

# Woodland Metal Spinning Pty Ltd Terms and Conditions

The following terms and conditions are incorporated into every contract for services and/or delivery of goods by Woodland Metal Spinning Pty Ltd ABN 92 001 746 943 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (Supplier). All quotations given, orders accepted, and credit extended by the Supplier, are subject to the following terms.

## Definitions

1. The "Supplier" shall mean Woodland Metal Spinning Pty Ltd ABN 92 001 746 943 and its related bodies corporate as the term is defined in the *Corporations Act 2001*.
2. The "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Supplier to the Customer.

## Payment terms

3. The terms of payment are strictly thirty (30) days from the date of the invoice or such other period as nominated by the Supplier herein.
4. Should the Customer not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of:
  - (a) 10 percent (10%) of the amount of the invoice payable; and
  - (b) A further 10 percent per annum payable per year, or part thereof, until full payment by the Customer.
5. At the Supplier's sole discretion the price shall be either:
  - (a) as indicated on any invoice provided by the Supplier to the Customer; or
  - (b) the Supplier's quoted price (subject to clause 4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
6. The Supplier reserves the right to change the price in the event of a variation to the Supplier's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of shipping and customs delays or as a result of increases to the Supplier in the cost of materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
7. At the Supplier's sole discretion a deposit may be required. The deposit amount or percentage of the price will be stipulated at the time of order by the Supplier and shall be immediately due and payable.
8. The Supplier may submit detailed progress payment claims in accordance with the Supplier's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet utilised.
9. At the Supplier's sole discretion:
  - (a) payment shall be due on delivery of the goods; or
  - (b) the Supplier may withhold delivery of the goods until the Customer has paid for them in full, in which case payment shall be due before the stipulated date of delivery; or
  - (c) payment for approved Customers shall be made by instalments in accordance with the Supplier's payment schedule.
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by the Supplier.
10. Payment may be made by cash, cheque, bank cheque, electronic/online banking, or by any other method as agreed to between the Customer and the Supplier.
11. Unless otherwise stated the price does not include GST. In addition to the price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply under this agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the price except where they are expressly included in the price.

## Overruns

12. Due to the nature of production, overruns and under runs may occur within a 5%-10% range (usually around 5%-6%). This means you may receive an overage or shortage on your order.



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13. Overruns, not exceeding 10% of the ordered quantity shall constitute acceptable delivery. No production overruns may be returned if compliant with specifications. Woodland will invoice for the actual quantity delivered within this tolerance. You will not be charged for products that you do not receive.
14. Delivery of up to 10% more or less than the quantity ordered shall constitute fulfilment of the customer-supplier agreement. The customer hereby promises to accept and pay for any excess not exceeding 10%.

### Acceptance

15. The Customer is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Customer places an order for or accepts delivery of the goods.
16. These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.

### Change in control

17. The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

### Delivery

18. Delivery ("Delivery") of the goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the goods at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the goods to the Customer's nominated address even if the Customer is not present at the address.
19. At the Supplier's sole discretion the cost of delivery is either included in the price or is in addition to the price.
20. The Customer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
21. Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
22. Delivery of the goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
23. The Customer shall take delivery of the goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed five percent (5%); and
  - (b) the price shall be adjusted pro rata to the discrepancy.

### Tooling

24. Tooling means any die, jig, fixture, mould, pattern, template, gauge, testing device, supplies, materials or other items that are purchased by the Supplier or specially constructed for the Supplier's use or the use of its outside suppliers on the Customer's behalf in the manufacture of parts for specific models, assemblies, or products and which has a normal physical life of one year or more.
25. The Supplier can dispose of tooling if it is not used after a period of one year with an additional six months' option. The Supplier reserves the right to charge a fee for storage of their tooling after one year. The Supplier may also send back tooling to the Customer and/or dispose of the item at the expense of the Customer.

### Risk

26. Risk of damage to or loss of the goods passes to the Customer on delivery and the Customer must insure the goods on or before delivery.
27. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.



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28. If the Customer requests the Supplier to leave goods outside the Supplier's premises for collection or to deliver the goods to an unattended location then such goods shall be left at the Customer's sole risk.
29. Metal is a natural product and as such colour, shade, tone, markings, and veining may vary from samples provided. Whilst the Supplier will make every effort to match sales samples to the finished goods the Supplier accepts no liability whatsoever where the samples differ to the finished goods.
30. The Customer acknowledges that metal supplied may:
  - (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

### **Jurisdiction**

31. The Customer acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
32. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
33. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

### **Security/charges**

34. The Customer charges in favour of the Supplier all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
35. The Customer charges in favour of the Supplier all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
36. The Customer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder.
37. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the Personal Property Securities Act 2009 (PPSA)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

### **Defects, warranties and returns**

38. The Customer must inspect the goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the goods.
39. Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010 (CCA)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
40. The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
41. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.



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42. If the Supplier is required to replace the goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the goods.
43. If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier in the Supplier's sole discretion;
  - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the goods;
  - (c) otherwise negated absolutely.
44. Subject to clauses 38–43, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 38; and
  - (b) the Supplier has agreed that the goods are defective; and
  - (c) the goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the goods are returned in as close a condition to that in which they were delivered as is possible.
45. Notwithstanding clauses 38–44 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - (a) the Customer failing to properly maintain or store any goods;
  - (b) the Customer using the goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing to use the goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God.
46. The Supplier may in its absolute discretion accept non-defective goods for return in which case the Supplier may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned goods plus any freight costs.
47. Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

### Default

48. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
49. Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### Formation of contract

50. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Customer's offer will complete a contract.
51. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

### Retention of title

52. Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).



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53. Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
54. Until payment in full has been made to the Supplier, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
55. The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Customer will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.
56. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 55 hereof unless and until the funds held on trust are remitted to the Supplier.
57. The Customer agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.
58. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under clause 54.
59. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
60. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the Personal Property Securities Act 2009 (PPSA).

### Indemnity

61. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

### Provision of further information

62. The Customer undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
63. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

### Corporations

64. If the Customer is a corporation, the Customer warrants that all of its directors will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.

### Trustee capacity

65. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
  - (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Customer has the right to be indemnified out of trust assets;
  - (c) the Customer has the power under the trust deed to sign this agreement; and
  - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
66. The Customer must give the Supplier a copy of the trust deed upon request.



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### Partnership

67. If the Customer enters into this agreement as partners, the Customer warrants that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.
68. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

### Insolvency

69. If the Customer becomes insolvent, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent

### Waiver

70. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Customer must be made by the Customer's authorised officer in writing.

### Costs

71. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
72. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
73. The Customer acknowledges and agrees that payments by the Customer will be applied by the Supplier as follows.
  - (a) Firstly, in payment of any and all collection costs and legal costs
  - (b) Secondly, in payment of any interest incurred
  - (c) Thirdly, in payment of the outstanding invoice(s).
74. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
75. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 73 herein.

### Taxes and duty

76. If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;The Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on demand.

### Interest rates

77. The interest rate on any outstanding debts is a fixed rate of 10 percent (10%) per annum.

### Set-off

78. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
79. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.



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### Miscellaneous

80. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
81. In relation to the supply of goods, the Supplier's liability is limited to:
  - (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
82. In relation to the supply of services, the Supplier's liability is limited to:
  - (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
83. The Customer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Customer under the PPSA.
84. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorised representative.
85. The Customer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
86. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
87. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the CCA or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
88. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

### Variation

89. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer.
90. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
91. Variations requested by the Customer will only be binding upon the Supplier if they are accepted in writing.

### Consent to register

92. The Customer hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register (PPSR) and agrees to do all things necessary and reasonably required by the Supplier to affect such registration.
93. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the PPSR.

### Entire agreement

94. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.



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