

1. SCOPE OF THESE TERMS OF TRADE

- 1.1. These Terms apply to all supplies of Goods by The Vendor to the Customer.
- 1.2. These Terms and, subject to clause 1.6, and Invoice contain, and are deemed to be a conclusive record of, the entire agreement and understanding between The Vendor and the Customer with respect to the subject matter to which they relate.
- 1.3. These Terms may not be amended or varied unless agreed in writing by the parties.
- 1.4. Subject to clause 1.3, there are no other prior or subsequent agreements, understandings, terms, conditions, warranties or representations (oral or written) between The Vendor and the Customer extending or otherwise relating to the agreement and understanding between them.
- 1.5. Subject to clause 1.3, The Vendor expressly rejects any terms the Customer proposes that vary these Terms and no act or omission by The Vendor constitutes agreement to any terms proposed by the Customer that vary these Terms.
- 1.6. An invoice cannot be amended for any reason unless, within thirty (30) days of the delivery: (a) The Vendor or the Customer gives to the other a written notice explaining its objection to the Invoice; and (b) The Vendor and the Customer agree in writing to amend the Invoice.

2. DEFINITIONS

In these Terms unless inconsistent with the subject or context:

- 2.1. "Accession" includes accessions for the purposes of the PPSA but is not limited to them.
- 2.2. "Customer" means the person named on the Invoice as the Customer, any person who accepts the Invoice as Customer and the successors in title, legal personal representatives, assigns, employees, servants and agents of the Customer. Where more than one person is included in the term "Customer" they will be jointly and severally liable.
- 2.3. "Delivered" means that the Goods have been, as directed by the Customer, either: (i) delivered to the customer; or (ii) removed from the premises of The Vendor. The receipt by The Vendor of a delivery acknowledgment signed by the Customer is sufficient evidence of delivery.
- 2.4. "Delivery Date" means the date for delivery of a batch of Goods.
- 2.5. "Insolvency Practitioner" means a liquidator, provisional liquidator, Controller, administrator, receiver, receiver and manager, encumbrance, trustee for creditors, trustee in bankruptcy or other similar person.
- 2.6. "IP Commencement" means an Insolvency Practitioner is appointed to, or takes possession or control of, any or all of a person's assets or undertakings.
- 2.7. "Goods" means any goods supplied, or to be supplied, by The Vendor to the Customer.
- 2.8. "Insolvency Event" means any of the following events:

Initial

- a) a person becomes insolvent (or insolvent under administration) as defined in the Corporations Act 2001 (Cth), states that it is insolvent or is presumed insolvent under an applicable law;
- b) a person is wound up, dissolved or declared bankrupt or commits an act of bankruptcy;
- c) an IP Commencement;
- d) a person enters into or becomes subject to: (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- e) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), meeting called, resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in an Insolvency Event;
- f) a person is taken, under section 459(1) of the Corporations Act 2001 (Cth), to have failed to comply with a statutory demand;
- g) a person suspends payment of its debts, ceases to carry on all or a material part of its business or becomes unable to pay its debts when they fall due; or
- h) Anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the other paragraphs of this definition, unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by The Vendor.

2.8 "Invoice" means a written invoice from The Vendor to the Customer for a batch of goods.

2.9 "PPSA" means the Personal Properties Securities Act 2009 (Cth).

2.10 "Purchase Price" means the price for Goods specified in the invoice for those goods.

2.11 "The Vendor" means The Vendor Australia Pty Ltd (ABN 52 108 341 911), its successors in title, transferees, assigns and, where applicable, its officers, employees and agents.

2.12 "Stock/credit Hold" means the customer's account will be put on hold, unable to purchase any goods.

3 PAYMENT FOR GOODS AND QUOTATIONS

3.1 The Customer must pay The Vendor the purchase Price in Australian Dollars within thirty days from the Invoice date. If payment is not received, customer will be contacted to be reminded and put on stock/credit hold until payment is received.

3.2 New Accounts are subject to a three (3) months period of paying by way of Cash on delivery of Goods.

3.3 All invoices are inclusive of GST.

3.4 If the Purchase Price is not paid in full in accordance with clause 3.1, the Customer must pay The Vendor a late payment fee calculated on the unpaid amount from the date that the unpaid amount became due and payable to the date that the Purchase Price is paid in full at a monthly rate of interest equal to 1.5% per calendar month.

Initial

- 3.5 The Customer is not entitled to withhold payment of any amount due on account of any claim against The Vendor whether admitted or disputed by The Vendor.
- 3.6 Unless otherwise specified, all prices are exclusive of any sales tax or goods and services tax, which will be charged at the appropriate rate where applicable.
- 3.7 If Goods are Delivered in instalments The Vendor may invoice on a pro rata basis as and when delivery of an instalment has been made, and payments shall be due in respect of each Delivered instalment notwithstanding whether other instalments have not been, or will not be, Delivered.
- 3.8 In addition to clause 3.4 The Customer is liable for any fees incurred by Debt Collection Company used by the Vendor in order to collect overdue payment from Customer.

4 DELIVERY OF GOODS

- 4.1 The Customer acknowledges that any Delivery date is an estimate only and that whilst The Vendor shall use reasonable and commercial endeavours to deliver the goods on or before the Delivery Date, The Vendor does not warrant or represent that the Goods will be delivered on the Delivery Date. The Vendor will not be liable under any circumstances for any loss, damage or delay occasioned to the Customer arising from late or non-delivery nor shall the Customer be entitled to treat the agreement between The Vendor and the Customer as repudiated if goods are not delivered on or before the Delivery Date.
- 4.2 If The Vendor is unable to deliver Goods to the Customer on or before the Delivery Date for any reason whatsoever beyond the control of The Vendor including but not limited to industrial dispute, fire or Act of God, then The Vendor may:
- a) deliver the Goods to the Customer after cessation of any such disabling event and these Terms will continue to have full force and effect as though the Goods had been delivered on or before the Delivery Date; or
 - b) Rescind these Terms in which case the Customer will have no recourse against The Vendor except for a refund of any part of the Purchase Price paid in respect of the Goods.
- 4.3 The Customer agrees that if it fails or refuses to take delivery of Goods then The Vendor may, in its sole discretion and without prejudice to any of its other rights, store those goods at the risk and expense of the Customer.
- 4.4 Where the Customer requests The Vendor to arrange for transportation of Goods, the Customer must pay for all carriage charges and expenses including cartage and insurance, unless otherwise agreed by The Vendor in writing.
- 4.5 Where Goods are placed with an independent carrier, the carrier will be deemed to be an agent of The Vendor and not of the Customer for the purposes of Sections 46, 47 and 48 of the Sale of Goods Act 1923 (NSW).
- 4.6 Where Goods are transported by The Vendor or a contractor engaged by or on behalf of The Vendor, The Vendor shall be under no liability whether in tort or contract for any loss or damage to those goods or

delay in delivery whether or not such loss, damage or delay is caused by the negligence or willful act or omission of The Vendor or its contractors.

5 LIABILITY AND INDEMNITY

5.1 Any claims by the Customer in respect of Goods must be notified in writing by the Customer to The Vendor within seven days after delivery and if the Customer does not do so, the Customer is deemed to forever release and discharge The Vendor from all actions, suits, charges, claims and demands which relate directly or indirectly to those goods.

5.2 Subject to clause 5.5, the Customer acknowledges and agrees with The Vendor that:

- a) Goods Delivered are fit for the purpose for which they were ordered and/or purchased;
- b) The Vendor has given the Customer no warranty as to the fitness of Goods for any particular purpose or that Goods are of merchantable quality; and
- c) any term, warranty, condition, representation or obligation whether express or implied and whether as to quality, fitness for any particular purpose or otherwise relating to Goods which is not expressly excluded from these Terms to the extent permitted by law.

5.3 The Customer agrees that The Vendor, to the extent permitted by law, accepts no responsibility or liability whether in contract or tort (including negligence or breach of statutory duty) or otherwise for any loss, damage, cost or expense of any kind whether direct, indirect or consequential (including for loss of profits, business or anticipated savings):

- a) arising directly or indirectly out of or in respect of the use, custody or supply of Goods; or
- b) caused directly or indirectly by the inadequacy of Goods for any purpose or any defect in Goods;

And the Customer releases and forever discharges The Vendor from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.

5.4 The Customer hereby indemnifies The Vendor against any liability, loss damage, cost or expense suffered or incurred by The Vendor as a result of The Vendor taking any action or exercising any of its rights under these Terms, including but in no way limited to any debt collection costs and related legal costs.

5.5 The Customer shall, to the extent permitted by law, indemnify and keep indemnified The Vendor against any actions, proceedings, claims or demands for loss, damage, cost or expense whether direct, indirect or consequential (including for loss of profits, business or anticipated savings) brought, made or threatened against The Vendor by any third party arising directly or indirectly out of or in respect of the use, custody or purchase and supply of Goods.

5.6 The Customer acknowledges that it is their responsibility to test a product prior to purchasing that product in quantity. A warranty as to Goods purchased by the Customer will only be provided where the Goods are reasonably considered to be poor quality. In such a circumstance the Customer must notify The Vendor within seven (7) days of receipt of the Goods and may be entitled to the replacement of the Goods reasonably considered poor quality at The Vendor's discretion.

Initial

- 5.7 The Customer may only return Goods the subject of a delivery if The Vendor has expressly permitted the Customer to do so, at the Vendor's sole discretion. If the Vendor so permits, the Customer must, at its own cost, deliver the Goods to The Vendor's premises in good and resellable condition, otherwise a refund will not be provided.
- 5.8 Nothing in this contract, whether express or implied, shall be taken to exclude, restrict or modify any non-excludable conditions, warranties or rights contained in any applicable State or Commonwealth legislation.
- 5.9 If The Vendor is held liable in respect of Goods for a breach of a condition or warranty implied by Australian Consumer Law or equivalent statutes of any relevant jurisdiction any liability for such breach will be limited at The Vendor's option to any of the following as determined in the sole discretion of The Vendor: (a) a replacement of those goods or the supply of equivalent goods; b) the payment of the value of the goods or of replacing the goods or of acquiring equivalent goods; (c) the repair or restoration of the goods; or (d) the payment of the costs of having the goods repaired or restored.

6 RETENTION OF OWNERSHIP

- 6.1 Upon Goods being delivered to the Customer, those goods shall be at the Customer's risk.
- 6.2 Notwithstanding clause 6.1, property in, and ownership of Goods will remain with The Vendor and not pass to the Customer until the customer has paid The Vendor for those goods in full and has paid The Vendor all other amounts owing on any account whatsoever by the Customer.
- 6.3 When property in, and ownership of, Goods has not passed to the Customer, the Customer will, from the time those goods are Delivered, take custody of the goods and retain custody of them as the fiduciary agent and bailee of The Vendor. The Customer will ensure that the goods do not lose their identity as, and are clearly identifiable as, the property of The Vendor and are properly stored, protected and insured.
- 6.4 When the Customer has custody of Goods as the fiduciary agent and bailee of The Vendor under clause 6.3, the Customer may re-sell such goods but only as the fiduciary agent of The Vendor. The Customer cannot, however, incur any liability for or on behalf of The Vendor to any third party by contact or otherwise. Any re-sale of Goods under this clause 6.4 must be at arm's length, on market terms, and in the ordinary course of the Customer's business.
- 6.5 Where the Customer re-sells Goods under clause 6.4, then, with respect to the proceeds of the goods re-sold ("the Proceeds"), the Customer will hold on trust for The Vendor:
- a) the Proceeds, up to an amount equal to the amount owed to The Vendor in respect of those goods("the Unpaid Purchase Price"); and
 - b) Where the Proceeds are less than the Unpaid Purchase Price, such part of the debt or other property received by the Customer as a result of the re-sale that equals in value the Unpaid Purchase Price minus the Proceeds.

The receipt on trust of the Proceeds, debt and other property in respect of Goods re-sold under clause 6.4 discharges, by an amount equal in dollar terms to that received on trust, the Customer's debt to The Vendor in respect of those goods.

- 6.6 The customer will maintain records to ensure that trust money and trust property are clearly identifiable as being held on trust from The Vendor. Moneys held on trust for The Vendor will be kept separate until

Initial

they are paid to The Vendor.

6.7 In the event that:

- a) the customer fails to pay the Purchase Price for Goods in full by the due date as determined under clause 3.1;
- b) an Insolvency Event occurs in relation to the Customer;
- c) the Customer parts with possession of Goods held under clause 6.3 otherwise than
- d) by way of sale in the ordinary course of the Customer's business; or
- e) the Customer breaches any of the other provisions of these Terms,

The Vendor shall have the immediate right to:

- i) demand that the Customer immediately account to The Vendor for any money or property (including, but not restricted to, any Goods and any debt) held on trust for The Vendor;
- ii) re-take possession of Goods held by the Customer under clause 6.3 without notice to the Customer and for that purpose The Vendor may enter upon any premises occupied by the Customer or any other place where such goods are stored free from trespass;
- iii) sell Goods held by the Customer under clause 6.3 or not yet Delivered and apply the proceeds after defraying expenses of sale and enforcement in or towards reduction of amounts due and payable on my account whatsoever to The Vendor; and
- iv) Be indemnified by the Customer from and against (and the Customer must pay on demand to The Vendor) all loss, damage, costs or expenses which The Vendor may suffer or incur in exercising its rights under this clause 6.7.

6.8 The Customer must allow representatives of the Vendor, free from trespass, to enter any premises where Goods held under cl. 6.3 are stored and inspect such goods at any time.

6.9 If an IP Commencement occurs in relation to the Customer, the Insolvency Practitioner must immediately conduct a stock take of all property (including trust property) belonging to The Vendor in the Customer's custody and provide The Vendor with access to the results of that stock take.

6.10 The Customer must comply with any reasonable directions given by The Vendor to ensure compliance with this clause 6.

6.11 The Customer shall be liable for all costs associated with the exercise of The Vendor's rights under this clause 6, which will be payable by the Customer on demand by The Vendor.

6.12 The Customer irrevocably appoints The Vendor as its true and lawful attorney to recover any proceeds of

Initial

Goods re-sold under clause 6.4 to any person and to exercise the Customer's rights against such person, including, without limitation, the right to re-take possession of those goods.

6.13 If the Goods or any part of the Goods are installed in, or affixed to, or become an Accession to any other products, the security interest continues in the Accession in accordance with the PPSA.6.15. The Vendor's rights under this part 6 in no way limit any other of its rights against the Customer.

7 CANCELLATION

7.1 The Vendor reserves the right to accept or reject all or part of any order submitted by the Customer.

7.2 Subject to clause 5.6, the Customer may not cancel any orders unless: (a) written notice of intention to cancel the order is given to The Vendor within seven days after the date of the order; and (b) The Vendor (in its absolute discretion) notifies the Customer in writing that it agrees to accept the cancellation of the order; and (c) the customer pays The Vendor any amounts necessary, as determined by The Vendor, to indemnify The Vendor against all loss or damage resulting from the cancellation.

8 OTHER TERMS

8.1 The Customer must immediately notify the Vendor of any alteration to the ownership or effective control of the Customer.

8.2 The Customer may not assign its rights contained in any agreement between The Vendor and the Customer to supply and purchase Goods without the prior written consent of The Vendor but any such agreement is assignable in whole or in part by The Vendor in its absolute discretion.

8.3 The Vendor will have the right to suspend deliveries of Goods (notwithstanding that the Customer may not be in arrears with any payment) where The Vendor in its absolute discretion considers the amount outstanding in the Customer's account (whether actually due for payment or not) is the limit to which The Vendor is prepared to allow the Customer credit.

8.4 If any provisions of these Terms, or the application of these Terms to any person or circumstance, is found to be invalid or unenforceable this will not affect the validity or enforceability of the other provisions of these Terms which will remain in full force and effect.

8.5 Notices or other communications to be given under these Terms will be deemed to have been given if they are in writing and signed by, or on behalf of, any of the respective parties and served upon the other party being delivered by hand or sent by ordinary post or by being transmitted by facsimile. Any such notice or communication will be deemed to have been received at the time at which it is left at the recipient's address or at the expiration of 48 hours from the time of posting or upon receipt by the sender of the facsimile transmission report.

8.6 These terms will be governed by the laws of New South Wales and the Customer and The Vendor agree to submit to the jurisdiction of the New South Wales Courts.

8.7 The Customer agrees and acknowledges that it has read and fully understood these Terms and agrees to be bound by them.

Initial

9 PPSA

9.1 Words and expressions used in this clause 9 which are not expressly defined in these Terms but which have a defined meaning in the PPSA have the meanings given in the PPSA.

9.2 The Customer acknowledges that:

- a) these Terms create a registrable security interest under the PPSA in the Goods and the proceeds of those Goods and that it has not agreed to postpone the time for attachment of that security interest;
- b) the security interest created by these Terms attaches to the Goods and the proceeds of the Goods in accordance with the PPSA;
- c) value has been given for the creation of the security interest;
- d) The Vendor is not obliged to act in any way to dispose of or to retain any Goods which have been seized by The Vendor; and
- e) Where The Vendor has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.

9.3 Customer's undertakings

The Customer:

- a) at The Vendor's request, must promptly execute any documents and do anything required (including to register any security interest on the PPS Register) to ensure that:
 - i) any security interest created under these Terms is perfected and remains continuously perfected;
 - ii) The Vendor's priority position is preserved or secured; and
 - iii) any defect in the security interest, including its registration, is overcome;
- b) must indemnify, and on demand reimburse, The Vendor for all expenses incurred in registering a financing statement or financing change statement on the PPS Register, and for the enforcement of any rights arising out of The Vendor's security interest;
- c) must not change its name, address, contact details or any other details that would cause any details in a financing statement to be different, without providing prior written notice to The Vendor;
- d) must not register a financing change statement or a change demand without The Vendor's prior written consent;
- e) except as provided in clause 6.4, must not without The Vendor's prior written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any

Initial

interest in them (or purport or attempt to purport to do any of those things) or permit any lien over the Goods;

- f) must notify The Vendor as soon as the Customer becomes aware of any of the following:
 - i) if any personal property which does not form part of the Goods becomes an Accession to the Goods; or
 - ii) if any of the Goods owned by The Vendor is situated outside Australia or, on request by The Vendor, of the present location or situation of the Goods;
- g) must keep full and complete records of the Goods;
- h) authorises The Vendor to apply any money The Vendor receives from the Customer towards debts, charges and expenses (including legal costs incurred by The Vendor) in any priority The Vendor determines in its sole discretion for whatever reason, including in order to maintain the security interest in the Goods created by these Terms; and
- i) in addition to other obligations set out under these Terms, must immediately return the Goods if requested to do so by The Vendor following non-payment of any amount owing by the Customer to The Vendor or following breach of any other obligation of the Customer to The Vendor.

9.4 To the extent that the PPSA permits, the Customer waives its rights:

- a) To receive a copy of any verification statement or financing change statement or a statement of account on the sale of the Goods.
- b) to receive any notice required under the PPSA, including a notice that The Vendor intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to The Vendor;
- c) To object to a proposal by the Vendor to retain the Goods in satisfaction of any obligation owed by the Customer to the Vendor;
- d) to reinstate the security agreement by payment of any amounts owing or by remedy of any default where the Vendor has the right to dispose of or retain the Goods;
- e) where any Goods become an Accession, to prevent the Vendor removing the Goods even if the removal will cause damage to the Customer's property, to receive notice of removal of the Accession and to apply to the Court for an order concerning the removal of the Accession under the PPSA: and
- f) Under ss.95, 96, 117, 118, 120, 121(4), 123, 125 – 130, 132, 134(2), 134(2), 135, 136(3)-(5), 137, 142 and 143 of the PPSA.

9.5 Disclosure of information:

- a) Subject to clause 9.5(b), neither The Vendor nor the Customer may disclose any information or documents supplied by the other party that is not publically available, including information of a kind referred to in s.275(1) of the PPSA.
- b) The Vendor and the Customer may only disclose information or documents:

Initial

- i) Where the Vendor is assigning, securitising, or enforcing or seeking to assign, securitise or enforce these Terms in a proceeding arising out of or in connection with these Terms or to the extent that The Vendor considers disclosure necessary to protect the Vendor's interests;
 - ii) To its legal advisers and its consultants;
 - iii) With the prior written consent of the other party, which must not be unreasonably withheld; or
 - iv) As required by law, provided that the party required making disclosure must give the other party reasonable prior notice of the proposed disclosure.
- c) Clause 9 survives the termination of these Terms.

10 ACCEPTANCE OF THESE TERMS

The Customer hereby acknowledges that after a Customer has placed an order for Goods and accepts those Goods on their delivery the Terms are deemed accepted by the Customer.

Initial