

## **TERMS AND CONDITIONS OF SALE**

### **1. (Definitions)**

In these Standard Terms and Conditions and in the Quotation, Order Form and Invoice the following words and phrases shall have the following meanings:-

- a. **"Assembly"** means the assembly of the Staging at the Location.
  - b. **"Apparent Defects"** means defects in the Goods or any components of the Goods where an examination or inspection ought reasonably have revealed the defects in the Goods to the Buyer.
  - c. **"Buyer"** means the person described as the Buyer in the Quotation and/or Order.
  - d. **"CC Act"** means the Competition and Consumer Act 2010.
  - e. **"Collection"** means collection of the Goods by the Buyer or the Buyer's agent/courier from the Seller's nominated warehouse.
  - f. **"Consumer"** means in the context of this Sale Contract, the Buyer of the Goods but only where:
    - i. the amount paid or payable as the Purchase Price of the Goods (together with any agreed services) does not exceed \$40,000 or if a greater amount is prescribed by the CC Act or any regulations made pursuant to it, then for the purposes of this definition – that greater amount; or
    - ii. the Goods or services that are being sold are of a kind ordinarily acquired for personal, domestic or household use or consumption.
  - g. **"Consumer Guarantees"** means the guarantees as set forth in Schedule 2 Part 3-2 Division 1 of CC Act in relation to goods and services.
  - h. **"Defect"** means any physical damage, deficiency or inadequacy in the Goods or any component of the Goods.
  - i. **"Defect Notice"** means the notice which the Buyer is required to provide to the Seller setting out the nature of the defects in the Goods.
  - j. **"Completion Date"** means the date specified in the Quotation for the completion of the Goods.
  - k. **"Delivery"** means delivery to the Buyer from the Seller's nominated warehouse.
  - l. **"Deposit"** means the 50% of the Purchase Price which must be paid by the Buyer upon acceptance of the Quotation unless otherwise agreed as a Special Condition.
  - m. **"Dispatch"** means dispatch to the Buyer from the Seller's nominated warehouse.
  - n. **"Goods"** means all of the components that make up the Staging as ordered by the Buyer which are the Goods sold by the Seller to the Buyer pursuant to an acceptance by the Buyer of an Order or Quotation such Goods being as described therein.
  - o. **"Location"** means the address for Delivery of the Goods as appearing in the Quotation.
  - p. **"Manual"** means the manual which will be provided by the Seller to the Buyer containing recommendations, instructions, procedures and methods for the Assembly and dismantling of the Goods, general recommendations for maintenance and storage of the Goods and other information concerning the Goods.
  - q. **"Order"** means the Buyer's Order for the manufacture, sale and/or Delivery of the Goods as constituted by a signed Quotation Acceptance or confirmation by email.
  - r. **"Person"** includes a corporation.
  - s. **"Purchase Price"** means the purchase price of the Goods (exclusive of GST), **ex factory**, unless otherwise agreed in the Special Conditions.
  - t. **"Quotation"** means the Seller's Quotation setting out the description of the components that make up the Goods and the price at which the Seller will sell those Goods to the Buyer.
  - u. **"Quotation Acceptance"** means the form of Quotation Acceptance found on the Quotation which when signed, shall become the Buyer's Order.
  - v. **"Sale Contract"** means these Standard Terms and Conditions, the Quotation/Order and any Special Conditions.
  - w. **"Seller"** means Megadeck Australia Pty Ltd ACN 068 156 123
  - x. **"Specifications"** means the Buyer's specifications as contained in the Quotation and/or Order.
  - y. **"Standard Terms and Conditions"** means these Standard Terms and Conditions.
  - z. **"Special Conditions"** means any special conditions set forth in the Order or Quotation.
    - aa. **"Staging"** means the Goods as supplied to the Buyer by the Seller.
    - bb. **"Stated Load Rating"** means the particular load rating of any piece of the Staging as shown on the label affixed to the underside of the ply top, being the uniform safe load capacity of 6.6kPa for Aluminium Megadecks and 7.5kPa for Steel Megadecks as tested by Testsafe Australia.
2. **(Purchase Price and Payment)**
    - a. Unless otherwise agreed in the Special Conditions, the Buyer must pay the Purchase Price in two instalments.
      - i. The first instalment of 50% of the Purchase Price is to be paid within seven (7) days of the issue by the Seller of a tax invoice for the Purchase Price. The Seller shall be entitled to issue this tax invoice immediately after the acceptance by the Buyer of the Quotation. The Buyer acknowledges that manufacture of the Goods by the Seller will not begin until the first instalment has been received from the Buyer. The Buyer also acknowledges that any delay in payment of the first instalment may delay the Completion Date.
      - ii. When the Goods have been manufactured and are ready, the Seller will notify the Buyer to that effect and the Buyer must pay the remaining 50% of the Purchase Price before the Goods are released for Dispatch, Collection or Delivery.
    - b. Unless otherwise agreed, the Purchase Price does not include the cost of Assembly of the Goods at the Location.
  3. **(Manufacture and Dispatch of the Goods)**
    - a. **(Seller to manufacture)** The Seller shall manufacture and/or arrange for the manufacture of all of the components of the Goods in accordance with the Specifications and shall make all reasonable endeavours to ensure such manufacture is completed by the Due Date.

- b. **(Buyer to give directions and instructions)** In order to facilitate the manufacture of the Goods, the Seller may require directions, instructions or further information from the Buyer which the Buyer shall promptly provide. The Buyer acknowledges that any delay in giving such directions, instructions or further information may delay the manufacture of the Goods and therefore prevent Delivery of the Goods by the Completion Date.

- c. **(Buyer's Specifications)** The Buyer must satisfy itself that the Goods, if manufactured to the Specifications, will meet its intended purpose, and in this regard the Seller has relied on the Buyer's instructions and information as to size, shape, dimensions, space and as to the suitability and capacity of the components' Stated Load Rating for the weight loads that the Staging and various components of the Staging will be required to support.

- d. Where the Goods have been manufactured to those Specifications, the Buyer shall not be entitled to make any complaint or to claim any compensation or to reject the Goods on the basis that they are inadequate for the Buyer's purpose.

### **4. (Dispatch and Delay)**

- a. **(Packaging and Dispatch)** Unless otherwise stated in the Special Conditions, the Purchase Price includes all costs of usual packaging and all prices are ex-factory from the Seller's warehouse, unless an alternative agreement has been made. If the Buyer requires any particular packaging to be used, the Buyer must bear the costs of such packaging.

- b. **(Late Dispatch)** The Seller shall not be liable for any late Dispatch of the Goods where it has made reasonable endeavours to ensure the manufacture of the Goods be ready for Delivery, Dispatch or Collection by the Completion Date.

### **5. (Delay)**

In addition to any other clause herein, whilst the Seller will use its best endeavours to deliver the Goods by the Completion Date. The Seller is not and will not be liable to pay any compensation or damages to the Buyer or any other person caused by any delay in delivering the Goods by the Delivery Date where such delay is a consequence of:-

- a. the unavailability of any materials or components required by the Seller to manufacture the Goods;
- b. any industrial disputes;
- c. the Location being unsuitable or unavailable for the Delivery of the Goods; and
- d. any act or event beyond the reasonable control of the Seller which may cause a delay in the Delivery of the Goods.

### **6. (Assembly)**

- a. Unless the Quotation provides for the Seller to Assemble the Goods at the Location, it shall be the responsibility of the Buyer to Assemble the Goods at its own cost. The Seller shall provide to the Buyer the Manual which will contain the instructions for the Assembly of the Goods. It is the responsibility of the Buyer to assemble the Goods in accordance with the instructions in the Manual.

- b. The Seller shall not be liable for any defect in the Goods caused by the failure of the Buyer to follow the instructions in the Manual.

- c. It is the responsibility of the Buyer to ensure that throughout the Assembly of the Goods:-

- i. all bolts, nuts and any other fixing or clamping devices are of good quality, and are securely fastened and checked regularly;
- ii. the Goods as Assembled is maintained and kept in a safe condition for its normal or expressly stated intended use;
- iii. no loads above the Stated Load Rating specified for each component of the Staging are placed on any part of the Staging;
- iv. Unless the Owner has expressly agreed in its Quotation/Order to Assemble the Staging, the Buyer must Assemble the Staging and dismantle it at its own expense.

### **7. (Manufacturer's Warranty)**

- a. **(Warranty)** The Seller warrants to the Buyer that the Goods shall be free from defects for the relevant warranty period and manufactured in accordance with Specifications.

- b. **(Statutory Warranty Against Defects)** In addition to the warranty in paragraph (a.) above, where the Buyer is a Consumer, the Seller's Goods come with Consumer Guarantees that cannot be excluded under the Australian Consumer Law (the CC Act). The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Buyer is also entitled to have the Goods repaired or replaced if the Goods fail to be of an acceptable quality and the failure does not amount to a major failure. *[CC Act Regulations 2010 Regulation 90(2)]*

- c. **(Warranty Periods)** The warranty period for Apparent Defects in the Goods is for three (3) months from the Delivery Date. The warranty period for all other defects in the Goods is three (3) years from the Completion Date.

- d. **(Defects notified out of Warranty)** The Seller's warranty does not apply to any defect in the Goods where such defect is notified to the Seller after the relevant warranty period has expired or is a direct or indirect consequence of:-

- i. any failure on the part of the Buyer to keep the goods safe and in good repair;
- ii. any modification by the Buyer to the Goods, other than modifications made by the Seller or by a third party with the approval of the Seller;
- iii. any misuse of the Goods by the Buyer such as the placement of loads on the Staging beyond the Stated Load Rating specified for any component of the Goods;
- iv. any accident causing damage to the Goods after they have been delivered to the Location;
- v. any failure by the Buyer to Assemble the Goods in accordance with the instructions in the Manual;
- vi. any failure by the Buyer to dismantle the Goods in accordance with the instructions in the Manual;
- vii. any failure by the Buyer to keep the Goods safe and any act of vandalism by any third party;
- viii. any act or omission by the Buyer which causes the Goods to become of unacceptable quality or any failure by the Buyer to take reasonable steps to prevent the Goods from becoming of unacceptable quality;

- ix. any damage to the Goods caused by their abnormal use;
- x. any damage to the Goods caused by the surface under or surrounding the Goods collapsing or flooding.
- e. **(Details for Notifying the Seller of Defects)** The Buyer must, after it becomes aware of a defect or defects, notify the Seller in writing within seven (7) days of the defects by serving a Defect Notice on the Seller. In that regard:-
  - i. The Seller is Megadeck Australia Pty Ltd.
  - ii. The factory/warehouse address is 87 McDonald Street, Erskineville NSW 2043.
  - iii. The telephone number of the Seller is (02) 9550 3459, facsimile number is (02) 9517 1421 and email address is [sales@megadeck.com](mailto:sales@megadeck.com).
  - iv. The Defect Notice must set out in reasonable detail the nature of the defects in the Goods.
- f. **(Repair or Replacement at Location)** Where the Seller is obliged to repair or replace the Goods and those repairs or replacements can reasonably be carried out at the Location, the Seller shall carry out those repairs at the Location and the Buyer shall give all reasonable access to the Seller to enable the Seller to carry out such work. Subject to the Buyer's compliance with this obligation, the Seller must repair or replace the Goods at the Location within one (1) month of receiving a Defect Notice or within such shorter period as is reasonable having regard to all of the relevant circumstances including the Buyer's use of the Goods.
- g. **(Repairs or Replacement at Seller's warehouse)** Where it is not practical to repair or replace the Goods at the Location and it is practical for the Goods to be repaired in the Seller's warehouse, the Seller shall notify the Buyer to that effect within fourteen (14) business days of being served with a Defect Notice. The Buyer must then promptly dismantle the defective component(s) of the Goods in accordance with the Manual and the instructions of the Seller and have them transported back to the Seller's nominated warehouse. The Seller must repair the defective Goods within one (1) month of their Delivery to the Seller's warehouse or within such shorter period as is reasonable having regard to all of the relevant circumstances including the Buyer's use of the Goods.
- h. **(Transportation Costs)** The cost of transportation of the Goods back to the Seller's warehouse shall be borne by the Buyer. The Buyer must follow any instructions from the Seller in respect to the packaging (where applicable) and the transportation of the defective Goods back to the Seller's warehouse.
- i. **(Additional to Other Rights)** Where the Buyer is a Consumer, the rights in paragraph 7(b) are in addition to any other rights and remedies which are available to the Buyer.
- 8. (Inspection and Apparent Defects)**
  - a. **(Inspection required by Seller)** The Seller may require the Buyer to inspect the Goods:-
    - i. in their unassembled form in the Seller's warehouse prior to the Completion Date for the purposes of identifying any Apparent Defects; and/or
    - ii. where the Seller carries out the Delivery and Assembly for the purpose of identifying Apparent Defects, at the Location after the Goods have been Assembled; and the Seller may require the Buyer to certify at that time as to whether in the Buyer's opinion there are any Apparent Defects. If the Buyer fails to provide such certification after being requested to do so by the Seller, the Goods shall be regarded as being free from Apparent Defects.
  - b. **(Failure to Inspect the Goods)** Where the Buyer fails to inspect the Goods before or after Assembly after being requested to do so by the Seller pursuant to Clause 8 above, the Buyer shall be deemed to have accepted the Goods as being free from any Apparent Defects.
- 9. (No Exclusion of Consumer Guarantees)**
  - a. Where the Buyer is a Consumer, no term of this Sale Contract excludes or purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying :
    - i. the application of all or any of the provisions of the Consumer Guarantees in Schedule 2 Part 3-2 Division 1 of the CC Act; or
    - ii. the exercise of a right conferred by such a provision of the CC Act; or
    - iii. any liability of the Seller for a failure to comply with a Consumer Guarantee that applies under Part 3-2 Division 1 of the CC Act to the sale of the Goods to the Buyer.
  - b. Where the Buyer is a Consumer it is expressly agreed that any provision of this Sale Contract that purports to limit the liability of the Seller in a way that is inconsistent with the Consumer Guarantees is to be deemed expressly excluded from these Terms and Conditions and for all purposes shall be void and of no effect.
- 10. (Limitation of Liability)**

Subject to Clause 9 (above), The Seller makes no representations and gives no warranties express or implied in respect of the Goods except as contained in these Standard Terms and Conditions, or in any legislation (where such warranties cannot be excluded) or Seller's Specifications for those Goods. In particular, but without limiting the generality of the foregoing, the Seller does not warrant that the Goods are fit for any particular purpose, other than as set out herein or in the specification for those Goods. This applies irrespective of whether or not any such purpose has been communicated to the Seller by the Buyer.
- 11. (Implied Terms Excluded)**

All implied terms including warranties in respect to the Goods under any legislation which the parties can by agreement lawfully exclude are hereby excluded. Subject to any implied warranties that cannot be excluded or limited, the Buyer agrees that the Seller is not and will not be liable for any damages or loss of any kind whatsoever (including, without limitation, any liability for consequential loss) arising out of the sale of the Goods or their use and whether arising from any act, omission or failure (including any negligent act or omission) of the Seller.
- 12. (Implied Terms Limited)**

If any implied terms cannot be excluded, the Seller's liability is limited to the extent permitted by the *CC Act* at the Seller's sole discretion to one or more of the following:-

  - a. replacing the Goods or supplying equivalent goods,

- b. repairing the Goods,
  - c. paying the cost of replacing the Goods or of acquiring equivalent goods,
  - d. paying the cost of having the Goods repaired.
- Where the Seller also performs any service in respect to the Goods, the liability of the Seller with respect to those services is limited at the Seller's sole discretion to the supply of the services again or the payment of the costs of having a third party perform those services.
- 13. (Quotation and Orders)**
  - a. The acceptance by the Buyer of the Quotation shall constitute the Order and shall establish a binding Sale Contract between the Seller and the Buyer for the manufacture, sale and supply of the Goods in accordance with the Specifications.
  - b. Acceptance of the Quotation must be made within thirty (30) days of the date of the Quotation. An acceptance shall be made and communicated by the Buyer signing the Quotation acceptance and sending it by email, facsimile or by post to the Seller. Acceptance shall be deemed communicated upon the sending of the email, the facsimile or on a date (3) days after posting.
- 14. (Property in Goods)**

The Buyer acknowledges that title in the Goods delivered by the Seller to the Buyer does not and will not pass to the Buyer until the Seller has received full payment of the Purchase Price for those Goods. Notwithstanding that title in the Goods has not passed to the Seller, risk of any damage to or destruction of the Goods passes to the Buyer upon the Delivery of the Goods to the Buyer at the Location or Collection of the Goods by the Buyer.
- 15. (Failure to pay for the Goods)**

If the Buyer fails to pay the Seller for the Goods by the Completion date then in addition to all other remedies which the Seller may have, the Seller may retake possession of the Goods and for that purpose, the Seller and its representatives are irrevocably authorised by the Buyer to enter upon the Location and/or any other premises where the Goods may be stored or located to retake possession of them and remove them from such premises. The Buyer indemnifies the Seller against any loss, liability or damage it might directly or indirectly sustain as a consequence of retaking possession of the Goods.
- 16. (Taxes and Charges)**

The Buyer must pay to the Seller when it pays for the Goods, all Goods and Services Tax ("GST") on the Goods as shown on the Seller's tax invoice.
- 17. (Cancellation, Suspension and/or Termination for Non-Payment)**
  - a. If the Buyer fails to make payment of the first instalment to the Seller within seven (7) days as required by Clause 2(a)(i), the Seller may, irrespective of any other rights or remedies which the Seller may have, terminate this Sale Contract by giving written notice to the Buyer to that effect. Such notice can be sent to the Buyer by email or facsimile.
  - b. If the Buyer fails to pay the second instalment as required by Clause 2(a)(ii) the Seller may refuse or suspend Delivery of the Goods to the Location until payment is made. Where the Goods have been delivered to the Location and the Seller is responsible for Assembly as part of this Sale Contract, the Seller may refuse or suspend Assembly until payment has been made or take the Goods back and terminate the Sale Contract. Where the Goods have been delivered and Assembled, then the balance of the Purchase Price unpaid shall be a debt immediately due and owing by the Buyer to the Seller.
  - c. The Buyer expressly waives any right or cause of action against the Seller which it might but for this Clause have, in contract, tort or otherwise for any special, direct or indirect or consequential damages (including loss of profits) incurred as a result of any delay, cancellation or suspension by the Seller of the Delivery or Assembly of the Goods or the termination of this Sale Contract.
  - d. Refusal to deliver any Goods in accordance with this Clause will not be considered a breach of any contract by the Seller.
- 18. (Force Majeure and Acts of God)**

If through the happening of any event beyond the control of the Seller or through any natural disaster or other similar circumstance the Seller is unable to deliver the Goods or any part thereof the Seller shall not be liable to the Buyer in any way for any non Delivery of the Goods or any part thereof.
- 19. (Conflicts with the Buyer's Terms and Conditions of Sale)**
  - a. If the Buyer and the Seller have agreed to any Special Conditions, those Special Conditions shall to the extent of any inconsistency with these Standard Terms and Conditions apply in place of these Standard Terms and Conditions but only to the extent of such inconsistency.
  - b. If the Buyer is a Consumer, then nothing in the Special Conditions shall be deemed to exclude or modify any of the Consumer Guarantees or warranties which under the CC Act must apply to this Sale Contract.
- 20. (Governing Law)**

The contract formed by acceptance of these Standard Terms and Conditions of sale will be governed in accordance with the laws of the State of New South Wales and the Commonwealth of Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of New South Wales or the Commonwealth of Australia as the case may be.
- 21. (Notices)**

Any notice under this Agreement must be:-

  - a. in writing, signed and delivered to the party to whom it is addressed at the address of that party set out in this agreement or at such other address as may be notified by that party in writing from time to time;
  - b. may be served personally on the party to whom it is addressed or may be delivered by post or sent by facsimile transmission to that person.
- 22. (Entire Contract)**

Subject to any terms implied by Statute and which cannot be excluded by the parties, these Standard Terms and Conditions together with the Quotation, the Order and any Special Conditions contain the entire agreement between the Seller and the Buyer for the sale of the Goods. No change or modification to any of the terms or conditions contained herein will be binding unless in writing signed by each of the parties.