

# Terms and Conditions of Sale

The supply of goods or services by Moffat Pty Ltd ("Moffat") is made on the following terms and conditions (the "Contract Terms"):

## 1. GENERAL

- 1.1 These Contract Terms include all those statutory rights conferred on the buyer that Moffat is not capable of excluding, restricting or modifying ("the buyer's statutory rights").
- 1.2 Unless agreed in writing by Moffat, these Contract Terms apply to the exclusion of all prior discussions, representations, understandings and arrangements, and all conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other document delivered by the purchaser to Moffat.
- 1.3 Moffat may alter these Contract Terms on 30 days notice.
- 1.4 Unless otherwise agreed in writing by Moffat, the provision of engineers' services to install, start up and/or commission any goods shall be the subject of a separate contract.

## 2. QUOTATIONS AND ORDERS

- 2.1 Unless previously withdrawn by Moffat at any time, a quotation is open for acceptance for a period of thirty (30) days from the date of the quotation after which time it will lapse.
- 2.2 All orders are subject to written acceptance by Moffat.

## 3. PRICE AND PRICE VARIATION

- 3.1 Unless otherwise stated, all prices charged are ex works.
- 3.2 Moffat is entitled to adjust any price to take into account a variation in cost arising from:
  - (a) delays in manufacture or installation as a result of any act or omission by the buyer, or other circumstances beyond Moffat's control;
  - (b) variations in Moffat's costs of manufacture including, without limitation, variations in the cost of labour or raw materials;
  - (c) variations in the cost of the goods to Moffat due to variations in the cost of freight and transport, insurance premiums, customs duties or currency exchange rates; and
  - (d) any error or omission.
- 3.3 All spare parts will incur a freight and packing charge.

## 4. TERMS OF PAYMENT

- 4.1 Payment is to be made on goods sold by Moffat within Australia 30 days from the date of Moffat's statement to the address specified on the invoice. If payment is required upon completion of installation, such payment shall be due on completion of Moffat's obligations as provided in clause 6.
- 4.2 Unless agreed by Moffat in writing,
  - (a) payment is to be made on goods sold by Moffat outside Australia on a 30 day letter of credit;
  - (b) payment is to be made on goods sold by Moffat in Asia by a confirmed letter of credit.
- 4.3 Moffat reserves the right to impose on the buyer a minimum deposit to Moffat of 25% of the purchase price for goods that are not spare parts.
- 4.4 In the event of default by the buyer under clause 4.1, 4.2 or 4.3, all debt recovery costs, including legal costs on a solicitor /own client basis and disbursements, and any mercantile agent costs charged to Moffat will be part of the indebtedness of the buyer to Moffat.
- 4.5 Without prejudice to any other remedy, Moffat may charge the buyer interest on any overdue amounts at a rate of 2% per annum above the overdraft rate for the time being charged by Moffat's banker calculated and compounded on a daily basis from the due date until the payment is made in full.

## 5. VARIATION OF TERMS OF PAYMENT

- 5.1 If Moffat decides that the credit worthiness of the buyer has become unsatisfactory, Moffat may on written notice to the buyer:
  - (a) vary the terms of payment, and may require payment in full and in cash, and/or the provision of security, for any amount unpaid; and
  - (b) stop any goods in transit until any requirements under this clause have been complied with.

## 6. COMPLETION AND DELIVERY

- 6.1 Moffat will endeavor to deliver or supply the goods or services or otherwise complete the contract within the time agreed or within a reasonable time (in the absence of agreement).
- 6.2 Moffat's obligations to supply goods shall be deemed to be completed and the goods deemed to be delivered when:
  - (a) in the case of goods sold for delivery and installation - when the goods are assembled in position and connected to the power and other services specified.
  - (b) in the case of goods sold for delivery - when the goods reach the specified destination. Unloading of goods shall be the buyer's responsibility unless otherwise expressly agreed in writing.
  - (c) in the case of goods sold for delivery ex works - when the goods are delivered to the carrier.

- 6.3 Unless otherwise agreed, spare parts will be delivered by air freight at the buyer's expense.
- 6.4 Moffat shall not be liable for any loss or damage (whether direct or indirect) caused by any failure to deliver, supply or complete either in whole or in part.
- 6.5 Moffat may suspend delivery, supply or completion and/or terminate the contract where the failure to deliver, supply or complete is caused by force majeure, including any act or omission on the part of the buyer, or by any act of God, war, lightning, fire, earthquake, storm, flood, explosion, any embargoes, restraint orders or restrictions imposed directly or indirectly by any government or governmental authority, agency or department, unavailability or delay in availability of equipment, materials or transport, labour dispute and any other case whether of the kind enumerated or otherwise which is not within the control of Moffat.

## 7. WITHHOLDING SUPPLY AND DELIVERY BY INSTALMENTS

- 7.1 Moffat reserves the right to withhold supply to the buyer if the buyer is in breach of any contract with Moffat.
- 7.2 Moffat reserves the right to deliver the goods by installments and each installment shall be deemed to be sold under a separate contract incorporating these Contract Terms. Failure of Moffat to deliver any installment shall not entitle the buyer to cancel the balance of the contract. Exercise of these rights does not entitle the buyer to terminate any contract with Moffat or claim any loss or damage.

## 8. INSTALLATION AND COMMISSIONING

- 8.1 Where Moffat is to install, start up or commission the goods, the buyer will provide suitable access to and possession of the premises where the goods are to be installed, started up and commissioned, and shall provide suitable facilities at the premises in order to receive the goods.
- 8.2 The buyer will bear the cost of:
  - (a) any work to be carried out by third parties including, without limitation, builders, masons, joiners, pipefitters and electricians;
  - (b) any alterations to existing equipment or premises for use with the goods; and
  - (c) all fuels, services and other facilities required for the installation starting up and commissioning of the goods.

## 9. TITLE AND RISK

- 9.1 Title to the goods sold shall not pass to the buyer until the purchase price and all other sums due by the buyer to Moffat have been paid in full.
- 9.2 Until payment for the goods and all other amounts owing by the buyer to Moffat is received by Moffat in full:
  - (a) the buyer shall hold the goods sold as bailee for Moffat. The buyer indemnifies Moffat against any loss, cost and expense associated with any damage (howsoever arising) to those goods, and against any tax, fine or impost assessed upon or in respect of the goods or any part thereof or the use thereof;
  - (b) if Moffat seeks to recover any goods for non-payment, the buyer hereby grants Moffat a licence to enter the buyer's premises or any other premises where goods are kept to recover possession of the goods; and
  - (c) the buyer shall insure in Moffat's name the goods in the buyer's possession against all usual risks including fire, breakage and theft, and shall produce to Moffat on demand the policies and receipts for the payment of premiums thereon.

## 10. CANCELLATION AND RETURNS

- 10.1 A fee of 15% will be charged for the cancellation of any order or the return of any goods. The fee will be based on the value of the order or the sale price of the goods as the case may be.
- 10.2 Where the buyer delivers goods for return to Moffat and if Moffat accepts the return of those goods, the buyer will be given credit to the value of the sale price of those goods less any applicable fees and charges only if the goods are returned within 30 days of invoice date.
- 10.3 The credit given for the return of any custom made goods will be reduced by the amount of Moffat's expenses in manufacturing or otherwise procuring those goods.
- 10.4 Where Moffat rejects the claim for credit for goods returned, and advises the customer accordingly, Moffat will, unless requested to return the goods at the buyers expense within 7 days of notification of the claim being rejected, dispose of the items on behalf of the client.

## 11. TRADE IN EQUIPMENT

- 11.1 Where the buyer delivers goods to Moffat as a trade-in, the risk of any loss or damage to those goods remains with the buyer until those goods are accepted by Moffat.
- 11.2 The credit given by Moffat for any traded in goods will be based on the condition of those goods when delivered to Moffat. Title to traded-in goods shall pass to Moffat upon its acceptance of those goods.

## 12. CHANGEOVER GOODS

- 12.1 Moffat will invoice the buyer for any goods supplied on a changeover basis at sale prices at the time of dispatch.
- 12.2 Upon delivery of the reconditioned or repaired goods to the buyer, the buyer must promptly return any goods supplied on a changeover basis by Moffat. Moffat may accept the return of those goods having regard to their condition. If Moffat accepts the return of those goods, Moffat shall give credit to the buyer for the sale price of those goods.

## 13. BUYER'S REQUIREMENTS

- 13.1 Prior to Moffat's acceptance of any order, the buyer must inform Moffat of all its requirements including any statutory or regulatory requirements relating to the installation and end use of goods in the place of intended use. If the buyer fails to inform Moffat of such requirements, the buyer shall be responsible for, and shall indemnify Moffat against, any action, claim, demand, loss, damage, cost or expense associated with any failure to meet those requirements.

## 14. TESTING

- 14.1 Moffat may conduct tests on any installed or commissioned goods. The buyer shall supply any materials required for those tests or the commissioning of those goods. The buyer shall bear the costs of any additional tests required by it. The buyer must provide Moffat with a copy of any report obtained in relation to those additional tests.
- 14.2 Moffat may charge the buyer an engineering test fee where any goods returned for testing, subsequently pass all applicable tests.

## 15. BUYER'S DEFAULT AND INDEMNITY

- 15.1 Without prejudice to any other remedy, if the buyer breaches any of its obligations under a contract with Moffat, commits an act of bankruptcy, makes any composition or arrangement with its creditors, or steps are taken for the winding up of the buyer, or the buyer has a receiver appointed over any of its property, Moffat may treat any contract with the buyer as terminated and the price then unpaid whether or not due in whole or part, shall become due and payable.
- 15.2 If the manufacture, dispatch or transport of goods is delayed due to any act or omission of the buyer, and that delay continues beyond a reasonable time, Moffat may treat the contract as terminated and a proportion of the price that reflects the work already done by Moffat together with any expenses and any additional costs attributable to such delay, shall become due and payable.
- 15.3 The buyer shall indemnify and keep Moffat indemnified against any action, claim, demand, loss, damage, cost or expense which: (a) Moffat may suffer or incur, or is liable for arising out of, or in connection with the storage, use, possession, or other act or omission of the buyer in respect of any goods supplied; or (b) may be brought by a third party arising out of or in connection with any goods supplied by Moffat to the buyer.

## 16. CLAIMS

- 16.1 The buyer shall advise Moffat in writing of any claims: (a) for loss or damage – within 14 days of receipt in the case of Australian orders and 21 days of receipt in the case of export orders; and (b) for non-delivery or a shortfall in delivery – within 7 days of agreed or reasonable delivery time in the case of Australian orders and 14 days of agreed or reasonable delivery time in the case of export orders.
- 16.2 Moffat will advise the buyer of any rejected claim for credit for goods returned in writing electronically, detailing the reason/s for rejection, after which payment in full will be required from the buyer for the value of the rejected claim.
- 16.3 Spare parts purchased from Moffat Pty Ltd cannot be returned for a financial claim or replacement if the returned part has been fitted prior to being returned.

## 17. WARRANTY AND LIABILITY

- 17.1 Except for the buyer's statutory rights, no guarantee, condition or warranty as to materials, workmanship or performance attaches to second hand, repaired or reconditioned goods sold by Moffat.
- 17.2 To the full extent permitted by law, the liability of Moffat for breach of the buyer's statutory rights is limited to the replacement or repair of the goods, supply of equivalent goods or the payment of the cost of replacing or repairing the goods or supplying of equivalent goods, or supplying the services again or the payment of the cost of providing the services again.
- 17.3 The buyer must prove, to Moffat's reasonable satisfaction, that the defect developed under proper and normal conditions of use and maintenance and must deliver the defective part to Moffat.
- 17.4 In the case of defective goods not of Moffat's manufacture, Moffat shall pass on to the buyer the benefits obtained under any guarantee given to Moffat by the manufacturer of those goods.

Moffat will repair or replace and fit – at its option, defective goods of Moffat's manufacture where a defect in materials or workmanship appears (and the labour warranty on product is current) as follows:

Unit warranty periods are as follows:

Product Name	Labour (from date of dispatch)*	Parts (from date of dispatch)*
Aex	12 months	12 months
Aladdin Temp-Rite	12 months	12 months
Blue Seal	12 months	12 months
Blue Seal S Line	12 months	12 months
Burlodge	12 months	12 months
Carpigiani	12 months	12 months
Cobra	12 months	12 months
Convotherm	12 months	12 months
Crown	12 months	12 months
Friginox	12 months	12 months
Ital Proget	12 months	12 months
Lai - Rossi Dimension	12 months	12 months
Paramount	12 months	12 months
Rieber	12 months	12 months
SDX Thermobox	12 months	12 months
Tekna	12 months	12 months
Turbochef	12 months	12 months
Turbofan	12 months	12 months
Viking	12 months	12 months
Waldorf	12 months	12 months
Washtech	12 months on total product	12 months
	2 years on wash pump (parts supply only)	
	5 years on cabinet	

### Bakery Equipment

(including Genesis

Products installed in

Australia): 12 months

12 months

Genesis Products

installed outside

Australia N/A

12 months

\*The parts and labour warranty term is effective from date of installation, however the term of warranty shall not exceed 18 months from date of dispatch from Moffat Pty Ltd. Spare parts purchased through Moffat Pty Ltd are covered by a 3 month warranty against manufacturing defects effective from the date of sale.

If the labour warranty has expired, Moffat will repair or replace (but not fit) at its option, defective goods sold by Moffat where a defect in materials or workmanship appears.

- 17.5 All warranty work will be undertaken by Moffat from Monday to Friday 8.00am – 4.00pm. Moffat may charge the buyer penalty rates for any work done outside those hours.

## 18. RETURN OF DRAWINGS

- 18.1 All drawings and specifications obtained by the buyer from Moffat or its employees or agents remain Moffat's property.
- 18.2 The buyer shall not, without the prior written consent of Moffat, utilise or reproduce such drawings or specifications or communicate them to a third party, except for the purpose for which they are supplied.
- 18.3 Except for Moffat's standard descriptive specifications, operating instructions, layout and foundation drawings, all drawings and specifications are to be returned to Moffat on completion of the contract or on request.

## 19. GOODS AND SERVICES TAX

- 19.1 If GST is imposed on any taxable supply under these Contract Terms, then Moffat has the right to increase the purchase price payable on that taxable supply by an amount equal to the GST imposed.
- 19.2 To obtain a valid tax invoice, the buyer must supply Moffat with its ABN.
- 19.3 Any reference in this clause to "GST", "taxable supply" and "tax invoice" has the meaning given to those expressions in A New Tax System (Goods and Services Tax) Act 1999.

## 20. NO WAIVER

- 20.1 Failure by Moffat to enforce any of these Contract Terms shall not be construed as a waiver of any of Moffat's rights hereunder or a waiver of a continuing breach.

## 21. GOVERNING LAW

- 21.1 This contract shall be governed by the laws of the State of Victoria, and the buyer submits to the non-exclusive jurisdiction of the courts of that State.