



Guhring Pty Ltd
6 Jacks Rd
Oakleigh South
VIC 3167

Credit application form

ABN 30 003 723 448
Ph: 03 9948 4600
Fax: 03 9948 4699

PLEASE PRINT CLEARLY

Email: guhring@guhring.com.au

Company name: _____

Postal address: _____

Delivery address: _____

ABN: _____

ACN: _____

Business Owner: _____

Accounts Contact Name: _____

Business PH: _____

Accounts PH: _____

Business Fax: _____

Accounts Fax: _____

Business Email: _____

Accounts Email: _____

Business Established in (year): _____

*All invoices/statements will be **emailed** or **faxed** unless otherwise specified.*

Please select your preference: Fax Email

Purchasing Contact Name: _____

Workshop Manager Name: _____

Purchasing PH: _____

Workshop PH: _____

Purchasing Fax: _____

Workshop Fax: _____

Purchasing Email: _____

Workshop Email: _____

A restocking fee of 15% applies. Credits will not be given to goods returned later than 10 days from date of purchase. Goods ordered that are indented (not an Australian stock item) cannot be credited.

I/we accept Guhring P/L terms and conditions of sales (copy attached). I/we acknowledge Guhring's trading terms of 30 days net from the date of invoice and will adhere to it.

I/we understand that the goods remain the property of Guhring P/L until paid in full and that Guhring reserves the right to reclaim goods should payment terms not be met.

Signed: _____

Date: _____

Print name: _____

Position: _____

Office use only

Salesman: _____

Rec. Credit limit: \$ _____

Guhring Pty Ltd terms and conditions of sales

1. GENERAL

The seller accepts the buyer's order on these conditions (which together with the acceptance) constitutes the entire agreement between the seller and the buyer and it is expressly agreed that there are no other understandings, representations or warranties of any kind (express or implied) forming part of this contract.

All Contracts between the Company and the Customer shall be governed by the general conditions of sale unless the Company and the Customer otherwise expressly vary any of these general conditions by agreement in writing signed by the Company and the Customer and any variation in writing shall not alter in any way the conditions as stated hereunder except for the clause or clauses stated in the agreement made between the Company and the Customer. Any part of these conditions is severable and if any provision is held to be illegal or unenforceable for any reason, such illegality or unenforceability shall effect only that portion of these conditions which is illegal or unenforceable and the remainder of these conditions shall remain in full force and effect. This shall apply to any inconsistency or any other contract of Sale.

The Company does not accept any conditions of purchase which the Customer may state on their order form which may contradict the conditions of sale hereunder, in particular:

- (i) Any condition contained in the buyer's order which is inconsistent with, qualifies, or is contrary to these conditions shall be of no effect unless that condition is expressly accepted in writing by the seller.
- (ii) Any variation, waiver or cancellation of the buyer's order shall be of no effect unless accepted in writing by the seller. Where the seller accepts cancellation the seller may levy a handling charge of up to 10% of the price.
- (iii) Where the buyer and the seller agree to a variation in the quantity of the goods, the goods shall be priced either at the rate applicable to the original quantity or the revised quantity at the absolute discretion of the seller.
- (iv) Where the Trade Practices Act of 1974 applies to supply, nothing in these terms of trade limits or affects the buyer's rights and remedies under the Act.

2. PRICE AND TERMS OF PAYMENT

- (i) The seller's prices are subject to alteration without notice and the price payable by the buyer for the goods ordered shall be the price ruling at the date the goods are despatched for delivery to the buyer.
- (ii) The seller's prices are exclusive of taxes, duties and other imposts which, if chargeable are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.
- (iii) If the goods are exported the price and other moneys due by the buyer shall be paid in Australian currency.
- (iv) All prices are strictly nett and unless otherwise stated in writing by the seller on acknowledging the order, are due for payment on the 30th day of the month following the month in which the goods (or any instalment of the goods) are delivered.
- (v) Without prejudice to its right to sue for payment or exercise any other remedy where any payment is not made on the due date, the seller may:
 - a) Cancel all discounts on invoices overdue as per Clause (iv) and re-charge at retail rates, and attract interest as per Clause 2(v)b.
 - b) Charge interest on the overdue balance including all invoices re-charged at retail at the rate of 18% per annum based on a non-compounding rate and calculated daily from 21st day of the month the account was due. Charging interest shall not extend the time for payment nor imply any forbearance to sue or otherwise recover overdue moneys.
 - c) Interest shall accrue after as well as before any judgement or arbitrators award until the principal and interest is paid in full.
 - d) Where the Customer makes an agreement to pay off a debt all payments will be applied to interest first then principal.
 - e) Demand payment of the arrears as well as payment in advance for any undelivered goods before proceeding with manufacture or making any further delivery of goods under this or any other contract between the seller and the buyer.
 - f) Rescind this contract or any other contract between the seller and the buyer and the buyer shall not be entitled to demand or enforce delivery of any goods or any instalment of goods under this or any other contract.
 - g) Notwithstanding the above, the right to restrict or withhold the sale of further goods on credit is reserved where the seller has reason to doubt the buyer's ability to pay for such purchases.
 - h) The buyer shall be liable for all expenses and legal costs incurred by the seller in collection of the debt should the buyer fail to pay on due date. This shall include any costs of entry incurred by the seller in entering premises on order to recover the goods.
 - i) The seller shall be entitled to:
 - a) suspend or close any customer account
 - b) cancel any outstanding orders including any orders partly met

3. RETURN OF GOODS FOR CREDIT

Goods supplied ex stock in accordance with the buyer's order can only be returned with the express approval of the seller or otherwise required by law:

- (i) Request to return goods must be submitted in writing within 10 days from date of supply.
- (ii) Where goods are accepted for credit they must be delivered, at the buyer's expense, into the seller's store from where they were purchased, in original condition and packaging.
- (iii) The original invoice number must be quoted.
- (iv) The seller reserves the right to levy a restocking fee against any returns they may agree to accept. Such fees may be up to 15% and levied at the seller's absolute discretion.

To the fullest extent permitted by law, goods specially imported or procured on behalf of the buyer cannot be returned except by prior written approval from the seller and then only on such terms and conditions as the seller may agree. Where the buyer does not acquire the goods, or hold himself or herself out as acquiring the goods, for the purposes of a business the buyer shall have additional guarantees by virtue of the Trade Practices Act of 1974.

- (v) No credits for returns shall be passed without the customer receiving a goods returned docket.

4. SHORTAGES

Liability for shortages in the quantity of the goods supplied is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the customer gives written notification of the shortages in writing within 7 days of delivery and provides a reasonable opportunity to take all necessary steps to investigate the claim.

5. DAMAGE OR LOSS IN TRANSIT

Goods leaving the seller's premises are adequately packaged. Claims made for damage or loss in transit must be made against the carrier in the prescribed manner:

- (i) Prior to acknowledging delivery to the carrier the buyer must ensure that the complete consignment as per the carrier's note has been received.
- (ii) Should there be a shortage or visible damage to outer packaging the carrier's note must be endorsed accordingly.
- (iii) Within 7 days of receipt of consignment the buyer must ensure that all product received is in good order and condition.

No claims will be considered after 7 days of receipt of goods.

While no liability for goods damaged or lost in transit will be accepted by the seller details of any claim should be advised to the seller.

6. DELIVERY

- (i) The seller may withhold delivery in terms of Clause 2 above.
- (ii) The seller reserves the right to despatch the buyer's order in one delivery or by instalments. Where the seller acknowledges an order which provides for delivery by instalments the seller shall be entitled to payment for each instalment delivered (as if it were a separate contract) but failure to deliver any instalment shall not entitle the buyer to repudiate the contract as to any remaining instalments.
- (iii) Any quotations of delivery times by the seller are made in good faith but as estimates are not commitments the seller shall not be bound by such estimate.
- (iv) Where the buyer requests a particular method of delivery and the seller agrees in writing then the buyer shall cover the cost of delivery by that method from the point of despatch of the goods by the seller. Otherwise the seller will select the method of delivery.

7. DISPUTES

In the event that any part of an invoice is disputed, the amount not under questions shall be paid promptly according to the applicable payment terms. Any claim or dispute arising hereunder shall be subject to arbitration in accordance with the Commercial Arbitration Act 1984, Victoria, Australia:

- (i) Mediation: Without limiting any rights of the buyer under the Trade Practices Act of 1974, either party may require any dispute arising which has not been resolved within 14 days, to be referred to mediation. The mediator shall be appointed by both parties or, where the parties cannot agree within 14 days, appointed by the chairman or any other office holder of the Australian Chapter of LEADER or any other approved organisation. The mediator shall conduct the mediation in accordance with the guidelines agreed between the parties or, if the parties cannot agree within 14 days, following the appointment of the mediator in accordance with the guidelines set by the mediator. The costs and expenses of the mediator shall be shared by the parties equally.

8. PROPERTY AND RISK (Retention of Title)

Risk (including insurance responsibility) shall pass to the buyer on collection of the goods by the customer or on delivery by the seller or by the source to the buyer or his agent or to a carrier for delivery to the buyer.

Ownership of all goods sold by the seller ("the goods") is retained by the seller until full payment is received for all amounts owing in respect of all goods supplied. This provision is designed to protect the seller in the event of the bankruptcy, receivership or liquidation of the buyer, a seizure of goods by a creditor of the buyer or default in payment. Such events and the filing of legal proceedings seeking any such event are subsequently referred to as "the said events".

Until such payment is made the buyer shall be only a fiduciary owner of the goods and the buyer agrees to:

- (i) Enable the goods to be readily identifiable as the property of the seller.
(ii) Maintain the goods so supplied in good order and condition and to return the goods immediately if called upon to do so by the seller.

In the event of default in payment on the due date, time for which is strictly of the essence, or in any of the other said events the buyer shall at the request of the seller hand to the seller the said goods of such of the goods as had not been sold AND the seller is authorised by the buyer to enter any premises on which the goods may be located and to recover the same.

The buyer hereby agrees to meet all costs of, and any incidents in the recovery of the said goods, as well as any shortfalls between the amount owing and the value of the goods recovered. Notwithstanding the retention of ownership, the buyer may prior to payment in full, as agent for the seller, sell the goods under a bona fide transaction not intended simply to deprive the seller of the benefit of the retention of title. In the event of a sale of the goods or any of them prior to payment in full the buyer shall as trustee for the seller:

- (a) Hold all moneys received by the buyer on any such sale of the goods separate from the buyer's own money and in the name of and to the credit of the seller and the buyer will on request from the seller pay such proceeds to the seller.
(b) Hold all claims against purchases of any such goods who have not made payment for the same in trust for the seller and the seller may in any of the said events either in its own name or the buyer make claim to and issue proceedings to recover the sale price of such goods.

In respect of any goods which are mixed with or form an integral part of or used as a constituent part of any product manufactured or constructed by the buyer for on-sale to another party, the goods shall remain the property of the seller. Immediately upon such manufacture and construction occurring the buyer agrees to store such resultant product in a separate and identifiable part of the buyer's premises. All proceeds of sale shall be held by the buyer in an account for the seller in the bank account operated as aforesaid.

9. SELLER'S LIABILITY AND MAINTENANCE GUARANTEE

- (i) The buyer shall ensure that the goods ordered are fit and suitable for the purpose for which they are required and the seller is under no liability if they are not.
(ii) In the case of goods not of our own manufacture the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturers in respect thereof. The seller shall not be liable for consequential or special damages under any circumstances whatsoever.
(iii) In lieu of any warranty, condition, or liability implied by law, the seller's liability in respect of any defect in or failure of the goods supplied, or for any loss, injury or damage attributable thereto, is limited to making good the replacement or repair of defects arising under normal proper use and maintenance arising solely from faulty design, materials, or workmanship within the guarantee period, if stated, or otherwise within 12 months of the date of supply, provided always that such defective parts are promptly returned to the seller, unless otherwise arranged or required by law. At the termination of the appropriate period all liability on the seller's part ceases.
(iv) This warranty does not cover damage for misuse, accident, neglect or improper operation, maintenance, installation, modification or adjustment.
(v) The seller's liability under this contract and the warranty in this Clause is confined to the buyer named in this contract it being agreed that the seller has no liability to any purchaser of the goods from the buyer in that the buyer's rights under this contract are not assignable without the prior consent of the seller.
(vi) The Trade Practices Act of 1974 will NOT apply if the buyer acquired, or held himself or herself out as acquiring the goods for the purpose of a business.
(vii) The buyer agrees to include provision in its conditions of sale to the effect that the Trade Practices Act of 1974 shall not apply where a purchaser is acquiring the goods for the purposes of a business. The buyer agrees to indemnify the seller for any liabilities, losses, damages, claims, costs or expenses of whatever kind or nature incurred by the seller if the buyer fails to do so.

10. ERRORS OR OMISSIONS

Clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgements or invoice, shall be subject to correction.

All claims by the customer for credit on incorrect or errors in prices must be claimed within 3 months of date of invoice, after expiry of 3 months the Company reserves the right to refuse any such claim.

11. FORCE MAJEURE

The seller shall not be liable to the buyer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the goods or failure to perform any terms of this contract where such delay or failure is caused directly or indirectly by an act of God, fire, armed conflict, labour dispute, civil commotion, intervention of a government, inability to obtain labour, materials or manufacturing facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the sellers control.

12. COMPLIANCES WITH REGULATIONS

The buyer shall be solely responsible for obtaining any necessary permits under and for compliance with all legislation, regulations by law or rules having the force of law in connection with the installation and operation of the goods.

13. PROPER LAW

The contract and these conditions shall be governed by the laws of Victoria, Australia and the Courts of Victoria, Australia shall have exclusive jurisdiction in connection herewith.

14. CHANGE OF LEGAL ENTITY

The buyer is liable to notify the seller in writing of any change in legal entity of the buyer and the buyer shall complete a new Seller Credit Application form if requested by the seller. Failure by the buyer to inform the seller of any change in legal entity will result in the previous legal entity being responsible for any debts incurred before as well as after the change of legal entity.

15. CHANGE OF GENERAL TERMS AND CONDITIONS

The seller has the right to change any or all of their terms and conditions of sale at any time by giving seven (7) days notice in writing to the buyer. The seller shall be at liberty at all times to refuse the placement of order or decline to approve any such account application.

16.

The seller reserves the right to change the customer's credit limit, stop credit, close the account. The seller reserves the right to decline credit to any buyer and the seller reserves the right to periodically decrease or increase credit limits without notifying the buyer.