

TERMS AND CONDITIONS OF PROVISION OF GOODS TO DURAFLOW INDUSTRIES PTY LTD

Purchase Order

Supplier (you/your)	
Customer Notice Address	
Goods	
Price and Deposit	
Delivery Location	
Delivery Date	
Any Purchase Order sent to you by Duraflow will be governed by these Terms and Conditions.	

DEFINITIONS

1. In these Terms and Conditions, unless the context or subject matter otherwise require:

Contract Goods means any Goods ordered by Duraflow from you at any time;

Debt means any money owing to you by Duraflow as specified in a Purchase Order and pursuant to these Terms and Conditions;

Delivery means delivery to the location/s nominated by Duraflow and includes such other place or date (as the case may be) as the parties may agree or as Duraflow may at its sole discretion consider reasonable in the circumstances;

Deposit means the amount required to be paid upon making an order for Goods if any;

Descriptive Matter includes without limitation, specifications, drawings, diagrams, product recommendations, particulars of weights/dimensions or any other form of measurement submitted by you or contained in your catalogues, price lists or advertising matter;

Duraflow (we/us/our) means Duraflow Industries Pty Ltd;

Goods means all products, goods, parts or components you may make available for supply from time to time;

Intellectual Property means and includes all copyright and related Rights, all Rights in relation to inventions (including patents and patent Rights), all registered and unregistered trade marks Rights, all Rights relating to registered designs, all circuit layout rights, and all other Rights resulting from intellectual activity in the artistic, literary or scientific fields excluding any moral attribution Rights;

Obligation means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Originating Location means the location of the relevant Contract Goods at the time a Purchase Order is sent to you;

Overdue Amount means any amount of money that remains unpaid thirty days after the date of the invoice for that amount or for a sum including that amount;

Personal Information has the definition attributed to it under the *Privacy Act 1988* (Cth);

Purchase Order means the schedule shown on the first page of this document or else another form of purchase order issued by us to you from time to time;

Right means any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

Terms and Conditions means the terms and conditions set out in this document; and

You/your means the person or entity on behalf of whom the request for Contract Goods is made and/or the person listed as the Supplier in the Purchase Order.

GENERAL

2. When you receive a Purchase Order from Duraflow, whether conditional or unconditional, you acknowledge that:

(a) you have read and agree to be bound by these Terms and Conditions; and

(b) Duraflow is dealing with you on the express basis that these Terms and Conditions will apply in full to the transaction.

ORDERING GOODS

3. Upon our requesting Contract Goods, we will provide a Purchase Order which will constitute an offer and be deemed accepted if not rejected within 24hrs of being sent.

4. Duraflow's Purchase Order may be provided to you in any form including, without limitation, ordinary post, facsimile, email, verbally or by hand delivery.

5. You may accept a Purchase Order from Duraflow earlier than the deemed acceptance in clause 3 by:

(a) written acceptance;

(b) verbal acceptance;

(c) part or full delivery; or

(d) continuing to communicate with Duraflow after the Purchase Order has been sent in a manner that would reasonably imply acceptance of the Purchase Order.

6. Once you perform an act of acceptance under clause 5 or acceptance is deemed under clause 3 of these Terms and Conditions, Duraflow is entitled to:

(a) rely on this acceptance as forming a contract (the **Contract**) to provide Contract Goods on the basis set out in these Terms and Conditions and on the price and terms contained in Duraflow's Purchase Order; and

(b) receive the Contract Goods from you for the price contained in a Purchase Order regardless of whether or not you wish to complete the transaction at a later time.

7. All Descriptive Matter is relied upon by Duraflow. You acknowledge that:

(a) Descriptive Matter forms part of the Contract; and

(b) Duraflow has relied upon representations contained within any Descriptive Matter.

PAYMENT / NON-PAYMENT

8. A failure by Duraflow to make payment of any Deposit does not:

- (a) prevent you from accepting the Purchas Order in any manner provided for in clause 3 or 5; or
- (b) limit or derogate from any of your Obligations under these Terms and Conditions.

9. Payment will be made by the due date contained in a Purchase Order (or if no date is specified) within 45 days of Delivery of the Contract Goods and the price attached to those specific Contract Goods.

10. You acknowledge that any price contained in a Purchase Order is fully inclusive of the following costs:

- (a) all packaging costs;
- (b) all taxes, duties and charges whatsoever imposed by any government or other government-related authority and payable in respect or by reason of the sale or Delivery of the Contract Goods whether or not the same were payable at the date of the order or offer;
- (c) the amount of any increase in the costs of Duraflow supplying or delivering the Contract Goods or any part thereof occurring after the date of order or offer for any reason, including without limitation, changes in the Manufacturer's prices, rates of exchange, landing charges, port dues or the cost of carriage, insurance or handling;
- (d) any excess over the amount estimated by Duraflow in respect of freight, insurance, port dues or handling changes at any port to which the Contract Goods are to be shipped; and
- (e) any excess incurred over the amount estimated by Duraflow to be incurred for supplying or delivering the Contract Goods, even where such excess results from an error or omission on the part of Duraflow, its servants, agents or employees,

unless the Purchase Order expressly states otherwise.

DELIVERY

11. You must make Delivery of the Contract Goods by the Delivery Date.

You expressly indemnify Duraflow from any actions or Obligations conducted or incurred in reliance on any expected Delivery Date and any claim or matter in connection thereof.

12. The risk and all attached liability for damage of the Contract Goods passes to you at the point of departure of the Contract Goods from the Originating Location even if Duraflow delivers the Contract Goods itself or Duraflow's premises are the intended delivery location.

LIMITATION OF LIABILITY

13. If Duraflow advises (in any manner) of an issue with the Contract Goods, you will:

- (a) repair or replace the Contract Goods; or
- (b) provide a full refund for the Contract Goods.

LICENCES

14. If it is necessary for the lawful fulfilment of any transaction under these Terms and Conditions for you to hold or obtain any license, consent or authority (**Licence**), you will fully indemnify Duraflow from any claims or losses arising out of your failure to hold or obtain any Licence.

TERMINATION

Termination by Duraflow

15. Duraflow may terminate any transaction arising out of your provision of Goods to it immediately upon notice to you in any form at any time.

16. Duraflow's has no liability to you upon termination by Duraflow.

Termination by you

17. You may terminate any agreement arising out of the provision of the Contract Goods upon written notice to Duraflow sent by email to purchasing@Duraflow.com.au or to any other address that Duraflow may nominate in writing for that purpose.

18. Even if you terminate a transaction with Duraflow in accordance with clause 17, you are still liable to provide Contract Goods under any Purchase Order issued at the time of termination or else reimburse Duraflow for any additional cost incurred in sourcing the Contract Goods from elsewhere should you not deliver them.

INTELLECTUAL PROPERTY / CONFIDENTIAL INFORMATION

19. If you provide us with any property, specifications, designs, plans, descriptions, prototypes, samples, tooling or components for or in relation to the Contract Goods or their manufacture or delivery, you agree to indemnify Duraflow against any claims, actions, demands, costs, damages, or expenses arising from or incurred by reason of any infringement of any Intellectual Property or confidential information arising from the supply or use of such specifications, designs, plans, descriptions, prototypes, samples, tooling or components. Duraflow is not required to defend any action, claim, or demand or to contest any costs or expenses covered by this indemnity before it is entitled to invoke this indemnity.

20. Any Intellectual Property vested in the Contract Goods remains the property of Duraflow.

21. All documents, information systems and know how provided to or disclosed to you by Duraflow must be treated as confidential by you and you warrant not to lend, copy, use, dispose of or sell such documents, information systems or know-how without the prior written consent of Duraflow.

PRIVACY

22. You must not, without Duraflow's consent, use our Personal Information in a way that breaches the National Privacy Principles set out in the *Privacy Act 1988* (Cth).

DISPUTE RESOLUTION

23. If you consider there is a legitimate dispute between Duraflow and you (the **Parties**) as to any part of a transaction governed by these Terms and Conditions, you must first go through the following dispute resolution process before the commencement of any arbitration or other legal proceedings.

24. You must give us notice in writing setting out full details of the dispute (**Dispute Notice**).

25. To resolve the dispute:

- (a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will engage in negotiations and discussions in order to seek to resolve the dispute.
- (b) the Parties must participate in the negotiations and discussions referred to in clause 25(a) in good faith and will use all reasonable endeavours to resolve the dispute. The Parties may also appoint third party consultants to assist in the resolution of the dispute.
- (c) if the Parties cannot resolve the dispute within the period set out in clause 25(a), you may request that the dispute be referred to mediation upon providing a written undertaking to bear all costs involved in the mediation.
- (d) if you do not undertake to pay all costs involved in the mediation, then Duraflow is not obliged to attend any mediation.

26. If the Parties to the dispute cannot agree on a mediator within seven days after a request under clause 25(c), upon the request of either Party the president of the Queensland Law Society Inc or that president's nominee may appoint a mediator.

27. Unless agreed by the mediator and Parties, the mediation must be held within 15 days of a request for the dispute to be referred to mediation being made under clause 25(c) and must occur on the Sunshine Coast unless otherwise agreed.

28. If a Party to a dispute fails to comply with any aspect of clauses 23-27, the other Party does not have to comply with those clauses in relation to the dispute.

29. Nothing in these Terms and Conditions obliges Duraflow to attempt the dispute resolution process outlined in clauses 23-28 before it can take action against you.

ILLEGALITY AND SEVERABILITY

30. The provisions of these Terms and Conditions will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect but if any provision on its true interpretation is illegal, invalid or unenforceable:

(a) that provision will so far as possible be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or

(b) if the provision or part of it cannot be read down the provision or part will be deemed to be void and severable and the remaining provisions of this instrument will not in any way be affected or impaired.

JURISDICTION

31. You irrevocably acknowledge that despite:

- (a) your business or residential location;
- (b) the delivery place of the Contract Goods; or
- (c) any other geographical indicia,

any transaction entered into between you and Duraflow is entered into under the laws of Queensland.

32. Any dispute that is not resolved in accordance with the process outlined in clauses 23 to 28 must be resolved in a court of competent jurisdiction in Queensland.

33. These Terms and Conditions or any Contract arising from them will not be interpreted, construed or applied adversely to Duraflow by reason of their having been drafted by or on behalf of Duraflow.