

Dexion Commercial Standard Terms of Trade

1. DEFINITIONS

In these terms and conditions:

“**Goods**” means supplies, stock-in-trade, consumables, services, construction labour, Standard Products, Special Products, Modified Products and merchandise supplied by the company to the Customer;

“**Modified Product**” refers to a limited range of Standard Products with a design modification as specified by the Company.

“**Customer**” means any party who purchases Goods from the Company;

“**Special Product**” means any product manufactured to the Customer’s specifications that will be supplied but not manufactured or finished by the Company;

“**Standard Product**” means any product with a product code issued by the Company;

“**Company**” means Dexion Commercial (Australia) Pty Limited (ABN 43 108 860 724) and its successors, transferees or assignees.

2. BINDING TERMS AND CONDITIONS

The only terms in connection with the supply of Goods by the Company to the Customer which are binding upon the Company are:

- (1) those set out in these terms and conditions or otherwise agreed to in writing by the Company;
and
- (2) those, if any, which are imposed by law and which cannot be excluded.

3. PRICE AND ORDERS

- (1) The price list of the Company, and any quotation for Goods supplied by it, is not an offer to sell but an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any orders that may be received by it.
- (2) The prices, products and specifications shown in the price list and any scheduled rates are subject to alteration without notice.
- (3) If the Company accepts an order it must supply the Goods at the price shown in the price list current when the Company accepts the order, or in accordance with its written quotation (whichever is appropriate), unless otherwise agreed in writing.
- (4) If the Company issues an order acknowledgement to the Customer then the Customer must advise the Company of any discrepancies within 48 hours from its receipt.
- (5) All offers or quotations of the Company shall be valid for no longer than (90) days unless otherwise specified in writing and shall become binding only upon receipt by the Company of an unconditional written acceptance from the Customer as the Company may require. Further the Customer agrees that the price may be determined or adjusted in accordance with the rise and fall formula set out in clause 20.
- (6) Any order made by a Customer for a Standard Product must clearly state the part number, finish, order type and description of the Standard Product required and any other information that the Company from time to time requires.

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- (7) If required, the Customer must, prior to the acceptance by the Company of any offer to purchase Goods, provide the Company with 3 trade references which must be satisfactory to the Company in its sole and absolute discretion.
- (8) If a Customer wishes to modify or cancel an order then it may only do so in the manner specified from time to time by the Company. All requests to cancel or modify existing orders must be made in writing. The Customer acknowledges that the extent to which an order can be modified or cancelled, if at all, will depend on the type of product and the stage that the order has reached in the Company's system.
- (9) Prices quoted are on the basis of the whole quantity being supplied unless otherwise stated.
- (10) Applicable duties, taxes and other mandatory Government charges are shown separately on the invoice.

4. GOVERNMENT CHARGES

- (1) Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable under or in connection with these terms and conditions is exclusive of any Government charges, duties or taxes ("**Taxable Supply**"). If a party makes a Taxable Supply under or in connection with these terms and conditions then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner, the amount payable in respect of the Taxable Supply.
- (2) Each party agrees to do all things, including providing tax invoices that may be necessary or desirable to enable or assist the other party to claim any Input Tax Credit, adjustment or refund in relation to any amount of Government charge paid or payable in respect of a supply made under or in connection with these terms and conditions.
- (3) To the extent that one party is required to reimburse another party for costs incurred by the other party, those costs do not include any amount in respect for which the party is entitled to claim as an Input Tax Credit.

5. DELIVERY

- (1) Unless otherwise specified in writing, delivery is ex works, factory gate.
- (2) When delivery is to the Customer's business premises, or other agreed delivery point, access must be reasonable in the opinion of the Company, and all delivery costs, documentation costs, export packing costs, port charges, tolls and all other duties, levies or externally imposed charges are to be paid by the Customer.
- (3) The Customer shall at its own expense facilitate the off-loading of the Goods at the place of delivery.
- (4) By prior written agreement, the Customer may collect the Goods at its own cost during the Company's normal business hours.
- (5) Time of delivery is at the sole discretion of the Company and if a delivery date is specified that date is an estimate only and the Company is not liable for any delay in delivery.
- (6) The Company shall not be liable for any losses, damages or expenses sustained by the Customer or any other person in consequence of delay in delivery or collection of the Goods or completion of work for any reason whatsoever and if such delivery or collection or completion is delayed at the request of the Customer or owing to his inability to accept the Goods for any reason or owing to some other cause beyond the control of the Company where the Company is able to deliver

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same or carry out such work then the Customer shall be liable for extra charges, losses or expenses incurred by the Company.

- (7) If the Company is unable to supply the Customer's total order these terms and conditions continue to apply to the Goods supplied.

6. ACCEPTANCE

- (1) The Customer must inspect the Goods immediately upon delivery and must within 72 hours after the date of delivery give written notice to the Company, with particulars, of any claim that the Goods are not in accordance with the contract. If the Customer fails to give such notice within such period then to the extent permitted by statute the Goods are deemed to have been accepted by the Customer and the Customer must pay for the Goods in accordance with the provisions of these terms and conditions.
- (2) If the Customer is unable to receive an order then it must notify the Company and comply with the Company's requirements or as otherwise specified in writing by the Company from time to time.

7. CONSTRUCTION

Where the Company accepts an order from the Customer to provide Goods which includes labour to carry out construction ("**Construction Works**") the following additional conditions shall apply:

- (1) The Customer will at his own expense convey the goods to a position within twenty metres from where construction is required.
- (2) The Customer will ensure the safe custody of and minimise deterioration to the Goods and the Company's equipment on site and will protect the same by providing covered and secured water-proof storage accommodation.
- (3) The Customer will prior to the commencement date for construction ensure that
 - (a) the site is cleared and free from obstruction
 - (b) electricity services are available and
 - (c) unless written agreement to the contrary, the Company is enabled to carry out the Construction Works as one uninterrupted operation to be completed during normal working hours.
- (4) The contract price is fixed on the basis that the floors upon which the construction works are to be performed are level and even. Any additional costs incurred to shim the installation due to an uneven or out of level floor surface in excess of plus or minus 10mm elevation variation over the entire floor area shall be paid by the Customer.
- (5) The Company is not responsible for the strength or structural condition of the floors or foundations upon which the Construction works are erected and makes no representation and gives no warranty that such floors or foundations are suitable for the Construction Works thereon and shall not be liable for any damage or injury directly or indirectly attributable to any defects in or any structural movement collapse subsidence or failure of the said floors or foundations.
- (6) On completion any surplus goods delivered by the Company shall remain the property of and be

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removed from the site by the Company. Until such removal the Customer will take reasonable precautions for the safe custody and protection of such surplus goods.

- (7) If for any reason commencement of the Construction Works extends beyond two (2) weeks from the stipulated date the Company shall be entitled to receive from the buyer an interim payment or payments on account of the contract price and may render an interim invoice or invoices accordingly.
- (8) Unless otherwise expressly provided for the Company will not be responsible for any builder's work or other work involving alterations to the structure of any premises at which work is to be undertaken by the Company.
- (9) The Customer will serve all notices and make applications for and obtain all such licenses, consents or approvals as are required under any building regulations or by-laws or any legislation in force prior to the carrying out of the Construction Works and the Customer shall be liable and indemnify and keep indemnified the Company against all actions, proceedings, costs, charges, claims or demands arising directly or indirectly out of or in connection with any breach of this condition.

8. RETENTION OF TITLE

(1) When Property Passes

Property in the Goods supplied by the Company to the Customer under these terms and conditions does not pass to the Customer until the money owing for those Goods, and any other money owing by the Customer to the Company, has been paid. The Customer in the meantime takes custody of the Goods and retains them as the fiduciary agent and bailee of the Company.

(2) Allocation of Payments

Where the Customer does not make payment in respect of specific Goods, payment must be treated as having been made first in respect of Goods which have passed out of the possession of the Customer, and then in respect of whatever Goods still in the possession of the Customer the Company elects.

(3) Customer's Obligations until Paid For

Until the Goods have been paid for in full:

- (a) the Customer must store the Goods in such manner as to show clearly that they are the property of the Company;
- (b) the Customer may sell the Goods, in the ordinary course of its business, but only as fiduciary agent of the Company. Any right to bind the Company to any liability to a third party by contract or otherwise is expressly negated. The Customer receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims) in trust for the Company and must keep the proceeds in a separate bank account until the liability to the Company is discharged; and
- (c) the Customer agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods ("**Book Debts**").

(4) Balance Sale Price Remains a Debt

- (a) If the sale price of all Goods sold by the Company to the Customer is greater than the sum of:

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(i) the proceeds actually received by the Company in respect of all dealings by the Customer with the Goods (including the sale of Manufactured Product)

(ii) all other payments received by the Company in respect of the Goods;

the difference remains a debt owing by the Customer to the Company.

(5) **Company's Authority to Inspect and Reclaim**

The Customer irrevocably authorises the Company at any time, to enter any premises:

(a) upon which the Company's Goods are stored to enable the Company:

(i) to inspect the Goods; and/or

(ii) if the Customer has breached the contract, to reclaim possession of the Goods; and

(b) upon which the Customer's records pertaining to the Goods are held to inspect and copy the records.

(6) **Goods Attached to Premises**

The Company's property in the Goods is not affected by the fact that the Goods become fixtures attached to premises of the Customer or a third party, and if the Company enters those premises for the purpose of reclaiming possession of the Goods, and incurs any liability to any person in connection with the entry or reclamation, the Customer indemnifies the Company against that liability.

(7) **Action before Property Passes**

The Company may commence legal action against the Customer if the Goods are not paid for in accordance with these terms and conditions or any separate arrangement for credit made by the Company with the Customer although property in the Goods has not passed to the Customer.

9. PAYMENT

(1) Subject to clause 9(2), payment for the Goods by the Customer must be in the currency specified by the Company and be tendered no later than 30 days after the date of the statement for the Goods ("**the Due Date**"), unless otherwise agreed in writing.

(2) If required, the Customer must make payment in advance, or in cash on the date of delivery, or by irrevocable Letter of Credit.

(3) Payment is deemed to be made:

(a) if by means of direct debit - on the date the money is credited to the bank account nominated by the Company;

(b) if cash is tendered - on the date it is tendered; and

(c) if a cheque (bank or otherwise) or other negotiable instrument is tendered - on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Company's bankers.

(4) If the Customer defaults in making payment to the Company in accordance with these terms and conditions the Company may in its absolute discretion:

(a) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 2% per month from the date on which the default arose; and

(b) require the Customer to reimburse the Company for all collection costs including legal costs incurred by the Company calculated on a solicitor and client basis as a consequence of the Company instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Company in its discretion decides.

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- (5) Any payments tendered by the Customer to the Company must be applied as follows:
- (a) first as reimbursement for any collection costs incurred by the Company in accordance with clause 9(4)(b);
 - (b) secondly, in payment of any interest charged to the Customer in accordance with clause 9(4)(a); and
 - (c) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's account.

10. RETURNS

Subject to the provisions of this clause 9:

- (1) The Customer must not return any Goods to the Company unless specifically requested to do so by the Company. For any Goods not of merchantable quality or not in accordance with the contract (whether or not the Goods are deemed to be accepted by the Customer) the Company will give full credit for the Goods on proof that they are not of merchantable quality, and an appropriate allowance for Goods not in accordance with the contract which cannot reasonably be offered for sale.
- (2) Orders accepted by the Company cannot be countermanded or delivery deferred or Goods returned except with the written consent of the Company and upon terms that will reimburse and indemnify the Company against all loss including profit on any part of the order that is cancelled. A restocking fee may also apply. Special Products not considered as standard by the Company will not be accepted for return by the Company.

11. RISK

Goods supplied by the Company to the Customer are supplied on an ex-warehouse basis and are at the Customer's risk immediately after they have left the warehouse or the Company's premises.

12. EXCLUSIONS AND LIMITATIONS

- (1) The only conditions and warranties that are binding on the Company in respect of:
- (a) the state, quality or condition of the Goods supplied by it to the Customer; and/or
 - (b) advice, recommendation(s), information or services supplied by it, its employees, servants or agents to the Customer regarding the Goods, their use and application, are those imposed and required to be binding by statute.
- (2) To the extent permitted by statute the liability, if any, of the Company arising from the breach of the conditions or warranties referred to in clause 12(1) are, at the Company's option, limited to and completely discharged:
- (a) in the case of the Goods, by either:
 - (i) the replacement of the Goods or supply by the Company of equivalent Goods; or
 - (ii) the repair of the Goods; or
 - (iii) the payment of the cost of replacement of the Goods or of acquiring equivalent Goods;
 - (iv) the payment of the cost of having the Goods repaired.
 - (b) in the case of advice, recommendation(s), information or services, by supplying the advice, recommendation(s), information or services again or the payment of the cost of having the services supplied again.

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- (3) Except as provided in this clause 12 all conditions and warranties implied by law in respect of the state, quality or condition of the Goods which may apart from this clause be binding on the Company are excluded.
- (4) The Customer acknowledges that the Customer does not rely and it is unreasonable for the Customer to rely on the skill or judgment of the Company as to whether the Goods supplied are reasonably fit for any purpose for which they are being acquired, and that the sale is not a sale of Goods by description or sample.
- (5) Except to the extent provided in this clause 12, the Company has no liability (including liability in negligence) to any person for:
 - (a) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods and/or advice, recommendation(s), information or services supplied by the Company; and
 - (b) in particular without limiting clause 12(5)(a) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods and/or advice, recommendation(s), information or services supplied by the Company.
 - (c) The Company shall in no circumstances be under any liability for injuries, expense, damages or consequential loss which may in any degree be attributed to the use of materials or installations supplied by it but not manufactured by the Company or to the adoption of data, design materials or advice given as to the use of its products.

13. INDEMNITY

- (1) The Customer indemnifies the Company, regardless of any negligence on the part of the Company, against:
 - (a) all losses incurred by the Company;
 - (b) all liabilities incurred by the Company; and
 - (c) all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by the Company in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), arising directly or indirectly as a result of or in connection with the supply of Goods by the Company to the Customer including as a result of any work done by the Company in accordance with the instructions or design of the Customer unless caused by wilful misconduct on the part of the Company or any of its employees or agents acting within the scope of their employment.
- (2) The Customer must pay to the Company all liabilities, costs and other expenses referred to in clause 13(1), whether or not the Company has paid or satisfied them.
- (3) Where the Company has followed a design or instruction given by the Customer, the Customer will indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable through any work required to be done in accordance with those instructions involving an infringement of any statutory or common law right.

14. PRIVACY

Where Goods are supplied to the Customer on credit the Customer irrevocably authorises the Company, its employees and agents to make such enquiries as it deems necessary to investigate the

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credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers ("Information Sources") and the Customer authorises the Information Sources to disclose to the Company all information concerning the Customer which is within their possession and which is requested by the Company.

15. FORCE MAJEURE

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

16. VARIATION

(1) The Customer acknowledges and accepts that the Company may add to, delete or otherwise modify these terms and conditions by giving written notice of the change to the Customer.

(2) A change to these terms and conditions takes effect 7 days after it is notified to the Customer.

17. ENTIRE AGREEMENT

These terms and conditions contain the entire agreement between the parties without prejudice to the rights of the Company at common law or equity.

In the event of any conflict between these terms and any other terms, whether implied or expressed, these terms and conditions shall apply.

18. COPYRIGHT

(a) All drawings and specifications prepared by the Company are the property of the Company and the copyright is reserved accordingly and no copies shall be made or extracts taken without its prior written consent.

19. CANCELLATION

(a) The Company may by written notice immediately suspend or cancel performance of this contract if the Customer be declared bankrupt or if a company if it be subject to a winding-up order if a Receiver or Manager or Receiver and Manager of its assets be appointed or if any form of insolvency administrator or third party is appointed or if it shall breach or fail to perform any of these conditions or shall fail to rectify such breach or non-performance within seven (7) days after written notice and may by written notice terminate this contract forthwith but any such termination shall not affect any other rights or remedies which the Company may have in consequence or any such breach or non-performance.

(b) The laws of New South Wales, Australia apply to the interpretation of these terms and conditions

20. Rise & Fall clause

(1) Formula

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ASP $SP \times (M2 / M1) \times 0.50 + (ML2/ML1) \times 0.25 + (CL2/CL1) \times 0.25$

(2) Where

ASP Adjusted Selling Price

SP Quoted Selling Price

M1 Material Index at time of Quote

M2 Material Index at time of manufacture

ML1 Manufacturing Labour Index at Time of Quote

ML2 Manufacturing Labour Index at Time of Manufacture

CL1 Construction Labour Index at time of Quote

CL2 Construction Labour Index at time of Manufacture

(3) The basis of the formula is the movement in indexes as published by the Australian Bureau of Statistics

(4) The Indexes used are as follows

- (a) Cat: 6427.0 Producer Price Indexes, Table 14 Materials used in the manufacturing industries, Fabricated Metal products. This is the Material Index
- (b) Cat: 6435.0 Wage Index Table 5, Total hourly rates of pay excluding bonuses. This is the Manufacturing Wages Index
- (c) Cat: 6435.0 Wage Cost Index, Table 5, Total hourly rate of pay excluding bonuses. This is the Construction Wages Index