

Adarsh Australia Terms and Conditions of Sale

Last updated 21 November 2023



ADARSH AUSTRALIA

1. Terms and conditions

- 1.1 These terms and conditions of sale (Terms) govern the supply of all Goods by Adarsh Australia (ABN76 177 275 729) or any of its subsidiaries and associated parties (Adarsh) to a customer (Customer) and together with any terms set out in any quotation issued by Adarsh and any guarantee entered into between Adarsh and the Customer and/or the Customer's directors, partners or trustees will constitute the entire agreement between Adarsh and the Customer. In the event of any inconsistency between these Terms and any terms set out in a quotation, these Terms will prevail.
- 1.2 In these Terms, "Goods" means all Goods and/or services supplied by Adarsh to the Customer, or ordered by the Customer but not yet supplied, and includes Goods described on any quotation, invoice, purchase order or any other document issued by Adarsh.
- 1.3 In these Terms, "Production Tooling" means all tools, dies, moulds, jigs, equipment and other tools for manufacturing the Goods, paid or not yet paid for by the Customer and supplied/operated on behalf of the Customer by Adarsh, or ordered by the Customer but not yet supplied, and includes Production Tooling described on any quotation, invoice, purchase order or any other document issued by Adarsh. Production Tooling is subject to all Terms governing the sale of Goods except where terms specifically stating Production Tooling exceed the requirements for sale of Goods.

2. Quotations and orders

- 2.1 Prices quoted by Adarsh are based upon prices, rates and charges in effect on the date of quotation or any other such date as specified in the quotation. All quotations are valid for the time period specified on the quotation and Adarsh may vary or withdraw a quotation at any time.
- 2.2 Order for Goods is only accepted when Adarsh confirms its acceptance in writing; until then the estimations and quotations submitted by Adarsh are not binding.
- 2.3 Orders for Goods may only be cancelled or varied with Adarsh's prior written Consent.
- 2.4 Orders for Goods, if accepted, are subject to understanding that any orders may be manufactured in whole or in part by any manufacturer in any part of the world.

3. Supply of Goods

- 3.1 The Customer may elect to have the Goods delivered by Adarsh or pick-up the Goods from Adarsh's premises as advised by Adarsh. Such election must be made and notified to Adarsh at the time the Customer places an order.
- 3.2 If the Customer elects to have the Goods delivered, the cost of delivery of the Goods to the advised delivery address is payable by the Customer.
- 3.3 If the Customer subsequently directs that delivery be spread over more lots, at different times or to different addresses, from those specified in the original order, then each such delivery will be deemed to be a separate quantity and a novation of the original contract and may be priced accordingly. The Customer will be liable for any additional changes incurred by Adarsh in so doing.
- 3.4 The Customer is responsible for loss or damage occurring during transit.
- 3.5 If the Customer elects to pick up the Goods, any pick-ups must be made at Adarsh's premises in Perth, Australia during normal business hours, unless otherwise agreed between the parties in writing.
- 3.6 The Customer is deemed to accept delivery of Goods when the Goods are placed at the Customer's disposal at the named place of destination specified on the front hereof, and all subsequent transportation of Goods shall be carried out at the expense and risk of the Customer.
- 3.7 Adarsh accepts no responsibility for any delay in transit from point of manufacture to final point of delivery.
- 3.8 Adarsh shall have the right to charge the Customer with all costs incurred due to storage, detention, double cartage or similar causes, whether or not the costs are incurred at the Customer's request, if caused by the Customer's inability or failure to accept delivery of Goods when delivered or ready for delivery by Adarsh. Should the Customer for any reason be unable or fail to accept delivery of the Goods, Adarsh shall have the right to deposit the Goods in any place of storage nominated by the Customer or failing such nomination in any place of storage determined by Adarsh. Delivery to such place shall in all respects be deemed to be delivery to the Customer.
- 3.9 Adarsh may arrange shipment of Goods by vessel on berth terms or on voyage time or part charter.
- 3.10 Where shipment is on other than berth terms, then unless otherwise specified in the Contract the cost of discharge including stevedoring damage to vessels and/or cargo and any dispatch or demurrage at the port of discharge shall be to Customer's account and the Customer shall accept such conditions relating to discharge as are specified in the charter party or in writing by Adarsh.
- 3.11 Adarsh will not be liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery or failure to deliver the Goods, either whole or in part, due to circumstances beyond Adarsh's control.
- 3.12 If the Goods are delivered by instalment, each such instalment shall be at the Customer's risk upon delivery of each instalment.
- 3.13 The Customer may, at its election inspect the Goods jointly with Adarsh prior to delivery or pick-up of the Goods.
- 3.14 Adarsh shall be allowed a tolerance of not more than five (5) percent plus or minus, in respect of all weights and measures unless otherwise agreed in writing, and payment shall be adjusted accordingly. All weights and measures mentioned in catalogues, price lists and quotations are to be considered approximate. Adarsh's determination in relation to quantities and/or weights shall be final. Where goods are subject to tests and/or inspections, such tests and/or inspections shall be performed prior to dispatch from the manufacturer's factory. Unless otherwise specified in the quotation, a certificate issued by Adarsh's manufacturer shall be full and final evidence that the Goods comply with such tests and/or inspections.

- 3.15 If the Customer considers any Goods to be defective and/or that an order has not been fulfilled because any Goods are short in quantity, length and/or weight (Defect) then the Customer must give written notice to Adarsh of such Defect within seven days of delivery of the Goods (Claim).

- 3.16 On receipt of any Claim in accordance with clause 3.16, the Customer will give Adarsh an opportunity to inspect the Goods in order to investigate the Claim. If, following investigation of the Claim, Adarsh considers the Goods to be defective, then Adarsh may (a) pick-up the Goods or request that the Customer returns the Goods to Adarsh's premises in Perth (at Customer's own cost); and (b) elect (at Adarsh's sole discretion) to: (i) replace the Goods; or (ii) refund the price for the part of the Goods that is defective. Adarsh will have no further liability to the Customer following any action taken by Adarsh under this clause 3.17 and clause 3.18.

- 3.17 For all Goods supplied outside of Australia, Adarsh's warranty under clause 3.16 and 3.17 shall apply, except that upon receipt of a claim under clause 3.16, Adarsh may elect to pick-up the Goods where the location of origin of the claim is in close geographic proximity to a suitable Adarsh premises. In all other situations Adarsh may elect (at Adarsh's sole discretion) a suitable Adarsh premises for inspection and request the return of the Goods to Adarsh premises (at Customer's own cost). Adarsh will have no further liability to the Customer following any action taken by Adarsh under this clause 6.4.

- 3.18 If, upon taking delivery of the Goods, the Customer or his agent signs a receipt for the Goods which states that the said Goods were received in good order and conditions or words to that effect, and the Goods are later found to have been damaged in transit, or part of the Goods are found to be missing, and the signing of the said receipt thereby prejudices a possible claim by Adarsh or the Customer against a third party, Adarsh shall be free from all liabilities with respect to the loss or damage for which Adarsh does not recover from the third party.

4. Payment

- 4.1 Adarsh will submit invoices to the Customer for Goods to be supplied to the Customer. Unless otherwise specified in Adarsh's invoice, the Customer must pay Adarsh the amount set out in the invoice in full on receipt of invoice or after the agreed time period in the customers established credit account with Adarsh. If the quotation requires that advance payment is paid, then Adarsh will only commence work once the advance payment is paid in full by the Customer.
- 4.2 The Customer must pay Adarsh by electronic funds transfer to such bank account as nominated by Adarsh. All payments must be (a) in Australian dollars; (b) for the full amount of the invoice and not subject to any deduction for any currency conversion or other bank fee; and (c) free of any deduction, withholding, set-off, counterclaim, restrictions or conditions except to the extent the deduction or withholding is required by law.
- 4.3 If any charge, duty or impost of any kind not chargeable or applicable at the date of the within quotation is imposed or becomes payable or applicable on or in respect of the Goods or the transportation, export or import thereof by or under any legislation, regulation or governmental action or other matter whatsoever, beyond the Adarsh's control, it will be for Customer's account and (to the extent to which it is paid or borne by Adarsh), will go to increase the purchase price and be recoverable accordingly.
- 4.4 Should the Customer fail to pay any Adarsh invoice by the required due date and in the manner provided in these Terms, Adarsh may charge the Customer: (a) default interest of 24 percent. Default interest will accrue on a daily basis from the due date to the date of actual payment, both before and after any court judgment to pay; and (b) for any legal, debt collection and other expenses incurred by Adarsh in relation to recovery of such debt.
- 4.5 Adarsh reserves the right to offset any amount due by the Customer against any amount payable by Adarsh to the Customer.
- 4.6 Until payment is received in full by Adarsh, the Goods sold shall be subject to a lien in favour of Adarsh.
- 4.7 In addition to Adarsh's right under clause 4.4 above, if the Customer fails to make any payment due under these Terms ("Payment Default"), Adarsh may immediately cease all work and shall have the right to terminate this agreement, without prejudice to any other rights or remedies available to Adarsh under law or in equity.
- 4.8 Upon occurrence of a Payment Default, Adarsh will provide written notice to the Customer specifying the amount overdue and the due date(s) for such payment(s) ("Default Notice").
- 4.9 The Customer have a period of 10 business days from the receipt of the Default Notice to cure the Payment Default by making payment of the overdue amount(s) in full, including any applicable late fees or interest as specified in these Terms ("Cure Period").
- 4.10 If the Customer fails to cure the Payment Default within the Cure Period, Adarsh may, at its sole discretion, issue a written notice of termination to the Customer, effective immediately or on such later date as specified in the notice ("Termination Notice").
- 4.11 Upon issuance of the Termination Notice, this Agreement shall be deemed terminated, with all rights and obligations of the parties under this agreement ceasing, except for any rights or obligations that, by their nature survive termination or expiration of this Agreement, or any rights or remedies available to Adarsh under law, in equity or as specified in this Agreement. In addition to the right to terminate this agreement for non-payment, Adarsh may exercise any other rights or remedies available under law or in equity, including, but not limited to, seeking: (i) payment for any outstanding amounts due under this agreement, (ii) damages for any breach of this agreement, (iii) specific performance of the agreement, or (iv) injunctive relief to prevent any further breach of the agreement.

5. Ownership, risk, and insurance

- 5.1 Notwithstanding any period of credit, legal and beneficial title and ownership of any Goods supplied by Adarsh to the Customer will remain with Adarsh until the Customer has paid: (a) for those Goods in full; and (b) all other amounts owing in accordance with clause 4.4.
- 5.2 Until ownership of the Goods passes to the Customer, where the Customer has possession of the Goods, the Customer agrees: (a) to hold the Goods in trust for Adarsh as Adarsh's bailee; and (b) to store the Goods at the Customer's cost separately from other Goods and clearly distinguish and identify the Goods as the

- property of Adarsh.
- 5.3 In the event that the Customer defaults in the payment of any amount owed to Adarsh, the Customer irrevocably grants Adarsh (including its employees and agents) the right to: (a) enter (without notice) the Customer's premises or any other premises where the Goods are known, or reasonably believed, to be stored; and (b) search for and repossess the Goods. Adarsh will not be liable to the Customer in any way for the exercise of its rights under this clause 5.3.
- 5.4 If the Customer makes default in any payment or commits any act of bankruptcy, or, being an incorporated company, passes a resolution for winding up (except for the purposes of reconstruction), or a petition is presented for its winding up, Adarsh may, without prejudice to its own rights, either suspend further deliveries, require payment in advance for all such deliveries, or terminate any contract forthwith, by written notice to the Customer.
- 5.5 In addition to any right of lien to which Adarsh may be entitled by law, Adarsh shall in the event of the Customer's bankruptcy, be entitled to a general lien on all Goods of the Customer's in Adarsh's production, even if such Goods or some of them may have been paid for, against any outstanding amount for these or any other Goods sold and delivered by Adarsh to the Customer, under this or any other contract.
- 5.6 The Customer may suspend any order or part thereof by written notice to Adarsh. In the event of suspension, Adarsh will immediately stop production on any incomplete orders, and the Customer must (i) pay for the Goods produced prior to the suspension in accordance with these Terms; and (ii) pay for any fair and reasonable price and/or compensation for unavoidable suspension costs incurred by Adarsh.
- 5.7 The Customer may cancel the order or part thereof by providing at least 30 days' notice to Adarsh. Unless agreed otherwise with Adarsh in writing, in the event of cancellation, the Customer must immediately pay for cancellation cost as follows: (a) where manufacturing is at less than 50% complete, then the Customer must pay 80% of the total price of the order or (b) where manufacturing is at more than 50% complete, then the Customer must pay 100% of the total price of the order.
- 5.8 Notwithstanding that ownership of the Production Tooling has not passed to the Customer, the Customer agrees that in the event that the Customer requests that the Production Tooling be returned to the Customer, then provided that the Customer has made full payment of any moneys owing to Adarsh, the Production Tooling will be available for pick up from Adarsh's premises in Perth, Australia or such other addresses as advised by Adarsh at the time that the request is made. The Customer shall pay for all costs associated with the movement of Production Tooling from the point of storage to Perth, Australia.
- 5.9 The Customer agrees that the Production Tooling will be returned in "as is" condition and Adarsh does not warrant that it is fit for a particular purpose. To the extent permitted by law, Adarsh is not obliged to repair the Production Tooling or replace and/or repair any Goods manufactured using the Production Tooling once it is returned to the Customer.
- 5.10 Notwithstanding that ownership of the Goods has not passed to the Customer, the Customer agrees that risk in the Goods will pass to the Customer when the Goods are delivered by Adarsh to the Customer or picked-up by the Customer at Adarsh's premises (as applicable).
- 6. Warranties and liability**
- 6.1 The Customer warrants that all purchases of Goods from Adarsh are for commercial purposes only and, accordingly, the provisions of the National Consumer Credit Protection Act 2009 do not apply to the Customer.
- 6.2 Adarsh warrants that Goods supplied will be to the specifications supplied by the Customer and agreed to by Adarsh. Adarsh does not warrant that the Goods are fit for a particular purpose and to the extent permitted by law, Adarsh obligation to rectify Defects in accordance with this clause 6 shall be the Customer's sole and exclusive remedy and represents the full extent of Adarsh's liability for Defects.
- 6.3 Adarsh will not be liable to the Customer in any event for any for any loss of business, business interruption, loss of business information, errors, loss of profits, loss of production, damages based on a third-party claim or for any other special, incidental, indirect or consequential loss (as ordinarily defined) or damage suffered or incurred by the Customer as a result of anything done or omitted to be done under these Terms whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise.
- 6.4 Subject to clause 6.3, Adarsh's liability to the Customer arising out of or in any way connected with the sale of Goods under these Terms whether the liability claim is based on breach of contract, tort (including negligence), under a warranty or an indemnity, under statute, in equity or otherwise shall be limited to the re-supply of the Goods or where the Goods cannot be re-supplied, then up to the amount paid by the Customer under these Terms.
- 7. Personal Properties Securities Act**
- 7.1 The Customer consents to Adarsh effecting a registration under the Personal Properties Securities Act 2009 (PPSA) on the Australian Personal Properties Securities Register (PPSR) in relation to any security interest arising under or in connection with or contemplated by these Terms.
- 7.2 The Customer: (a) waives its right to receive notice of a verification statement in relation to any registration by Adarsh on the PPSR; (b) agrees to promptly execute any documents, provide all relevant information, fully cooperate with Adarsh and do any other act or thing that Adarsh requires to ensure that Adarsh has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise; (c) agrees that, until all monies owing to Adarsh are paid in full, it will not sell the Goods or grant any other security interest (whether an accession or otherwise) in the Goods; and (d) will not register a financing change statement in respect of the security interest without Adarsh's prior written consent.
- 7.3 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: (a) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; (b) section 96 (when a person with an interest in the whole may retain an accession); (c) agrees that, until all monies owing to Adarsh are paid in full, it will not sell the Goods or grant any other security interest (whether an accession or otherwise) in the Goods; and (d) section 125 (obligation to dispose of or retain collateral); (e) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; (f) section 132(3)(d) (contents of statement of account after disposal); (g) section 132(4) (statement of account if no disposal); (h) section 134(1) (retention of collateral); (i) section 135 (notice of retention); (j) section 142 (redemption of collateral); and (k) section 143 (reinstatement of security agreement).
- 7.4 Notices or documents required or permitted to be given to Adarsh for the purposes of the PPSA must be given in accordance with the PPSA.
- 7.5 Adarsh agrees with the Customer not to disclose information of the kind mentioned in section 275(1) of the PPSA except in circumstances required by sections 275(7) (b) to 275(7)(e).
- 7.6 If Adarsh receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding amounts may, at Adarsh's discretion, become immediately due and payable.
- 7.7 The Customer agrees to reimburse, upon demand, Adarsh for all costs and/or expenses incurred or payable by Adarsh in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest relating to the Goods.
- 7.8 In these Terms the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.
- 8. General**
- 8.1 Adarsh reserves the right to review and amend these Terms at any time (Amendments). By continuing to order Goods from Adarsh, the Customer agrees to be bound by the Amendments posted on Adarsh's website (<https://www.adarsh.com.au/>) from time to time. Adarsh recommends that the Customer regularly review these Terms to see any updates or changes to Adarsh's Terms.
- 8.2 The Customer may not assign its rights and obligations under these Terms without the prior written consent of Adarsh.
- 8.3 The Customer will notify Adarsh of any (a) change in its ownership or effective control; (b) material change in the nature of the Customer's business; and (c) change of name, no later than seven days prior to such proposed change coming into effect. Adarsh will be under no obligation to provide credit terms, or supply any Goods, to the Customer following a change of ownership, control or business.
- 8.4 These Terms will be governed by and will be interpreted in accordance with the laws of the Western Australia. The Customer submits to the non-exclusive jurisdiction of the courts of that State.
- 8.5 Adarsh shall not be obliged to fulfil the terms of this agreement if such fulfilment is prevented by any impediments arising out of national or international trade or customs requirements or any embargos or other sanctions.
- 8.6 If any provision or part-provision of this agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remaining provisions of this agreement.
- 8.7 Any failure by Adarsh to exercise its right to terminate this agreement for non-payment or to enforce any other provisions of this agreement shall not operate as a waiver of such right, nor shall it preclude or limit the future exercise of such right. Any waiver of any right or remedy under this agreement must be in writing and signed by Adarsh.
- 8.8 Please contact accounts@adarsh.com.au if you have any questions in relation to these Terms.