

1. General

Any supply of Products or Services by CBS to the Customer shall be subject to the Terms and Conditions set out herein to the extent that no other agreements have been made in writing. Any general terms and conditions of the Customer that are inconsistent with these Terms and Conditions shall only be applicable to the extent CBS has approved in writing.

2. Definitions

“**Additional Charges**” includes any and all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid sums and all other government imposts and all money, other than the Purchase Price, payable by the Customer to CBS arising out of the sale of the Products and/or Services.

“**CBS**” means Complete Belting Solutions Pty Ltd (ACN: 130 505 378).

“**Customer**” means the person / company / entity to or for whom/which the Products and/or Services are supplied by CBS.

“**Purchase Price**” means the price payable by the Customer for the Products and/or Services.

“**Products**” means the Products supplied by CBS to the Customer.

“**Services**” means the Services provided by CBS to the Customer.

3. Quotations and Orders for Products or Services

3.1 All quotations are made, and all orders for Products and Services are accepted, by CBS subject to these Terms and Conditions, as well as any special conditions that are agreed to by CBS in writing. Unless otherwise expressly agreed by CBS, previous dealings between CBS and the Customer or the imposition of additional or alternative terms and conditions by the Customer shall not vary or replace these Terms and Conditions or be deemed in any circumstance whatsoever to do so.

3.2 CBS may withdraw, revoke or vary a written quotation at any time prior to the Customer submitting an order accepting the offer to sell comprised by the written quotation.

3.3 Unless otherwise indicated, prices for Products and Services included in a quotation are in \$AUD, subject to any other conditions specified in the quotation and exclusive of all applicable Additional Charges, including taxes and freight.

3.4 Unless otherwise expressly agreed, the prices are quoted ex works of CBS.

3.5 Unless otherwise requested by the Customer in writing, prices quoted provide for CBS's standard packing arrangements.

3.6 The relevant exchange rate is indicated on all quotations for Products. CBS reserves the right to adjust quoted prices for Products where the exchange rate differs by more than 2% at date of delivery of the Product.

3.7 CBS reserves the right to increase the quoted price on the date of invoice where extra Products or Services were required to fulfil the Customer's order.

3.8 Quoted Product lead times are estimates only at the time of the quotation, and are subject to change depending on the timing of the Customer's order. CBS accepts no liability for delay or failure to meet the quoted lead time. The Customer is not relieved of any obligation to accept or pay for the Products by reason of any delay or failure to meet the quoted lead time.

3.9 Quotations are valid for 30 days from the date of quotation. CBS reserves the right to decline an order placed by a Customer referencing an expired quotation.

3.10 CBS reserves the right to accept or decline, in whole or in part, an order for Products or Services placed by the Customer.

3.11 To the extent permitted by law, if the Customer cancels its order at any time prior to Products being ready for dispatch, CBS reserves the right to invoice the Customer for all expenses involved in the preparation of the order.

3.12 If CBS is prevented either directly or indirectly from performing any of its obligations under these Terms and Conditions, including without limitation, fulfilling an order by reason of Force Majeure, it shall be entitled, at its discretion, by notice to the Customer, either to:

- a) extend the lead time of the Products for a reasonable period; or
- b) subject to refunding the Customer for any payment already made by the Customer to CBS for the Products (if any), terminate the order.

and the Customer shall not have any claim against CBS for damages or any other remedy for breach of contract. “Force Majeure” shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond CBS's control.

4. Specifications, Materials or Special Orders

4.1 Unless otherwise indication, all descriptions, specifications, illustrations, drawings, data and dimensions contained in catalogues, price lists or other advertising matter of CBS or elsewhere are approximations only. They are intended by CBS to be a general description for information and identification purposes and do not create a sale by description.

4.2 CBS shall not be obligated to accept any change in Product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order after CBS has ordered special materials or commenced tooling for manufacture.

4.3 Unless otherwise stated in a quotation, Products will be supplied by CBS within the tolerances in regard to quantity, weight and dimension as specified in the relevant order, or if not specified, as consistent with usual industry practice.

4.4 Where Products supplied by CBS are not of CBS manufacture, CBS shall give the Customer, and use its best endeavours to enforce at the costs of and for the benefit of the Customer, any warranties and guarantees that CBS has obtained from its suppliers.

4.5 Where CBS is required to order special Products or materials for which CBS's supplier requests minimum order quantities, the Customer may be requested to accept an increase of the minimum quantity required to be ordered by CBS to fulfil the order and if so requested the Customer shall be obliged to accept and pay for the increase.

5. Pricing

5.1 The Customer must pay the Purchase Price and the Additional Charges associated with an order to CBS in the same transaction.

5.2 The Purchase Price of Products and Services is CBS's current price at the time of delivery, unless otherwise quoted or agreed in writing between CBS and the Customer.

6. Retention of Title

6.1 Products supplied by CBS are supplied on the condition that they remain the legal and equitable property of CBS until the products have been paid for in full and any interest owed thereon.

6.2 In addition to any rights that CBS may have, and in the event that:

- a) payment for goods is not made upon the due date; or
- b) prior to payment in full, the Customer is bankrupt, becomes insolvent or a receiver or trustee is appointed over the Customer's property; or
- c) the Customer makes a general assignment for the benefit of its creditors; or
- d) a voluntary or involuntary petition under bankruptcy laws is filed with respect to the Customer,

CBS or its authorised representative may retake possession of Products in respect of which title has not been passed to the Customer and may enter any premises controlled by the Customer to do so. Any associated cost (e.g. transportation costs) incurred will be borne by the Customer.

If the Products cannot be distinguished from similar Products that the Customer claims to have paid for in full, CBS may seize all products matching the description of the Products and hold them for a reasonable period so that the respective claims of CBS and the Customer can be ascertained. CBS must promptly return to the Customer any products that are found to be the property of the Customer. CBS is in no way liable or responsible for any loss or damage to products, as well as loss or damage to the Customer's business, arising from the seizure of products.

Where the Customer has sold the Products prior to payment in full, then the Customer is required to hold the proceeds of the sale on trust for the benefit of CBS.

7. Security Agreement under the Personal Property Securities Act 2009 No. 130 (Cth)

7.1 Where the context requires, words used in this Clause shall be given the same meaning as in the Personal Property Securities Act 2009 (Cth) (the PPSA).

7.2 CBS and the Customer acknowledge and agree that this Clause constitutes a security agreement for the purpose of the PPSA, and gives rise to a Purchase Money Security Interest in favour of CBS over the Products supplied or to be supplied to the Customer as Grantor pursuant to these Terms and Conditions.

7.3 The Products supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of “Other Goods” acquired by the Customer pursuant to these Terms and Conditions.

7.4 CBS and the Customer acknowledge and agree that CBS, as Secured Party, is entitled to register a Financing Statement with the Personal Property Security Register (PPSR) at any time before or after delivery of the Products and the Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information requested by CBS to complete and register any Financing Change Statement with the PPSR; and
- (b) indemnify and on demand reimburse CBS for expense incurred in searching, registering and/or discharging a Financing Statement or any other document with the PPSR and any reasonable enforcement fees and expenses of the Security Agreement.

7.5 The Customer waives its right under s. 157 of the PPSA to receive notice of any verification of the registration.

7.6 If the Customer defaults on any of its obligations to CBS under these Terms or Conditions or any other agreement for CBS to supply Products to the Customer, CBS may enforce its security interest in any Product by exercising any or all of its rights under these Terms and Conditions or the PPSA.

7.7 The Customer covenants that it will not grant another security interest in the Products to another person or entity without first providing 14 days written notice to CBS.

7.8 The customer waives its rights as a Debtor or Grantor under sections 95, 120, 121(4), 123(2), 129(2)(a), 130, 132(3)(d), 132(4), 135 and 137(2) of the PPSA.

7.9 Nothing in this Clause 7 is limited by any other provision of these Terms and Conditions or any other agreement between the CBS and the Customer.

8. Delivery

8.1 Unless otherwise expressly agreed, mode of delivery will be as specified on the Customer's purchase order to the Customer's address. Where mode of delivery has not been specified, the Customer will be responsible for organisation of delivery.

8.2 CBS shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where CBS delivers by instalments, each instalment shall be deemed to be sold to the Customer under a separate contract and the Customer will be invoiced accordingly.

8.3 Any times quoted by CBS for delivery are estimates only and CBS accepts no liability for failure or delay in delivery of Products. The Customer is not relieved of any obligation to accept or pay for Products by reason of any delay in delivery.

8.4 No defect or claim in respect of Products delivered shall entitle the Customer to reject delivery of other Products that are delivered as part of the order and are not subject to any defect or claim.

9. Freight, Passing of Risk

9.1 Unless otherwise expressly agreed, freight/shipment shall always be carried out at the Customer's expense and the risk shall pass to the Customer as soon as the Products have been handed over to the Customer representative / person / company / entity executing the freight/shipment.

9.2 If freight/shipment is delayed for reasons to be attributed to the Customer (e.g. failure or delay in unloading), the risk of accidental deterioration, loss and destruction shall pass to the Customer on notification of CBS's readiness to freight. Required storage costs after passing of risk shall be borne by the Customer.

9.3 If the Customer defaults in accepting the Products, CBS shall be entitled to claim reimbursement of any expenditure associated with the freight and subsequent default, and the risk of accidental deterioration, loss and destruction shall pass to the Customer.

10. Damage, Inaccuracies, Defects

10.1 The Customer shall inspect the Products immediately upon delivery and shall notify CBS in writing of any alleged inaccuracies or short supply of the Products or any fault, damage or defect in the Products or allegation that the Products or Services are not in accordance with the terms of a contract made pursuant to these Terms and Conditions within seven (7) days of the date of delivery of the Products or Services.

10.2 To the extent permitted by law, if the Customer does not notify CBS in writing within seven (7) days of the date of delivery, the Products or Services shall be deemed to be in all respects in accordance with the contract and the Customer will be bound to accept and pay for the same. Additionally, CBS will not be responsible for any loss or damage whatsoever and howsoever caused, arising out of or resulting from such inaccuracies or short supply of Products, or fault, damage or defect in Products or failure of Products to comply with the terms of a contract.

10.3 Subject to Clause 13, and to the extent permitted by law, if the Customer notifies CBS in writing of a fault, damage or defect in Products, or failure of Products to comply with the terms of a contract made pursuant to these Terms and Conditions within seven (7) days of delivery, CBS will, if in its opinion the Customer has not used the Products and any damage was not caused by the Customer, at CBS's discretion, repair or replace the damaged, faulty, defective or non-compliant Products and CBS will have no additional liability to the Customer.

11. Invoicing and Payment

11.1 Provided that credit terms have been approved in writing by CBS, payment is required within 30 days of the end the month of invoice.

11.2 If the Customer defaults on these payment terms, CBS may, at its discretion, withhold all further deliveries or cancel unfulfilled orders without prejudice to any of its existing rights. CBS may also, at its discretion, charge interest and seek to recover any reasonable costs incurred in the recovery or attempted recovery of any unpaid sums due from the Customer in line with the terms and conditions set out in the *CBS Customer Account Application form*. Additionally, CBS may withdraw any credit terms extended to the Customer and require immediate payment of all sums owed to CBS by the Customer.

11.3 CBS may set off any amount owed by the Customer to CBS against any amount owed, or that may become owing, by CBS to the Customer.

The Customer waives any right to set off any amount that is, or may become, owing by the Customer to CBS against any amount owing by CBS to the Customer. This term overrides any other document or agreement to the contrary.

11.4 If credit terms have not been approved by CBS, payment is required by cash prior to delivery.

11.5 Payments made by credit card will subject to the surcharge specified on the tax invoice issued to the Customer.

11.6 All amounts payable by the Customer under these Terms and Conditions must be paid without any offsets or a counterclaim of any kind.

11.7 Invoices will be issued:

a) if in relation to a Product, on the date of dispatch of the Product from CBS's premises, regardless of the date of actual delivery to the Customer; or

b) if in relation to a Service, on the date of the provision of the Service.

11.8 Any queries regarding items shown on invoices issued by CBS must be lodged by the Customer with CBS within seven (7) days of the issue date of the relevant invoice.

12. Returns

12.1 Unless otherwise agreed between the Customer and CBS, stock Products returned for credit will only be accepted within seven (7) days from the date of delivery, and must be returned to the point of dispatch at the Customer's expense. Products must be in their original condition, (no allowance being made for wear and tear), in their original packaging (if applicable) and be accompanied by all Product and delivery documentation provided with the Product,

12.2 If CBS chooses to accept the return of Products outside of the terms set out in Clause 12.1, it reserves the right to charge the Customer a restocking fee.

12.3 No credit will be issued by CBS for Products that are non-stock or have been specially manufactured or ordered to meet the Customer's requirements, unless the return is due to defect.

13. Warranties and Conditions

13.1 Where applicable, Products should be installed, operated and maintained in accordance with CBS's relevant procedures as published from time to time and available from CBS. Any warranty shall be void if installation, operating or maintenance instructions are not observed.

13.2 Products claimed to be defective shall be returned to CBS for examination in their original or equivalent condition, unless otherwise agreed in writing. CBS will remedy the defects if the warranty claim is valid and within the warranty period. CBS may refuse to remedy defects if the Customer has not complied with CBS's request to return the Products claimed to be defective.

13.3 CBS shall not accept liability for defects in Products supplied if they are caused by normal wear and tear. The Customer shall have no rights against CBS in respect of defects in Products sold as lower-class or used Products.

13.4 Any warranty shall be void if parts are replaced or materials used that are not in accordance with the original product specifications by CBS, unless the Customer can show that the defect in question resulted from another cause.

13.5 Specifications of CBS Products, particularly pictures, drawings, data regarding weight, measure and capacity contained in quotations and brochures shall in no way constitute a quality warranty but merely a description or labelling of goods.

13.6 Unless otherwise expressly agreed by CBS, variations shall be admissible that are customary within the trade.

13.7 To the extent permitted by law:

a) where CBS is not performing Product installation works, CBS will not be responsible for the consequence of any representation made or technical advice given by its employees or agents in connection with the design, installation and use of the Products, and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer's risk;

b) unless otherwise expressly specified in the terms of any applicable written warranty provided by CBS, CBS's liability to the Customer (under statute, contract, tort (including negligence), equity or otherwise) in relation to its Products and Services is limited to:

- i) in the case of damaged, defective or non-compliant Products, the repair or replacement of the Products; or
- ii) in the case of Services, the resupply of services;

- c) subject to Clause 13.7(b), CBS is not liable to the Customer or anyone else in connection with the Products or supply of the Products or Services for:
 - i) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Products or injury to any person) arising from:
 - a. the loading, unloading or delivery of the Products;
 - b. a failure or delay in supplying the Products;
 - c. a failure to install the Products in accordance with CBS's installation procedures as published from time to time;
 - d. the removal of defective Products or the installation of replacement Products;
 - e. the use of any tool or equipment loaned or hired out by CBS;
 - f. any changes to recommended Product specifications requested by the Customer; or
 - g. in the case of Service work performed by CBS, the failure of the Customer or its employees, agents or sub-contractors to follow the directions of CBS in relation to any actions required once the Service work has been completed in order to ensure its success and longevity;
 - ii) any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
 - iii) any claim, action, or proceeding by a third party against the Customer (or any loss, damages or liability incurred or suffered by the Customer as a result as a result of any such claim, action or proceeding); and

13.8 Any claims held against CBS may not be assigned to third parties.

13.9 The Customer indemnifies CBS from and against all losses, damages, costs and expenses suffered or incurred by CBS, as well as all claims, demands, suits, actions or proceedings made or brought against CBS, arising out of:

- a) CBS's use of or reliance on any materials, design, drawing or specification provided to CBS by the Customer (including any allegation or claim that any such use or reliance by CBS infringes the intellectual property rights of any person);
- b) the contract formed pursuant to these Terms and Conditions;
- c) any breach, act or omission arising directly or indirectly from or in connection with any breach of these Terms and Conditions the Customer or its employees and agents; or
- d) any loss or damage caused by any tool or equipment, or the use of any tool or equipment, loaned or hired out by CBS to the Customer.

14. Intellectual Property

14.1 Any and all drawings, designs, photos, videos, specifications or documentation relating to the Products disclosed by CBS to the Customer, remain the Intellectual Property of CBS.

14.2 The Customer shall not use the Intellectual Property for any purpose other than that specified by CBS, and shall not disclose the Intellectual Property to any person.

14.3 The Customer shall ensure that all directors, officers, employees, agents, contractors, advisors or associates are made aware and shall comply with the obligations set out in this Clause. The Customer shall be liable for any breach of these Terms and Conditions caused by any such person.

15. Governing Law and Jurisdiction

These terms and conditions shall be construed in accordance with and shall be governed by the laws in force in the State of Victoria, Australia and the parties hereby irrevocably submit to the jurisdiction of the Courts of that State in relation to any dispute between them and in so far as the *Vienna Convention for the International Sale of Goods* might otherwise govern the terms of sale, its application to these terms and conditions is excluded.

16. Severability, Variation

If all or any part of any of these terms and conditions are illegal or unenforceable they may be severed from these terms and conditions and the remaining provisions of this Agreement continue in force.

These terms and conditions contain all of the terms and conditions of the agreement between the parties and may only be modified or varied by agreement in writing between the parties.

No terms and conditions contained on any purchase order, delivery receipt or other document provided by the Customer to CBS will have any effect except to the extent that CBS expressly agrees in writing to amend these terms and conditions to incorporate those terms or conditions.