

## Mentis Australia Standard Terms and Conditions of Sale

These General Terms and Conditions of Sale ("**Conditions**") will apply to and form part of any contract for the supply of Goods and/or Services ("**Goods**") by Mentis Australia Pty Ltd (ABN 11 064 213 369) and its associated and related entities ("**Mentis**") to the Customer.

- 1 Price**
- 1.1 The price of Goods will be as referred to in the Mentis price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.
- 2 Payment**
- 2.1 If a trading account is not current at the time of ordering, our cash sale policy is payment up front before any fabrication work is started.
- 2.2 Payment on pick up can be arranged for standard stock items. For large projects a deposit can be paid and the balance issued on an account once approved. A 25% deposit is required for overseas orders at the time of order or by negotiation.
- 2.3 Where the Customer has an approved trading account with Mentis, the Customer must ensure that payment for the Goods is made to Mentis by no later than 30 days from the end of the invoiced month.
- 3 Default by Customer**
- 3.1 If a Default Event occurs, Mentis may notify the Customer of the default and immediately suspend delivery of any further Goods until such time as the Customer has remedied that default.
- 3.2 If a Default Event occurs, Mentis may terminate this or any other agreement for the supply of Goods to the Customer if the Customer does not remedy the relevant default within 10 Business Days of receipt of notice of the default.
- 3.3 If the Customer is in default of its obligations in relation to payment, or becomes subject to an Insolvency Event, Mentis may in addition to any other rights it may have under these Conditions or at Law:
- suspend deliveries of further Goods to the Customer whether under this contract or otherwise;
  - terminate any contract between Mentis and the Customer in relation to Goods that have not been delivered;
  - withdraw any credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to Customer by Mentis;
  - issue an invoice for, and demand immediate payment for, Goods ordered by the Customer but not delivered; and/or
  - Seek to enforce its security over Goods already delivered or proceeds received by the Customer in relation to the same.
- 4 Specifications and materials**
- 4.1 Product finish**
- Mentis manufactures to industrial and not architectural standards, please contact us if you require an alternative finish.
- 4.2 Material**
- Some materials used in manufacturing and fabrication are of overseas origin. All grating supplied by Mentis is China Grade Q235b.
- 4.3 Handrail Fabrication**
- All ball to pipe connections shall be fully seal welded. If required, any butt joints made outside a stanchion ball to be spigotted and fully seal welded. Panels over 6.5 m long, or complex in nature, may be supplied in multiple sections and requiring joining onsite.
- 4.4 Grating Fabrication**
- Mentis will split all grating into stock sheet width panels wherever possible, grating marking plans are always available on request.
- 4.5 Kickplate**
- Mentis follows the industry standard of welding kickplate to handrail in lieu of bolting. Kickplate welded to handrail and galvanised after fabrication can bow, we do not allow for any straightening of the kickplate. Mentis standard kickplate brackets will be used.
- 4.6 Detailed Drawings**
- Detailed drawings will be required at the time of ordering, if not supplied prior. We have drafting services available at an additional charge if required. Please provide DXFs and DWGs wherever possible.
- 4.7 Sharp Edges**
- Any sharp areas will be ground smooth.
- 4.8 Panel I.D**
- Each panel will be identified using a pin stamped steel tag. Secured or welded to each panel.
- 4.9 Packaging**
- All panels shall be packed into manageable transportation bundles using steel strapping.
- 4.10 Vent Holes**
- All handrail panels that are to be hot dip galvanised after fabrication, shall retain galvanising vent holes.
- 4.11 Welding**
- All welding is in accordance with AS1554 General Purpose and to Mentis' standard welding procedures. These are available on request.
- 4.12 Measurement**
- Handrail is measured in meters of the top rail in plan view including closures and bends. Stair handrail is measured on the rake. Grating is measured in square metres in plan view of the top surface, cut outs less than 500 mm x 500 mm are included in the total area of the grating.
- 4.13 SC Gate Design**
- The Mentis Self-Closing Gate is designed using a high closing force spring and an on-site adjustment system. This gate closing mechanism is superior to any other currently available to ensure long-term trouble-free operation.
- 4.14 Product Spec**
- Mentis product specifications are available in our product brochures which are available from [www.mentis.com](http://www.mentis.com). Some imported material is used in our manufacturing and fabrication processes. Alternatives can be supplied on request.
- 4.15 Quality Docs**
- Material Certificates, Galvanising LOC, Paint Reports & Certificate of Compliance to AS 1657 are all available on request.
- 4.16 Material Data Report (MDR)**
- If a full MDR is required, this must be requested at quoting stage. This can be supplied at the additional cost quoted and includes the following:
- Fabrication ITP
  - Material Register & Certificates
  - Certificate of Compliance for fabricated items to AS 1657
  - WPS, WPQR, WQR, Welder Records
  - NDT Testing (10% of Welds) & Reports, NDT Personnel Qualification Register and Certificates
  - As Built Drawings
  - Galvanising Report (incl. Coating Micron Reading)
  - Painting ITP and Reports
- 5 Delivery and Risk**
- 5.1 Lead-time**
- While the availability period was accurate at the time the quotation was sent, changes do occur, and we will inform you at the time of placing your order of any variance. Please note that your delivery date may be affected if there is a delay in drawing approval or response to technical queries.
- Lead-times for overseas orders are approximate and are subject to unexpected delays. We will provide regular updates on any delays if/ when they occur.
- 5.2 Transportation**
- All care is taken during loading to reduce damage caused by transportation; however, some damage is unavoidable, and Mentis will not be held liable for the rectification of this damage.
- 5.3 Risk**
- Mentis is liable for all risks associated with the Goods up to the time of delivery.

The Customer is liable for all risks associated with the Goods from the time of delivery.

## **6 Damage, Inaccuracies and Defects**

- 6.1 The Customer must check all Goods received immediately upon delivery and must notify Mentis in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 5 Business Days of the date of delivery of the Goods.
- 6.2 If the Customer does not notify Mentis in accordance with clause 6.1, Mentis will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract, unless the Customer is a Consumer or Small Business and such loss or damage arises from the negligence or wilful misconduct of Mentis or any of its officers, employees or agents.
- 6.3 If the Customer notifies Mentis in writing in accordance with clause 6.1 and, if in Mentis' reasonable opinion the Customer's notice is reasonable and the Customer has not used the Goods, Mentis will arrange to repair or replace (at Mentis' option) the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and Mentis' liability to the Customer will be limited in accordance with clause 11.1(c).
- 6.4 To the extent permitted by law we are not liable to you for any indirect or consequential loss and our maximum liability under each Contract is limited to the price paid for the affected Goods. If you are a Consumer or Small Business, our liability to you is limited to the extent permitted by the *Competition & Consumer Act 2010* (Cth) including to replacing or repairing goods.

## **7 Retention of Title**

- 7.1 Property in all the Goods supplied shall remain vested in Mentis and shall not pass to the Customer until all monies owing to Mentis by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- 7.2 The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of Mentis until title has passed to the Customer.
- 7.3 Mentis may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- 7.4 In the event that the Customer defaults in the payment of any monies owing to Mentis, the Customer becomes subject to an Insolvency Event or in Mentis' reasonable opinion the payment of any amount in respect of the Goods supplied by Mentis is in jeopardy, Mentis and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and Mentis, its employees or agents shall be entitled to do all things required to secure repossession.
- 7.5 If the Goods have been disposed of and the Customers have received proceeds from their sale such proceeds are hereby held by the Customer in trust for Mentis until the Goods are paid for in full.

## **8 Application of the PPSA**

- 8.1 In this clause 8, PPSA means the *Personal Property Securities Act 2009* (Cth.). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 8.2 This clause 8 applies to the extent that Mentis' interest in any Goods is a security interest.
- 8.3 The Customer acknowledges and agrees that Mentis may apply to register one or more security interests in the Goods in accordance with the PPSA at any time before or after delivery of the Goods.
- 8.4 If the Customer is a Trustee of any Trust, Mentis' security interest in the Goods must be registered against the Trustee in its own capacity and as Trustee of the Trust.
- 8.5 To the extent permitted by Law, the Customer waives its rights to receive any notice that is required by the PPSA (but this does not prohibit Mentis from giving such a notice).
- 8.6 Mentis can apply amounts it receives from the Customer towards amounts owing to it in such order as Mentis chooses.
- 8.7 If the Customer defaults in the performance of any payment obligation owed to Mentis under these Conditions or any other agreement for Mentis to supply Goods to the Customer, Mentis may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA.
- 8.8 To the maximum extent permitted by Law, Mentis need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.

- 8.9 For the purposes of any clause in these Conditions restricting disclosure, disclosure under section 275 of the PPSA will only be regarded as required by Law to the extent that section 275 requires disclosure despite any agreement to the contrary.

8.10 The Customer must promptly do anything required by Mentis (such as obtaining consents, producing, completing and signing documents) to ensure that Supplier security interest is enforceable, a perfected security interest and has priority over all other security interests in the Goods.

8.11 Nothing in this clause 8 is limited by any other provision of these Conditions or any other agreement between the parties.

## **9 Installation**

Where applicable all goods supplied by Mentis must be installed in accordance with the recommended fixing procedures of Mentis. Mentis will not be liable for any loss suffered by The Customer or any other person arising out of the Customers failure to do so.

## **10 Personal Guarantee**

- 10.1 Each director of the Customer who has signed the Mentis Credit Application Form hereby jointly and severally guarantees to Mentis the payment of the Customer's account and all monies associated now and hereafter that become due to Mentis (**Guarantee**).
- 10.2 This Guarantee is a continuing guarantee and is irrevocable until Mentis has been paid all monies owing by the Customer.
- 10.3 The directors may, by notice in writing to Mentis, revoke this guarantee at any time. Such revocation shall be effective only upon written acknowledgement by Mentis and shall operate to discharge the directors from all liability as to future dealing only by the Customer with Mentis after the date of Mentis' written acknowledgement.

## **11 Variations to the Conditions**

- 11.1 The Customer acknowledges and agrees that these Conditions may be varied or replaced by Mentis from time to time by Mentis providing the Customer and each Guarantor 14 days' notice of its new terms and by posting the new Conditions to its website.
- 11.2 The new terms shall apply to all orders placed after the 14 day period referred to in clause 11.1 has expired.
- 11.3 Any notice or other communication to or by a party to this agreement may be given by delivery in person or sent by post or email to the address identified in the Mentis Credit Application or such other address as notified in writing to Mentis.

## **12 More than one Customer**

- 12.1 If more than one legal person is identified as the Customer in the Mentis Credit Application such persons are jointly and severally liable.

## **13 Warranties, Liabilities and Indemnities**

- 13.1 Subject to clause 13.3:
- (a) Mentis will not be responsible for the consequence of any statement or representation made or technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods, whether oral or written, and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer's risk;
- (b) except for the warranties expressly made in these Conditions and warranties issued by the Customer in writing applying to the Goods (if any), all conditions, warranties, undertakings or representations, express or implied, arising by Law or otherwise are expressly excluded by Mentis to the full extent permitted by Law;
- (c) except as otherwise expressly specified in the terms of any applicable written warranty provided by Mentis, the liability of Mentis to the Customer (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited (to the full extent permitted by Law), at Supplier option, to:
- (i) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
- (ii) in the case of services, the resupply of services or paying for the cost of resupplying the services;
- (d) Mentis is not liable to the Customer or anyone else in connection with the Goods or the supply of the Goods, or with these Conditions (including any changes to these Conditions), for any Losses:
- (i) arising from any act or omission on the part of the Customer or any of its officers, employees, agents or contractors;
- (ii) including without limitation for damage to the Goods or any other property, or injury to any person, arising from:
- (A) the loading, unloading or delivery of the Goods;

- (B) any delay in delivering the Goods;
  - (C) the delivery or removal of defective Goods or the installation of replacement Goods; or
  - (D) the use of any tool or equipment loaned or hired out by Supplier;
  - (iii) in relation to any claim, action or proceeding by a third party against the Customer (or any Losses incurred or suffered by the Customer as a result of any such claim, action or proceeding); or
  - (iv) in relation to the fitness or suitability of the Goods for the Customer's purpose (including a third party purpose) unless such purposes are known and expressly confirmed in writing by Mentis at the time the order for the Goods is accepted.
- 13.2 Subject to clause 13.313.3, the Customer indemnifies and will keep indemnified Mentis and each of its officers, employees and agents (for each of whom Supplier holds the benefit of this indemnity upon trust) from and against all Losses arising out of or relating to:
- (a) Mentis' use of or reliance on any materials, design, drawing or specification provided to Mentis by the Customer (including any allegation or claim that Mentis has infringed the intellectual property rights of any person);
  - (b) any loss or damage caused by or during the processing of materials supplied to Mentis by the Customer;
  - (c) any loss or damage caused by any tool or equipment, or the use of any tool or equipment, loaned or hired out by Mentis to the Customer;
  - (d) the negligence, wrongful act or omission, breach of statutory duty, breach of contract or wilful misconduct of the Customer or its officers, employees, agents or contractors;
  - (e) any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the business of the Customer; or
  - (f) misuse of the Goods by the Customer.
- 13.3 Where the Customer is a Consumer or Small Business:
- (a) the Customer's liability to indemnify Mentis under clause 13.2 will be reduced proportionately to the extent that Mentis' negligent act or omission or wilful misconduct has contributed to the loss; and
  - (b) under clauses 13.1(a) or 13.1(d) Mentis will be proportionately liable to the Consumer or Small Business but only to the extent that Mentis' negligent act or omission or wilful misconduct contributed to the loss or damage.
- 13.4 To the extent permitted by law, but notwithstanding anything else contained in these Conditions Mentis shall not be liable for :-
- (a) any business interruption, delay costs, loss of revenue, loss of income, loss of opportunity, loss of contracts, loss of investment or damage or goodwill or reputation, however arising;
  - (b) any other indirect or consequential loss.
- 14 Intellectual Property**
- 14.1 Mentis retains the Intellectual Property Rights in any Goods, promotional literature, technical documents or other information provided by Mentis to the Customer under these Conditions.
- 14.2 The Customer must:
- (a) where practicable, indicate prominently in written form that the Intellectual Property Rights are owned by Mentis and that the Customer is a user of the Intellectual Property Rights;
  - (b) only use the Intellectual Property Rights in relation to the Goods or as otherwise approved by Mentis; and
  - (c) not use the Intellectual Property Rights in any way which would lead the trademarks to become generic, lose distinctiveness or become liable to mislead the public or in any way which would be materially detrimental to or inconsistent with the name, reputation and/or image of Mentis.
- 14.3 If the Customer is in breach of any of these Conditions, including clause 14.2, if requested by Mentis in writing, the Customer will promptly cease to use any Intellectual Property Right and deliver or (at Mentis' request) destroy any materials in whatever form including all marketing and advertising materials, logos, labels and any reproductions of Mentis brands that are in the possession or control of the Customer that carries an Intellectual Property Right.
- 14.4 The Customer must procure that its employees, contractors and agents comply with the provisions of clauses 14.2 and 14.3.
- 14.5 All goodwill in any Intellectual Property Right generated through the use of such right by the Customer is for the benefit of Mentis.

## 15 Miscellaneous

- 15.1 This agreement shall be construed in accordance with laws of the State or Territory in which the Goods are to be delivered. Mentis and the Customer submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in that State or Territory.
- 15.2 A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 15.3 Each provision of these Conditions is deemed to be separate and severable from the other provisions. If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 15.4 Subject to clauses 15.5 and 15.6, neither party may assign the benefit of, or otherwise create an interest in its rights under these Conditions, unless it obtains the prior written consent of the other party.
- 15.5 Nothing in these Conditions restricts Mentis from assigning, declaring a trust over, transferring or otherwise dealing with any receivables owed to it by the Customer under these Conditions, together with any associated rights and interests (including any related security) in favour of any third party. With notice to the Customer, Mentis may assign this contract to any of its Related Corporations or, in the case of a sale of business, to any third party which acquires all or substantially all of the assets of Supplier which are used in the performance of the obligations arising under these Conditions.
- 15.6 Where the Customer is a Consumer or Small Business, the provisions of clauses 15.4 and 15.5 do not apply.
- 15.7 Nothing in these Conditions constitutes Mentis as the sub-contractor of the Customer.

## 16 Interpretation

- 16.1 **In these Conditions:**
- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
  - (b) **Bankruptcy Act** means the *Bankruptcy Act 1996* (Cth);
  - (c) **Business Day** means Monday to Friday (inclusive) excluding public holidays at the place of delivery;
  - (d) **Consumer** has the same meaning as in the Australian Consumer Law;
  - (e) **Customer** means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from Mentis and includes a Consumer or Small Business;
  - (f) **Corporations Act** means the *Corporations Act 2001* (Cth);
  - (g) **Default Event** means the occurrence of any of the following events in relation to a party:
    - (i) If the Customer fails to pay on time any amount which is due and payable by it to Mentis under these Conditions or any other agreement between the Customer and Mentis for the supply of Goods;
    - (ii) If the Customer fails to perform any obligation under these Conditions or any other agreement between the Customer and Mentis for the supply of Goods; or
    - (iii) the death of the Customer if the Customer is an individual.
  - (h) **Insolvency Event** means the occurrence of any of the following events in relation to a party:
    - (i) the party becomes insolvent as defined in the Corporations Act, states that it is insolvent or presumed to be insolvent under an applicable Law;
    - (ii) the party is wound up by resolution or an order of a court or declared bankrupt;
    - (iii) the party becomes an insolvent under administration as defined in the Corporations Act;
    - (iv) the party becomes subject to one of the forms of external administration provided for in Chapter 5 of the Corporations Act;
    - (v) the party enters into or becomes subject to:
      - (A) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
      - (B) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

- (C) any application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (vi) the party enters into or becomes subject to:
  - (A) any agreement under Part IX of the Bankruptcy Act; or
  - (B) any agreement under Part X of the Bankruptcy Act.
- (vii) the party is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand; or
- (viii) the party suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business;
- (i) **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, inventions and confidential information, and other results of intellectual activity in any field whether or not registrable, registered or patentable. These rights include rights in applications to register these rights and all renewals and extensions of these rights.
- (j) **Law** means:
  - (i) legislation, regulations, by-laws, orders, awards, proclamations and statutory instruments imposed or enforced by any applicable government, agency or authority;
  - (ii) any written instrument which constitutes a requirement of an organisation which has jurisdiction in connection with the supply of the Goods; and
  - (iii) principles of common law and equity established by decisions of the courts;
- (k) **Small Business** has the same meaning as in the Australian Consumer Law;
- (l) **Working Hours** means between 7.00am and 5.00pm on any Business Day at the place of delivery.