

CONDITIONS OF SALE

1. General

- (a) Only these Terms and Conditions of Sale ("Terms and Conditions"), as may be varied under clause 1(c), govern the sale and purchase of Goods described in the Quotation issued by Company to Customer, and bind the Company. All other Terms and Conditions (including Customer's conditions of purchase, if any), warranties and representations are excluded and do not bind the Company.
- (b) Agents or distributors of the Company's Goods have no power, right or authority, express or implied, to bind the Company.
- (c) The Company may vary these Terms and Conditions by agreement in writing with Customer.
- (d) A Quotation given to Customer is not an offer, and is valid only insofar as the Quotation constitutes terms for consideration for 90 days from the date of Quotation, or as otherwise stated.
- (e) An order placed by Customer under a Quotation is not binding on the Company until accepted in writing by the Company. That acceptance by the Company of Customer's Quotation shall be effective to form a contract between the Company and Customer pursuant to the Company's acceptance and to the Terms and Conditions herein.

2. Price

- (a) Prices for Goods will be as per the Company's Official Price List.
- (b) Prices may be altered by the Company with 30 days' notice.
- (c) (GST for Canadian Customers), delivery charges and extra (packaging) surcharges are payable by Customer.
- (d) The Company may impose a handling and delivery charge on low value orders.
- (e) Prices for the Goods specified on the Company's Official Price List are exclusive of all city, state and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Customer agrees to pay such taxes directly or to reimburse the Company for all such taxes, whether imposed on Customer, required to be collected by the Company or imposed on the Goods or on Customer in connection with this sale. Wherever applicable, such tax or taxes shall be added to the invoice as a separate charge or invoiced separately. Customer agrees to pay all personal property taxes that may be levied against the Goods after the date of delivery.

3. Orders and Delivery

- (a) Orders for Goods cannot be suspended or cancelled except with the Company's consent. Customer shall pay all reasonable expenses incurred by the Company due to suspension or cancellation.
- (b) Delivery Dates are estimates only and the Company is not liable for any loss or damage for failure to deliver by those dates. The Company shall not be liable for, nor shall the Company be in breach of its obligations to Customer because of, any delivery made within a reasonable time after the stated Delivery Date.
- (c) The Company may make partial deliveries of any order and render an invoice to Customer for the Goods delivered. Failure to make delivery of the total order will not invalidate the sale of Goods delivered.

4. Returns

- (a) Goods are sold on a non-return basis and unless damaged (refer to clause 8) or incorrectly delivered (refer to clause 3) cannot be returned.
- (b) All returns must receive the prior approval of the Company.
- (c) The Company reserves the right to inspect Goods to be returned.
- (d) Goods must be returned according to the Company's procedure for returns for credit or replacement.
- (e) Customer must retain signed return documentation as proof of a return.
- (f) Unless damaged or incorrectly delivered, a re-stocking fee of 25% applies to all Goods returned and is payable within 30 days of the end of the month in which the credit is issued.

5. Payment

- (a) Customer must pay the Invoice Value within 30 days of the end of the month of delivery of the Goods (i.e. net 30 days).
- (b) Any Goods returned or to be returned by Customer under clause 4 do not alter the payment terms on an invoice.

- (c) The Company may impose a service charge of up to 2% per month (calculated on daily balances) on overdue amounts.
- (d) Customer shall be liable for all costs incurred by the Company in recovering outstanding monies from Customer, including collection agency fees, court costs and bank dishonour fees.
- (e) If any payment is overdue, the Company reserves the right to suspend any other deliveries to Customer.

6. Risk and Ownership of Goods

- (a) All shipments covered by these Terms and Conditions are F.O.B. destination. The Company's liability for delivery shall cease upon the Company making delivery to Customer at the F.O.B. point.
- (b) Title and ownership of the Goods shall transfer from the Company to Customer upon delivery by the Company, and receipt of the Goods, by Customer.
- (c) The Company at its discretion may require a security interest in the Goods and in the proceeds of those Goods, perfected by the filing of a UCC-1 financing statement, which security interest shall not be terminated until Customer has made full payment for all Goods whatsoever sold by the Company to Customer, whether:
 - (i) under these conditions or any other contract or agreement;
 - (ii) the Goods are similar to the goods the subject of these conditions or not;
 - (iii) such indebtedness is pursuant to a written, oral or partly written and oral contract; or
 - (iv) such indebtedness is on a current account, a trading account or otherwise.
- (d) Notwithstanding clause 6(b), Customer may still sell the Goods, but only in the ordinary course of business. However, if it does so, the proceeds of sale shall be held for the Company until all Goods are fully paid for by Customer.
- (e) If Customer enters into any form of bankruptcy, insolvency, or similar proceeding prior to full payment of the Goods by Customer, or the Company requires Goods to be returned due to non-payment, Customer must return Goods to the Company on demand. If Customer does not return the Goods to the Company within 48 hours of receipt of the demand (or such other time, if any, specified by the Company), the Company may at any time do all things necessary to recover the Goods to the value of the non-payment. Customer is liable for all costs associated with the exercise by the Company of its rights under this clause 6(d).

7. Damage, Shortage, Loss In Transit and Defective Goods

- (a) Unless otherwise agreed, Customer must advise the Company of any damaged or shortage of Goods within 48 hours after the Delivery Date, otherwise no liability will be accepted.
- (b) Goods subsequently found to be defective must be reported immediately when the defect is discovered and any reported defects shall be supported with pictures and documentation

8. Limitation of Liability

- (a) Unless otherwise agreed, damaged Goods (excluding unavoidable imperfections) will be credited or replaced if the Company is advised within 14 days after the Delivery Date, and the damaged Goods are made available for inspection and return to the Company may elect to:
 - (i) replace the damaged Goods; or
 - (ii) pay the cost of obtaining equivalent products; or
 - (iii) pay the cost of having the damaged Goods repaired.
- (b) In no event shall the Company be liable for any special, incidental, exemplary, punitive or consequential loss, indirect costs or damages including without limitation, litigations costs, installation and removal costs, re-procurements or replacement costs, loss of data, production, opportunity, goodwill or profit arising from any cause whatsoever, regardless of the form of the action, whether in contract, tort (including negligence), strict liability, or otherwise, even if advised of the possibility of such costs or damages.

9. Limited Warranty

The Company warrants that Goods delivered hereunder shall be free from defects in material and workmanship under normal use and service for a period, as specified on the Company's web site. If, during the specified period (a) the Company is notified as per clause 7(b); (b) Customer returns such Goods to the Company, F.O.B. the Company's facility; and (c) the Company's examination of such Goods discloses to the Company's satisfaction that such Goods are defective and such defects are not caused by accident, abuse, misuse, neglect, alteration, improper installation, repair or alterations by someone other than the Company, improper testing, or use contrary to any instructions issued by the Company, then within a reasonable time the Company shall (at its sole option) either repair, replace or credit Customer for such Goods. The Company shall return any Goods repaired or replaced under this warranty to Customer, transportation prepaid and reimburse Customer for the transportation charges paid by Customer for such Goods. The performance of this warranty does not extend the warranty period for any Goods beyond that period applicable to Goods originally delivered. This limited warranty excludes engineering samples, which are provided "as is" without warranty, and Goods that have been subject to misuse, mishandlings, accident, alteration, neglect, unauthorized repair or installation. Furthermore, this limited warranty shall not apply to the use of Goods in any application or environment that is not within the Company's specifications or in the event of any act, error, neglect or default of customer. THE FOREGOING LIMITED WARRANTY CONSTITUTES THE COMPANY'S EXCLUSIVE LIABILITY, AND THE EXCLUSIVE REMEDY OF CUSTOMER, FOR ANY BREACH OF ANY WARRANTY OR OTHER NONCONFORMITY OF GOODS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

10. Trademarks

- (a) Customer cannot use the Company's trademarks and trade names without the prior written approval of the Company.
- (b) All right, title and interest in and to the intellectual property and other proprietary rights embodied in the Goods shall be retained by the Company. No right or license therein is transferred to the Customer under these Terms and Conditions. The Company reserves all rights in such intellectual property and other proprietary rights.

11. Changes to Specifications; Discontinuance

The Company reserves the right to make any changes in the specifications of the Goods that do not materially alter their quality or performance, or where change is necessary to conform to any applicable safety or other statutory requirements. The Company also reserves the right to discontinue the sale of the Goods at any time, in its sole absolute discretion.

12. Explanatory Material

- (a) Explanatory Material provided to Customer does not bind the Company, and does not constitute any form of representation by the Company.
- (b) The Company may amend its Explanatory Material without notice to Customer.

13. Non Performance

The Company is not responsible for any lack of operation or performance of the Goods (and any loss or damage) where they are:

- (a) used or adapted for a purpose for which they were not designed;
- (b) combined or integrated with other products not manufactured by the Company.

14. Force Majeure

The Company is not liable for any failure to comply with these conditions where the failure is due to circumstances which are not directly within the Company's control or force majeure, including, but not limited to, acts of terrorism, natural disaster, industrial action, or a failure of a supplier, public utility or common carrier.

15. GST (for Canadian Customers)

- (a) Customer will be liable for GST on any taxable supply by the Company to Customer.
- (b) The Company reserves the right to raise tax adjustment notes and recipient tax invoices when necessary.
- (c) Customer must supply the Company with its ABN (where applicable) prior to or at the time of placing order with the Company.

16. Waiver

No failure by the Company to enforce or take advantage of any provision hereof shall constitute a waiver of the right subsequently to enforce or take advantage of such clause or any other clause hereof.

17. Governing Law

The laws of the State of Delaware, United States of America shall govern in all respects as to the validity, interpretation, construction and enforcement of these Terms and Conditions, without reference to conflicts of laws principles. The U.N. Convention on Contracts for the sale of International Goods shall not apply.

18. Entirety of Agreement

These Terms and Conditions set forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersede all other oral or written representations and understandings. These Terms and Conditions may only be amended or modified per clause 1(c).

19. Privacy Act

Customer agrees to the Company obtaining information about the financial standing and credit worthiness of Customer.

20. Definitions

Company: Caroma USA, Inc., but shall not include Caroma Industries Ltd ABN 35 000 189 499, or any director, officer, employee, agent or representative of either company for any purpose whatever.

Customer: the person or company named in the sales invoice or Quotation issued for the Goods by the Company.

Delivery Date: the date on which the Goods are delivered to Customer.

Invoice Value: the amount stated in the Company's invoice for Goods ordered by Customer.

Explanatory Material: drawings, specifications, explanatory literature and any other materials prepared by the Company for descriptive or explanatory purposes.

Goods: those goods ordered by Customer from the Company from time to time.

Official Price List: the list of prices of Goods set out in the Company's price book or price file or price notifications from time to time.

Price: the price for Goods contained in the Official Price List.

Quotation: a quotation submitted by the Company to Customer for Goods.