goods which have been replaced will belong to CPE. Any repaired or replacement goods will be liable to repair or replacement under the terms specified in clause 10.2 for the unexpired portion of the warranty period.

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10.5 To the extent permitted by law, any warranties, conditions or terms which are not expressly stated in these Terms of Sale are excluded. Where any warranties, conditions or terms are implied by law and are unable to be excluded (including any such warranties, conditions or terms under the *Competition and Consumer Act 2010 (Cth)*), then CPE's liability in respect any such warranties, conditions or terms shall be limited to replacing or re-supplying the goods or re-performing the services.

11. Limitation of Liability

11.1 The parties agree that in no circumstances is CPE liable for any Consequential Loss in connection with the Contract or the supply, irrespective of how such Consequential Loss arises, including whether through breach of contract, tort (including negligence), under an indemnity, under statute or under any other cause of action.

11.2 Any liability of CPE in respect of a failure to provide goods or services in accordance with the requirements for the supply under the Contract shall be limited to CPE (at CPE's option):

- (a) replacing or re-supplying the goods or reperforming the services as the case may be; or
- (b) refunding the price to the Customer.

11.3 Any other liability of CPE under the Contract which is unable to be excluded is limited in the aggregate to the amount of the price.

12. Severability

If any part of these Terms of Sale is unenforceable, it shall be severed from these Terms of Sale and the remaining parts shall continue to apply.

13. Governing Law

These Terms of Sale are governed by the laws of South Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia.

14. Notices

14.1 Any notice under these Terms of Sale must be:

- (a) in writing and addressed to the physical address or e-mail address of the recipient; and
- (b) delivered personally, sent by e-mail or posted and will be deemed to be delivered in the case of:
 - (i) personal delivery, when delivered;
 - (ii) e-mail, at the time shown in the delivery confirmation report generated by the sender's e-mail system or if no such delivery confirmation report is received by the sender within 12 hours of the time the e-mail is sent, unless the sender receives a return e-mail notification that the e-mail was not delivered, undeliverable or similar; and
 - (iii) post, 2 business days after it is posted, except where the time of dispatch is after 4:00 pm on a business day in which case the notice will be deemed not to have been sent until the next business day.