

### 1. General

- (a) Any order for Goods placed by a Purchaser (**Purchase Order**) for the purchase of Goods and/or Services supplied by the Company will incorporate these conditions (as varied under clause (**Conditions**)).
- (b) The Company reserves the right to vary these Conditions at any time by written notice. The carried Conditions are effective for any Purchase Order placed for the Product after the Company has given the Purchaser written notice under this clause.
- (c) In these Conditions:
  - (i) **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth);
  - (ii) **Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;
  - (iii) **Consumer Guarantee** has the meaning given to it in section 3 of the Australian Consumer Law;
  - (iv) **Contract** means a contract of purchase of Goods or Services arising out of a Purchase Order accepted by the Company;
  - (v) **Goods** means any goods supplied by the Company to the Purchaser;
  - (vi) **GST** means goods and services tax;
  - (vii) **GST Act** means A new Tax System (Goods and Services Tax) Act 1999;
  - (viii) **PPSA** means the Personal Property Securities Act 2009 (Cth); and
  - (ix) **PPS Law** means:
    - (A) the PPSA;
    - (B) any regulations made at any time under the PPSA;
    - (C) any provision of the PPSA or regulations referred to in (B) above;
    - (D) any amendment to any of the above made at any time; or
    - (E) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in (A) to (D) above
  - (x) **Price** means the price of the Goods and Services as determined under clause 3;
  - (xi) **Purchaser** means the person buying Goods or Services from the Company;
  - (xii) **Services** means any services supplied by the Company to the Purchaser; and
  - (xiii) **Toolage** means any dies, tools and other equipment which the Company manufactures or

obtains in order to produce the Goods and includes all intellectual property in or relating to the Goods.

- (d) Sub-clauses (e) and (f) shall not apply to a Consumer.
- (e) These Conditions:
  - (i) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods and/or Services including, but not limited to, those relating to the performance of the Goods and/or Services or the results that ought to be expected from using the Goods and/or Services; and
  - (ii) override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these terms.
- (f) Unless the Company otherwise agrees in writing, the Supply Agreement contains the only terms which shall apply to the Goods and Services supplied by the Company.
- (g) The Purchaser agrees that these Conditions will in all circumstances prevail over the Purchaser's terms and conditions of purchase (if any).

### 2. Orders

- (a) A Contract will be made only upon acceptance of a Purchase Order by the Company which may be by supply of all or part of the Goods or Services ordered.
- (b) The Company reserves the right to accept or reject in its absolute discretion any Purchase Order, or part of a Purchase Order, placed by the Purchaser without giving reasons. Acceptance of a Purchase Order by the Company may be by supply of all or part of the Goods and/or Services ordered.
- (c) The Company may cancel the supply of Goods and/or Services at any time before the delivery of any instalment of the Goods or the provision of the Services by written notice to the Purchaser.
- (d) The Purchaser may not, without the Company's prior written consent, cancel a Purchase Order after the Company has accepted the Purchase Order. If the Company consents to the cancellation of a Purchase Order, the Purchaser will be liable for any costs incurred by the Company up to the time of cancellation. If the Goods have been or are in the process of being

manufactured or produced specifically for the Purchaser, the Purchaser will pay to the Company as liquidated damages the full Price of the Goods and any additional costs incurred by the Company (including any GST) less the scrap value of the Goods as determined by the Company. The Purchaser acknowledges and agrees that the liquidated damages set out in this clause are a genuine pre-estimate of the loss and damage that the Company would suffer in such circumstances.

### 3. Prices and Quotations

Unless the Company otherwise agrees in writing:

- (a) Prices quoted are based on the Company's estimated cost of assembly, test or supply at the time of quotation and may be altered by written notice to the Purchaser if there is any increase in the Company's costs between the date of quotation and the date of acceptance of the order.
- (b) Prices quoted are valid for the entire items or quantities offered. In case part items or quantities are ordered we reserve the right to amend our quote accordingly.
- (c) All Goods and Services will be charged in accordance with the Company's current prices (plus any applicable GST) that are applicable at the relevant delivery date, which must be paid to the Company by the Purchaser when payment for the Goods and/or Services is due.
- (d) Prices will be rounded to the nearest whole cent in the Company's invoices.
- (e) In the case of orders for Goods on the basis of the number of pieces, the Company may apply a nominal weight (kg) to those Goods to determine the price of the Goods. On request by the Purchaser, the Company will disclose such nominal weight. The weight shown on packaging is for shipping purposes only and should not be taken as the weight of those Goods.
- (f) In the case of orders by the Purchaser made on the basis of weight (kg), the Company may:
  - (i) calculate the number of pieces of the Goods to be supplied by reference to the nominal weight of the Goods; and
  - (ii) calculate the price by reference to the nominal weight of the Goods to be supplied; and
  - (iii) supply and invoice the Goods by reference to the nominal weight, rather than the actual weight, of the Goods.

- (g) The Purchaser acknowledges and accepts that shipping tolerances apply that may result in Goods being over or under the quantity ordered.

### 4. Payment

- (a) The Purchaser must pay the Price for the Goods and Services supplied under each Contract, without deduction 30 days from the invoice date, the invoice date is the date which the invoice is given to the Purchaser, unless otherwise agreed in writing by the Company.
- (b) The Company reserves the right to vary the terms of payment and to require payment in full prior to delivery if, at any time, the credit worthiness of the Purchaser is, in the Company's opinion, unsatisfactory.
- (c) For cash account Purchasers 50% payment is required on placement of order and the balance prior to despatch of the order for stock items and 100% payment is required on placement of order for non-stock lines or custom made stock
- (d) In addition to any right of lien to which the Company may be entitled under the common law, the Company shall be entitled to exercise a general lien over all items in its possession belonging to the Purchaser until the Purchaser has paid in full for all Goods supplied by the Company to the Purchaser. If the Purchaser has not paid the Company in full by the due date, the Company may, at its option, sell any item that is subject to the said lien, provided that the Company shall pay to the Purchaser any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to the Company in respect of Goods that have been delivered by it to the Purchaser and all reasonable costs of sale incurred by the Company. The Purchaser acknowledges that the Company has a security interest (for the purposes of the PPSA) in these items, and the proceeds of these items, until the Purchaser has paid in full for all Goods supplied by the Company under the Contract. The Purchaser will do anything required by the Company to enable the Company to register this security interest, with the priority the Company requires and to maintain that registration. Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, the Company may perfect this security interest by possession of the relevant items.

- (e) Fees may apply for payment by credit card for account customers as set out in the Company's current price list or quotation.
- (f) Unless prices quoted by the Company include any sales tax, GST or other taxes which may apply these taxes are payable by the Purchaser in addition to the quoted prices.

### 5. Delivery

- (a) Unless otherwise agreed in writing by the Company, all costs of delivery will be for the Purchaser's account. Freight, insurance and risk remain the purchaser's responsibility.
- (b) Any date for delivery of the Goods or completion of the services shown on the other part of this document or otherwise indicated by the Company whether before or after or at the same time as the contract is made, is an estimated date for delivery only. Except where the Company's obligation is a Consumer Guarantee, the Company will not be liable for any loss or damage, however it arises, if the Goods are not delivered by that date or at all.
- (c) If the Company determines that it is or maybe unable to deliver within a reasonable time or at all, a Purchase Order may be cancelled by the Company. If the Purchase Order is cancelled, the Purchaser will have no claim against the Company for any damage, loss, cost or expense.
- (d) The liability of this company for damage, loss, delay, non-delivery or for any cause thereof ceases upon release of goods to authorised third party carriers
- (e) The Company reserves the right, at our discretion, without being liable for any loss or damage to decline the supply of goods relating to any purchase order should;
  - i) any payment of any invoice is overdue
  - ii) the Purchaser becomes insolvent
  - iii) any prepayment or deposit is not made in accordance with the quotation

### 6. Instalments

The Company reserves the right to deliver the Goods by instalments and each instalment will be taken to be sold under a separate Purchase Order. Failure of the Company to deliver any instalment will not entitle the Purchaser to cancel the balance of the order. If the Purchaser defaults in payment for any instalment, the Company may elect to treat the default as a breach of contract relating to each other instalment.

### 7. Claims for wrongful delivery

Any claim by the Purchaser for short or wrongful delivery of the Goods must be notified to the Company in writing within 24 hours of delivery of the Goods. Any claim which the Purchaser does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

### 8. Risk & Property

- (a) Unless otherwise agreed in writing by the Company, the risk of loss of, or damage to, the Goods will pass to the Purchaser on collection by the freight company. If the Purchaser collects the Goods or arranges for their collection from the Company then delivery will be deemed to occur on collection of the Goods from the Company.
- (b) Title to the Goods passes to the Purchaser on payment in full of the Price for the Goods.
- (c) The Company's rights under this clause 8 secure:
  - (i) the Company's right to receive the Price of the Goods; and
  - (ii) all other amounts owing to the Company under any other contract.
- (d) All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPSA.
- (e) Until full payment in cleared funds is received by the Company for all Goods supplied by it to the Purchaser, as well as all other amounts owing to the Company by the Purchaser under any other contract:
  - (i) legal title and property in all Goods supplied under a Contract remain vested in the Company and do not pass to the Purchaser;
  - (ii) subject to (iii), the Purchaser must keep the Goods separate from other Goods and maintain the labelling and packaging of the Company so that they are readily identifiable as the property of the Company;
  - (iii) the Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business;
  - (iv) the Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing of the Goods for the Company in a separate bank account with a bank to which the Purchaser has not given any security;
  - (v) In addition to any rights the Company may have under Chapter 4 of the PPSA, the Company may, without notice, enter any premises where it suspects the Goods may be located and remove them without

committing a trespass, even though they may have been attached to other Goods or land not the property of the Company, and for this purpose the Purchaser irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all Loss suffered or incurred by the Company as a result of exercising its rights under this clause. If there is any inconsistency between the Company's rights under this clause 8 (e)(v) and its rights under Chapter 4 of the PPSA, this clause 8 (e)(v) prevails;

- (f) the Purchaser acknowledges and warrants that the Company has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in sub-clause 8 (e)(iv) until title passes to the Purchaser in accordance with this clause 8. The Purchaser must do anything reasonably required by the Company to enable the Company to register its security interest, with the priority the Company requires and to maintain that registration; and
- (i) the security interest arising under this clause 8 attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 8 attaches at any later time.
- (ii) The Purchaser warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.
- (g) If the Purchaser fails to pay all or any part of the Purchaser's total indebtedness to the Company under any Contract, the Company may without notice and without prejudice to any of its other rights and remedies:
- (i) recover and/or re-sell the Goods or any of them and may enter upon the Purchaser's premises for that purpose; and
- (ii) recover any difference between the sale or scrap value of the Goods and the price payable by the Purchaser for the Goods.

### 9. Description

Any description of the Goods is given by way of identification only and the use of that description does not constitute a sale by description.

### 10. Specifications

- (a) Unless otherwise stated on the other part of this document or agreed in writing by the Company, the specification of the Goods is in respect of tolerances, weight, quantity, size, dimension, finishes, chemical composition and physical properties as stated in the Company's most recent published product data and/or in any recent applicable drawings issued by the Company, or, if not so specified, subject to tolerances normally regarded as being commercially acceptable.
- (b) All illustrations, drawings and specifications remain the property of the Company and must be treated as confidential by the Purchaser (who may not copy, sell, lend or otherwise dispose of or use them without the prior written consent of the Company). Where any designs or specifications have been supplied by the Purchaser for manufacture by or to the order of the Company then the Purchaser warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods does not infringe the rights of any third party.

### 11. Toolage

- (a) If the Goods are manufactured from dies, tools or other equipment supplied by the Purchaser (Purchaser equipment), the Company accepts no responsibility for the shape, measure, capacity, fitness or otherwise, of the Purchaser equipment or the suitability of the Purchaser equipment for manufacturing the Goods and the Company is not liable for any loss or damage, however caused (including negligence of the Company), to the Purchaser's equipment.
- (b) All Toolage remains the property of the Company and the Company is not required to deliver such Toolage to the Purchaser or part with possession of it. This applies even where the Purchaser has contributed to the cost of development and manufacture of the Toolage.
- (c) Where the Company has agreed that particular items of Toolage will be used exclusively for the manufacture of Goods for the Purchaser, the Company will not use that Toolage to manufacture Goods for third parties or sell to third parties products manufactured from that Toolage, unless:
- (i) the Purchaser has authorised such use or sale; or
- (ii) the Purchaser has not, for a period of 36 consecutive months, purchased from the

Company any Goods manufactured from that Toolage; or

(iii) the Purchaser is in default under these Conditions.

(d) Where sub-clauses 11(c)(ii) or (c)(iii) apply, the Company may without reference to the Purchaser dispose of such Toolage or release such Toolage for general use.

(e) Nothing in this clause 11 prevents the Company from supplying any third party with shapes that are identical or similar to those produced from Toolage maintained for the Purchaser.

### 12. Intellectual Property

(a) The Purchaser warrants that anything furnished to the Company will not cause the Company to infringe any intellectual property rights of any third party. The Purchaser indemnifies the Company against any claim, loss, liability, cost and expense that may be incurred or suffered by the Company as a result of any infringement or unauthorised use of intellectual property rights arising out of the manufacture or use of the Goods.

(b) The sale and purchase of the Goods does not confer on the Purchaser any licence or rights or title in any intellectual property right which is the property of the Company.

### 13. Implied terms

Except as detailed in these Conditions, all conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

### 14. Defective Goods

(a) The Purchaser must, as soon as possible after delivery, check whether the Goods were damaged or defective when delivered.

(b) The Goods will be considered to have been delivered in good condition unless the Purchaser gives the Company notice of the damage or defect within 2 Business Days after delivery.

(c) If the Purchaser gives the Company notice under clause 14(b), it must:

(i) preserve the Goods in the state in which they were delivered for **[10]** Business Days after it gives the Company the notice; and

(ii) during that period, allow the Company access to the Purchaser's premises to inspect the Goods; or

(iii) at the Company's request return the Goods, at the Purchaser's cost within **[10]** Business

Days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.

(d) The Company will investigate and determine, in its discretion, whether the Goods and their components are defective.

(e) The liability of the Company under this Condition is limited as detailed in clause 16 below. All other costs, including cartage and installation, must be paid by the Purchaser.

(f) While the Goods are in the custody of the Company for investigation or repair they will be at the risk of the Purchaser and the Company will not be liable for any damage to the Goods.

### 15. Defective Services

(a) The Purchaser must, as soon as possible after the Services have been provided give the Company notice of any defective Services within 2 Business Days after the relevant Service has been provided.

(b) The liability of the Company for defective Services is limited as detailed in clause 16 below.

### 16. Liability

(a) Subject to clause 16(c) the Company's liability in respect of defective Goods or for breach of a condition, warranty or Consumer Guarantee in relation to the provision of Goods is limited to any one of the following options as determined by the Company:

(i) replacement of the Goods or the supply of equivalent Goods;

(ii) repair of the Goods;

(iii) payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

(iv) payment of the cost of repairing the Goods.

(b) Subject to clause 16(c), the Company's liability in respect of defective Services or for a breach of a condition, warranty or consumer guarantee in relation to the Services is limited to any one of the following options as determined by the Company:

(i) provide the Services again; or

(ii) pay the cost of having the Services provided again.

(c) Clause 16(a) and (b) do not apply if:

(i) it is not 'fair and reasonable' for the Company to rely on them in accordance with section 64A(3) and (4) of the Australian Consumer Law;

- (ii) the Goods are 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law;
  - (iii) the Services are 'services of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law; or
  - (iv) in relation to any guarantee pursuant to any of section sections 51, 52 or 53 of the Australian Consumer Law.
- (d) Except only for those rights and remedies that the Purchaser has in respect of the Goods or Services under the Australian Consumer Law and similar state and territory laws applicable to Consumers and which cannot be lawfully excluded, restricted or modified:
- (e) all conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Goods and Services; and
- (f) the Company is not liable to the Purchaser for any loss or damage which the Purchaser suffers, incurs or is liable for in connection with supply of the Goods or Services under a Contract, except in accordance with clauses 16(a) and 16(b).

### 17. Indemnity

The Purchaser indemnifies the Company against any Loss which the Company suffers, incurs or is liable for in connection with this agreement or any Purchase Order made under it, but not limited to:

- i) any act or omission of the Purchaser;
- ii) any breach of this agreement the Purchaser; and
- iii) enforcing any security interest arising under this agreement.

### 18. Return of Non-Defective Goods

- (a) Goods will only be considered for credit if they are returned in good and resalable condition, in the original packaging and when the original invoice number and date of supply are quoted.
- (b) Credits may be allowed only upon the following conditions:
  - i) Goods returned within 30 days of invoice - for stock items at invoice value less any agreed restocking fees.
  - ii) If Goods are returned after 30 days – no credit (unless by special arrangement).

- (c) The following Goods cannot be returned for credit under any circumstances:
  - i) Any Goods specifically made, treated or purchased for the Purchaser.
  - ii) Any Goods damaged or altered in any way by the Purchaser; and
  - iii) Any non-stock lines.
- (d) Freight and delivery fees are not eligible for credit. Freight on returns must be pre-paid. Freight forward will not be accepted.
- (e) Acceptance of delivery of Goods returned for credit does not signify agreement to issue a credit note. A credit note will only be issued after the Goods have been inspected and found satisfactory in the opinion of the Company. In the event that a credit note is not issued the Purchaser will be advised and the Goods made available to them.

### 19. Force Majeure

- (a) For the purposes of this clause 18, Force Majeure Event means:
  - (i) an act of God, lightning, fire, flood, explosion;
  - (ii) strike, lock-out or other labour difficulty;
  - (iii) breakage, accident or other damage to or failure of machinery or equipment;
  - (iv) unavailability or shortage of raw materials, labour, power supplies or transport facilities; or
  - (v) failure or inability to obtain licences or the effect of any applicable laws, orders, rules or regulations of any government or competent authority;
  - (vi) and any other event which is not within the reasonable control of the Company
- (b) Where a Force Majeure Event prevents or delays the Company from performing any obligation under this agreement, that obligation is suspended as long as the Force Majeure Event continues.

### 20. GST

- (a) Any reference to this clause 19 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term was defined or used in that Act.
- (b) To the extent that any supply made under or in connection with a Contract is a taxable supply, the recipient must pay, in addition to the consideration to be provided under a Purchase

Order for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the Company has first issued to the recipient a Tax Invoice in respect of that taxable supply.

### 21. Interest

Without prejudice to any other rights or remedies of the Company, if any payment is not made by the due date, the Purchaser will pay on demand, without limiting any other rights of the Company, interest at the rate of 2% per year above the standard overdraft rate (for overdrafts under \$100,000) applied by the Company's primary bank at the time, on the outstanding amount, calculated from the due date for payment until payment is made in full.

### 22. Waiver

Failure by the Company to insist on strict performance of any term, warranty or condition of these Conditions will not be taken as a waiver of it or any rights the Company may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or Condition.

### 23. Subcontracting

The Company reserves the right to sub-contract the production, manufacture or supply of the whole or any part of the Goods or any materials or Services to be supplied.

### 24. Notices

Any notice to be given under a contract must be sent by email, facsimile or prepaid mail to the other party's number or address (as notified by that party from time to time).

### 25. Governing Law and Jurisdiction

These Conditions are governed by and will be construed in accordance with the laws of Victoria and the Purchaser submits to the non-exclusive jurisdiction of the courts of that State.

### 26. International Supply Contract

The United Nations Convention on Contract for the International Sale of Goods will not apply to a Contract.

### 27. Confidentiality

(a) In this clause 26, **Confidential Information** means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Company's business.

(b) The Purchaser is authorised to use the Confidential Information for the sole purpose of using or selling the Goods and utilising the Services supplied under this agreement and must not otherwise use or disclose any Confidential Information.

### 28. Indemnities

Any indemnity given by the Purchaser under these Conditions:

- (a) is enforceable on demand;
- (b) is provided on the basis that the Company need not make any payment or incur any loss before it can enforce its right of indemnity.

### 29. PPSA

- (a) Defined terms used in this clause 28 have the same meaning as given to them in the PPSA.
- (b) The Company and Purchaser acknowledge that this agreement constitutes a Security Agreement and gives rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the Goods supplied to the Purchaser, as Grantor, pursuant to a contract, and over the Proceeds (including any sale monies or an account for such monies and insurance monies).
- (c) The Goods supplied or to be supplied under a contract fall within the PPSA classification of "other Goods" acquired by the Purchaser pursuant to these Conditions.
- (d) The Purchaser acknowledges that the Company, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Purchaser, as Grantor, under a contract on the PPSA Register as Collateral.
- (e) The Purchaser waives its right to any of the following under the PPSA:
  - (i) receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to the Company;
  - (ii) receive notice of removal of an Accession under section 95;
  - (iii) receive notice of an intention to seize Collateral under section 123;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 132(4);
  - (vi) receive notice of retention of Collateral under section 135;

- (vii) the right to redeem the Collateral under section 142;
  - (viii) the right to reinstate the Security Agreement under section 143;
  - (ix) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- (f) The Purchaser agrees that, to the extent permitted by law, nothing in sections 95, 121(4) 130, 132(3)(d), 132(4)(d), 135, 142, or 143 of the PPSA will apply to the enforcement of the Security Interests created under these Conditions.
- (g) Subject to section 275(7) of the PPSA, neither the Company nor the Purchaser will disclose information of the kind mentioned in section 275(1) of the PPSA.