

# DOHERTY COUPLERS PTY LTD TERMS AND CONDITIONS

In these Terms and Conditions ("Terms") we have used "we", "us", "our" and "Doherty" to refer to Doherty Couplers Pty Ltd ABN 34 645 774 956, a company registered in Australia, and "you" to refer to the Customer. These Terms govern the provision of all supplies of Goods and Services from us to you. They govern all current and future engagements unless we provide you with amended terms. By engaging us to provide Goods and/or Services, you are deemed to have read and agreed to these Terms to the exclusion of your terms (if any).

## Ownership

1. Ownership of Goods produced or supplied by us, or materials supplied as part of Services provided by us, shall not pass to you until we receive payment in full of all amounts owing to us by you on any account and you have performed all other obligations under these Terms. Until payment is received, you must identify the Goods in such a way as to show that ownership of the Goods remains with us.
2. Ownership of all tools and equipment used by us in performing any Services for you shall at all times remain with us.

## Risk

3. Delivery occurs at the time possession of the Goods passes to you (or a person nominated by you) from us. The risk in Goods supplied passes to you on delivery.
4. We will insure all Goods to be delivered to you for their full replacement value from the point they leave our premises to the point at which risk passes to you. The cost of such insurance is payable by you, unless otherwise agreed with us in writing.

## Order and Acceptance

5. All orders for Goods or Services are to be placed in accordance with our ordering procedure as notified to you from time to time. We shall not supply any Goods or Services to you unless we have received from you an order that complies with our order procedures and in turn provided you with an order confirmation, which may be provided by facsimile or email. We reserve the right to reject or refuse to confirm any order in our sole and absolute discretion.
6. When providing an order confirmation we shall specify an estimated delivery date. This is an estimate only and we shall not be liable for any delay in delivery. We shall also agree with you at the time of providing an order confirmation the shipping terms that will apply in respect of that order.
7. Each order confirmation only represents a commitment by us to deliver Goods and/or Services pursuant to the relevant order and does not impose an obligation upon us to confirm any subsequent order or re-order for the supply of Goods or Services. No ongoing commitment to supply shall be implied from the confirmation of one or more orders or from previous business dealings.
8. You may not cancel or vary an order (regardless of whether we have, at that time, confirmed the order) without our written consent, which we may grant or deny in our sole discretion. In the event we consent to cancellation you shall pay us for any costs, charges and expenses incurred to the date of cancellation, whether resulting from design, procurement of materials, work carried out to the point of cancellation or otherwise.

## Price

9. The price for the Goods and/or Services shall be the price stated in our order confirmation, subject to adjustment in accordance with clause 10.
10. Prices specified in our order confirmation are in Australian currency at the exchange rate applicable on the day that our order confirmation is sent to you and are based on then current costs of materials, labour, freight, insurance and applicable duties and taxes. We reserve the right to increase the price payable to reflect increases in any such costs, or exchange rate movements, prior to the date of delivery.
11. You agree to pay us the charges set by us from time to time for supplying any Goods and/or Services at your request outside of our normal business hours and delivering any Goods and/or performing Services on your property or other property you have specified.
12. You agree to pay us for any out of pocket expenses incurred in providing Goods and/or Services to you, such as travel and accommodation, provided that we will obtain your consent prior to incurring the expense and will produce appropriate receipts when requesting re-imbursment.
13. The price for Goods or Services is expressed in Australian dollars and excludes GST and packing charges. GST and packing charges are payable in addition to the price quoted.

## Payment

14. Unless otherwise agreed in writing by us, payment for Goods and/or Services ordered is to be made in cleared funds before delivery. We shall notify you when the Goods or Services are ready for delivery. We will not load Goods for shipment until we receive payment in full. Where any alternative payment terms are agreed and specified in an order confirmation, the payment terms in the order confirmation apply in preference to this clause 14, but only in respect of that particular order. In all cases you shall make all payments due to us into our nominated account, without set-off or deduction of any kind.

## Default

15. If a payment is outstanding for 7 days from the date it is due (**Due Date**), then we may charge default interest at the rate of 20% per annum. The interest will be calculated on a daily basis from the date payment was due until the date payment is received by us. Any failure or delay by us to charge interest on any unpaid account or to exercise any of our rights will not operate as a waiver of those rights. We may apportion payments to outstanding accounts as we see fit.
16. Notwithstanding clause 15, if payment is outstanding for 7 days from the Due Date, we may suspend performing work on credit until the date of payment in full (including all accrued interest).
17. We may notify you at any time that we have ceased to provide Goods or Services on credit. This cessation does not relieve your obligation to pay amounts owing up to the date on which the credit arrangement is suspended.

## Personal Property Securities Act 2009 (Cth) ("PPSA")

18. These Terms create a security interest in the Goods supplied to you. You grant us a security interest in all of your present and after acquired personal property as further security for payment and performance of your other obligations under these Terms. You must not grant (or allow any other security interest to arise) over the property and goods that we have a security interest in. You agree to execute any documents, provide all relevant information and cooperate fully with us (within any time period specified by us) to ensure that we have a first-ranking perfected security interest in the property and Goods supplied to you. Within two business days of a written request by us to you, you agree to supply us with copies of all documents granting security interests over your personal property. We may at any reasonable time enter your premises and properties to uplift Goods that we have a security interest in. If Goods that we have a security interest in are processed, included or dealt with in any way causing them to be accessions, processed or commingled goods, our security interest will continue in the whole of which they are included. To the extent the law permits, we need not comply with, and you may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of and you waive your rights to receive any notice that is required by the PPSA (but this does not prohibit us from giving such a notice). If we exercise a right, power or remedy, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless we state otherwise at the time of exercise (but this does not apply to a right, power or remedy which can only be exercised under the PPSA). You and we agree not to disclose any information of the kind referred to in section 275(1) of the PPSA under section 275(4) of the PPSA unless section 275(7) of the PPSA applies. You agree not to exercise rights to make any request of us under section 275 of the PPSA, or to authorise the disclosure of any information under that section or waive any duty of confidence that would otherwise permit non-disclosure under that section.

## Warranty and Limitation of Liability

19. Subject to clause 20, we warrant that:
  - a. Services supplied shall be carried out in a good and workmanlike manner;
  - b. Goods supplied shall comply with our Products Standard Limited Warranty. A copy of the warranty document can be obtained from our website at [www.dohertydirect.net](http://www.dohertydirect.net).
20. Any defects in Goods or Services we supply must be notified to us in writing within 30 days. However, this clause does not affect any rights you may have as a "consumer" under the Australian Consumer Law.
21. The benefits of the warranty under clause 19 are in addition to other rights and remedies you may have under Australian law in relation to the Goods and Services that cannot be excluded by these Terms. If you are a consumer for the purposes of the Australian Consumer Law, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
22. Except as set out in these Terms (including clause 21) or as provided in any written warranty agreement signed by us, any and all conditions, guarantees, warranties or representations which might otherwise

be implied by law, trade, custom or otherwise are, where it is allowed, expressly excluded to the maximum extent permitted by law. In particular, and without limitation, to the maximum extent permitted by law:

- a. all implied terms, conditions and warranties contained in the Sale of Goods Law are expressly excluded;
- b. you must satisfy yourself that the Goods are fit and suitable for the purposes for which they are required, including in relation to any performance criteria.

23. Except to the extent that the law prevents us from excluding liability and subject to clauses 24 and 25, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Goods or Services provided by us to you.

24. If you are a "consumer" under the Australian Consumer Law, our liability (if any) under any condition, guarantee or warranty which cannot legally be excluded, but can be validly limited, is limited to:

- a. in the case of Goods, the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent goods; or the payment of the cost of having the Goods repaired; and
- b. in the case of the Services, supplying the Services again; or paying the cost of having the Services supplied again.

25. If you become liable to a "consumer" under the Australian Consumer Law in relation to the supply of the Goods by you to the consumer, then to the maximum extent permitted by law our liability (if any) to indemnify you under the Australian Consumer Law is limited to:

- a. the cost of replacing the relevant Goods;
  - b. the cost of obtaining equivalent Goods; or
  - c. the cost of having the relevant Goods repaired;
- whichever is the lowest amount.

26. To the extent permitted by law, we may, in our sole discretion, repair or replace any defective Goods or re-perform any defective Services, or refund the amount of those Goods or Services, provided that:

- a. You promptly notify us of any failure;
  - b. You must supply the date and number of any invoice relating to the Goods or Services; and
  - c. We must have a reasonable opportunity to inspect the Goods or Services complained of.
- Other than as required by law, we shall have no obligation to remedy any damage or defect caused by:
- d. Any wilful act or negligence by you or any other person other than us or our agents, employees or subcontractors;
  - e. Faulty materials or workmanship other than the work or materials provided by us;
  - f. Design faults, errors or discrepancies where we were not responsible for design; or
  - g. Unintended use of the Goods or failure to maintain the Goods in accordance with the stated or recommended instructions or requirements provided by us.

## Intellectual Property

27. All intellectual property (including without limitation copyright, patent and design rights, drawings, dies, patterns, jigs, documents, data, ideas, procedures and calculations) which arises out of or in the course of the production of the Goods or the provision of the Services shall be the exclusive property of Doherty, unless otherwise agreed in writing.

28. If any Goods or Services are to be undertaken based on your designs, plans, samples or instructions, you warrant that the undertaking of this work by us will not cause us to infringe any third party's intellectual property rights and you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.

## Termination

29. Either party may terminate these Terms, or cancel any particular order, with immediate effect, if any of the following events occur:

- a. the relevant party breaches these Terms and if such breach is not remedied within 5 business days of notice from the other party specifying the breach and what must be done to remedy the breach (if such breach is capable of remedy);
- b. the relevant party commits an act of bankruptcy or makes an assignment or composition with its creditors;
- c. any of the conditions necessary to render the relevant party liable to be put into liquidation occurs;
- d. the relevant party is or becomes unable to pay its debts as when they fall due or suspends payment to its creditors or ceases or threatens to cease to carry on its business or convenes a meeting of its creditors to propose a compromise with its creditors;
- e. if an application to put the relevant party into liquidation is made or advertised or a resolution is passed or proposed to be passed for the liquidation of that party; or
- f. the relevant party has a receiver or manager or statutory manager, or administrator appointed.

30. If any of the events in clause 29 occurs, in addition to any remedies we may have at law, we may do one or more of the following:

- a. suspend the account and provision of Goods or Services;
- b. charge default interest in accordance with clause 15;
- c. enter onto your premises or other property and repossess any Goods which have not been paid for in full; and
- d. immediately terminate these Terms.

31. Any termination is without prejudice to the rights of the parties arising prior to termination. If these Terms are terminated we reserve all rights not to provide any Goods or Services to you unless and until new terms of trade are agreed.

32. Nothing in clauses 29, 30 and 31 affects the operation of any clauses in these Terms which are expressed or implied to have effect after its termination.

## GST

33. In these clauses 33 to 36:

- a. GST means GST as defined in A New Tax System (Goods and Services Tax) Act 1999 (GST Act); and
- b. words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

34. Unless GST is expressly included, the consideration to be paid or provided under any other clause of these Terms for any supply made under or in connection with these Terms or an order does not include GST.

35. To the extent that any supply made under or in connection with these Terms or any order is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided.

36. A party's right to payment under clause 35 is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

## Notices

37. Any notice may be given in person, posted or sent by fax or email (or where the relevant party is a company, to any of its directors, agents or employees at the company's registered address).

## Privacy of Information

38. You authorise us:

- a. to collect, retain and use information about you provided by you, or any person, for the purpose of assisting in assessing your creditworthiness and for the purpose of assisting us in providing the Goods and Services under these Terms or any order; and
- b. to disclose information about you:
  - i. to any person who guarantees, or who provides insurance, or who provides any credit support, in relation to your obligations to us;
  - ii. to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

39. To the extent that you are entitled pursuant to the Privacy Act 1988 (Cth), you may request access to information held by us about you by making a written request to us. Our privacy policy (available upon request), also contains information about how you may access and correct personal information that we hold about you, how to lodge a complaint relating to our treatment of your personal information, and how we will deal with such a complaint.

**Variation**

40. We shall be entitled at any time by notice in writing to vary any provision of these Terms and you shall be bound by such variation.

**Costs**

41. You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms or any order.

**Severance**

42. If any of these Terms is held to be invalid, void, unenforceable or illegal for any reason, such provision shall be deemed to be severed from these Terms and the remaining provisions shall continue in force.

**No Waiver**

43. A failure or delay in enforcing a right pursuant to these Terms or any order is not a waiver of that right. Any waiver must be in writing and signed by the party granting the waiver.

**Assignment**

44. You must not assign or subcontract any of your rights, powers or obligations under these Terms or any order.

**Delivery**

45. If we have given a time frame for delivery of Goods or completion of Services, such time frame is approximate only and is not deemed to be of the essence.

**Force Majeure**

46. To the extent permitted by law, we shall not be liable to you for any defect, loss, damage or delay caused by strike, lockout, damage to or breakdown of plant, government interference, war, or act of war, storm, tempest, fire, flood, riot, explosion, earthquake, force majeure or any other cause beyond our control, that impacts on the supply of Goods or Services pursuant to these Terms or any order.

**Jurisdiction**

47. These Terms and each order shall be governed by the laws of Australia and shall be subject to the non-exclusive jurisdiction of Australia.

48. The application of the United Nations Convention on Contracts for the International Sale of Products (known as the Vienna Sales Convention 1980) is excluded.

**Entire Agreement**

49. These Terms, together with any particular terms specified in an order confirmation, represent the entire agreement between us relating to the order and supply of Goods and/or Services to you. No representations, statements, warranties, conditions or agreements made by any employee, agent or representative of Doherty that is not expressly provided for in these Terms shall be binding unless such representation, statement, warranty, condition or agreement is in writing and signed by a Director of Doherty.

**Interpretation**

50. In these Terms:

- a. "Australian Consumer Law" means Schedule 2 to the Competition and Consumer Act 2010 (Cth);
- b. "Goods" means all goods, including without limitation, machinery, equipment, attachments and components that we supply to you.
- c. "Sale of Goods Law" means:
  - i. the Sale of Goods Act 1954 (ACT);
  - ii. the Sale of Goods Act 1923 (NSW);
  - iii. the Sale of Goods Act 1972 (NT);
  - iv. the Sale of Goods Act 1896 (QLD);
  - v. the Sale of Goods Act 1895 (SA);
  - vi. the Sale of Goods Act 1896 (TAS);
  - vii. the Goods Act 1958 (VIC); and
  - viii. the Sale of Goods Act 1895 (WA).
- d. "Services" means all services we provide you including, without limitation, repair services.
- e. Words importing the singular include the plural and vice versa.
- f. References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- g. References to legislation include as amended, re-enacted or substituted from time to time.