



**A.B.N. 83 073 168 680**

## **NON-AUCTION TERMS AND CONDITIONS**

These conditions of sale apply to each offer to sell, quotation, contract and other commercial transaction for the supply of goods by A.C.N. 073 168 680 Pty Limited A.C.N. 073 168 680 trading as O'Maras Valuers & Auctioneers and any of its subsidiaries (as defined in Section 46 of the Corporations Act 2001 (Cth)) named as the party supplying the goods ("O'Maras") whether acting in its own right or as an agent for the Vendor. These conditions of sale shall be read in conjunction with any special conditions of sale which shall prevail to the extent of any inconsistency with these conditions of sale. Except as otherwise agreed in writing between the parties, these conditions of sale (as amended by any special conditions of sale referred to above) shall apply notwithstanding anything to the contrary in any order, supply or other documentation issued by the Buyer.

### **1. INTERPRETATION**

#### **1.1 In these conditions:**

- 1.1.1 "Buyer" means the purchaser of the Goods specified in Item 1 of the Schedule.
- 1.1.2 "Vendor" includes each and every one of the owners of the Goods and the person or company instructing or authorising O'Maras to offer the Goods for sale and where more than one, jointly and severally.
- 1.1.3 "Goods" means the products and, if any, services, specified in Item 2 of the Schedule, that the Vendor has agreed and authorised O'Maras to sell on behalf of the Vendor and the Buyer has agreed to purchase under these conditions of sale.
- 1.1.4 "Price" means the price of the Goods as set out in Item 3 of the Schedule.
- 1.1.5 Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### **2. GENERAL**

- 2.1 These conditions (which shall only be waived in writing signed by O'Maras) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

### **3. TERMS OF SALE**

- 3.1 The Goods and all other products sold by O'Maras on behalf of the Vendor are sold on these terms and conditions.
- 3.2 These conditions constitute a separate contract in relation to each of the Goods sold by O'Maras to the Buyer.

### **4. PACKING**

- 4.1 The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense.

### **5. SHORTAGE**

- 5.1 The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with O'Maras within three (3) days of the date of purchase of the Goods and in any event, at least prior to the removal of the Goods by the Buyer.

### **6. DRAWINGS, ETC**

- 6.1 All specifications, drawings, and particulars of weights and dimensions submitted to O'Maras or the Vendor are approximate only and any deviation from any of these things does not vitiate any contract with O'Maras or the Vendor or form grounds for any claim against O'Maras or the Vendor.
- 6.2 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.
- 6.3 Where specifications, drawings or other particulars are supplied by the Buyer, the price by O'Maras is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by O'Maras and set out in a quotation, then any such increase or decrease are to be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

### **7. PERFORMANCE**

7.1 Any performance figures given by O'Maras or the Vendor are estimates only. O'Maras and the Vendor are under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

## **8. REMOVAL OF GOODS**

8.1 The Buyer may only remove the Goods from the premises once the Goods and all other moneys whatsoever owing by the Buyer to O'Maras have been paid for in full.

8.2 All Goods must be removed from the premises within fourteen (14) days from the date of sale as nominated by O'Maras.

8.3 O'Maras and the Vendor are not liable for any loss, damage or delay occasioned to the Buyer or the customers of the Buyer arising from the removal of the Goods from the premises by the Buyer or any person claiming through the Buyer (whether or not O'Maras or the Vendor are legally responsible for the person who caused or contributed to that loss or damage).

8.4 The Buyer indemnifies O'Maras, the Vendor and the owner of the premises against any damage whatsoever caused by the Buyer or his or her servants during any removal of the Goods from the premises. This indemnity survives termination of this agreement by either party for any reason.

## **9. LOSS OR DAMAGE IN TRANSIT**

9.1 O'Maras and the Vendor are not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not O'Maras or the Vendor are legally responsible for the person who caused or contributed to that loss or damage).

## **10. NO WARRANTY**

10.1 To the extent permitted by law, the Buyer acknowledges to O'Maras and the Vendor that:

10.1.1 the Buyer must purchase the Goods in the present state and condition of the Goods, subject to all defects latent and patent;

10.1.2 prior to execution of this agreement, the Buyer conducted a thorough examination of the Goods;

10.1.3 the Buyer is satisfied about the present state and condition of the Goods;

10.1.4 no warranty, condition, description or representation is given or made by O'Maras or the Vendor to the Buyer in relation to the Goods, expressly or impliedly by this agreement or outside this agreement;

10.1.5 all warranties, terms and conditions in relation to the state, quality or fitness of the Goods and of every other kind whether expressed or implied by use, statute or otherwise is excluded;

10.1.6 if the Goods being sold is a used plant ("Plant"), the Buyer acknowledges that the Vendor or O'Maras have:

(a) provided the Buyer with written details of any faults that have been detected with the Plant; and

(b) advised the Buyer that the Plant is not to be used until the faults have been rectified; and

(c) where relevant, advised the Buyer that the Plant is only suitable for scrap or spare parts for another plant and that the Plant in its current state is not suitable to be used for work; and

(d) clearly labelled the Plant with words to the effect set out in clause 10.1.6.(c);

(e) provided the Buyer with all information that a manufacturer must provide relating to the correct and safe operation of the Plant, including:

i. the purpose for which the Plant was designed;

ii. testing or inspections that are to be carried out on the Plant;

iii. installation, commissioning, operation, maintenance, inspection, cleaning, transport, storage;

iv. if the Plant is capable of being dismantled, dismantling of the Plant;

v. systems of work;

vi. knowledge, training or skills necessary for persons undertaking testing and inspection; and

vii. emergency procedures;

(f) provided the Buyer with all available information concerning health and safety that was received from the designer and manufacturer of the Plant;

(g) provided the Buyer with all available records of the Plant that were kept by the previous owner of the Plant.

## **11. PAYMENT**

- 11.1 The Buyer must pay the Price and any buyer's premium or processing charge to O'Maras for the Goods prior to collection of the Goods by the Buyer.
- 11.2 Unless otherwise stated, all prices quoted by O'Maras are net, exclusive of Goods and Services Tax (GST).
- 11.3 Unless otherwise agreed between the Buyer and O'Maras, payment for the Goods must be made by cash or bank cheque.
- 11.4 The Buyer expressly acknowledges and warrants to O'Maras and to the Vendor that prior to making an offer for the Goods or successfully negotiating the purchase of the Goods, the Buyer has either cash resources immediately available to complete the Buyer's purchase of the Goods or the Buyer has obtained approval for such financial assistance or loans as the Buyer may need to complete the Buyer's purchase and that such financial assistance or loans are on reasonable terms and satisfactory to the Buyer.

## **12. RIGHTS IN RELATION TO GOODS**

- 12.1 The Vendor (and O'Maras on behalf of the Vendor) reserves the following right in relation to the Goods until all moneys on any account whatsoever are fully paid:
  - 12.1.1 ownership of the Goods;
  - 12.1.2 to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
  - 12.1.3 to keep or resell any Goods repossessed pursuant to clause 12.1.2 above.
- 12.2 If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Vendor and shall pay such amount to the Vendor upon request by O'Maras or the Vendor.
- 12.3 Despite the provisions above O'Maras or the Vendor shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.
- 12.4 For the avoidance of doubt, even after delivery, the Goods shall remain the property of the Vendor until all outstanding debts owed by the Buyer to Vendor, including part paid debts and secured debts, are paid.
- 12.5 For the avoidance of doubt, title in the Goods shall not pass to the Buyer until all moneys owing or payable on any account whatsoever have been paid to O'Maras or the Vendor.
- 12.6 If the Buyer fails to comply with these conditions of sale or if any cheque given on account of the Buyer's purchase is dishonoured, any moneys which the Buyer has paid to O'Maras on account of the Buyer's purchase is absolutely forfeited to the Vendor. In this event, the Vendor and/or O'Maras is at liberty to sue the Buyer for damages, or at their option, to resell the Goods in accordance with clause 12.1.3 in any manner and upon such terms and conditions as they think proper.
- 12.7 All losses and expenses incurred by the Vendor and/or O'Maras resulting from any resale pursuant to clause 12.6 and all damages which the Vendor and/or O'Maras may sustain are recoverable from the Buyer as liquidated damages. The Vendor and/or O'Maras is not obliged to give any notice of a resale. Without limiting the generality of the foregoing, O'Maras is entitled in the event of a resale to:
  - 12.7.1 the amount of any commission and buyer's premium lost on a purchase as a result of the Buyer not proceeding with the purchase;
  - 12.7.2 the cost of advertising in respect of any such purchase;
  - 12.7.3 any other costs incurred in such resale.

## **13. BUYER'S PROPERTY**

- 13.1 Any property of the Buyer in the possession, custody or control of the Vendor and/or O'Maras, including without limitation, any bailee or agent of O'Maras is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

## **14. INTELLECTUAL PROPERTY**

- 14.1 The specification and design of the Goods (being all intellectual property, including but not limited to copyright, design right or other intellectual property) remains the property of the Vendor.
- 14.2 The Buyer recognises that there may be software installed on computer equipment and that use of such software, without licence, will infringe the rights of the software owner. The Buyer hereby acknowledges and warrants that the Buyer has had an opportunity to consider the terms and conditions contained in license agreements before purchase. The Buyer expressly undertakes to be bound by the terms and conditions of the licence for any software which may be installed on computer equipment purchased. The Buyer indemnifies and keeps indemnified the Vendor and O'Maras against any claim whatsoever by the software owner.

## **15. STORAGE**

- 15.1 O'Maras reserves the right to make a reasonable charge for storage if goods are not collected by the Buyer within fourteen (14) business days of the date of this sale agreement. The parties agree that O'Maras may charge for storage from the first day after the Buyer fails to collect the Goods. For the avoidance of doubt, unless otherwise agreed in writing, all Goods must be collected on the day of Purchase before 5:00 pm.

## **16. EXCLUSION OF NEGLIGENCE**

- 16.1 O'Maras and/or the Vendor are not liable to the Buyer in contract or in tort arising out of or in connection with or relating to:
- 16.1.1 the performance of the products or Goods or any breach of these conditions; or
  - 16.1.2 any fact, matter or thing relating to the Goods; or
  - 16.1.3 any error (whether negligent or in breach of contract or not) in information supplied to the Buyer or a user before or after the date of the use of the Goods by the Buyer or a user.

## **17. EXCLUSIONS OF REPRESENTATIONS AND ARRANGEMENTS**

- 17.1 These terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods or any part of the Goods, including but without limiting the generality of the foregoing, those relating to the performance of the Goods or any part of the Goods or the results that ought to be expected from using the Goods.

## **18. INDEMNITY**

- 18.1 The Buyer indemnifies on a continuing basis and on a full indemnity basis each of the Vendor and O'Maras from and against any liability, loss, expense or demand for or arising from any false, misleading, deceptive or misdescriptive representation or statement made by the Buyer in respect of the Goods to any person. This indemnity survives termination of this agreement by either party for any reason.

## **19. NO WAIVER**

- 19.1 The failure by O'Maras and/or the Vendor to enforce these provisions or to exercise any rights expressed in these provisions is not to be a waiver of such provisions or rights and does not affect the enforcement of these provisions.
- 19.2 No waiver under subparagraph (a) operates as an estoppel against O'Maras and/or the Vendor.
- 19.3 The exercise by O'Maras and/or the Vendor of any of the rights expressed in these conditions does not preclude or prejudice O'Maras and/or the Vendor from exercising the same or any other rights they may have irrespective of any previous action taken by O'Maras and/or the Vendor.

## **20. REPRESENTATIONS AND WARRANTIES**

- 20.1 The Buyer acknowledges that O'Maras and/or the Vendor do not make under these conditions or outside of it any representations or warranties regarding the Goods or any matter which is or might be relevant to the Buyer buying or selling the Goods other than the representations or warranties expressed in these conditions.

## **21. AUTHORISATION**

- 21.1 The Vendor has authorised O'Maras or any representative of O'Maras to execute this sale agreement as agent of the Vendor.
- 21.2 No servant or agent of O'Maras is authorised to waive, add to or vary these terms and conditions without written authority of the company secretary or managing director of O'Maras.

## **22. CANCELLATION**

- 22.1 No order may be cancelled except with consent in writing and on terms which will indemnify O'Maras and/or the Vendor against all losses.

## **23. PLACE OF CONTRACT**

- 23.1 This contract for sale of the Goods is made in the state or territory of Australia from which this document is issued.
- 23.2 The parties submit all disputes arising between them to the courts of such state or territory and any court competent to hear appeals from those courts of first instance.

**ATTACHMENTS**

Schedule 1      Details of Offer

## Schedule 1 Details of Offer

### Item 1 Buyer

Name:	
Company:	
Address:	
Telephone:	
Email:	

### Item 2 Description of Goods and/or Services

- ***Please note Australian buyers offer price is GST exclusive***

### Item 3 Price

Item	Description	Qty	Offer Price	GST Amount	Total
1	1996 TOYOTA ride on, battery electric forklift truck, Model: 6FBR13, Frame No: 6FBR13-10627, Hour meter reads: unknown	1			
2	CECCATO packaged air compressor, Model: CSA10 500 D, Product No: 4152000963, S/N: CAI332453, YOM: 2008, Weight: 450kg	1			
3	CAPITANI gnocchi machine, Model: GN 6, S/S: 970411, 100kg/hr to 120kg/hr	1			
4	TECNA large long pasta machine, Model: TA300, S/N: A0804002, Year: 2004, up to 200kg/hr, fully automatic with conveyor belt attachment, for making fettuccini, tagliatelle and spaghetti	1			
5	SAIMA small long pasta machine: Model: TA155, up to 20kg/hr, for making fettuccini, tagliatelle & spaghetti	1			
6	STORCI pasta dough mixing machine, 5kg mix continuous, mixed pasta	1			
7	STORCI ravioli and tortellini filling machine, up to 150kg/hr	1			
8	M-AGNELLI tortellini machine, S/N: M192A002520, up to 150kg/hr	1			
9	GB MACHINE spiral mixer with stainless steel bowl, S/N: unknown, up to 80kg	1			
10	M-AGNELLI gnocchi machine, S/N: N20364.A87, up to 200kg/hr	1			
11	LB ITALIA large ravioli machine, up to 120kg/hr, produces 40g ravioli w 3 moulds square, oval and heart, and conveyor belt attachment	1			
12	WODSCHOW & CO. DENMARK planetary mixer, 150 L capacity Model: mkII R150, S/N: 618, Year: 1989	1			
13	PAMA cannelloni and lasagne machine, Model: CN22000, Year 2006, up to 3000 cannelloni per day	1			

Item	Description	Qty	Offer Price	GST Amount	Total
14	Meat grinder/mincer, 100kg	1			
15	ZANASSI electric boiling pan, 200L	1			
16	2 x BARON gas stockpot, 150 L capacity, Model:9PF/G150, S/N:B009149 & UNKNOWN,	1			
17	HOBART grinder/mincer, up to 150kg/hr, Model: 4346, S/N: 27-023-626	1			
18	PRODUCTION LINE: Pasta Cooking (Obsolete), washer and cooler for pasta, up to 200kg/hr	1			
19	PRODUCTION LINE: packaging, printer, sauce and pasta weigher,	1			
20	HELIX PACKAGING LINE, weigher, sealer, printer, Model: BJ/C1830, S/N: 9719PB, up to 13 items per minute for 1kg or 500g items	1			
21	Gearbox for rotating carousel in freezer	1			
22	LB ITALIA large ravioli machine, S/N: 166/056, Year: 2005, up to 120kh/hr, under repair	1			
23	PTE hopper lifter, Model: SBE, S/N: 93057	1			
24	SAIMA pasta dough mixing machine, Model: CA300	1			
25	MEC AUSTRALIA ravioli machine, 80kg/hr	1			
26	SAIMA pasta dough mixing machine: Model: CA300, S/N: P15/5, Year: 1995, up to 50kg/h	1			
27	Various obsolete machinery used for spare parts	1			
28	HYCOM hand wrapper, Model: SW-500E	1			
29	BIRO small mincer	1			
30	STORCI small ravioli machine, Model: RAVIOLATRICE, S/N: ST-3639/M2, Year: 2004, half moon moulds	1			
31	GOLDSTEIN Fryer, Model: VFG-24i, S/N: 91715NG, double basket	1			
32	OXFORD RCG BBQ Grill, Model: RCGD04 W/HP, S/N: 0050, 4 burner	1			
33	GOLDSTEIN bratt pan 150L capacity	1			

#### Conditions of Offer Acceptance

- Closing date Friday 26 January 2018 at 4:00pm
- Full payment due by 12.00pm within 3 days following acceptance of offer
- Pickup within 14 days following acceptance of offer

EXECUTED by the parties as an Agreement.

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Signed by the Vendor

Name:  
Date:

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Signed by Witness

Witness Name:  
Witness Address:  
Date:

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Signed for or on behalf of O'Maras

Name:  
Date:

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Signed by Witness

Witness Name:  
Witness Address:  
Date:

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Signed by Buyer

Name:  
Date:

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Signed by Witness

Witness Name:  
Witness Address:  
Date: