



TERMS AND CONDITIONS OF CONTRACT **FINLAY RECYCLING SYSTEMS PTY LTD**

- 1. DEFINITION:** In these terms and conditions the expression "Finlay" means Finlay Recycling Systems Pty Ltd. The expression "the Purchaser" means the person, firm or company obtaining any goods or services from Finlay, and the expression "goods" includes all goods or material of every nature or kind supplied by Finlay or the subject of any transaction between Finlay and the Purchaser.
- 2. APPLICATION:** Every offer, quotation, acceptance or contract for the sale or supply of goods (including services ancillary thereto) by Finlay is subject to these Conditions and all other terms and conditions proposed by the Purchaser which would conflict with, qualify or negative any of these terms and conditions are expressly excluded, no variation of or amendment to these conditions shall be valid unless agreed by an Authorised Officer of Finlay in writing.
- 3. ACCEPTANCE:** All quotations given are subject to confirmation by Finlay in writing upon receipt of the purchaser's order and no contract shall be concluded unless such confirmation is given, quotations are valid for a period of 30 days only from the date thereof.
- 4. SPECIFICATIONS AND DRAWINGS:** Unless specifically guaranteed in writing by Finlay to the Purchaser no dimensions, details statement as to the capacity, output or power or performance specified or contained in any drawings, catalogues, shipping specifications or other documents or any illustration referred to, are to be treated as contractual. Finlay reserves the right to make such minor changes in the specifications as circumstances require, or will in the judgement of Finlay be improvements, and such changes shall not affect the validity of the contract.
- 5. PRICES:** The prices quoted or agreed by Finlay are nett ex-works at the date of quotation, and are exclusive of tax, port rates, transportation, insurance, customs duties, licence fees or other charges. They are based upon the cost of goods or materials labour transport and maintenance of machinery, ruling at the date when such prices are quoted or agreed. The price may be varied at any time before a delivery of the goods to cover any increased cost to Finlay. All goods will be invoiced and payment will become due at the prices ruling as published or operated by Finlay at the date of delivery. Unless otherwise expressed or agreed Finlay's quoted prices cover only the supply of goods from its normal stock or production. In any case where a Purchaser requires some different or special goods an extra charge may be made to cover any additional cost.
- 6. TERMS OF PAYMENT:** (a) where goods are for delivery in Australia payment shall be stated on the face of the invoice nett cash (Australian dollars) at Finlay's premises in Burpengary, Queensland. Finlay shall be entitled to charge interest at 2% above current bank rate on all payments outstanding after due date. (b) Where goods are for delivery outside Australia payment shall be made by irrevocable letter of-credit confirmed by Australian Bank approved by Finlay against the usual shipping documents. (c) Without prejudice to Finlay's right to charge interest on outstanding amounts if the Purchaser fails to pay Finlay in accordance with these conditions or if any sum shall be due and remain unpaid by the Purchaser to Finlay under this or any other contract between the Purchaser and Finlay may either suspend all further deliveries of any goods until payment is made in full or cancel the order and any other orders remaining to be fulfilled insofar as goods remain to be delivered thereunder. (d) Terms of payment shall be of the essence of the Contract.
- 7. PASSING OF PROPERTY:** (a) The risk in the goods shall upon delivery pass to the buyer, but Finlay shall retain legal and equitable ownership of the goods until payment has been made and received in full by Finlay. (b) Until all such monies owed are paid in full by the buyers the buyers shall hold the goods as bailee for Finlay and shall owe Finlay all the fiduciary duties which may in law be imposed upon a bailee and the relationship between Finlay and the Purchaser shall be that of the bailor/bailee. (c) Until payment is made in full the purchaser shall store the goods separately and identifiably and shall upon default in payment permit Finlay to recover possession of any goods which have not been paid for. In the event that the goods or any individual item/s of the goods is/are re-sold by the Purchaser before payment in full is made Finlay shall be entitled to the proceeds thereof to the full extent of the buyer's indebtedness to Finlay in respect of such goods and to that end such proceeds shall be earmarked by the buyers in a separate and identifiable account. (d) In the event that the goods or any individual item/s of the goods is/are incorporated by the Purchaser into another product before payment in full is made to Finlay, that product shall be stored by the Purchaser separately from the Purchaser's other goods in an identifiable manner and Finlay shall be entitled to and shall be permitted by the Purchaser to recover possession of the goods in the form of such product. Alternatively if the product is sold by the Purchaser the Provisions in relation to re-sale set out in Sub clause (c) of this clause shall apply to the proceeds of such sale.
- 8. RISKS:** Notwithstanding that ownership of the goods may not pass to the Purchaser as provided in Clause 7 hereof, the risk in the goods shall pass to the Purchaser at the time of tender of delivery to the Purchaser his agent or carrier, and in the event of Finlay not having received payments for goods which are lost or destroyed, the proceeds of any insurance thereon he A by the Purchaser or any claim made by the Purchaser in respect of such loss or damage, shall be deemed to be held by the Purchaser on trust for Finlay until such time as Finlay receives payment in full for the said goods.
- 9.INSPECTION AND TESTING:** Inspection and testing of the goods will be allowed at Finlay's premises before delivery or by agreement with Finlay and an extra charge may be made. If any inspection or testing is so agreed Finlay shall give the Purchaser reasonable notice to attend or be represented at any such test.
- 10.DELIVERY:** (i) Delivery shall be ex-works Finlay, and in the event that the Purchaser fails to remove the goods or (if Finlay has agreed to arrange delivery) fails to accept the goods promptly when requested, Finlay shall be entitled (but not bound) to
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store the goods at the Purchaser's risk and may 30 days after giving written notice to the last known address of the Purchaser dispose of the goods. The Purchaser shall be liable to Finlay for all expenses and or losses incurred by Finlay, by reason of the Purchaser's failure to remove the goods or otherwise take delivery.

(ii) As stated in Clause 5 hereof Finlay's prices and quotations do not include delivery, unless such prices or quotations specifically state in writing that delivery costs are included. Finlay will at the Purchaser's request arrange for the quote prices for delivery to the Purchaser or to the Purchaser's Order subject to the following terms and conditions:

(a) Delivery costs only cover delivery on normal working days during normal working hours, all deliveries made at the Purchaser's request on Public Holidays, Sundays or Saturday Afternoons or at any other time outside normal working hours will be subject to extra charge.

(b) Subject to Clause (c) delivery will be to the nearest accessible point of the Purchaser's site or depot, delivery costs also includes the cost of unloading or loading as the case may be calculated on the basis that there shall be no unreasonable delay in such unloading or loading.

(c) Finlay does not undertake to collect or deliver any load over roads or other ground which in its opinion Finlay consider unsuitable for the vehicle used for performing the contract. If such a vehicle delivers or collects a load to or from a place situated off the public road, Finlay shall not be responsible in any circumstance for any direct, indirect or consequential loss or damage whatsoever, howsoever arising out of such delivery other than by liability for death or personal injury resulting from the negligence of Finlay.

(d) Delivery shall be expressly at the risk of the Purchaser.

(e) Unless the Purchaser otherwise notified Finlay and any outside carrier concerned within any time limit imposed by the carriers conditions of business for receipt of claims in respect of damage in transit, loss or errors in delivery or errors in despatch and invoicing, or within 7 days whichever shall be the shorter period. Finlay will be under no liability whatsoever in respect of such matters and goods are deemed to have been delivered in accordance with the contract and in perfect order and condition, and the Purchaser to have accepted accordingly. In the event of non-delivery of goods unless Finlay is notified within 7 days of the date of Finlay's advice note, it will be under no liability in respect thereof.

(f) Unless specifically agreed otherwise all packing is charged by Finlay to the Purchaser and is non-refundable. In the event of Finlay agreeing to accept return of any packing, such return must be made within two months from the date of despatch by Finlay failing which the Purchaser shall become liable to pay the cost thereof.

(g) All payments in respect of delivery shall be subject to the same terms and conditions as apply hereunder to the price of goods.

11. DELAY OR FAILURE TO SUPPLY OR DELIVER: Delivery dates may be quoted by Finlay and arrangements for delivery made in accordance with Clause 10 hereof. Such dates and arrangements shall be interpreted as estimated and in no event shall such dates be construed as falling within the meaning of "time is of essence". Without prejudice to the above Finlay shall not be liable for failure to supply or for delay in supplying and goods or loss or damage resulting directly or indirectly from such failure, due to any Act of God, Force Majeure, or any War, Invasion, Riot, Civil Commotion, Criminal Damage, Military or Usurped Power, and Legislation, Government Order, Regulation or direction, Fire, Strike or lock-out or other Labour difficulties affecting Finlay's own plants or those of Finlay's suppliers or deliveries to or from Finlay, or any accident breakdown of machinery or shortage of labour equipment or spare parts affecting the production or transit of such materials or goods, or from any other cause whatsoever beyond Finlay's control, or any abnormal conditions arising from any of the aforesaid causes.

In the event of any delay due to any such cause the date of delivery or time for completion will be adjusted to reflect the actual length of time as may be necessary to properly reflect the delay. The Purchaser's acceptance of goods shall constitute a waiver of any claim for delay.

12. CONDITIONS AND WARRANTIES: **(a)** Any conditions, warranties, guarantees, or other obligations whatsoever, either express or implied by common law, custom of the trade, course of dealing or otherwise as to any matter shall be excluded.

(b) Any conditions, warranties, guarantees, or other obligations whatsoever either express or implied by statute as to any matter shall be excluded insofar as such exclusion is permitted by statute.

(c) Where any goods have been specially manufactured, processed altered or adapted to the special order or requirements of the Purchaser Finlay does not warrant that they are fit for any particular purpose.

13. MANUFACTURERS GUARANTEES: Where any goods supplied by Finlay are not manufactured by Finlay and are the subject of Manufacturers Terms, Guarantees and Warranties. Finlay undertakes to secure for the Purchaser the benefit of all such Manufacturers Terms, Guarantees and Warranties and Finlay obligations shall not extend any further under any circumstances. In this respect the Purchaser is deemed to have made him/herself familiar with and be satisfied with the Terms, Guarantees and Warranties provided by the said manufacturer. Finlay shall be under no liability for defects in goods not manufactured by Finlay save to the extent that Finlay is entitled to recover any loss or damage from the Manufacturer or Supplier thereof.

14. EXCLUSION OF LIABILITY: **(a)** Without prejudice to Clause 13 any liability of Finlay for any breach of contract whatsoever including liability in respect of any defect in the goods arising or quality condition or description of the goods whether from defect of manufacture or otherwise shall be limited to free replacement of any materials or goods which are notified to Finlay as defective or not of the correct quality or specification ordered within 24 hours of delivery.

(b) Finlay shall not be under any liability for the negligence of the company, its employees, servants, agents, subcontractor or others except liability for death or personal injury resulting from negligence.

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(c) Without prejudice to the operation and effect of any other part of these conditions (including this condition)-where Finlay makes or the Purchaser takes delivery of any goods which are defective or otherwise not in accordance with the contract, the liability of Finlay to the Purchaser in damages shall be limited to and shall not in any circumstances exceed a sum equal to the price of the defective goods.

(d) Finlay shall not be responsible in any circumstances for any direct, indirect or consequential loss or damage whatsoever whether suffered by the Purchaser or any third party and howsoever arising out of the installation or use of goods supplied or work done by Finlay or from any defects in the same or otherwise arising from any contract with Finlay including (without limitation) failure in the performance or the functioning of any equipment or system to which the goods are connected or of which they form part, loss of profit, wastage of goods, loss of machine time or production or wastage of labour.

15. SAFETY: The Purchaser undertakes that it will comply and that it will procure that its employees and any other persons working with, on, or near or using any goods supplied by Finlay will comply in full with the instructions and recommendations made in the relevant Operating and Safe Working Hand Book and Service Manual provided by the Manufacturer with such goods, and/or that they will comply with all other instructions whether written or verbal given by Finlay or Manufacturer in connection with the safe use, maintenance and/or operation of the goods.

16. CANCELLATION: No contract for goods ordered, obtained or manufactured by Finlay may be cancelled, and no goods may be returned without the prior written consent of Finlay and it shall be an implied condition of any cancellation or return to which Finlay so consents that the Purchaser shall indemnify Finlay against all expenses, loss (including the loss of profit) occasioned hereby.

17. INSOLVENCY OR DEFAULT:..(a) If Finlay receives information from which it appears that the Purchaser may be unable to pay its debts Finlay shall (without prejudice to any other rights, hereunder) be entitled to demand security prior to delivery either by payment in cash or Bank Guarantee notwithstanding any other terms of payment previously agreed, and in the event that the Purchaser is unable to provide such security Finlay shall be entitled to withdraw from the Contract without liability.

(b) If the Purchaser shall make default of any payment on the due date, commit a breach of a contract, or of any other of its obligations to Finlay or if any execution shall be levied upon the Purchaser's property or assets, or if the Purchaser shall make or offer any arrangement or composition with its creditors or commit any act of bankruptcy or any petition or receiving order shall be presented or made against it, or in any resolution or petition to wind up the Purchaser's business shall be passed or presented or if a Receiver or Manager of the undertaking property or assets or any part thereof the Purchaser, shall be appointed then Finlay may without notice:

(i) Suspend or determine the contract or any unfulfilled part thereof without prejudice to its existing rights thereunder.

(ii) Stop any goods in transit, and

(iii) Recover from the Purchaser premises any goods the property of Finlay.

18. Neither party shall assign or transfer this contract without the prior written consent of the other party as a condition to any such written consent such Assignment shall be subject to the terms and conditions herein and no greater rights or remedies shall be available to the Assignee.

19. INTERPRETATION: (a) These terms and conditions are considered to be fair and reasonable having regard to the circumstances known to and in the contemplation of the parties at the date hereof, and shall apply insofar as they shall be held to be lawful and enforceable. But it is hereby agreed that if any of such term and conditions shall be adjudged to be void, but would be valid if any part of the wording thereof were deleted the said term or condition shall be read with such modification as may be necessary to make it valid and effective.

20. INDEMNITY: (a) The Purchaser will indemnify Finlay against all claims of whatsoever kind and from whomsoever arising from death or personal injury arising out of use of the goods by any person.

(b) The Purchaser will indemnify Finlay against all claims of whatsoever kind and from whomsoever arising for damage to property arising out of any use of goods by any person.

21. JURISDICTION: These Terms and Conditions are to be subject to and construed in accordance with the law of Queensland and are subject to the exclusive jurisdiction of the Courts of Queensland