

## Terms and Conditions of Sale

1. **ACCEPTANCE OF ORDERS** Any quotation given by Seller lapses if not accepted within 30 days. Seller will only accept orders which are accompanied by full payment. *All quoted prices are exclusive of GST.*
2. **TERMS OF PAYMENT** Terms of payment are payment with order. Goods will not be released until full payment has been received by the Seller. Terms of payment where the Seller has agreed to provide credit are unless agreed otherwise by the Seller, 30 days from the end of the month of invoice. If payment is not made within the above terms the Seller is entitled to calculate and charge daily interest at a rate not greater than the maximum interest rate charged by ANZ on its credit card accounts from time to time, and the Seller reserves the right to recover from Customer all costs, expenses and charges incurred by the Seller in undertaking any debt recovery action, including legal fees on a full indemnity basis.
3. **DEFAULT** If Customer defaults in payment, or an application is made to a court to wind up Customer, or a receiver or administrator or trustee-in-bankruptcy is appointed to manage the affairs of Customer, then Seller may terminate the contract and may recover from Customer reasonable compensation for materials purchased and ordered and labour expended in complying with Customer's orders.
4. **DELIVERY AND RISK** While Seller will use all reasonable endeavours to deliver by the date specified, it does not guarantee delivery on that date, it may deliver an order in parts, and is not liable for any Loss resulting from late delivery. Risk in the goods passes to Customer at the time of delivery. Delivery to Customer is deemed to occur at the time of delivery to Customer, its agent or carrier.
5. **PASSING OF PROPERTY** Customer agrees that property in the goods is retained by Seller until payment by Customer of all sums owing to Seller, whether under this contract or otherwise. If Customer fails to pay by the due date any amount owing to Seller, Seller may (without prejudice to any of its other rights) recover and resell any goods in which property has not passed to Customer, and Customer hereby authorises Seller to enter onto the premises where the goods are kept to take possession of the goods for that purpose at any time. If Customer sells or purports to sell any goods supplied by Seller in which property has not passed to Customer, then Customer does so as a fiduciary for Seller. The proceeds of such sale are the property of Seller to the extent of any money owed to it by Customer. Customer must account to Seller for that portion of the proceeds of sale, and Seller may trace the proceeds of any such sale. Customer consents to registration by Seller of a financing statement under the *Personal Property Securities Act 2009* (Cth) ("the PPSA") to perfect the purchase money security interest created by this clause. Customer also agrees to the contracting out by Seller of each of the obligations which it is permitted to contract out of by Section 115 of the PPSA.
6. **CANCELLATIONS** Any request by Customer for cancellation of an order must be in writing. Customer is liable to reimburse Seller for the costs it has incurred for labour and materials in fulfilling the order up to the date the request for cancellation is received by Seller.
7. **FORCE MAJEURE** Neither party is liable for any Loss incurred by the other party as a result of any delay or failure to observe any of these Terms and Conditions (other than an obligation to pay money) as a result of any circumstance beyond the party's control, including but not limited to any strike, lock-out, labour dispute, act of God, fire, flood, accidental or malicious damage or breakdown in machinery. The party affected must notify the other party as soon as possible of such circumstance. During the continuance of such circumstance the obligations of the party affected, to the extent they are affected by the circumstance, are suspended and resume as soon as possible after the circumstance has ceased to have effect.
8. **SELLER'S LIABILITY**
  - (a) Nothing in this document is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation into the arrangement between Seller and Customer, if such exclusion, restriction or modification would be void or prohibited by the legislation.
  - (b) To the extent that Seller breaches any condition or warranty implied into the arrangement between Seller and Customer and which cannot be excluded or modified, Seller's liability is limited to, at Seller's discretion, either: (i) replacement of the goods or supply of equivalent goods; (ii) payment of the cost of replacing the goods or acquiring equivalent goods; (iii) repair of the goods; or (iv) payment of the cost of having the goods repaired; and in the case of services, to: (i) supply of the services again; or (ii) payment of the cost of having the services supplied again.
  - (c) Subject to (a) and (b) above, Seller is not liable to Customer (or to any third party claiming through Customer) for any Loss caused by any act or omission of Seller, its employees or agent, and whether based on negligence or other tort, contract or otherwise.
9. **FITNESS FOR PURPOSE** Customer is responsible to ensure that the goods selected for purchase are of the relevant strength and suitability for the proposed application, given the different components used in the production of the Seller's different products, including different strengths and grades of steel used.
10. **JURISDICTION** This agreement is governed by the laws of the State of Victoria, and the parties submit to the jurisdiction of the courts of that State, and the Commonwealth of Australia.

11. **MISCELLANEOUS**

- (a) The waiver of any provision or breach of these Terms and Conditions is not to be construed as a waiver of any other provision or breach, or subsequent breach of the same or any other provision of the contract.
- (b) Customer indemnifies the Seller against any Loss suffered by the Seller and any Claim made against the Seller by a third party arising out of or in connection with the supply of goods where Customer does not communicate [in writing] to the Seller at the time of ordering the goods the purpose for which it requires the goods or the purpose for which the goods will be used by a third party (as the case may be).
- (c) If any provision of these Terms & Conditions is unenforceable or void either in whole or in part for any reason then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of the remainder of this document.
- (d) The terms and conditions of any purchase order issued by the Customer do not operate to modify or amend these Terms and Conditions.
- (e) The following words have the following meanings in these Terms & Conditions, unless the context requires otherwise:-
  - "Claim" means any claim, demand, legal proceedings or cause of action under common law, equity or statute;
  - "Customer" means the person (including its successors, personal representatives and permitted assigns) who acquires goods from Seller, and where this consists of more than one person the obligations in these Terms & Conditions are deemed to be joint and several;
  - "goods" means all goods and/or services supplied under these Terms & Conditions;
  - "Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property; and
  - "Seller" means Matco Handrails Pty Ltd, ABN 11 283 252 376.

12. **ACCEPTANCE OF TERMS AND CONDITIONS** Please note that purchase of 'goods' as defined in 11(e) above, from the Seller, signifies acceptance of these terms and conditions by the Customer.

13. **PRICE VARIATION** The price quoted by Seller is subject to variation at any time prior to the date of delivery upon written notice to Customer.

14. **CLAIMS** Any claim by Customer arising out of the contract must be made as soon as practicable after discovery by Customer of the problem. Customer must not make any attempt to rectify any problem with the affected goods, and must make them available for inspection by Seller as soon as possible.

15. **RETURN OF GOODS** No returns will be accepted without a return authority number from the seller – (invoice number and date are required on all claims) if invoice number cannot be quoted, goods may be credited at the Seller's current lowest catalogue price, less 20 per cent to cover any possible price increase since date of purchase. Goods will not be accepted back by this Company unless we have received prior notification, either by advising our office or our Representative. The Customer is responsible for freight charges on goods being returned.
- (a) Valid claims for incorrect goods sent will be credited in full provided we are notified within 14 days of receipt of goods. Claims for incorrect goods sent more than 14 days after delivery to the Customer will not be accepted.
  - (b) Goods made to order or specifically manufactured for the Customer are non-return items and will not be accepted, unless defective.
  - (c) Return of "resaleable goods" not required, or ordered in error, by the Customer will be at the Company's discretion and subject to a 20% Restocking Fee.
  - (d) "Resaleable goods" must be:
    - (i) In their original packaging,
    - (ii) Not used, marked or altered in any way,
    - (iii) Not damaged after delivery,
    - (iv) Still current catalogue items
  - (e) Goods returned in a non-saleable condition – (i.e. Other than as above) will not be accepted back for credit and will be returned "freight-on" to the sender unless prior arrangements have been made.
  - (f) Faulty goods MUST first be inspected by our representative through appropriate photographic evidence and a sample of the goods being returned to our premises for inspection.
  - (g) If the Company agrees to, or is required to accept a return, an Adjustment Note will be issued and applied to the Customer's trading account. The credit is to be used against the purchase of other goods.
  - (h) The Customer is not entitled to any credit/deduction from payment until the Adjustment Note is issued.
  - (i) Under no circumstances will Credits be issued to the Customer in a form of payment, except if required by law.
  - (j) All postage and insurance costs are to be paid by the Customer, except if required otherwise by law.

We recommend that you return the goods via Registered post and that you pre pay all postage. You assume any risk of lost, theft or damaged goods during transit and therefore advise you take out shipment registration of insurance with your postal carrier. The Seller will not be responsible for parcels lost or damaged in transit if you choose not to insure. We regret any inconvenience and request that should you ever have to request a credit or desire to return goods to please observe the above procedures in order to avoid any embarrassment due to non-processing or non-acceptance of claims and returns.

**Australian Consumer Law Warranty**

Our goods come with guarantees that cannot be excluded under Australian consumer law. To the extent that these apply, you are entitled to a refund or replacement for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.