



- a) Except as expressly provided in the Agreement, Metlam Australia Pty Ltd shall not be under any liability to the buyer in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the supply of any goods or services pursuant to this Agreement or the failure or omission on the part of Metlam Australia Pty Ltd to comply with its obligations under this Agreement unless otherwise accepted in writing.
- b) Except as expressly provided in this Agreement, all warranties, whether expressed, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this agreement generally, are excluded.
- c) Should Metlam Australia Pty Ltd be liable for a breach of a condition of warranty implied by division 2 of part V of the trade Practices Act 1974 ("Act"), (not being a condition or warranty implied by section 69 of the Act) our liability for the breach will, subject to Section 68A(2) of the Act, be limited to one of the following as determined by us:-
  - i. If the breach relates to goods:
    - a) The replacement of the goods or the supply of equivalent goods;
    - b) The repair of such goods;
    - c) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - d) The payment of the cost of having the goods repaired; and
  - ii. If the breach relates to services;
    - a) The supply of the service again; or
    - b) The payment of the cost of having the services supplied again.
- d) The delivery of goods to you and your acceptance of their delivery constitutes a binding contract for the sale of these goods comprised on the terms and conditions of this schedule.
- e) In relation to payment terms:
  - i. The buyer agrees to pay the amount invoiced for the goods by the due date which is the last working day of the Metlam Australia Pty Ltd accounting month following the month of sale of the goods unless specific credit arrangements are made, verified in writing, and remain current, to Metlam Australia Pty Ltd.
  - ii. After the due date of payment, Metlam Australia Pty Ltd may charge interest on outstanding amounts payable, calculated on a daily balance, at the reference rate of our nominated bank Corporation + 1%.
  - iii. In the event it is deemed necessary by Metlam Australia Pty Ltd to institute legal proceedings to recover any monies owing it shall be competent for Metlam Australia Pty Ltd to issue such proceedings in Melbourne, Victoria in a court of competent jurisdiction and the buyer shall be reasonable for all legal costs incurred by Metlam Australia Pty Ltd being solicitor and own client costs. It shall be lawful for Metlam Australia Pty Ltd to invoice the buyer for such costs.
- f) If any change is proposed to the arrangements between Metlam Australia Pty Ltd and the buyer as set out herein such change shall not take effect until Metlam Australia Pty Ltd has confirmed such changes in writing through its credit manager.
- g) In relation to goods supplied to you:
  - i. Property in any goods delivered to the buyer will not pass to the buyer until such payment in full is made to Metlam Australia Pty Ltd of the purchase price for all goods delivered by Metlam Australia Pty Ltd to the buyer and all of other debts owed by the buyer to Metlam Australia Pty Ltd.
    - a) The buyer shall store the goods in such a manner as to show clearly that they are the property of Metlam Australia Pty Ltd and the buyer shall keep records of any use or sales of such goods.
    - b) The buyer shall keep the goods free from and will indemnify Metlam Australia Pty Ltd against any charge, lien or other claim thereon.
    - c) The buyer has no title or right to charge or encumber the goods before payment to Metlam Australia Pty Ltd under this clause. If the buyer fails to pay the purchase price or any other debts to Metlam Australia Pty Ltd when due or commits any act of bankruptcy.
    - d) Metlam Australia Pty Ltd may without notice and without prejudice to any of its other rights and remedies recover and/or resell the goods or any of them and may by its servants or agents enter upon the buyer's premises or premises under the buyer's control for that purpose.
  - ii. Goods delivered to the buyer shall be at the buyer's risk on delivery to the buyer:



- a) Notwithstanding paragraph (i), the buyer may on-sell the goods, on commercial terms in the ordinary course of its business before the purchase for the goods and other debts to Metlam Australia Pty Ltd have been paid to Metlam Australia Pty Ltd, but in that case the buyer shall hold the proceeds of such sale on trust for Metlam Australia Pty Ltd in a separate account, and account to Metlam Australia Pty Ltd for such proceeds on demand.
  - b) Metlam Australia Pty Ltd will be given full ownership of any new goods or objects formed if you transform our goods into other products or affix those goods to other objects.
- h)** If the buyer wishes to dispute any delivery whether as to quality or quantity, this shall be done within seven (7) days of delivery or receipt of the invoice and such complaint shall be in writing but not otherwise. Should no such written complaint be made, the invoice shall be conclusive evidence of the money owing for the value of the goods in the invoice.
- i)** In the event of the buyer, being an individual or partnership, incorporates his/her business and the company continues to use the existing account or the account is used by a company of which he/she is a director, he/she hereby agrees to personally guarantee due payment of the account.
- j)** The buyer and/or its Guarantors hereby charges any legal or equitable estate or interest of the buyer/guarantors in any present and future undertakings and property of the buyer and/or its guarantors to Metlam Australia Pty Ltd to secure the payment of all moneys (including damages), which now or in the future are owed (actually or contingently) by the buyer to Metlam Australia Pty Ltd. The buyer consents to Metlam Australia Pty Ltd lodging a caveat or caveats noting its interests hereunder.
- k)** Orders for goods and services are accepted and goods and services are supplied subject to the above terms of trade only.