

# Terms and Conditions of Trade

*To the fullest extent legally permissible all dealings between Rovumstil Pty Ltd T/A Club Stainless and Accessories(referred to from here as Club Stainless) any Customer relating to any products ["Products"] and/or services are subject to the following terms and conditions of trade ["these Terms"] unless otherwise agreed in writing:*

1. **Payments** to be by cash, cheque, bank cheque, EFTPOS, credit card or direct deposit and without deduction unless otherwise agreed. If Club Stainless receives or recovers money in respect of debts of the customer or anyone else, Club Stainless may use it to pay off whichever part of those debts it chooses.
2. **Interest** will be charged on overdue accounts at the rate prescribed by the Penalty Interest Rates Act 1983 (NSW) plus 2%.
3. **Property:** Even if Club Stainless grants any credit facility and/or time to pay:
  - a. property in Products shall not pass to the Customer until payment in full and of all monies owed to Club Stainless and Club Stainless reserves the right to take possession and dispose of Products as it sees fit at any time until full payment;
  - b. the Customer grants permission to Club Stainless to enter any property to recover the Products and with such force as is necessary;
  - c. the Customer agrees that a certificate purporting to be signed by an officer of Club Stainless identifying Products as unpaid for shall be conclusive evidence that Products have not been paid for and of Club Stainless's title to those Products;
  - d. upon sale or disposition of any Products prior to full payment the Customer agrees to deposit all proceeds in a separate bank account, not mix such proceeds with any other monies and account to Club Stainless for the same as fiduciary and bailee;
  - e. without derogating from Club Stainless's rights as a creditor of the Customer or arising under these Terms if Products are used in any construction, building, fabrication and/or manufacturing process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any Products used in the Process as invoiced to the Customer by Club Stainless UPON TRUST for Club Stainless until payment in full for those Products and all monies owed to Club Stainless;
  - f. Products shall be deemed to be dealt with by the Customer on a "first in first out" basis at all times; and

- g. nothing in this clause is intended to create a charge over any Products and this clause shall be read down to the extent necessary to avoid creating any charge.
  - h. The purchaser shall indemnify Club Stainless against all damage, penalty, expense, or costs to which the company may become liable through any work required to be done or material supplied by the company in accordance with an order which involves an infringement of any patent, registered design, or other intellectual property, as pertaining to and including infringements of intellectual property.
4. **Limitation of Liability:** The Customer agrees:
- a. to limit any claim it makes to the cost of replacement of Products or of acquiring equivalent products;
  - b. that Club Stainless shall not be liable for any loss or expense arising after seven days from delivery (or at all once Products have been unpacked, affixed and/or otherwise used or applied) after which there shall be deemed to be unqualified acceptance;
  - c. that to the fullest extent legally permissible Club Stainless shall not be liable for any damages for personal injury, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise and the Customer acknowledges this limit of liability and agrees to limit any claim accordingly; and
  - d. that to the fullest extent legally permissible no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon Club Stainless other than these Terms is made or given by or on behalf of Club Stainless other than by these Terms save and except to the extent otherwise required by law.
  - e. Club Stainless shall not be liable for liquidated damages.
5. **Exclusions:** The Customer agrees that:
- a. no dealing between Club Stainless and the Customer shall be or be deemed to be a sale by sample;
  - b. the Customer shall rely on its own knowledge and expertise in selecting Products for any purpose and any advice or assistance given by or on behalf of Club Stainless shall be accepted at the Customer's risk and shall not be deemed to have been given as expert or adviser nor to have been relied upon;
  - c. Products are sold subject to each and every manufacturer's trading terms and conditions and are protected by each and every manufacturer's warranty and Club Stainless shall not be liable to the extent that any manufacturer is liable under a manufacturer's warranty unless otherwise required by law; and
  - d. Club Stainless shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Products and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at Club Stainless prior to the entry by Club Stainless into any relevant sale contract.
6. **Cancellations and Returns:** The Customer agrees that:

- a. the Customer shall at no time cancel the whole or part of any order placed without Club Stainless's prior approval;
  - b. the Customer shall not return Products without Club Stainless's prior written approval and if Products are not in brand new and unused condition with undamaged packaging and if three weeks or more have passed since the earliest delivery date;
  - c. Club Stainless may otherwise elect to take back Products in saleable condition on such terms as Club Stainless considers to be reasonable;
  - d. the Customer shall in all cases pay to Club Stainless a restocking fee of 15% of the gross invoice value of all returns;
  - e. notwithstanding any other provisions of these Terms the Customer shall not return Products without first providing to Club Stainless an original invoice as proof of purchase; and
  - f. notwithstanding any other provisions of these Terms the Customer shall not return any Products which have been custom made, custom cut, custom processed or custom acquired.
7. **Orders:** The Customer agrees that:
- a. each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due; and
  - b. when any order is placed the Customer shall inform Club Stainless of any facts which might reasonably affect any decision to accept the order and/or grant credit and that any failure to do so shall be deemed to create and constitute an inequality of bargaining position, the taking of an unfair advantage of Club Stainless and to be unconscionable, misleading and deceptive.
8. **Minimum Invoice Policy and Purchase Price:** The Customer agrees that:
- a. the Customer shall at all times and in all respects comply with Club Stainless's minimum invoice policy as may at any time and from time to time apply on such terms as Club Stainless considers to be reasonable; and
  - b. all sales are otherwise made by Club Stainless at its ruling price at the time of delivery and on such other terms as Club Stainless considers to be reasonable.
9. **Delivery:**
- a. Club Stainless accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability and at the Customer's cost and risk in all things;
  - b. Club Stainless shall not be liable for delay or any failure or inability to deliver;
  - c. Products shall be deemed to be delivered as soon as they are ready for delivery at which time risk shall be deemed to have passed to the Customer; and
  - d. Club Stainless may charge for frustrated delivery to cover Club Stainless's reasonable expenses.
10. **Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon Club Stainless shall apply.
11. **Recovery Costs:** The Customer shall pay all costs and expenses (including legal costs on an indemnity basis) incurred by Club Stainless and/or its agents in respect of the Customer whether relating to any debt, possession of Products and/or otherwise.

12. **Customer Restructure:** The Customer shall notify Club Stainless in writing of any change in its structure and/or management including any change in director, shareholder and/or management and any change in partnership or trusteeship within seven days of the date of any such change.
13. **Jurisdiction:** The Customer agrees that all contracts made with Club Stainless shall be deemed to be made in the State nominated by Club Stainless and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Club Stainless in the capital city of that State.
14. **Credit Limit:** The grant of any credit facility or nomination of any credit limit is an indication only of Club Stainless's intention at the time. Club Stainless may vary and/or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.
15. **Security for Payment:** As security for payment to Club Stainless of all monies payable by the customer, the customer does hereby charge in favour of Club Stainless all of the customer's interest in freehold and leasehold property both current and later acquired.
16. **Forward Orders:** The Customer agrees:
  - a. to pay for so much of any forward order as is from time to time invoiced by Club Stainless;
  - b. that no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
  - c. to pay any demurrage and/or other costs and expenses of Club Stainless in handling and/or holding Products once ready for delivery.
17. **Force Majeure:** Club Stainless shall not be or be deemed to be in default or breach of any contract as a result of Force Majeur. Force Majeur shall include any cause beyond the reasonable control of Club Stainless including strikes and lockouts.
18. **Attornment:** For the purpose of giving effect to the Customer's obligations under these Terms (in particular clause 15. of these Terms) the Customer hereby irrevocably appoints the Account Manager (or like equivalent) for the time being of Club Stainless as the Customer's attorney in all things.
19. **Disputes:** The Customer agrees to pay into an interest-bearing trust account in the joint names of Club Stainless and the Customer any amount claimed by Club Stainless as a condition precedent to any dispute by the Customer of any such claim on the basis that upon resolution of the dispute the trust fund and any interest shall be dispersed according to the resolution. This clause shall operate as a bar to any defence or claim by the Customer until fully complied with.
20. **Abnormal Payments:** The Customer agrees to pay an administration fee of 2% (calculated on the amount paid) on any payment which is made other than as provided in clause 1. of these Terms which fee is agreed as the liquidated cost of processing such abnormal payments.
21. **Defaults:** Upon default or breach of these Terms by the Customer Club Stainless may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or at Club Stainless's election take immediate possession of Products not paid for without prejudice to any other rights Club Stainless may have and without Club Stainless being liable in any way to any person.

22. **Severability:** Any part of these Terms being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.
23. **Goods and Services Tax [GST]:** All monies payable to Club Stainless and any other consideration for any other "taxable supply" (within the meaning of A New Tax System (Goods and Services Tax) Act 1999 and associated legislation as amended from time to time) shall unless Club Stainless otherwise directs be deemed at all times to be exclusive of GST and/or any other applicable taxes, government charges, levies and/or imposts of any kind whatsoever - any and all of which must be paid by the Customer to Club Stainless as and when and in such manner as Club Stainless reasonably requires.
24. **Warranty Policy:** Save and except as required by law no warranty is given where Club Stainless is not the manufacturer of Products other than the warranty offered by the manufacturer and to the fullest extent legally permissible Club Stainless's liability shall in all cases be strictly limited in accordance with clauses 4. & 5. of these Terms. Where Club Stainless is or might be deemed to be a manufacturer then the Club Stainless Standard Warranty applies for the period applicable to specific Products. Details of the Club Stainless Standard Warranty and the schedule of periods applicable are available upon request.
25. **Credit Information:** The Customer irrevocably authorises Club Stainless and its servants and agents to make such enquiries from time to time as Club Stainless may deem necessary to obtain information and/or to investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any land titles office, the ASIC, ITSA and/or any similar body and/or related information service ["the Sources"] and including personal credit and consumer credit information and any property, business and/or solvency information. The Customer by this clause irrevocably authorises the Sources to disclose anything about the Customer which is in the Sources' possession and the Customer agrees that Club Stainless may disclose any information it has about the Customer to any interested person (subject only to any obligations Club Stainless may have under the Privacy Act 1988 (Cth)).
26. **Notice:** The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Club Stainless and whether or not the Customer has actual notice thereof. The Customer shall be bound by any terms and conditions of trade which may be adopted by Club Stainless immediately they are so adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.