GLENMAR INDUSTRIES PTY LTD - TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly payment before exchange of documents (or such other period as nominated by the supplier) from the date of invoice. Glenmar Industries Pty Ltd ABN 12 109 827 741 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of AUD$75 per follow up made by the Supplier regarding any amount outstanding.

Prices

3. Quotations are based on the cost as at the date of quotation of the following items namely materials, wages, the content of industrial awards and other prevailing labour conditions, exchange rates, other overheads and transport.
4. Quoted prices are firm for a period of 14 days after due date of quotation provided they are not revoked in writing during that period. If before acceptance by the Supplier of the order and/or during manufacture and prior to completion of the work rises occur in the cost of any such items (e.g. exchange rates, material costs) the quoted price to be paid may be increased to allow for such rises.
5. The Supplier's calculations of such increase in price shall be conclusive, and the price to be paid will be that so calculated at the date of completion.

Delivery

6. Time for delivery is an estimate only and based upon commitments at the time of quotation. Every effort will be made to maintain this estimated date, but it is not guaranteed and the Supplier accepts no liability for failure or delay in delivery. This said estimated date is to be calculated from the date of receipt of firm order and if applicable finalisation of all technical matters and financial arrangements, and is subject to extensions to cover any delay due to causes and conditions beyond the Supplier's control.
7. The Applicant acknowledges that:
   a. any delay in payment of an invoice will entitle the Supplier to delay delivery of any outstanding orders and the Supplier is entitled to claim the storage, warehousing and financing costs of any such delayed delivery from the Applicant; and
   b. if it makes a request to the Supplier for a delay to a shipment of an order, the Supplier has absolute discretion to accept or deny this request and any acceptance is given on the basis that the Applicant will reimburse the Supplier for any additional costs incurred, including storage costs, and the risk attached to goods is borne by the Applicant.

Shipment

8. Unless otherwise specified, prices include packing and delivery to the Applicant's closest shipping port.
9. Unless otherwise agreed in writing, risk (but not title) in the goods passes to the Applicant, and the Supplier's insurance liability ceases, upon goods being loaded onto the shipping vessel in the Port of Origin.
10. The Applicant is to have marine insurance to cover the freighting of goods.
11. The Supplier will only supply via seafreight unless the Applicant wants to pay for airfreight. Any replacement of goods will be via seafreight.

Cancellation

12. After acceptance, an order cannot be cancelled by the Applicant except with the written consent of the Supplier. The Supplier reserves the right to cancel an order in the event of circumstances beyond its control inhibiting its ability to complete an order and in such an event it shall not be liable for any loss or damages arising from such cancellation.

Jurisdiction

13. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.
14. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
15. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts. The Applicant acknowledges and agrees that the Supplier may enforce any judgement obtained in courts of Victoria in other jurisdictions in which the Applicant operates.

Security/charges

16. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
17. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
18. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
19. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009* (**PPSA**) or similar legislation in any jurisdiction in which the Applicant may be based) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Applicant under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

20. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

21. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it.
22. Placement of an order for goods by the Applicant, either verbally or in writing, constitutes an offer to purchase goods in accordance with and acceptance of these terms and conditions subject only to any special conditions agreed in writing. Only written acceptance by the Supplier of the Applicant's order will complete a contract for the supply of goods.

Retention of title

23. Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
24. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
25. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
26. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
27. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 26 hereof unless and until the funds held on trust are remitted to the Supplier.
28. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
29. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 28. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
30. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
31. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

Cancellation of terms of credit

32. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not.
33. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.

Indemnity

34. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

35. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
36. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Corporations

37. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

Trustee capacity

38. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
    a. the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
    b. the Applicant has the right to be indemnified out of trust assets;
    c. the Applicant has the power under the trust deed to sign this agreement; and
    d. the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
39. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

40. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
41. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

42. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

43. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
44. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
    a. under section 95 to receive notice of intention to remove an accession;
    b. under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
    c. under section 121(4) to receive a notice of enforcement action against liquid assets;
    d. under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
    e. under section 130 to receive a notice to dispose of goods;
    f. under section 132(2) to receive a statement of account following disposal of goods;
    g. under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
    h. under section 135 to receive notice of any proposal of the Supplier to retain goods;
    i. under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
    j. under section 142 to redeem the goods;
    k. under section 143 to reinstate the security agreement; and
    l. under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

45. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
46. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
47. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.
    a. Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 28 and 46.
    b. Secondly, in payment of any interest incurred in accordance with clause 53.
    c. Thirdly, in payment of the outstanding invoice(s).
48. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Suppliers absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
49. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 48 herein.
50. Payments allocated (and/or reallocated) under clause 48 and/or 49 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

Taxes and duty

51. The Applicant must pay the applicable sales tax on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of sales tax is in addition to any other consideration payable by the Applicant for a taxable supply.
52. If as a result of:
    (a) any legislation becoming applicable to the subject matter of this agreement; or
    (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

    the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

53. The interest rate on any outstanding debts is the HSBC Corporate and Commercial Bank Base Lending Interest Rate plus 2 percent per annum.

Set-off

54. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
55. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

56. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
57. In relation to the supply of goods, the Supplier's liability is limited at the choice of the Supplier to:
    a. replacing the goods or supplying similar goods;
    b. repairing the goods;
    c. providing the cost for replacing the goods or for acquiring equivalent goods; and
    d. providing the cost for having the goods repaired.
58. In relation to the supply of services, the Supplier's liability is limited at the choice of the Supplier to:
    a. supplying the service again; or
    b. providing for the cost of having the services supplied again.
59. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
60. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
61. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
62. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
63. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
64. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
65. Unless otherwise specified the Supplier sells on the basis of CFR Client Port and does not include any taxes or duties which are payable by the Applicant. Any cost incurred by the Supplier as a result of additional taxes or duties or changes in legislation are payable by the Applicant in addition to the quoted price.
66. Drawings, specifications, patterns and tooling supplied by the Applicant are accepted by the Supplier on the basis that the Applicant indemnifies the Supplier against all damages, penalties, costs and expenses whatsoever arising from any infringement of any other party's intellectual property rights arising from the Supplier's use of the items supplied.
67. Metal castings, by their very nature, are imperfect. The Applicant has to take into account in his stress analysis that there will probably be imperfections in any casting, and compensate for this in his factor of safety. If strength of a casting is crucial to the end use, then the Applicant has to give consideration to this specification of metal and to the testing requirement.

Tooling

68. Tooling delivered to the Supplier will be assumed to be correct and no responsibility is taken for any loss arising from patterns being incorrect. For an additional charge the Supplier is prepared to verify patterns to drawings. All care will be taken with patterns but responsibility cannot be accepted for wear and damage and they are held and stored entirely at the Applicant's risk.
69. Tooling manufactured for producing the Applicant's orders remains the property of the Supplier's suppliers. The Supplier warrants that the Supplier will only supply the Applicant from this tooling. In the event that the Applicant would like the tooling delivered to them then the Supplier will do whatever is reasonable to extract the tooling from the supplier.

Trials

70. Trials from new patterns will be submitted for approval before high volume production casting commences. The Applicants is to approve the trial samples before production casting will proceed. Upon acceptance or if the client decides to waive doing a trial sample the Supplier does not accept liability for any loss whatsoever arising from inadequacy.

Limitation of Liability

71. The Supplier will only be liable to the extent of the contract price for work undertaken by it and will not be liable for any loss of the original product delivered to it or for any consequential loss and damage in respect thereof on any other claim or matter whatsoever arising out of any quotation sale, tender or contract.

Testing

72. Unless otherwise noted no provision has been made in the quoted price to cover supply of additional NDT, physical or chemical tests. A material test certificate is available upon request. If other testing is required, these would be the subject of an additional charge.

Severance

73. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
74. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

75. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
76. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
77. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

Consent to register

78. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
79. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

80. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
81. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

Privacy Act

82. The Applicant agrees to the terms of Glenmar's Privacy Policy