

## **TERMS AND CONDITIONS OF SALE WELD CLASS ENGINEERING**

Weld Class Engineering Pty Ltd trading as Weld Class Engineering Australia Pty Ltd (“WCE”) also known in the Terms and Conditions (“Agreement”) as the Seller manufactures and sells the following products, made to order (1) Mixing Solutions: mixing equipment, emulsifiers and complex mix tank systems to suit every application. (2) Stainless Steel Fabrication: Fabrication of Stainless Steel products, including but not limited to, pressure vessels and piping, high purity piping, mixing systems and emulsifiers, food process tanks and equipment, as well as providing services, such as site installations, shutdowns and mobile welding. The products and services are tailored to the individual client (“Buyer”). These terms and conditions govern the sale of Products (“Product or Products”) and provisions of services (“Services) by WCE. The contract between WCE and the buyer relating to any of the Products or its services including customer service and technical backup or transactions is subject to the agreement herein. This Agreement takes precedence over any Buyer’s supplemental or conflicting terms and conditions to which notice of objection is hereby given. WCE’s failure to object to conflicting or additional terms will not change or add to the terms of this agreement. Buyer’s acceptance of the Products and/or Services from the Seller shall be deemed to constitute acceptance of the terms and conditions contained herein. Unless otherwise agreed in writing, these Terms apply to and form part of all agreements for the supply of Products and related Services by WCE.

### **1.0 Interpretation**

In these terms; WCE and/or Seller means Weld Class Engineering. Buyer means the purchaser of Products or Services from the Seller Products means Mixing Solutions and Stainless-Steel Fabrication. The Agreement means all these terms and conditions of sale contained herein.

### **2.0 Application**

2.1 These terms apply to all contracts for the sale of products or services by WCE. 2.2 No amendment, alteration, waiver or cancellation of any of these terms contained herein is binding on WCE unless confirmed by WCE in writing. 2.3 The Buyer acknowledges that no employee or agent of WCE has any right to make any representation, warranty or promise in relation to the products or services other than as contained in this Agreement.

### **3.0 Orders, Prices and Payment**

3.1 All orders placed by the Buyer are subject to acceptance by the Seller.

3.2 A quote will be provided to the Buyer upon which the Buyer has a period of (14) days to accept and for the order to be processed.

3.3 The products are non-cancellable and non-returnable and the sale of such products shall be subject to the conditions herein, which shall prevail and supersede any inconsistent terms and conditions contained elsewhere.

3.4 Prices are determined at the time of order and prior to the payment of the deposit are subject to change without notice.

## **TERMS AND CONDITIONS OF SALE**

### **WELD CLASS ENGINEERING**

3.5 WCE has the right to terminate the tender of quotation at any time, and is not liable for any termination charges.

3.6 Payment may be made by credit card or internet banking transfer (all fees to be borne by the Buyer). Payment via credit card facilities will attract a 1% surcharge.

3.7 Three progress payments are required. A deposit of 30% of the invoice price must be paid when placing the order, 30% on demonstration of receipt of materials and the balance (40%) made payable prior to delivery.

3.8 With respect to labour services, payment must be made within 14 days.

3.9 The balance of the invoice must be paid in full before delivery.

3.10 Interest is payable on all overdue accounts calculated on a daily basis at the rate of 15% per annum as from the date due for payment until payment is received.

3.11 Any expenses incurred by WCE in recovery of debts are to be met by the Buyer. This will not apply in cases where non-payment is entirely due to WCE.

3.12 Prices are for products, which are manufactured to the appropriate Australian Standards. WCE holds a number of Australian Standards.

#### **4.0 Title**

4.1 Subject to these terms, legal and equitable title in the Products remain vested in WCE and shall not pass to the Buyer until the Buyer has paid the purchase price and all other moneys owed in full. In the event of default by the Buyer of any of the terms, the Buyer acknowledges and agrees that WCE may recover or retake possession of the product(s) and this constitutes authorisation that WCE or any of its representatives may enter without notice to the premises where the product is stored for the purpose of repossession and WCE will not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Buyer as a result of repossession.

4.2 Until payment in full, the Buyer agrees to provide adequate insurance for the Products and only to sell the Products in the ordinary course of its business. The Buyer acknowledges and agrees that a sale of any product for less than its cost price does not constitute a sale in the ordinary course of business and it will sell any such products as fiduciary and bailee of WCE.

4.3 Title and risk of loss pass to the Buyer upon delivery of the Product to the carrier. Seller's delivery dates are estimates only and Seller is not liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of the Seller, nor shall the carrier be deemed an agent of the Seller.

4.4 All products are final, non-cancellable and non-refundable, as they are made to the Buyer's specifications and provided as a one-off product, unless product is faulty.

## **TERMS AND CONDITIONS OF SALE WELD CLASS ENGINEERING**

### **5.0 Taxes**

5.1 Prices quoted do not include GST unless otherwise stated, and where applicable this will be charged as a separate item on the invoice.

5.2 Unless otherwise agreed to in writing by the Seller, all prices quoted are exclusive of transportation and insurance costs. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation shall appear as separate items on Seller's invoice.

### **6.0 Intellectual Property**

6.1 The Buyer acknowledges that WCE is the owner and holds all rights, title and interest in the various patents, inventions, designs, copyright, trademarks, trade names, business names, corporate names, logos, get up, circuit layouts, know-how, trade secrets and confidential information held by WCE. The Customer will not attempt to seek or claim any interest in WCE's IP, or assist any other party to assert any interest in WCE's IP.

6.2 The Customer acknowledges that any improvement or enhancement of WCE's IP which may result from work performed by the Buyer shall remain the exclusive property of WCE and the Buyer irrevocably assigns to WCE all right, title and interest the Buyer may have in any improvements or enhancements, to WCE's IP.

6.3 Where the buyer instructs WCE to follow any design or instruction, the buyer indemnifies WCE against all damages, penalties, costs and expenses arising from any infringement of a patent, trademark, registered design, copyright or common law right with respect to those designs or instructions. The buyer warrants that any designs or instructions given to WCE will not cause WCE to infringe any patent, registered design, trademark, copyright or common law right.

### **7.0 Competition and Consumer Act 2010 (Cth) ("CCA") and Director's Liability**

7.1 Where the provisions of the CCA apply, the provisions of these Terms will be read subject to the application of the CCA and in the case of any conflict, the provisions of the CCA will apply.

7.2 Nothing in these Terms is intended to limit or replace any rights of "consumers" as that term is defined under the CCA.

7.3 This agreement does not exclude, restrict or modify any right that you have under the Competition and Consumer Act 2010 (Cth), such as an assurance that any service is provided with due care and skill. Other than expressly stated in this agreement, WCE does not make any promises or warranties, whether express or implied, about the services or any of the products

7.4 If the Buyer on sells any Products it agrees that it will not make any representations in relation to the Products which are not: (i) contained on the packaging of the Products; (ii) contained in any materials supplied by WCE; (iii) set out in any applicable manufacturer's warranty; or (iv) approved in writing by WCE. If the Buyer on sells the Products to consumers who purchase them for the



## **TERMS AND CONDITIONS OF SALE**

### **WELD CLASS ENGINEERING**

purposes of re-supply, manufacture or repair of other goods, the Buyer agrees to contract out of the CCA in writing with those consumers.

7.5 The Buyer agrees that it will indemnify WCE against any claim, liability or cost incurred by WCE as a result of any breach by the Buyer of its obligations.

7.6 To the extent permitted by law, WCE and its respective directors, officers, employees, contractors and agents disclaim all responsibility to you for any loss, liability, claim, expense (including but not limited to legal costs and defence or settlement costs) or damage whatsoever, whether consequential, special, incidental or indirect (including but not limited to loss of profits, trading losses and damages that result from delay, loss or inconvenience) arising out of or in connection with the Content on the product and/or any omissions from the Content whether in contract, tort (including negligence), statute or otherwise and even if WCE has been advised of the possibility of such damage or loss.

7.7 Subject to the clauses above, in the event that WCE and its respective directors, officers, employees, contractors and agents is liable to any customer then WCE and its respective directors, officers, employees, contractors and agent's total liability whatsoever (including in negligence) is limited to a maximum amount of \$200.00.

### **8.0 Warranty Claims**

8.1 Except to the extent required by law, all consumer guarantees, representations, warranties, terms and conditions in relation to the Products and Services (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law. The Buyer agrees that if it is aware (or should be aware) that the Products or Services, the subject of any order, are for any particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Buyer will clearly identify and disclose that purpose or those characteristics in any order for the Products or Services.

8.2 To the maximum extent permitted by law:

8.2.1 WCE shall not be liable in respect of any defective Products unless the Buyer it in writing of its claim within 7 days from delivery and WCE reasonable opportunity to investigate the claim. Failure to so notify WCE in this timeframe shall be deemed to be unqualified acceptance of the delivery;

8.2.2 WCE shall have no liability for, and will not accept any claims for products which, after delivery, have been improperly stored, altered or handled or suffered damage or deterioration or have been affixed, used or applied in any way.

8.2.3 WCE shall not be liable for any losses or damages incurred by the Buyer or any third party in relation to the products or these terms, including any damage to property,

8.3 Buyer shall not be entitled to, and seller shall not be liable for, loss of profits or revenue, promotional or manufacturing expenses, overheads, business interruption cost, loss of data, removal or reinstallation costs, injury to reputation or loss of buyers, punitive damages, intellectual property infringement, loss of contracts or any indirect, special, incidental or consequential damages of any



## **TERMS AND CONDITIONS OF SALE WELD CLASS ENGINEERING**

nature. Buyer's recovery from seller for any claim shall not exceed the purchase price paid for the affected products irrespective of the nature of the claim whether in the contract, tort, warranty or otherwise. Buyer will indemnify, defend and hold seller harmless from any claims based on; (a) Seller's compliance with buyer's designs, specifications or instructions (b) Modification of any products by anyone other than the seller; or (c) Use in combination with other products.

### **9.0 Default**

9.1 The Buyer will be in default, if any of the following occurs;

9.1.1 The Buyer breaches any of the terms in the agreement; any/or

9.1.2 Payments for the products or services has not been received by WCE by the due date of payment; and/or

9.1.3 The Buyer is subject to any insolvency proceedings.

9.2 In the event of default, WCE may;

9.2.1 Regard the agreement as being repudiated by the buyer and may commence action for breach of contract; and/or

9.2.2 Refuse to supply any products or services to the buyer; and/or

9.2.3 Make all monies owing payable immediately.

### **10.0 No Reliance**

10.1 The Buyer acknowledges and agrees that it has not relied on any prior representation or promise made by WCE except as set forth herein.

### **11.0 Force Majeure**

11.1 WCE shall not be responsible for any delay or failure of performance occasioned or caused by strikes, riots, fire, insurrection, embargoes, failure of carriers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, government tariffs and quotas, compliance with any law, regulation or other governmental or court order whether or not valid, or other causes beyond the control of WCE, irrespective of whether the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure of WCE's machinery, or failure of a supplier to WCE.

### **12.0 No Waiver**

12.1 No failure or delay by WCE in exercising any right, power or privilege to which it is entitled shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. These Terms and obligations and



## **TERMS AND CONDITIONS OF SALE WELD CLASS ENGINEERING**

acknowledgments hereunder may only be waived or modified by WCE by an agreement in writing between the parties hereto.

### **13.0 Severability**

13.1 In the event of any provision of any provision of the Agreement being invalid, unenforceable or illegal for any reason, then such provision or part thereof will be deemed to be deleted from this Agreement and this Agreement will otherwise remain in full force and effect.

### **14.0 Governing Law and Jurisdiction**

14.1 This Agreement shall be governed by and construed in accordance with the laws applicable in the State of New South Wales and the parties submit to the jurisdiction of courts having jurisdiction in the State of New South Wales. Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.