

# UVEX - STANDARD TERMS & CONDITIONS OF SUPPLY

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

"goods" means the goods supplied by Uvex to the Purchaser under these Terms and Conditions refer and otherwise described on the purchase order appearing on the reverse side hereof.

"Purchaser" means the person who places an order with Uvex for the purchase of goods.

"services" means the services (if any) supplied by Uvex to the Purchaser under these Terms and Conditions.

"Uvex" means Uvex Safety Australia Management Pty Limited ABN 37 616 050 670, of Unit 3, Riverside Centre, 24-28 River Road West, Parramatta, NSW, 2150 as general partner of Uvex Safety Australia Limited Partnership ABN 56 417 194 966 and its agents, servants, employees and related bodies corporate as defined in section 9 of the Corporations Law.

### 1.2 Interpretation

In these Terms and Conditions:

- (a) headings are for convenience only and will not affect interpretations;
- (b) references to any legislation or to any provision of any legislation include any modification, re-enactment of, or any legislative provision substituted for, and all statutory instruments issued under, such legislation or such provisions;
- (c) words denoted in the singular include the plural and vice versa;
- (d) words denoting individuals include corporations and vice versa;
- (e) words denoting any gender include all genders;
- (f) references to any document or agreement (including the contract incorporating these Terms and Conditions) include references to such document or agreement as amended, novated, supplemented or replaced from time to time; and
- (g) references to any party to the contract arising from and including these Terms and Conditions or any other document or agreement include its successors or permitted assigns.

## 2. CONTRACT FOR SALE AND PURCHASE OF GOODS AND THE PROVISION OF SERVICES

2.1 These Terms and Conditions will constitute the terms and conditions of the contract for sale and purchase of the goods and the provision of any services arising between Uvex and the Purchaser.

2.2 Uvex will not be bound by any variation or waiver of these Terms and Conditions, or any other terms and conditions contained in, or endorsed upon, any correspondence, invoices or documents issuing from the Purchaser in connection with the order, unless this variation, waiver, terms or conditions have been made or accepted by Uvex in writing, and signed on Uvex's behalf.

## 3. OFFER AND ACCEPTANCE

Any quotation made by Uvex is not an offer to sell goods or provide services and the Purchaser's order will not bind Uvex until accepted by it in writing or the supply of goods commences.

## 4. INSPECTION

Where goods are sold subject to inspection by the Purchaser:

- (a) inspection will be at Uvex's premises; and
- (b) if the goods are to be delivered outside the metropolitan area of the capital city of the State of purchase, the Purchaser must acknowledge satisfaction with inspection in writing prior to despatch of the goods by Uvex.

## 5. DELIVERY

- (a) Any date quoted for delivery of goods is an estimate only. The Purchaser will not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery or dispatch and the Purchaser agrees that Uvex will not be liable for late delivery or non-delivery of the goods or any part of the goods. Written advice to the Purchaser that goods are ready for delivery whether in whole or in part will constitute delivery and the terms of payment will apply. Anyone at the delivery address who receives the goods will be presumed by Uvex to be authorised to receive the goods.
- (b) Uvex reserves the right to deliver by instalments, and each instalment will be deemed to be a separate contract. Failure to deliver any instalment will not entitle the Purchaser to repudiate, rescind or terminate this contract.
- (c) Any quotation containing a provision to supply goods "ex stock" is subject to fulfilment of prior orders at the date of receipt of the Purchaser's order.
- (d) Subject to applicable laws, including, without limitation, the *Competition and Consumer Act 2010* (Cth), the Purchaser waives any claim for shortage of goods or defective goods delivered if a notice in respect thereof has not been provided to Uvex within 7 days from the date of receipt of goods by the Purchaser.

## 6. PAYMENT

- (a) Unless agreed in writing payment terms are net cash 30 days from the date the invoice for the goods (or services, if applicable) is sent to the Purchaser, or to the Purchaser's carrier or agent. Interest may be charged on late payments at the lesser of 8% per annum and the maximum allowed by law.
- (b) If Uvex does not receive forwarding instructions sufficient to enable it to despatch the goods for delivery within 7 days of notification that the goods are ready, the Purchaser will be deemed to have taken delivery of the goods and the terms of payment will apply from that date. The Purchaser will be liable for storage charges payable monthly on demand, storage being at the Purchaser's risk.

## 7. PRICE

- (a) Unless otherwise expressly agreed in writing the price of the goods will be that price charged by Uvex at the date of delivery plus the amount which Uvex is required to pay on account of any excise, or sales tax or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the goods or any parts thereof, or the manufacture, use, sale or delivery thereof.
- (b) Unless otherwise specified in the purchase order, any prices quoted do not include transportation costs.
- (c) The prices quoted are based on present day costs and will be subject to contract price adjustment at the option of Uvex.

## 8. RETENTION OF TITLE

- (a) The risk in the goods supplied passes to the Purchaser on delivery to the Purchaser.
- (b) To the maximum extent permitted by law, ownership of and title in the goods supplied does not pass to the Purchaser until the Purchaser has discharged all indebtedness in respect of the goods supplied, or until such time as the Purchaser sells the goods to its customers in the ordinary course of business.
- (c) Until payment in full of this indebtedness has been made, the Purchaser acknowledges and agrees that:
  - (i) The Purchaser will, if directed by Uvex, store the goods supplied marked in such a way that it is clear that the goods are the property of Uvex, but all costs of storage, whether or not storage is at the direction of Uvex, will be for the account of the Purchaser.
  - (ii) The Purchaser irrevocably gives Uvex, its agents and servants, leave and licence without the necessity of giving any notice to enter at any time on and into any premises occupied by the Purchaser, forcibly, if necessary, to inspect, search for or remove any of the goods supplied.
  - (iii) If the goods supplied or part thereof and have been sold by the Purchaser before payment, then either the debts of the Purchaser arising from such on-sales or the proceeds of sale will be the property of Uvex and will be held on a fiduciary basis separately for its account, not mixed with the Purchaser's other money, debts or property and payable immediately without demand. Uvex has the right to trace the proceeds of any such sales in accordance with equitable principles.

- (d) The Purchaser acknowledges and agrees that, until the Purchaser has discharged all indebtedness in respect of the goods supplied:
- (i) Uvex holds a security interest (as that term is defined in the Personal Properties Securities Act 2009 (Cth) ("PPSA") in the goods and such security interest is effective and attaches to the goods immediately upon the Purchaser taking delivery of the goods;
  - (ii) Uvex may take all necessary steps to perfect, record, register, amend or remove the registration of the Purchaser's security interest on the Personal Property Securities Register ("PPSR").
  - (iii) the Purchaser must at its own cost do anything which Uvex considers reasonably necessary to (A) ensure that Uvex's security interest in the goods is enforceable, perfected, has priority and is otherwise effective under the PPSA; (B) enable Uvex to exercise or enforce any of its rights in relation to its security interest, and (C) enable Uvex to prepare, register or renew a financing statement on the PPSR.
  - (iv) the Purchaser must not: (A) otherwise than in accordance with these Terms and Conditions, create any security interest in the goods or any property which constitutes 'personal property' under the PPSA and becomes an accession to the goods without the prior written consent of Uvex; or (B) agree, attempt, offer or purport, sell, assign, sub-let, lend, pledge, mortgage, let on hire or otherwise part possession with the goods otherwise than in accordance with these Terms and Conditions or with the prior written consent of Uvex.
  - (v) To the extent permitted under the PPSA, Uvex need not give any notice, including, without limitation, a notice of the receipt of a verification statement, to the Purchaser under the PPSA.
  - (vi) Neither Uvex nor the Purchaser shall disclose information of the kind mentioned in section 275(1) of the PPSA, and the Purchaser will not authorise and will ensure that no other party authorises the disclosure of such information.

#### **9. FORCE MAJEURE**

Uvex will not be responsible for any delay in manufacture or delivery of the goods or the provision of services caused by, or in any way incidental to any act of God, war, fires, breakages of machinery or strikes or arising out of any other unexpected or exceptional cause, or any cause beyond Uvex's reasonable control.

#### **10. CANCELLATION**

Subject to any relevant law and without limiting the entitlement of a consumer to rescind a contract as provided in any such Act, any order may only be cancelled, varied or suspended with the written consent of Uvex and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify Uvex for any costs, expenses, charges incurred by Uvex in preparation for and in the execution of an order.

#### **11. DESCRIPTION AND SPECIFICATIONS**

- (a) Any description, illustration and other material contained in any catalogue, price list, brochure, leaflet or other descriptive material provided by or on behalf of Uvex, is given by way of identification only and the use of such description, illustration or other material will not constitute a contract between Uvex and the Purchaser as a sale by description.
- (b) The Purchaser warrants that any goods manufactured, constructed or supplied by Uvex which are based in whole or in part upon designs, drawings or specifications supplied to Uvex by or on behalf of the Purchaser will not infringe any third party's patent, trade mark or registered design or other intellectual property rights ("Third Party Rights") The Purchaser agrees to indemnify and keep indemnified Uvex from and against any loss, damage, expense, cost or other liability suffered or incurred by Uvex arising out of any allegation by a third party that the designs, drawings or specifications supplied to Uvex by or on behalf of the Purchaser infringes any Third Party Rights.
- (c) It will not be a term of any contract between Uvex and the Purchaser that any goods manufactured, constructed or supplied by Uvex by or on behalf of the Purchaser will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgment of Uvex for the fitness of any purpose of any goods so manufactured, constructed or supplied.

#### **12. WAIVER**

The failure, delay or omission by Uvex to exercise a power or right conferred on Uvex under this contract does not operate as a waiver of that right, and any single exercise of a power or right does not preclude another exercise of that power, or the exercise of another power or right under this contract.

#### **13. SERVICES**

- 13.1 If Uvex provides any training or other services to the Customer, the Customer acknowledges and agrees that in using any of the goods the Customer relies on the Customer's own skill and knowledge and not on the skill and knowledge of Uvex.
- 13.2 Without limiting the generality of clause 13.1 and subject to clause 16, to the fullest extent permitted by law Uvex will not be liable in respect of the provision by Uvex to any Customer of any service including without limitation training or services in relation to the safety of the goods.
- 13.3 Uvex recommends that the Customer contact the local health and safety authorities in respect of any safety issues.

#### **14. INSOLVENCY AND DEFAULT**

If:

- (a) the Purchaser defaults in any payment due under this contract or commits a breach of these Terms and Conditions (which breach is not remedied within 10 business days of notification in writing);
- (b) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in Section 9 of the Corporations Law) or similar official is appointed in respect of the Purchaser or any asset of the Purchaser;
- (c) a liquidator or provisional liquidator is appointed in respect of the Purchaser;
- (d) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in clause 14(b) or (c);
  - (ii) winding up the Purchaser; or
  - (iii) proposing or implementing a scheme of arrangement in respect of the Purchaser;
- (e) execution is levied upon the assets of the Purchaser for amounts in excess of \$1,000 and is not satisfied within 7 days, then Uvex may at its option withhold further deliveries or cancel the contract without prejudice to its rights under the contract, provided that Uvex may at any time and from time to time, upon such terms as it may determine, waive any of its rights under this clause, but without prejudice to its right thereafter to rely on the happening thereafter of any of the events previously referred to or upon the continuation after such waiver of any state of affairs the subject of such waiver.

The rights in this clause 14 are without prejudice to any other right or remedy available to Uvex.

#### **15. INSURANCE**

If the goods are covered by insurance cover taken out by Uvex, Uvex will only be liable to the extent of any indemnity provided.

#### **16. EXCLUSION OF LIABILITY**

- (a) Except as expressly provided to the contrary 11, to the maximum extent permitted by law, this contract, all terms, conditions, warranties, undertakings, inducements, or representations whether express, implied, statutory or otherwise, relating in any way to any goods or services the subject of this contract, are excluded.
- (b) Without limiting the generality hereof, Uvex will not be under any liability to the Purchaser in respect of any loss or damage including consequential loss or damage however caused which may be suffered or incurred or which may arise directly or indirectly in respect of any goods or services the subject of this contract or the failure or omission on the part of Uvex to comply with its obligations under this contract, or if the Customer uses the goods in harsh conditions or in a manner inconsistent with any instructions for use which accompany the goods.
- (c) Where any law implies in this contract any term, condition or warranty and that

law avoids or prohibits provisions in a contract excluding or modifying the application or exercise of or any liability under such term, condition or warranty, such term, condition or warranty will be deemed to be included in this contract, provided that the liability of Uvex for any breach of such term, condition or warranty will be limited at the option of Uvex to any one or more of the following:

(i) if the breach relates to goods:

- A. the replacement of the goods or the supply of equivalent goods;
- B. the repair of such goods;
- C. the payment of the cost of replacing the goods or requiring equivalent goods; or
- D. the payment of the cost of having the goods repaired; and

(ii) if the breach relates to services:

- A. the supplying of the services again; or
  - B. the payment of the cost of having the services supplied again
- (d) The Purchaser warrants that it has not relied on any representation made by Uvex which has not been stated expressly in this contract or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by Uvex.

## **17. MISCELLANEOUS**

### **17.1 Proper Law**

These Terms and Conditions will be construed in accordance with the laws of the State of New South Wales and all disputes will be submitted to the jurisdiction and decision of the Courts of the State.

### **17.2 Continuing Provisions**

All of the provisions of these Terms and Conditions will survive delivery of the goods except to the extent that they are fully performed at any time. None of the provisions of these Terms and

Conditions which confer on any party rights capable of being exercised after delivery of the goods will merge on the date of delivery of the goods.

### **17.3 Void or Voidable Provision**

If any provision of these Terms and Conditions is any time found to be or become void, voidable or unenforceable the remaining provisions of these Terms and conditions will nevertheless continue to be of full force and effect.