

TERMS AND CONDITIONS FOR SALE OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATIONS

In the interpretation of these terms and conditions words importing the singular will include the plural and vice versa; words importing any one gender will include other genders; words importing natural person will include corporations, firms, government departments, statutory authorities, and other entities recognised by law and vice versa; all references in these terms and conditions to any statutory enactment or law will mean and be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any relevant jurisdiction; if more than one person is named and described as the Customer the obligations of those persons under these terms and conditions will be joint and several.

2. SALE AND PURCHASE OF GOODS AND SERVICES

2.1 THE SUPPLIER ('THE SUPPLIER') agrees to supply and the customer specified on the invoice ('Customer') agrees to purchase the goods and/or services specified on the invoice ('Goods') upon and subject to the terms and conditions set out in these terms and conditions for sale of goods and services.

2.2 THE SUPPLIER reserves the right to accept in whole or in part or reject any order submitted by the Customer to purchase Goods and/or services from THE SUPPLIER.

3. PAYMENT FOR GOODS AND SERVICES

3.1 Unless otherwise specified on any invoice and/or statement of account issued by THE SUPPLIER, payment of the price specified on the invoice ('Price') will be made in full by the Customer to THE SUPPLIER either in advance or on collection of goods and/or services. ('Payment Date')

3.2 Unless expressly stipulated by THE SUPPLIER to be a firm price, the quoted price is subject to variation to take account of variances in wages, materials or other costs since the date of the order and, in the event of such variation, THE SUPPLIER may adjust the quoted price, to the extent of such variation, and the revised price will be payable as if it were the original quoted price.

3.3 If the quoted or revised price is not paid in full pursuant to clause 3.1, the Customer will pay to THE SUPPLIER on demand interest computed on the unpaid amount of the price calculated from the date of delivery of the Goods to the date on which the quoted or revised price is paid in full at the rate of 1.25% per month.

4. DELIVERY OF GOODS AND SERVICES

4.1 Subject to clause 4.2, THE SUPPLIER will use reasonable endeavours to deliver the Goods to the Customer on or before the delivery date specified on the order (if any) but otherwise as notified by THE SUPPLIER to the Customer ('Delivery Date').

4.2 If THE SUPPLIER is unable by reason of industrial dispute or by reason of shortages of material or labour, shipping delays, war, riot, act of God or any other case whatsoever beyond the reasonable control of THE SUPPLIER ('Force Majeure Event'), to deliver the Goods to the Customer on or before the Delivery Date, then THE SUPPLIER will have the option:

- (a) to deliver the Goods to the Customer after cessation of any Force Majeure Event and in this case these terms and conditions will have full force and effect as though the Goods had been delivered on or before the Delivery Date; or
- (b) without prejudice to its other rights, to rescind these terms and conditions and in this case the Customer will have no recourse, claims or actions whatsoever against THE SUPPLIER except for a refund of any part of the price paid in respect of the Goods.

4.3 The Customer acknowledges that THE SUPPLIER does not warrant or represent that the Goods will be delivered on the Delivery Date, and failure to deliver by the Delivery Date will not avoid or give the Customer the right to avoid any contract or render THE SUPPLIER liable in any way for any direct or consequential loss arising from such failure and that THE SUPPLIER is at liability to make deliveries within a reasonable period before or after the Delivery Date.

4.5 The Customer agrees that if it fails or refuses to take delivery of the Goods on or before the Delivery Date or within 24 hours of the Delivery Date, then all monies paid to THE SUPPLIER will be forfeited to THE SUPPLIER and THE SUPPLIER may (without prejudice to its other rights) terminate the contract and resell any goods the subject of the contract or store the Goods at the risk and expense of the Customer.

5. CARRIAGE

5.1 The Customer must comply with all reasonable directions given by the party delivering the Goods and provide such information as is reasonably required by THE SUPPLIER to effect delivery.

5.2 Where THE SUPPLIER arranges transportation of the Goods by an independent carrier THE SUPPLIER will have absolute discretion as to the appointment of the independent carrier.

5.3 Where the Goods are transported by the employees, servants or agents of a contractor engaged by or on the behalf of THE SUPPLIER, the Goods will be deemed to be delivered when they leave the premises of THE SUPPLIER and will thereafter be at the risk of the customer.

6. LIMITATION OF CLAIMS BY CUSTOMER

6.1 The Customer acknowledges that the Customer has not, in acquiring the Goods and/or services for any particular purpose, relied upon the skill, judgment or recommendation of THE SUPPLIER or any of its servants or agents.

6.2 The Customer agrees to inspect the Goods and/or services thoroughly upon provision of goods and/or services from the SUPPLIER.

6.3 Any claims by the customer in respect of the Goods and/or services must be notified in writing by the customer to THE SUPPLIER within 30 days after the Goods and/or services are rendered, and if not notified, the Customer forever releases and discharges THE SUPPLIER from all actions, suits, charges, claims and demands relating directly or indirectly to the purchase by the Customer from THE SUPPLIER of the Goods and/or services.

7. RETURN OF GOODS

No Goods returned for credit will be accepted unless returned in accordance with the written agreement between the Customer and THE SUPPLIER. Without limiting the foregoing, in no case will THE SUPPLIER accept the return of Goods which have been altered in any way.

8. LIABILITY AND INDEMNITY

8.1 THE SUPPLIER acknowledges that under applicable State, Territory and Commonwealth Laws including in particular the *Trade Practices Act* (Cth.) 1974 and Australian Consumer Law, certain conditions and warranties may be implied into this contract and rights may be conferred upon the Customer which cannot be excluded, restricted or modified. Nothing of this contract whether express or implied, will be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights.

8.2 The Customer acknowledges and expressly agrees with THE SUPPLIER:

- (a) that the Customer is satisfied that the Goods and/or services are fit for the purpose for which they were purchased; and
- (b) that any implied warranty or condition whether statutory or otherwise and whether as to quality, condition or fitness for any particular purpose is expressly excluded from these terms and conditions to the full extent permitted by law.

8.3 The Customer agrees and acknowledges that THE SUPPLIER to the full extent permitted by law accepts no liability or responsibility arising from any direct or consequential loss, damage or expense of any kind or nature and the Customer releases and forever discharges THE SUPPLIER from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof.

8.4 The Customer will, to the full extent permitted by law indemnify and keep indemnified THE SUPPLIER against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against THE SUPPLIER by any third party or by any of the Customer's employees, agents or contractors arising directly or indirectly out of or in respect of the use, custody or purchase and supply of the Goods.

8.5 If THE SUPPLIER accepts liability for a claim or is held liable by a court of competent jurisdiction for a breach of conditions or warranty implied by statute and not negated pursuant to these terms and conditions, any liability for such breach will be limited at THE SUPPLIER'S option to replacement of the Goods, or the supply of equivalent Goods, and/or repair or restoration of the Goods, and/or the payment of the value of the Goods or of the replacing of the Goods or of acquiring equivalent Goods, and/or the payment of the cost of having the Goods repaired or restored.

9. RETENTION OF OWNERSHIP

9.1 Until the Customer has paid the quoted or revised price and any moneys outstanding pursuant to this contract or any other contract between THE SUPPLIER and the Customer in full, all goods supplied pursuant to this or any other contract between THE SUPPLIER and the Customer will remain the property of THE SUPPLIER.

9.2 Notwithstanding clause 8.1 the risk of loss or damage to the Goods will pass to the Customer from the time of delivery to the Customer or its agent.

10. PPSA

10.1 The Customer acknowledges and agrees that The Customer grants THE SUPPLIER a Security Interest in the goods and their proceeds by virtue of the retention of title clause.

10.2 The goods supplied by THE SUPPLIER secure the payment of the purchase price of those goods and of any other goods supplied by THE SUPPLIER.

10.3 The Customer will do all the things necessary including providing all information THE SUPPLIER requires to register a Financing Statement or Financing Change Statement on the Personal Properties Securities Register (PPSR) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA (Personal Properties Securities Act 2009);

10.4 The Customer will not change The Customer's name, ACN or ABN or other details required on the PPSR without first notifying THE SUPPLIER.

10.5 The Customer waives The Customer's rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions.

10.6 The Customer must pay THE SUPPLIER'S costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.

10.7 To the maximum extent permitted by law, The Customer agrees that the following sections of the PPSA will not apply: Section 130; Section 142; and Section 143.

10.8 To the maximum extent permitted by law, The Customer waives any rights The Customer may

have pursuant to, and hereby contract out the following sections of the PPSA: Section 95; Section 123; Section 129(2); Section 132; Section 134(2); and Section 135.

10.9 Unless otherwise defined in these terms and conditions of sale, the terms and expressions used in this clause have the meanings given to them or by virtue of the PPSA.

10.10 Until all moneys owing to THE SUPPLIER by the Customer have been paid in full or for all goods supplied to the Customer under this or any other contract and until the Customer has satisfied any other debts owing to THE SUPPLIER, the Customer will hold any Goods delivered to it as fiduciary agent and bailee for THE SUPPLIER pending such payment and will ensure that all goods supplied to the Customer by THE SUPPLIER are stored separately from all other goods which may be in the Customer's possession, and that all goods supplied to the Customer by THE SUPPLIER are stored and will comply with all reasonable directions given by THE SUPPLIER and/or its representative to ensure compliance with the requirements of this clause.

11. GOODS AND SERVICES TAX

11.1 For the purposes of this clause 10:

- (a) 'Price Payment' means any payment of the Price (whether quoted or revised pursuant to clause 3.2) or other amount payable by the Customer to THE SUPPLIER under these Terms and Conditions in respect of or in connection with any Supply made or provided by THE SUPPLIER which is Taxable Supply, but does not include any payment under clause 10.3;
- (b) 'GST Act' means the *Act A New Tax System (Goods and Services Tax) Act 1999*;
- (c) 'GST Rate' means the GST rate from time to time provided for in the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999*, and
- (d) The terms 'Consideration', 'GST', 'GST Law', 'Input Tax Credit', 'Taxable Supply', 'Tax Invoice' and 'Tax Period' have the meaning given by section 195-1 of the GST Act.

11.2 Any Price Payment is exclusive of GST.

11.3 In addition to each Price Payment, the Customer must pay to THE SUPPLIER an amount equal to each Price Payment multiplied by the GST Rate, such additional amount to be paid at the same time and in the same manner as the Customer is required to pay the relevant Price Payment.

11.4 THE SUPPLIER must provide a valid Tax Invoice (or any other documentation enabling Input Tax Credits to be claimed by the Customer) to the Customer no later than seven (7) days after the occurrence of any event that causes the GST liability of THE SUPPLIER on any Taxable Supply made to the Customer under these terms and conditions to be attributed to a particular Tax Period.

12. SAMPLES

Any samples, goods or materials supplied free of charge to the Customer by THE SUPPLIER remain the property of THE SUPPLIER and must be returned promptly to THE SUPPLIER at the request of THE SUPPLIER.

13. TECHNICAL IMPROVEMENTS

THE SUPPLIER reserves the right to make changes and other improvements to the Goods and/or services without prior notice.

14. WAIVER

The failure of THE SUPPLIER at any time to insist on performance of any of these terms and conditions is not a waiver of the rights of THE SUPPLIER at any time to insist on performance of that or any other provision.

15. SEVERANCE

If any provision of these terms and conditions is or is found to be invalid or unenforceable, that invalidity or unenforceability will not affect the validity or enforceability of the other provisions of these terms and conditions and these other provisions will remain in full force and effect.

16. WHOLE UNDERSTANDING

These terms and conditions contain the entire agreement and understanding between THE SUPPLIER and the Customer and the contract arising therefrom will not be amended, varied or waived unless such amendment, variation or waiver is in writing signed by the Customer and by a person authorised to sign such amendment, variation or waiver on behalf of THE SUPPLIER.

17. GOVERNING LAW

These terms and conditions will be governed by and construed in accordance with the law in force in Victoria and the Customer and THE SUPPLIER agree to submit to the jurisdiction of the Victorian Courts in respect of any dispute arising in connection with this contract.