

Terms of Sale and Delivery

Of Bathco Pty Ltd Suite 10, Ground Floor 123 Clarence Street, Sydney 2000 abn: 30125047252, hereafter called **mafi**.

1. VALIDITY OF THESE TERMS AND CONCLUSION OF CONTRACT:

1.1. These Terms & Conditions apply for every order accepted by **mafi** and form part of every agreement entered into with the Buyer, whether a **Sales Contract, Works Contract or Contract for Work and Material**. Therefore any "orders", "deliveries" etc. mentioned in these Terms and Conditions also include sales, production or deliveries from a factory. **These Terms and Conditions apply furthermore, even without separate agreements, to all future orders placed by the Buyer until such time as mafi issues new Terms and Conditions of Sale and Delivery to the Buyer.**

1.2. **Any terms of conditions issued by a Buyer are excluded.** This also applies when **mafi** is aware of those terms and carries out deliveries, or makes no objection to such terms on receipt of them.

1.3. **Changes and amendments to these Terms and Conditions and to the agreement concluded with the Buyer are valid only when made in writing; written notice is also necessary in order to modify this requirement.**

1.4. Quotations received from **mafi** are subject to confirmation. The agreement comes into force only after a written order confirmation has been issued by **mafi** or when an order is actually executed.

1.5. An order placed with **mafi** is binding for the Buyer for a period of four weeks after receipt. Should the Buyer not receive any order confirmation or delivery within that time, the Buyer may give written notice that he is to receive an order confirmation within one week after which he is free to give written notice of withdrawal from the agreement.

1.6. If the Buyer is a consumer and has not entered into this agreement either on premises used permanently by **mafi** for business purposes or at an exhibition stand used by **mafi**, the Buyer will receive separate instruction on his right to withdrawal.

1.7. The right indicated in these Terms and Conditions accorded to **mafi** does not exclude the validity of other or further legal rights of **mafi**.

1.8. If there is any inconsistency between these Terms and Conditions and any quotation, purchase order or other document provided by **mafi**, then these Terms and Conditions will prevail unless otherwise agreed in writing by **mafi**.

2. QUOTATIONS:

2.1. All Quotations provided by **mafi** to the Buyer for the supply of Goods and/or Services are valid for 14 days from the date of Quotations or for such other period stated in the Quotation.

2.2. Verbal Quotations are subject to written confirmation by **mafi**.

2.3. If a Quotation is accepted by the Buyer, the Quotations will form part of this agreement.

3. PRICES:

3.1. Unless otherwise expressly indicated Prices are exclusive of GST and are for Goods to be picked up from **mafi's** premises.

3.2. Unless **mafi** agrees otherwise in writing, the Price specified in a Quotation is exclusive of freight, delivery, insurance, handling, storage, and packaging and any other expenses relating to the Goods, required by the Buyer. These costs will be charged to and be paid by the Buyer on receipt of the Goods.

4. ADVANCE PAYMENT AND PAYMENT:

4.1. Unless otherwise agreed **mafi** requires **advance payment of 50% of the value of the Quotation to confirm the order for Goods and/or Services. Delivery or performance time begins with receipt of this advance payment.**

4.2. **mafi** will provide the Buyer with an Invoice for remaining 50% of the value of the Quotation on installation of the Goods.

4.3. All invoices provided to the Buyer are payable within 10 Business Days of invoice date.

4.4. If payment is **deferred or in default**, the Buyer must pay **mafi interest** on all moneys outstanding at the rate of 10% above Reserve Bank Australia Cash Rate calculated daily from the date that the overdue moneys are due and payable up until payment in full of the overdue monies **mafi** is entitled to withdrawal from the agreement without further notice if the Buyer is more than 10 days in

arrears with a payment that is due.

4.5. The Buyer is not permitted to exercise any rights of counterclaims by **offsetting** or by exercising any right of retention. If the Buyer is a consumer this does not apply to **insolvency** on the part of **mafi** or to counterclaims that are legally connected with the Buyer's obligations or have been acknowledged by a Court or by **mafi**.

4.6. **mafi** is entitled to allocate payments made by a Buyer, to the oldest outstanding liability or in any manner **mafi** determines at its sole discretion.

4.7. **mafi's** staff are only entitled to accept payments when they are in possession of written authorisation for collection.

4.8. If **mafi** becomes aware of circumstances which appear to jeopardise the recovery of any money owed by the Buyer to **mafi**, (e.g. a large number of creditors, refusal to pay, a petition filed for bankruptcy, incorrect information on the part of the Buyer of facts that might influence its financial standing) **mafi** is entitled to make delivery of Goods and/or provision of Services conditional on advance payment of the invoice amount, even after conclusion of this agreement. If the advance payment has not been made within the period required, **mafi** is entitled to immediately terminate this agreement and to request a reasonable reimbursement for preparations already undertaken towards fulfillment of this agreement and towards delivery of Goods produced (partly produced) to the extent the value of these is covered by the Buyer's advance payment. **This clause also applies if the Buyer is in arrears with payment of amounts to mafi arising from other business transactions.**

5. DELIVERY TIME:

5.1. **Delivery dates or periods specified by mafi are not binding unless otherwise expressly agreed.**

5.2. **mafi** is entitled to make part-shipments or deliver early.

5.3. **If mafi does not deliver within a confirmed delivery period or exceeds a non-binding delivery period by more than four weeks**, the Buyer may by notice in writing set a period of grace of four weeks for that part of the order affected by the delay after which the Buyer may **terminate** this agreement; if that part of the order affected by the delay becomes objectively unusable for the Buyer within the period of grace according to the purpose of this agreement the Buyer is also entitled to terminate this agreement with regard to that part. The period of grace begins with receipt of the Buyer's declaration by **mafi**.

5.4. If **force majeure** or any serious interruptions in operations beyond **mafi's** control prolong the delivery period the Buyer is entitled to terminate this agreement if this delay has lasted longer than 8 weeks and no delivery has been affected in spite of a period of grace of further 4 weeks. When circumstances of this nature occur **mafi** is also entitled to withdraw from the contract if a remedy for the consequences does not appear feasible within a reasonable period or if the delay has already lasted 8 weeks or it becomes foreseeable that it will last at least this length of time. Any termination under this clause will not give right to a right for damages.

5.5. **In the event of the agreed delivery time or period being exceeded, mafi can be held liable only in as much as the delivery delay was caused by mafi or a person for which it is answerable, as a result of fraudulence or gross negligence.** If the Buyer is not a consumer, the reimbursement of lost profits is excluded, even in the case of gross negligence.

6. DISPATCH, ACCEPTANCE AND TRANSFER OF RISK, DELAYED ACCEPTANCE:

6.1. Unless otherwise agreed, **the Buyer is obliged to take receipt of the Goods from mafi within 5 business days** after receipt of communication by **mafi** that the Goods are available at **mafi's** warehouse.

6.2. If **dispatch of the Goods** has been arranged, **mafi** is entitled to select a customary method of dispatch if the Buyer has failed to name one. In case of dispatch, the Buyer is obliged to accept the Goods on arrival and arrange unloading.

6.3. Transport insurance will be arranged by **mafi** only if expressly requested and will be to the Buyer's account.

6.4. Risk in the Goods passes to the Buyer from the moment that the Goods **are** dispatched from **mafi's** warehouse, unless the Buyer arranges delivery. In that case, risk passes

to the Buyer when the Goods leave **mafi's** warehouse in the manner agreed.

6.5. If the Buyer fails or refuses to collect or accept delivery of Goods (as the case may be) the risk in those Goods passes to the Buyer from the time of that failure (as determined by **mafi**). If this occurs, **mafi** is entitled to demand fulfillment and reimbursement for delayed acceptance or to terminate this agreement after a period of grace of 8 days and to demand full compensation for any losses incurred by **mafi**. In the event of late acceptance lasting longer than 10 Business Days, the Buyer must pay **mafi's** storage costs, also any incurred on the premises of any carrier.

7. LEGAL CONSEQUENCES IN THE EVENT OF WITHDRAWAL BY mafi:

7.1. If **mafi** terminates this agreement the Buyer will be held liable for all costs incurred for any return and realisation of the goods involved unless this agreement provides otherwise.

7.2. In the event of termination due to default of payment or acceptance by the Buyer, **mafi** is entitled to demand liquidated damages from the Buyer, **of 30% of the Price**. The damages may be increased or reduced if **mafi** can prove that higher damaged or the Buyer that lower damages have been incurred by **mafi**. **mafi** therefore reserves the right to claim higher damages.

8. RESERVATION OF TITLE:

8.1. Title of the Goods remains with **mafi** until resolution of all claims on behalf of **mafi** arising from this agreement. The Buyer must store reserved Goods separately from other Goods and to insure those Goods sufficiently against fire, theft, breakage and damage caused by water. In the event of damage any rights and claims arising from these insurances in favour of the Buyer will be transferred to **mafi**.

8.2. As long as reservation of title is applicable, impoundment, pledge or other means of disposal are not permitted. **Re-sale of goods reserved or their use by the Buyer to fulfill a service or works contract is only permitted if** the Buyer is not in default with payment obligations to **mafi**, arising from any legal transaction or the re-sale or other means of disposal of the Goods is carried out in the course of the Buyer's usual business. In the event of disposal of the Goods or their use for the fulfillment of a works contract, the Buyer instantly assigns to **mafi** any claims due to him from third parties to the sum of the unpaid amounts payable to **mafi**. The purchaser must be informed at the time of re-sale of the assignment in favour of **mafi** or the assignment must be noted in the Buyers' accounts.

8.3. If claims are made on reserved Goods by third parties (e.g. as part of a court order levying distraint), the Buyer is obliged to immediately inform the third party of **mafi's** reservation of the title and to immediately inform **mafi**, forwarding all relevant information and documentation to enforce the reservation of title, as well as supporting **mafi** in the enforcement of its right of ownership and reimbursing any costs that may be incurred in this connection.

8.4. **If the title reserved Goods are treated or processed or used in combination with other Goods, mafi** is entitled to part-ownership in the ratio of the value (according to the end sum on the invoice incl. GST) of the Goods delivered to the other items at the point in time of processing or combination.

9. PERSONAL PROPERTY SECURITIES LAW (PPS)

9.1. If **mafi** determines that this agreement is or contains a security interest for the purposes of the PPSA, the Buyer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which **mafi** asks and considers necessary for the purposes of: **(a)** ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective; or **(b)** enabling **mafi** to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by **mafi**; or **(c)** enabling **mafi** to exercise rights in connection with the security interest.

9.2. **mafi** need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

9.3. In this clause, PPSA means each of: **(a)** the Personal Property Securities Act 2009 (Cth) (**PPS Act**); **(b)** any regulations made at any time under the PPS act; **(c)** any provision of the PPS Act or regulation referred to in paragraph (b) above; **(d)** any amendment to any of the above, made at any time; or **(e)** any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in paragraphs (a) to (d) above.

10. SECURITY FOR PAYMENT LEGISLATION:

10.1. Nothing in these Terms and Conditions effects any rights or obligations of **mafi** and/or the Buyer pursuant to any Security for Payment Legislation

11. RECLAMATION AND WARRANTY:

11.1. The Buyer is not permitted to derive any claim from minor or customary deviations in construction, shape, colour of wood and / or mass of the Goods.

11.2. Any Warranty applies only to defects actually present at the time of acceptance. **mafi** will not be held liable for damage which occurs on the Buyer's premises such as through natural wear, damp, extreme heat in rooms, other influences of temperature or weather or through improper treatment and / or pets or stress such as stiletto heels or chemicals.

11.3. If the Buyer elects to have the Goods delivered, the Buyer is obliged to **examine the goods immediately after delivery and place any claims, indicating their actual extent, by registered mail at the latest within 7 days of delivery of the goods;** receipt by **mafi** is decisive for punctuality. If the Buyer has failed to claim in time for defects that would have been visible in an orderly inspection, there is the Buyer has no claim under any warranty or for compensatory damage.

11.4 If the Goods are collected from **mafi's** premises, the Buyer must examine the Goods prior to accepting the Goods and removing the Goods from **mafi's** premises and place any claims, indicating their actual extent at that time.

11.5. The **warranty period** is 7 year and begins with acceptance according to clause 6 and, in the event of delayed acceptance, with its beginning.

11.6. Evidence must be provided by the Buyer that a defect existed at the time of acceptance of the Goods even in the event that a defect becomes apparent within six months of acceptance. As prerequisite for the enforcement of claims arising from a defect on **mafi's** part, **mafi** must be given the opportunity to inspect the goods involved in the claim, or to have them inspected.

11.7. **In the event that defects covered by warranty do exist mafi has the option,** to either rectify the defects within a reasonable period or to supply similar goods that are free from defects in exchange for the defective goods within a reasonable period of time. The Buyer is entitled to demand cancellation or a price reduction only if **mafi** not only refuses to make a replacement delivery but also refuses to rectify the defect or does not make such within a reasonable period of time, or the repairs **mafi** has chosen to carry out prove inadequate.

11.8. The Buyer is entitled to demand cancellation or a price reduction only if **mafi** not only refuses to make a replacement delivery but also refuses to rectify the defect or does not make such within a reasonable period of time, or the repairs **mafi** has chosen to carry out prove inadequate.

11.9. In the event that **mafi** receives a claim from a third party, the Buyer will indemnify **mafi** in as much as that **mafi** accepts no liability towards him in accordance with

the afore-mentioned conditions.

11.10. If the Buyer is a consumer the conditions set out in 11.3. to 11.11. do not apply. For consumers the legal provisions for warranty performance apply without any limit so that e.g. the warranty for moveable objects is 2 years and for immovable 3 years and no reverse burden of proof to the disadvantage of the consumer takes place.

11.11. Goods will be returned within 60 days of delivery. Goods must be in full unopened packs and must be in new condition. There is a 30% handling and restocking charge. No custom items will be accepted for return, these include but not limited to stairs, oils, soaps, furniture, accessories and mafi catwalk.

12. GUARANTEE:

12.1. The Guarantor, being given the guarantee and indemnity in the clause 12 in consideration of **mafi** agreeing to enter into their Terms and Conditions. The Guarantor acknowledges receipt of valuable consideration from **mafi** for the Guarantor incurring obligations and giving rights under this guarantee and indemnity.

12.2. The Guarantor guarantees to **mafi** the due and punctual performance by the Buyer of its obligations under this agreement, including the obligation to pay money.

12.3. As a separate undertaking, the Guarantor indemnifies **mafi** against liability or loss arising from, and any costs, charges or expenses incurred in connection with, a breach by the Buyer of this agreement.

12.4. The Guarantor waives any right that they have of first requiring **mafi** to commence proceedings or enforce any other right against the Buyer or any other person before claiming under this guarantee and indemnity.

12.5. This guarantee and indemnity is a continuing guarantee and indemnity and is not discharged by any one payment. This guarantee and indemnity does not merge on completion of any transaction under this agreement.

12.6. The liability of the Guarantor under this clause 12 is a guarantor, indemnifier or principal debtor and the rights of **mafi** under this guarantee and indemnity are not affected by anything which might otherwise affect them at law or in equity.

12.7. The Guarantor may not, without the consent of **mafi**, prove in competition with **mafi** if a liquidator, provisional liquidator, receiver, official manager, or trustee in bankruptcy is appointed in respect of the Buyer or the Buyer is otherwise unable to pay its debts when they fall due, until all money payable to **mafi** in connection with the agreement is paid.

12.8. If a claim that a payment or transfer to **mafi** in connection with this agreement is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors) is upheld, conceded or compromised when mafi is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment or transfer had not occurred.

12.9. In the event of default by the Buyer, the Guarantor agrees to pay or reimburse **mafi** on demand for: **(a)** all costs, charges and expenses in making, enforcing and doing anything in connection with this guarantee and indemnity; and **(b)** all stamp duties, fees, taxes, and charges which are payable in connection with this guarantee and indemnity or a payment, receipt or other transactions contemplated by it.

12.10. The Guarantor acknowledges having been given a copy of this agreement and having full opportunity to consider its provisions before entering into this guarantee and indemnity.

13. CLAIMS FOR COMPENSATORY DAMAGES:

13.1. **Claims to mafi for compensatory damages resulting from any legal title (e.g. delivery delay, warranty defects, damage arising from defects) are, in as much as mafi or a person for whom it is answerable has caused the damage without intention or gross negligence, excluded.** If the Buyer is a consumer, this provision does not apply for damages to persons.

13.2. **Reimbursement for loss of earnings is,** in every case, excluded with the exception of intentional breach of this agreement by **mafi**. If the Buyer is a consumer this exception also applies if **mafi**, or a person for which it is answerable, has caused the damage as a result of gross negligence.

14. ENTIRE AGREEMENT:

14.1. This agreement: **(a)** constitutes the entire agreement between the parties about its subject matter and supersedes all previous representations, understanding and agreements in connections with that subject matter; and **(b)** may only be altered in writing signed by all parties.

15. APPLICABLE LAW, PLACE OF PERFORMANCE AND PLACE OF JURISDICTION:

15.1. This agreement is governed by **New South Wales Law.**

15.2. **Place of performance** for this agreement entered into with the Buyer is the registered office of **mafi.**

15.3. The parties submit to the jurisdiction of the courts of New South Wales for any disputes arising from or in connection with this agreement.

16. DEFINITIONS:

In this agreement:

Business Day means a day this is not a Sunday or Saturday, or a public holiday in NSW.

Goods means the goods ordered by the Buyer from **mafi** pursuant to a Quotation;

Price means the price of the Goods or Services (as the case may be) as stated in the quotation or as otherwise agreed in writing by **mafi**;

Quotation means a quotation to produce, manufacture, supply and/or install the Goods which consists of a list of the Goods being provided and/or the Services to be provided by mafi and the Price of those Goods and Services submitted to the Buyer by mafi;

Security for Payment Legislation means any of the following acts of Parliament:

- (a) Building and Construction Industry Security of Payment Act 1999 (NSW);
- (b) Building and Construction Industry Security of Payment Act 2002 (VIC);
- (c) Building and Construction Industry Payment Act 2004(QLD);
- (d) Construction Contracts (Security of Payment) Act 2004 (NT);
- (e) Construction Contracts Act 2004 (WA);
- (f) Building and Construction Industry Security of Payment Act 2009 (SA);
- (g) Building and Construction Industry Security of Payment Act 2009 (TAS); and
- (h) Building and Construction Industry Security of Payment Act 2009 (ACT),

as amended from time to time.

Services means the services supplied by mafi to the Buyer at the Buyer's request pursuant to a Quotation or incidental to the supply of Goods to the Buyer by mafi.

Warranty means Mafi Limited Warranty - Australia.

I accept the above Terms & Conditions

Buyer (all sales)

Name: _____ Signature _____ Date _____

Guarantor (sales with mafi Installation & Services)

Who is the Guarantor? Company Individual

Name: _____ Signature _____ Date _____

Company Name: _____