

STANDARD TERMS AND CONDITIONS OF SALE *Clark Masts Asia Pacific Pty Ltd*

CLARK MASTS™



CLAUSE 1 – DEFINITIONS

The following definitions apply unless otherwise stated:

"Product(s)"	Good(s) and service(s) described in the Order;
"CMAP"	The legal entity called Clark Masts Asia Pacific Pty Ltd, ACN 81 126 241 469
"Buyer"	Person or Company purchasing the Product(s)
"Order"	Any purchase order, change order, subcontract or contract received by CMAP for the Product(s).
"Terms and Conditions"	CMAP's present standard terms and conditions of sale.
"Manufacturer(s)"	Original manufacturer of the Product(s) - typically Clark Masts Systems Ltd and Clark Masts Teksam NV
"CMAP's warehouse"	CMAP's warehouse and main place of business, which is located at 1 /8-12 Lieber Grove, Carrum Downs, Victoria, 3201.

CLAUSE 2 – ACCEPTANCE OF ORDER

- 2.1. CMAP reserves the right to accept or reject an Order it receives from an existing or prospective Buyer at its sole discretion.
- 2.2. No Order shall be deemed accepted without the written express approval of CMAP.
- 2.3. Each Order must specify Buyer's name, delivery address, invoicing address, description of Products, CMAP's part number, quantity, requested delivery date(s), price and preferred method and carrier for delivery.
- 2.4. These Terms and Conditions shall be part of each Order CMAP accepts. No other terms and conditions shall be accepted without the written express approval of CMAP. In case of conflict between the terms of any Orders or of any delivery notes and these Terms and Conditions, the latter shall prevail.
- 2.5. CMAP reserves the right to modify the specification, design and/or components of the Products at any time during a fulfilment of an Order or any future open Orders. CMAP shall not be obligated to retroactively upgrade previously fulfilled Orders. Any modifications shall not adversely affect the performance or capacity of the Product.

CLAUSE 3 - TITLE AND PROPERTY IN GOODS

- 3.1. Title to, ownership of and property in the Goods shall pass to the Buyer only upon CMAP receiving payment in clear funds of the full purchase price and any freight charges, taxes and interest or other monies due and while the Goods remain the property of CMAP the Buyer holds the Goods on trust for CMAP in terms of these Terms and Conditions and the Buyer shall store or keep the Goods in a manner which clearly identifies the Goods as the property of CMAP.
- 3.2. Risk of any loss or damage to the Goods from whatever cause shall be borne by the Buyer from the time the Goods are dispatched to the Buyer.
- 3.3. If the Buyer defaults under these Terms & Conditions all of the Buyer's rights under any contract pursuant to which the Buyer has hired or otherwise provided the Goods or any part of them to third parties are automatically assigned to CMAP with effect from the date of the default.
- 3.4. Until the Buyer pays all amounts it owes to CMAP:
 - (i) the Buyer must keep all Goods insured against theft, damage and destruction on behalf of CMAP (and if the Buyer fails to insure the Goods, CMAP may do so and invoice the Buyer for the cost of insurance);
 - (ii) CMAP may enter premises where the Goods are stored to inspect them on reasonable notice; and
 - (iii) the Buyer acknowledges that it holds the Goods as CMAP's bailee.
- 3.5. The Buyer may on-sell the Goods prior to payment in full of the purchase price as agent for CMAP provided that the proceeds received from the on-sale are held on trust for CMAP until payment in full of the purchase price and are not mixed with other funds of the Buyer until the purchase price is paid to CMAP. The Buyer agrees to indemnify CMAP on a full indemnity basis and hold CMAP harmless from liability for any loss damage or cost arising from any inaccurate or incomplete representations to third parties.
- 3.6. If the Buyer does not pay for any goods on the due date CMAP is irrevocably authorised by the Buyer to enter the Buyer's premises (or any premises under the control of the Buyer or as agent of the Buyer if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer or anyone claiming through the Buyer whatsoever.
- 3.7. The Buyer acknowledges that CMAP holds a security interest capable of registration pursuant to the Personal Property Securities Act 2009 ("PPSA") in all goods including all present and after-acquired goods which have not been paid for. The Buyer further acknowledges that the security interest will continue until CMAP gives a final release in relation to the secured goods.
- 3.8. The Buyer acknowledges that CMAP will take all necessary steps to register its security interest under the PPSA, and hereby consents to CMAP doing so. The Buyer further undertakes to promptly provide any information and do all things as required by CMAP to enable CMAP to perfect its security interest in the goods.
- 3.9. The Buyer acknowledges that the goods constitute commercial property and hereby waives its right to receive notification from CMAP of the registration of the security interest pursuant to section 157(3) of the PPSA.

CLAUSE 4 – TERMINATION

- 4.1. CMAP may at its sole discretion terminate an Order or a portion thereof without incurring any liability to Buyer.
- 4.2. Any Order cancelled by Buyer after issuance to CMAP but before dispatch will be subject to a twenty-five percent (25%) cancellation fee.

CLAUSE 5 - WARRANTY

- 5.1. CMAP warrants that the Product delivered under an Order meets its intended design and performance criteria as stated in the manufacturer's specifications and is free from defective workmanship and materials. CMAP assigns to the Buyer any warranty received from the original manufacturer of the Product so far as CMAP is permitted to do so.
- 5.2. These warranties shall be enforceable solely by Buyer or Buyer's customers and shall be valid for twelve (12) months from day of invoice from CMAP or twelve (12) months from the date of commissioning (turn-on of Product for use) whichever occurs earlier.
- 5.3. CMAP will invoice any replacement Product at full price until such a time as the original Product is returned to CMAP. The Buyer shall be responsible for all handling, storage fees, freight, duty or other related charges for the return of the original Product to CMAP's selected point.

- 5.4. No claim shall be deemed accepted by CMAP until a full evaluation and a written express approval of CMAP. CMAP will issue a credit note to Buyer if CMAP approves a warranty claim.
- 5.5. CMAP's warranty is valid if the following conditions are met:
- (i) the failure occurred within the period stated in Clause 5.2 above;
 - (ii) the warranty claim is made within thirty (30) calendar days from the alleged defect occurrence;
 - (iii) the Products are used for the purpose and within the specification they were designed and intended for and within any limitation as stated in the manufacturers or CMAP's specifications. Any modification or any other change to CMAP's supplied Products made by Buyer or Buyer's customers will automatically nullify the warranty;
 - (iv) the Buyer or Buyer's customer using the Product has followed, and is capable of demonstrating, all required inspection and maintenance requirements as specified by the manufacturer or CMAP's specifications.

CLAUSE 6 – BUYER'S RESPONSIBILITY

- 6.1. It is the Buyer's responsibility to satisfy itself that the Goods and Services are of a description, quality and character suitable for the purpose for which they are purchased and, to the extent permitted by law, CMAP shall not be liable in any way for any loss or damage (including direct, indirect, or consequential) arising from the failure of the Buyer to so satisfy itself.
- 6.2. All samples, drawings, descriptive matter and specifications issued by CMAP are issued or published for illustration only and do not form part of CMAP's quotation or the Buyer's order.

CLAUSE 7 – RETURN POLICY

- 7.1. No return of any Product is allowed once the Product is shipped from CMAP's warehouse, without the express written approval of CMAP.
- 7.2. Other than in connection with a claim under CMAP's warranty, pursuant to Clause 5, if CMAP approves a return of a Product, a minimum fee of thirty-five percent (35%) of the Product price on the Order will be charged to Buyer. This fee may increase at CMAP's discretion if the Product is not in its original state at time of delivery from CMAP, such as but not limited to: "defective", "damaged", "missing components", "exceeds two (2) hours of operation".
- 7.3. Any refund the Buyer will be made via credits on future Orders.
- 7.4. Buyer will be responsible for any handling, storage fees, freight, duty, or other charges required to return the Product to CMAP's selected point.

CLAUSE 8 – LIMITATION OF LIABILITY

- 8.1. To the extent permitted by law except as set out in clause 5, CMAP excludes all statutory or implied conditions and warranties and any other liability it may have to the Buyer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.
- 8.2. To the extent permitted by law, CMAP limits its liability under the warranty in clause 5 and any condition or warranty which cannot be legally excluded in relation to the supply of Goods and Services to CMAP's choice of:
- (i) replacing the Goods or supplying equivalent Goods or Services again;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods again or of having equivalent Services supplied again; or
 - (iv) the payment of the costs of having the Goods repaired.

CLAUSE 9– INTELLECTUAL PROPERTY RIGHTS

- 9.1. Buyer understands and agrees to protect all confidential information and intellectual property rights (including, but not limited to products, processes, services, accounting, trade secrets, know-how and any other proprietary data) of CMAP or the manufacturers. Buyer shall not:
- (i) copy, modify, infringe or misappropriate such intellectual property; nor
 - (ii) disclose any CMAP confidential information other than to its employees and agents on a need to know basis and if required for normal use and maintenance of the Products.
- 9.2. Failure to comply with this clause will result in a default under these Terms and Conditions, in the termination of the Order as per Clause 4 herein and may result in legal action taken by CMAP.

CLAUSE 10 – PRICE, PAYMENT, DISCOUNT AND QUOTATION

- 10.1. Unless otherwise agreed in writing, payment by Buyer will be made before delivery from CMAP's warehouse. Unless otherwise agreed, CMAP will invoice on 25% with Order and final 75% on or prior to dispatch. Unless otherwise stated, all prices are in Australian dollars and exclude any applicable taxes and other imposts, including but not limited to, goods and services tax and duties. CMAP will issue a tax invoice and the Buyer must reimburse CMAP for any GST payable by it on each taxable supply it makes to the Buyer at the same time as the amount the subject of the invoice is payable.
- 10.2. Unless otherwise stated in writing on the quotation by CMAP, all CMAP quotations made to existing or potential Buyers are firm for thirty (30) days from the date of issue. CMAP's standard price list is subject to change at any time at CMAP's discretion. Verbal quotations are subject to written confirmation.

CLAUSE 11 - DEFAULT

- 11.1. The Buyer is in default if:
- (i) it fails to make a payment to CMAP by its due date;
 - (ii) being a natural person it commits an act of bankruptcy;
 - (iii) being a corporation it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets; or
 - (iv) it has any execution levied against its property.
- 11.2. In the event of a default, CMAP will be entitled, without the obligation to give any notice to the Buyer and in addition to any other rights, to:
- (i) payment of interest on all overdue accounts at the rate of 2% above the prevailing rate imposed by the Penalty Interest Rates Act 1983;
 - (ii) the commission it may have to pay to any recovery agent arising from such default or in recovering overdue amounts;

- (iii) its actual legal costs on an indemnity basis incurred in relation to such default or in recovering overdue amounts or in otherwise seeking compliance with these Terms and Conditions;
- (iv) immediate payment for Products, the payment which would otherwise not have been then due and payable;
- (v) disallow any discounts otherwise claimable by the Buyer;
- (vi) terminate or suspend delivery of any Order which is the subject of any other sale between CMAP and the Buyer; and
- (vii) treat the Buyer's default as repudiation of any existing contract for the purchase of Products and recover any unpaid sum plus the interest, recovery agent's, and legal costs referred to in (a), (b) and (c) above from the Buyer by way of liquidated damages.

CLAUSE 12 – PACKING AND SHIPPING

- 12.1. CMAP shall prepare the Products as per its standard practice, ready for delivery.
- 12.2. Unless otherwise stated in any Order accepted by CMAP, delivery terms shall be Ex-CMAP's warehouse.
- 12.3. The Buyer must notify CMAP of any short delivery by phone or writing within 24 hours of delivery failing which the Buyer will cease to have a claim for the short delivery.

CLAUSE 13 – ASSIGNMENT

- 13.1. Neither the Order, nor these Terms and Conditions, nor any interest therein, nor any claim thereunder shall be assigned by Buyer either voluntarily or by operation of law without the prior written consent of CMAP. An assignment without CMAP's written consent is ineffective and void. CMAP has an absolute right to withhold consent in CMAP's sole discretion. No such consent shall be deemed to relieve Buyer of its obligations to comply fully with the requirements hereof.
- 13.2. Should the assignment be unacceptable to CMAP, this Order will be terminated per Clause 4 herein.
- 13.3. The terms and conditions of any Order assigned by the Buyer in compliance with this Clause shall be the same as those of the original Order.

CLAUSE 14 – APPLICABLE LAW AND VENUE

- 14.1. These Terms and Conditions and any Order to which these Terms and Conditions apply are governed by and construed exclusively under the laws of Victoria, Australia applicable therein. Both Buyer and CMAP hereby submit to the sole and exclusive jurisdiction and venue of the courts of Victoria, Australia in any legal action related to or arising under this Order governed by these Terms and Conditions, including the Order to which these Terms and Conditions apply. Buyer and CMAP hereby agree that the above sets forth the sole and exclusive jurisdiction and venue in which any legal proceeding involving these Terms and Conditions including the Order to which they apply may be filed.
- 14.2. In the event of a dispute arising between Buyer and CMAP that is not disposed of by agreement, CMAP shall request a final written decision from Buyer's Management. If the parties cannot agree on a dispute resolution process or otherwise resolve a dispute, the said dispute will be filed in the proper court for disposition pursuant to the Applicable Law and Venue clause hereof.

CLAUSE 15 – ORDER OF PRECEDENCE

In the event of any inconsistency among the provisions of an Order hereunder, such inconsistency shall be resolved by giving precedence in the following sequence:

- (i) provisions accepted or as modified by CMAP on the Order;
- (ii) any overriding long-term agreement between Buyer and CMAP;
- (iii) CMAP or the Manufacturer's specifications of performance of the Product;
- (iv) these Terms and Conditions.

CLAUSE 16 – INDEMNIFICATION

Buyer shall indemnify and hold CMAP harmless to the full extent of any loss, damage, or expense, including lost profit, legal fees and court costs on a solicitor own client basis, for any failure or alleged failure of Buyer to comply with these Terms and Conditions. With respect to the Products delivered under an Order, Buyer agrees to indemnify and save harmless CMAP, its agents and employees, from and against all loss, expenses, costs, damages and liability incurred, directly or indirectly, as a result of or in connection with inappropriate handling, installation, use by Buyer, its agents, employees or customers of the Products. As a result, Buyer agrees and at its own expense, to defend all claims, suits and actions against CMAP, its agents and employees for such instance.

CLAUSE 17 – SUPERIOR FORCE

CMAP shall not be responsible for any default or delay in the performance of any of its obligations hereunder, if such performance is prevented or delayed, in part or in whole, by reason of Acts of God, or acts of government, or the consequence thereof included but not limited to, fire, flood, typhoon, earthquakes or by reason of riots, wars, hostilities, government restrictions, trade embargos, strikes, lockouts, labour disputes, boycotting of goods, ship shortage, manufacturer's bankruptcy, delays or damage in transportation or any other cause beyond CMAP's control. CMAP may, at its discretion, fulfil the Order within a reasonable time from the removal of the cause preventing or delaying the performance of any of its obligations hereunder or under an Order or rescind unconditionally and without liability, such Order in whole or a portion thereof.

CLAUSE 18 – ENTIRE AGREEMENT

These Terms and Conditions, including any accepted Order to which these Terms and Conditions apply, and any attachments hereto, constitute the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior representations and understandings, whether oral or written. However, nothing herein shall be construed as a limitation or exclusion of any right or remedy available to CMAP by law. CMAP and Buyer agree that the U.N. Convention on contracts for the international sale of goods shall not apply to any purchase and sale of Products governed by these Terms and Conditions.