



## **TRADING TERMS AND CONDITIONS**

**This is a legal document. The Buyer should seek legal advice if the Buyer is unclear on any point.**

### **Introduction / General Terms**

1. These terms and conditions shall apply to every sale made or agreed to be made by the Workmate Abrasives Pty Ltd and the Buyer, and, supersedes all prior arrangements, understandings and agreements between Workmate Abrasives Pty Ltd and the Buyer and constitutes the entire agreement between them and shall take effect according to these terms notwithstanding that any prior agreement is at conflict or variance with them or any correspondence or documents relating to the subject matter of these terms and conditions which may have passed between Workmate Abrasives Pty Ltd and the Buyer prior to execution. Each order will constitute an offer by the Buyer to acquire products from Workmate Abrasives Pty Ltd upon and subject to these trading terms and conditions.
2. Orders given cannot be cancelled, in whole or in part for whatsoever reason, without prior approval of Workmate Abrasives Pty Ltd and accordingly the Buyer will pay Workmate Abrasives Pty Ltd for the total value of the order.
3. Workmate Abrasives Pty Ltd selling prices are ex their warehouse. Freight is payable on all sales, irrespective of their value unless the Buyer arranges their own collection or pickup.
4. The purchase price unless otherwise stated does not include any delivery charges, packaging, freight, insurance or any statutory, sales, excise, goods and services, or other taxes, duties or imposts, all of which may be added to the purchase price.
5. All prices are subject to change without notice. Workmate Abrasives Pty Ltd will always attempt to give advance notice of any impending price increase / s.
6. It is understood that the Buyer agrees to the terms and conditions shown herewith. Any conflicting, inconsistent or additional terms and conditions expressed or implied are excluded. Any modification, variation or amendment of these terms and conditions shall not be in force or effect unless such modification, variation or amendment is in writing and has been signed by both Workmate Abrasives Pty Ltd and the Buyer.
7. Workmate Abrasives Pty Ltd may from time to time alter its trading terms or these terms and conditions and such altered terms and conditions shall apply in respect of all transactions taking place after notification to the Buyer of such altered conditions.
8. The standard terms of conditions of sale are included in all updated price lists issued by Workmate Abrasives Pty Ltd and are published on the Workmate Abrasives Pty Ltd website.
9. Any provision in this agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction be read down, if possible, so as to be valid and enforceable or otherwise severed to the extent of the invalidity or unenforceability without invalidating the remaining provisions hereof or without affecting the validity or enforceability of such provision in any other jurisdiction.

### **Financial, Payment, Default and Limit**

1. Payment of all accounts is to be made within / no later than 30 days from receipt of the 1<sup>st</sup> accounting statement.
2. Time given for the payment of the Goods shall be of the essence of the contract. If the Buyer fails to pay for the Goods when due, Workmate Abrasives Pty Ltd may treat the contract repudiated by the Buyer or may, until payment is made in full, suspend all further deliveries without incurring any liability whatsoever to the Buyer, in respect thereof.
3. Interest at a rate of 2% per month, compounded daily will be charged and payable on any amounts which remain outstanding 31 days after the statement as dealt with in 1 above.
4. In the event of Workmate Abrasives Pty Ltd having to instruct debt collectors or having to institute any legal action for the recovery of any monies due in respect of the granting of credit facilities in terms hereof, the Buyer shall, in addition to paying the sums owed shall also pay to Workmate Abrasives Pty Ltd all the legal costs and disbursements incurred in having to seek payment of the unpaid sum calculated on a solicitor and own client basis where proceedings have been issued in the appropriate court, together with all the costs of the debt collectors instructed and referred to above. For the avoidance of doubt, all or any costs of whatsoever nature incurred by Workmate Abrasives Pty Ltd in respect of the opening and maintaining of an account in the name of the Buyer or collecting any monies due by the Buyer in respect of the unpaid debt shall be paid by the Buyer on demand.
5. Workmate Abrasives Pty Ltd reserves the right to discontinue and summarily cancel any credit facilities in respect of any Buyer whose payments have fallen in arrears and in the event of this being exercised the full balance due and outstanding in respect of such credit facilities shall immediately become due and payable on demand, notwithstanding the fact that a portion of the amount would not be owing in accordance with the requested terms of payment and further concede that a certificate signed by a director of Workmate Abrasives Pty Ltd whose appointment as such need not to be proved, shall be conclusive proof and existence of both the debt as well as the amount owing. Workmate Abrasives Pty Ltd accepts no liability howsoever in the application of this condition.
6. Workmate Abrasives Pty Ltd shall be entitled without notice to the Buyer to adjust the buy price, whether before or after delivery of the Goods, in the event of and to account for any increase in the cost to Workmate Abrasives Pty Ltd of supplying the Goods as the result of increases in the costs of transport or insurance or in the rates of customs duties / taxes applicable in respect of supplying the Goods or to any changes in the Australian Dollar foreign exchange rates against the other major world currencies.
7. Any monies paid by the Buyer shall first be applied to payment of interest owing, secondly to any other costs which are applicable under these conditions of sale (if any) and thereafter any residual of the amount paid shall be applied against the purchase price of the Goods.
8. In the event of a dispute, the Buyer will not be entitled to withhold payment of any undisputed amount due to Workmate Abrasives Pty Ltd.

### **Return of Goods**

In the event of the Buyer returning any goods correctly supplied by Workmate Abrasives Pty Ltd, Workmate Abrasives Pty Ltd shall be entitled to a payment of a handling charge calculated at 20% on the value of such Goods.

Notwithstanding the above, and subject to any condition or warranty implied by any statute currently in force, the following Goods cannot be returned under any circumstances

- a) any goods which are custom built;
- b) any goods specifically cut to size;
- c) any goods specifically made, treated, purchased or imported by Workmate Abrasives Pty Ltd for the Buyer;
- d) any goods damaged or altered in any way by the Buyer; or
- e) the period since invoice exceeds 30 days

and Workmate Abrasives Pty Ltd shall not be responsible for any such returns which will immediately be returned to the Buyer, freight and accounting costs to the account of the Buyer.

Workmate Abrasives Pty Ltd shall not be liable for freight costs on Goods returned by the Buyer.

The receipt back of the Goods is not to be taken as an assumption of liability by Workmate Abrasives Pty Ltd to issue a credit. Workmate Abrasives Pty Ltd maintains the right to establish the condition of the Goods and the circumstances of the return.

### **Delivery**

Any time or date named or quoted or accepted by Workmate Abrasives Pty Ltd for delivery, dispatch, shipment or arrival of the Goods is an estimate only and does not constitute a condition of the contract. Workmate Abrasives Pty Ltd accepts no liability whatsoever for the consequences of any delay as a result of any cause outside its reasonable control.

The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event the Buyer is unable to take delivery of the Goods as arranged then Workmate Abrasives Pty Ltd shall be entitled to charge a fee for redelivery.

Delivery of Goods to a third party nominated by the Buyer is deemed to be a delivery to the Buyer for the purposes of this agreement

All and any custom made product or Goods, manufactured by Workmate Abrasives Pty Ltd will be subject to an underage and overage supply dependant on the raw material Workmate Abrasives Pty Ltd has available. In such instance, the contract will be supplied to the Buyer as complete. The Buyer must accept any overages, which will be kept within reason.



### Retention of Title

1. The ownership of goods supplied by Workmate Abrasives Pty Ltd to the Buyer shall remain vested in Workmate Abrasives Pty Ltd in full; should any monies be owing in respect of any Goods supplied, then and in this event Workmate Abrasives Pty Ltd reserves the right to lawfully enter the premises of the Buyer where the Goods supplied are situated forthwith retake possession of any such Goods in any way and / or manner in which it, at its sole discretion, may deem fit.
2. In the event of any third party be it an individual, company or liquidator seeking to claim a prior right to the Goods such claim shall rank secondary to that of Workmate Abrasives Pty Ltd upon the said Workmate Abrasives Pty Ltd providing documentary evidence to the third party that they supplied the goods in question, that the goods are the property of Workmate Abrasives Pty Ltd and that all or part of the sums owed by the Buyer have not been paid to Workmate Abrasives Pty Ltd.
3. Risk in the Goods will pass at the time of delivery and the Buyer must adequately insure the Goods. Until the Goods passes to the Buyer
  - i. The Buyer will hold the Goods as fiduciary bailee and agent for Workmate Abrasives Pty Ltd
  - ii. After giving 24 hours notice to the Buyer Workmate Abrasives Pty Ltd is entitled to enter upon the Buyer's premises between 9am and 5pm to inspect the Goods
  - iii. The Goods are to be stored separately and in a manner so that they are easily identifiable as Workmate Abrasives Pty Ltd property
  - iv. The Buyer may use our Goods with other goods but only on the condition that if the products are admixed, united or incorporated or otherwise with other products, the resulting product which incorporates the Goods are the property of Workmate Abrasives Pty Ltd until the account has been paid in full.
  - v. The proceeds of any Goods sold are to be kept in a separate account and must not be mixed up with any monies, including funds of the Buyer
  - vi. The Buyer must return the Goods to Workmate Abrasives Pty Ltd on demand.
4. The Buyer acknowledges that if the Buyer mixes the Goods with other products or items so that the Goods are no longer separately identifiable, the Buyer and Workmate Abrasives Pty Ltd will be owners in common of the new product.
5. The Buyer shall not attempt to give or allow any security interest over the Goods in favour of another person.

### Liability / Warranty

1. The liability of Workmate Abrasives Pty Ltd for a breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 (other than section 69) is hereby limited to;
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of the goods;
  - iii. the payment of the costs of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired
2. As Workmate Abrasives Pty Ltd has no control on how their goods are used or what applications they will be utilised, Workmate Abrasives Pty Ltd can not guarantee or warrantee any length of service or quality of finish from the use of such goods.
3. It is the responsibility of the Buyer to inspect the Goods and to satisfy himself as to the condition, quality, and suitability of the Goods for his purposes prior to the use of the Goods. If the Buyer fails to inspect the Goods in connection with the requirement specified in this clause, the Buyer shall have forfeited any right for compensation of any kind and must pay the full purchase price of the Goods to Workmate Abrasives Pty Ltd
4. Workmate Abrasives Pty Ltd assumes no liability (whether negligence or otherwise) for any technical advice or assistance given or the results obtained therefrom and any such advice is given and accepted at the Buyer's risk.
5. Without limiting the provisions of any other condition within these Trading Terms and Conditions Workmate Abrasives Pty Ltd liability with respect to claims shall not exceed the purchase price of the Goods.

### Claims

Any claim against Workmate Abrasives Pty Ltd must be made in writing within 5 days of delivery of the Goods except claims of non delivery which must be made in writing within 24 hours of receipt of the Goods. All claims must refer to a relevant invoice number and reason for claim. Telephonic advice of such a claim is not accepted.

Any claim for receipt of damaged Goods or faulty Goods, the Buyer shall ensure that the Goods are kept intact for inspection by Workmate Abrasives Pty Ltd. Failure to comply with this provision, to the full extent permitted by law, disentitle the Buyer to any remedy.

### Indemnity

The Buyer shall comply with all instructions of Workmate Abrasives Pty Ltd in relation to the handling, fitting, installation and storage of the Goods. Notwithstanding such compliance the Buyer shall keep Workmate Abrasives Pty Ltd indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, and without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property, and consequential loss, (including loss of profit) which may be made against Workmate Abrasives Pty Ltd or which Workmate Abrasives Pty Ltd may sustain, pay or incur as a result of or in connection with the sale or any use of the Goods, unless such cost, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, Workmate Abrasives Pty Ltd, or, a duly authorised employee of Workmate Abrasives Pty Ltd.

It is the Buyers responsibility to ensure that all applicable health and safety regulations are observed, as well as, appropriate steps are taken for the correct storage, handling and use of the Goods.

### Waiver

A waiver of any right or entitlement by Workmate Abrasives Pty Ltd shall not be a waiver of any continuing breach of these Terms and Conditions by the Purchaser and Workmate Abrasives Pty Ltd's rights will not be prejudiced by any time or indulgence granted to a Purchaser in relation to such a breach.

### Authorisation to check credit history / rating

This authorisation relates to the Privacy Act – Section 18A (1) (b)

The Buyer also consents to Workmate Abrasives Pty Ltd being given a consumer credit report to collect overdue payments – Section 18K (1) (h) Privacy Act 1988.

1. The Buyer agrees that Workmate Abrasives Pty Ltd shall obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by Workmate Abrasives Pty Ltd.
2. The Buyer agrees that Workmate Abrasives Pty Ltd may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - a. To assess an application by a Buyer; and / or
  - b. To notify other credit providers of a default by the Buyer; and / or
  - c. To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and / or
  - d. To assess the credit worthiness of the Buyer and / or Guarantor/s.

It shall be a condition of these terms and conditions that the Buyer shall have complied with Workmate Abrasives Pty Ltd requirements, and, all requests for credit submitted will only be assessed once the credit application forms have been fully completed. Default payers will be reported to the necessary credit reporting / rating authorities.

### Legal

These terms and Conditions are governed and construed in accordance with the laws of the State of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of that State and of all courts competent to hear appeals from such courts.

Any modification, variation or amendment of these terms and conditions shall not be in force or effect unless such modification, variation or amendment is in writing and has been signed by both Workmate Abrasives Pty Ltd and the Buyer.