



## STORK AWD PTY LTD

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### Wholesale Automotive & Industrial Surface Preparation & Finishing Supplies

#### GENERAL CONDITIONS OF SALE (2014)

1. Acceptance - All prices submitted to Buyer in the "Distributor Price List" are subject to acceptance by StorkAWD Pty Ltd ("Seller") on receipt of order. Unless otherwise stated, prices and terms and conditions are held open for acceptance for a period of thirty (30) days from date of the Distributor Price List after which period, such prices and terms and conditions must be reconfirmed by Seller in writing in order to be valid. Distributor Price List and General Conditions of Sale are subject to change without notice. Any terms and conditions stated in Buyer's enquiry or purchase order which differ or are inconsistent with Seller's Distributor Price List and General Conditions of Sale shall not apply.
2. Delivery - Every reasonable endeavour will be made to effect delivery within the period of 7 working days from acceptance of the Buyers order, but no liability shall be accepted by Seller should the estimated delivery time be exceeded for any reason.
3. Terms of Payment - In relation to products and equipment ordered by Buyer, and unless otherwise specified by the Seller's acceptance of the order, the terms of payment for products or equipment supplied by Seller, the terms of payment shall be: net cash thirty days after date of invoice. In any event, amounts remaining unpaid at the due date for payment shall accrue interest at the rate of 1.5% per month until payment in full is received by Seller. A 2% charge will apply to the Buyer if they wish to make payment via Credit Card (MasterCard or Visa only). In the event that the Seller is required to bring legal action or engage professional debt collection service to collect delinquent accounts, the Buyer agrees to pay all the legal or debt collector fees and costs of suit.
4. Warranty -
  - (a) For Equipment - Equipment purchased from third parties and supplied by Seller, including, without limitation, spray guns, heat guns, spray gun wash, panel stands, polishing machines etc, are excluded from Seller's warranty and, for those items (if any) Seller will use its best endeavours to pass to Buyer the best warranties obtainable by Seller from that third party.
  - For Consumables - Items of a consumable or routine replacement nature such as adhesives, compounds, tapes, films, putties, paints, etc. are excluded from this general warranty.
  - (i) All warranties, conditions, liabilities (including for negligence) or representations in relation to, the quality or fitness of the equipment, its compliance with description, conformance with statutory requirements or its use or application other than any non-excludable right which might otherwise be implied by law or statute, are expressly excluded.
  - (ii) Seller reserves the right to alter the specifications, design or to discontinue any products without prior notice. Notwithstanding, all illustrations, descriptions and specifications are by way of example only and are not necessarily applicable to any product and equipment offered by Seller.
  - (b) For Services - The Buyer acknowledges and agrees that in respect of any technical services (including, without limitation, any advice, recommendation, information or assistance) ("Services") Seller may provide to Buyer, is provided in good faith and, Seller makes no representation or warranty of any kind including the Services' fitness for purpose or compliance with description.
  - (c) Limitation of Liability - Notwithstanding anything contained in Seller's Distributor Price List (including without limitation these General Conditions), Seller shall not be liable to Buyer in any circumstances for any indirect, economic, incidental, special or consequential loss or damage, including without limitation loss of revenue, loss of production, loss of business or loss of profit, whether arising from negligence, breach of contract, statute or otherwise in connection with or arising out of or in any way related to the supply of Seller's products and equipment and the provision by Seller of Services. In any event, the total liability (if any) of Seller under Seller's Quotation shall be limited to One Australian Dollar (\$1).
  - (d) Indemnity - Notwithstanding any other provision of Seller's Distributor Price List (including without limitation these General Conditions), Buyer shall indemnify and keep indemnified Seller and hold Seller harmless from and against all actions, suits, causes of action, claims, demands, costs, charges and expenses of every description made against or suffered by Seller due to the use, operation, safety features and procedures for use in respect of any products and equipment which may be supplied by Seller to Buyer
5. Product & Equipment Acceptance - Unless otherwise agreed in writing, products and equipment shall be accepted or be deemed to have been accepted by Buyer, and the contract completed, when delivered by Seller to Buyer's premises.
6. Force Majeure - The Seller shall not be liable for failure or delay in performance caused by failure of freight, failure of manufacturer to supply goods to Seller, or any act of force majeure including, but without limitation accident, civil or industrial disturbances, acts of war (whether declared or not), acts of god or any other causes beyond Seller's control. In the event of any such failure or delay, Seller may at its discretion and without liability terminate whole or any part of its performance. This clause 6 does not apply to any obligation of Buyer to pay money.
7. Cancellation of order - Without prejudice to Seller's rights, after Buyer's purchase order had been received and/or accepted by Seller, cancellation of that order by Buyer shall only be accepted by Seller if Buyer shall first have paid Seller against all of its loss of which it has suffered or could suffer as a result of such cancellation. Buyer agrees to pay the costs already incurred.
8. Taxes - Goods and Services Tax ("GST") and other legally chargeable taxes & duties if relevant are excluded from Seller's price book, and will be charged to Buyer. If GST is imposed on any supply by Seller of products and equipment and Buyer agrees that it shall pay and Seller shall be entitled to recover from Buyer the amount of GST. For that purpose, Seller shall issue to Buyer a tax invoice in respect of that taxable supply.
9. Applicable Law - Seller's Distributor Price List (including without limitation these General Conditions) shall be governed by the laws of the State of Victoria, Australia. Both Seller and Buyer irrevocably submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and the Courts entitled to hear appeals therefrom.
10. Retention of Title - In relation to goods (including Seller's products and equipment) supplied by Seller to Buyer, until payment in full of all amounts owing to Buyer to Seller on any account whatsoever:-
  - (a) The title in the goods shall not pass to Buyer and Buyer shall keep the goods as bailee for Seller. The goods shall nevertheless be at the risk of Buyer from the time of delivery, and Buyer shall keep the goods fully insured for their full replacement value. The Buyer shall indemnify Seller against all loss or damage to the goods whatsoever occurring after delivery;
  - (b) Buyer must store and clearly identify goods as the property of Seller, and ensure that the Buyer or any third party do not claim to be owner of the goods;
  - (c) Buyer irrevocably authorises Seller or agents to enter Buyer's premises and recover the goods and Buyer will not make any claim against Seller in respect of such entry. The Buyer also appoints Seller as attorney to do all such acts and things as are necessary to enable Seller to recover the goods; and
  - (d) Buyer shall hold the goods in a fiduciary capacity and may only sell the goods in the ordinary course of business as agent for Seller. Furthermore, Buyer must hold the proceeds of any such sale in a fiduciary capacity for, and to the account of, Seller, and Buyer must take all steps necessary to keep such proceeds separate from other monies and pay over such proceeds to Seller to the extent necessary to discharge in full the Buyer's indebtedness to Seller.
11. Insolvency, Conflict of Interest & Termination - If Buyer fails to comply with any of the terms of Seller's General Conditions of Sale or fails to make payment for goods as and when they fall due; or if Buyer shall become bankrupt; or if Buyer goes into liquidation or provisional liquidation, has a receiver appointed; or if Buyer imports or trades in Farecla & Lord Fusor products not supplied by or authorised by the Seller, or if in the opinion of Seller Buyer is no longer able to meet its debts as and when they fall due, Seller may at its discretion suspend or postpone any delivery without being liable for any loss or damage suffered by Buyer in that regard, or terminate the contract by notice in writing to Buyer. Upon termination, and in addition to any other rights conferred on Seller by these General Conditions of Sale, Seller shall be entitled to recover all costs incurred by it including, without limitation, payment for all deliveries already made. Termination pursuant to this clause shall not affect any other rights or remedies which Seller may have.
12. General -
  - (a) The Buyer must not without Seller's prior written approval, assign or transfer or purport to assign or transfer Seller's price book or the benefit thereof to any other person whatsoever.
  - (b) No indulgence or forbearance extended to Buyer shall limit or prejudice any other right of claim to Seller.
  - (c) The supply of goods by Seller shall not confer any right upon Buyer to use any of Seller's trade-marks or trade-name without Seller's prior written consent including those of Farecla and Lord Fusor, and at all times such marks or names remain the property of Seller or its principals.
13. Claims  
Claims for damaged or short supply to Buyer must be reported in writing to Seller within 48 hours after good receipt at Buyer address.
14. Goods Returned
  - (a) Must first be approved in writing by the Seller's general manager or director.
  - (b) Must be no older than 21 days from date of purchase. No exceptions apply.
  - (c) Subject to 15% (based on invoice price) re-stocking & handling fees.
  - (d) Must be in unopened, undamaged and in original packaging.
  - (e) Must have freight prepaid by Buyer.
  - (f) Claims for damaged or short supplied goods are required to be reported within 48 hours after the receipt of the goods to the Seller.
15. Back orders
  - (a) Seller will endeavour to supply all orders ex-warehouse.
  - (b) Incomplete orders or backorders will be noted on the delivery docket or invoice.
  - (c) All back orders will automatically be shipped with the next order to avoid additional freight cost.
16. Freight charges
  - (a) Order value where free freight is applicable (Appendix 1 attached). Seller will select the most efficient mode of transport for delivery of goods to Buyer.
  - (b) Orders below the threshold value for free freight (Appendix 1 attached) will be delivered ex-works (StorkAWD, 2-6 Sarton Rd, Clayton Vic 3168).
  - (c) Buyer may nominate their own freight company to collect goods and provide the following info to Seller:
    - Freight carriers name
    - Freight carriers phone and address
    - Buyers freight account number
    - Type of freight; General or express freight
    - Insurance details