



TERMS AND CONDITIONS

Between: Australasia Trade Building Company Pty Ltd (“we”, “us”, “our”)

And: The Applicant (“you”, “your”)

The following are the contractual Terms and Conditions upon which you have agreed to purchase the Goods from us:

1. Interpretation

In these Terms and Conditions, the following definitions will apply:

Agreement means the agreement to supply the Goods to you, comprising:

Application for Credit;

these Terms and Conditions; and

Deed of Guarantee, Indemnity & Charge given to us;

Applicant means the applicant named in the Application for Credit;

Application for Credit means the Application for Credit form completed by the Applicant;

Collection Address means Our Premises or any other place of collection we agree;

Credit means your deferred debt to us for the purchase of the Goods from us on the Terms and Conditions;

Customer means the applicant named in the Application for Credit;

Delivery means making the Goods available at the Collection Address and **Delivered** has a corresponding meaning;

Delivery Date means the date specified in the purchase order issued by us;

Due Date means the day immediately following the last day of the Term of Credit;

GST means Goods and services tax imposed under the GST Law;

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* or any Act which amends or replaces that Act in the future, imposing or relating to GST;

Goods means the products supplied or to be supplied by us to you;

Guarantee, Indemnity and Charge means the Deed of Guarantee, Indemnity and Charge entered into by the Guarantor in favour of us in consideration for us agreeing to supply the Goods to you;

Guarantor means each person who signs the Guarantee, Indemnity and Charge as guarantor;

Manufacturing Process means the act of mixing the Goods with other goods;

Manufactured means the product created using the Goods;

Obligation means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

Our Premises means any premises from which we carry on the business of supplying the Goods;

Statement means a statement issued by us in respect of any supply of Goods under this Agreement;

Tax Invoice means a GST tax invoice issued by us in respect of any supply of Goods to you;

Term of Credit or Credit Term means a period of 30 days commencing on the Delivery Date;

Terms and Conditions means these Terms and Conditions and includes, where the context requires, any additional terms and conditions agreed to by us in writing from time to time; and

Unmixed means the state the Goods are in before they are altered in the Manufacturing process (if any);

2. General

2.1 All quotations given by us and all orders for the Goods placed by you are accepted subject to these Terms and Conditions.

2.2 Any other terms and conditions not contained within these Terms and Conditions will not form part of any contract between us and you unless those other terms and conditions are in writing and attached to these Terms and Conditions.

3. Payment for Goods/Interest and Costs on Outstanding Monies

3.1 Payment for the Goods must be made cash-on-delivery unless we have agreed to provide you with Credit. If we provide Credit, then payment must be made by way of cleared funds on the Due Date in accordance within the terms specified on the Application for Credit.

3.2 If payment is not received by the Due Date, legal action may be pursued to recover all outstanding monies, interest incurred on outstanding monies and any reasonable costs pertaining to the collection of the monies owed.

3.3 Interest is calculated based on rates specified by Queensland Courts (refer to <https://www.courts.qld.gov.au/courts-calculator/interest-rates>). Interest calculated and compounded on a daily basis from first day each invoice is overdue.

4. Invoice and Price

4.1 The price we charge for the Goods will be the current price at the Delivery Date, (which is subject to increase without notice) unless we agree in writing at your request to charge another price.

4.2 If GST applies to any supply under this Agreement, you must pay us the price of the Goods supplied together with the GST.

4.3 We have the option to invoice you in the month when Goods manufactured are completed even though Goods may not be delivered.

5. Retention of Title

5.1 We will retain both the legal and equitable ownership of all Goods supplied to you until the purchase price in respect of such Goods has been received in full by us by way of cleared funds.

5.2 If:-

(A) you fail to pay for the Goods by the Due Date; or

(B) action is commenced to place you into voluntary administration, liquidation, receivership or external management; or

(C) we have reasonable grounds to believe that for whatever reason, you may be unable to pay for the Goods, you, by accepting delivery of the Goods, agree to us entering upon any premises under your control to take possession of the Goods (Unmixed or Manufactured) and agree to deliver up the Goods in good and merchantable condition, on demand by us.

5.3 You indemnify us against any action, claim or other demand which may arise out of any lawful act done by us in exercise of our Rights pursuant to this clause.

5.4 We will be entitled to resell any Goods which we have taken into our possession pursuant to this clause and we will be released from all of our Obligations to you under the Agreement.

Updated 01/04/2020. Effective immediately.



- 5.5 Until payment in full is made to us, you may resell the Goods only as a fiduciary agent of us. You do not have any right to bind us by contract or otherwise to any third party.
- 5.6 You must keep the Goods insured whilst the Goods remain in your possession or control until payment in full is made to us and you will note us as the beneficiary on the insurance until the Goods are paid for in full.
- 5.7 All proceeds (whether tangible or not) with respect to any dealing with the Goods will be held by you in trust for us. You will:
 - (a) keep such proceeds in a separate account;
 - (b) keep records to enable identification of those proceeds and identification of the Goods to which those proceeds relate;
 - (c) make those records available to us on demand, until such time as we have been paid in full for the Goods.
- 5.8 If you alter the Goods or allow them to be altered or used in a Manufacturing Process, you warrant that you will hold such part of the proceeds received with respect to that Manufacturing Process in trust for us as relates to the purchase price of those Goods.
- 5.9 You will:
 - (a) keep the monies in trust in a separate account together with such records necessary to identify the Goods the subject of that trust relationship and the proceeds relating to those Goods; and
 - (b) will make those records available to Us on request until payment to Us for those Goods has been made in full.
- 6. Default, Security & Costs**
- 6.1 Where you are in default in the performance of any of your Obligations under the Agreement, we may, at our election and without prejudice to any of our other Rights, refuse to supply or deliver further Goods to you.
- 6.2 If you are in default, you must, if we request and at your cost, grant us a fixed and floating charge over your assets and undertakings, or a bill of sale over any of your physical assets ("charge"), or a bank guarantee in an amount we reasonably require, as security for the performance of your obligations under this Agreement.
- 6.3 All costs and expenses incurred by us in recovering monies due to us (including without limitation legal costs on a solicitor and own client basis, administrative and secretarial costs, debt collection agencies' commission or other collection costs) will be payable by you within seven (7) days of written demand being made to you by or on our behalf.
- 7. Warranties and Liabilities**
- 7.1 Subject to the terms of any written warranty which may be provided by us and the provisions of any legislation dealing with our Right to limit our liability (for example, the *Trade Practices Act (Cth)*), where the Goods provided by us to you are demonstrated to our reasonable satisfaction to be defective, the liability of Us for breach of any express or implied condition, warranty as to quality, description, fitness for purpose or condition is limited to the following as determined by us:
 - (a) the replacement of the Goods or equivalent Goods, or if this is not possible, or
 - (b) payment for the replacement cost of the Goods or equivalent Goods.
- 7.2 Subject to clause 7.1 and to any applicable legislation affecting our Right to limit liability, we will not be liable in any way whatsoever to you or to any other person or entity for any loss or damage howsoever caused which you or any other person may suffer whether or not such loss or damage arises as a result of the Goods or any defect in those Goods or from the failure or omission on our part (or any of our representatives, agents or employees) to comply with any obligation at law.
- 8. Delivery**
- 8.1 We will not be liable for any loss or damage arising due to delay in delivery of Goods to you.
- 8.2 The Goods are at your risk from the time they leave Our Premises and we will not be responsible for any loss or damage caused to the Goods once they have left Our Premises.
- 8.3 On the Delivery Date, we will make the Goods available for collection by you at the Collection Address. You are solely responsible for collection of the Goods from us and we are not liable for any expense, loss, damage or delay occasioned to you or your customers arising from the collection of the Goods and their loading at and transport away from the Collection Address.
- 8.4 Dates and times quoted for Delivery are estimates only and any delay in Delivery will not entitle you to seek damages or any other remedy.
- 8.5 No alleged defect in the Goods or claim in respect of the Goods delivered will entitle you to refuse the accept Delivery of any other part of the Goods.
- 8.6 You are responsible for arranging, effecting and maintaining your own insurance in respect of the Goods from the time of Delivery.
- 9. Instalment Deliveries**
- Unless otherwise expressly stated, we have the right to deliver the Goods in instalments. All instalments will be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay for any instalment when due will excuse us from making any future deliveries.
- 10. Force Majeure**
- We will be entitled to give notice to you to either extend the time for delivery of the Goods for a reasonable period or to terminate this Agreement if we are prevented from performing any of our Obligations including (without limitation) making a delivery of Goods by reason of force majeure (for example, and without limitation, breakdown of plant or machinery, war, terrorist attack, strike, industrial dispute, government interference, transport delay, act of God, flood, fire, accident, non-delivery or shortage of supplies of Goods or any other cause not under our control).
- 11. Damage or Defects**
- 11.1 You must, within twenty four (24) hours of receipt of Delivery of the Goods, check the Goods and notify us in writing of any alleged damage, defects in quality or any Statement or Tax Invoice inaccuracies including any short supply of Goods, time being of the essence. We will endeavour to replace any damaged Goods or remedy any inaccuracies as soon as reasonably practicable but will not be liable for any loss or damage which arises or results from any inaccuracy, damage or short supply save for our liability under clause.
- 11.2 Any dispute will be referred to an independent Quality Assurance assessor for determination as soon as reasonably practicable provided that our liability for loss or damage which arises or results from any inaccuracy, damage or short supply will be limited under clause 7.

Updated 01/04/2020. Effective immediately.



11.3 Failure to notify us in accordance with clause.1 will preclude you from making any claim against us for damaged or defective Goods or for inaccuracies in a Tax Invoice/Statement and it will be assumed that you are satisfied with the condition, quality and safety of the Goods, their fitness for purpose and their compliance with the description.

11.4 Authorised returns must be sent to us at your expense. If not sent in such a way, your Credit may be increased by any cost of freight.

12. Identification

If we describe Goods in our price list or elsewhere, this description is by way of identification only and the use of such description will not create a sale by description (for example, as defined in the Queensland *Sale of Goods Act* or the Commonwealth *Trade Practices Act*).

13. Goods Ordered for Collection

We will hold Goods ordered for collection for a maximum period of FIVE (5) days after the Delivery Date. If the Goods are not collected within that time, we may, at our election, without giving notice to you deliver the Goods to you or sell the Goods to another Customer as we see fit. If we elect to deliver the Goods to you, all costs incurred by us to do so will be payable by you.

14. Information true and correct

You and each Guarantor each declare that to the best of your knowledge, the information provided in the Application for Credit is true and correct. You and each Guarantor notify us within seven (7) of any change in the information provided in the Application for Credit.

15. Right to terminate

We reserve the right subject to the Terms and Conditions to terminate this Agreement at any time and to refuse to provide any further Credit at our absolute discretion. The Guarantor and you acknowledge that you each will have no right of action or recourse against us if we terminate this Agreement or refuse to provide Credit to you.

16. Governing Law

This Agreement is governed by the laws of Queensland. The parties submit to the jurisdiction of the Courts exercising jurisdiction in Queensland located nearest to Our Premises with respect to any dispute which may arise between the parties concerning this Agreement, the sale and/or delivery of Goods or any other matter arising out of the dealings between the parties including but not limited to, any claims by us for the unpaid price of Goods or any claim (whether raised as a claim or a defense) by you against us with respect to the Goods.

17. Indemnity

You indemnify us against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature arising out, or of alleged to arise out of, the Delivery, selection, purchase, acceptance or rejection, ownership, possession, use or storage of the Goods.

18. Miscellaneous

18.1 Nothing in this Agreement may 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 Queensland *Sale of Goods Act* or the Commonwealth *Trade Practices Act*) and which by law cannot be excluded, restricted or modified.

18.2 If any provision in this Agreement is or at any time becomes illegal, invalid or unenforceable, the remaining provisions will continue in full force and effect. Any illegal, invalid or unenforceable provision will, so far as possible, be read down to the extent that it may be necessary to ensure it is not illegal, invalid or unenforceable. All Obligations of the Guarantor and you under this Agreement will survive the severance of any provision, or part of a provision, to the extent required to be fully observed and performed.

18.3 This Agreement represents the entire agreement between the parties. No further or other covenants are implied between the parties by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either party to the other on or before the execution of this Agreement. The existence of any implied, collateral or other agreement is negated.

19. Personal Property Securities Act 2009 (Cth) ("PPSA")

19.1 For the purposes of clauses 19.1 to 19.7 of these Terms, the terms accession, account, amendment demand, commingled, control, financing change statement, financing statement, perfected, possession, proceeds, purchase money security interest, security interest and verification statement have the meanings given to them in the PPSA.

19.2 The Customer acknowledges and agrees that any security interest created by these Terms, or the transactions contemplated by them: (a) extends to, and acts as a security interest in respect of, any:

(1) proceeds (including any account) derived from, or from a dealing with, any Product;

(2) accession to any Product or any goods to which a Product is commingled; and

(b) continues in any Product if the Product becomes an accession or is commingled with other goods.

19.3 The Customer agrees to do (or procure anyone else who has an interest in any Product or New Product, or who claims under or as trustee for the Customer to do) anything which we require from time to time to:

(a) ensure that any security interest which is purported to be reserved or created under or in connection with these Terms is a first ranking perfected security interest and, if applicable, recorded as a purchase money security interest on the Personal Property Securities Register established under the PPSA ("PPSR");

(b) if requested by us, ensure that any security interest which is purported to be reserved or created under or in connection with these Terms is perfected by possession or control;

(c) enable us to register and maintain (including to renew before expiry) fully valid and effective financing statements or financing change statements with respect to any security interest which is purported to be reserved or created under or in connection with these



Terms;

- (d) remove any financing statement which is registered in respect of any Product; and
- (e) otherwise protect our position as the holder of security interests under or in connection with these Terms.

19.4 Without limiting any other provision of these Terms, the Customer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to any security interest created under or in connection with these Terms.

19.5 The Customer undertakes and agrees:

- (a) to not, without first giving us 10 business days' written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in relation to any security interest created under or in connection with these Terms;
- (b) to pay all costs in connection with the registration, discharge or amendment of any financing statement or financing change statement;
- (c) to not, without the prior written consent by us, lodge or serve a financing change statement or an amendment demand in relation to any security interest created under or in connection with these Terms;
- (d) that the Products supplied to the Customer under these Terms are not intended, and shall not be used, for personal, household or domestic purposes.

19.6 The Customer and we agree that:

- (a) to the extent that section 115(1) of the PPSA allows them to be excluded, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (b) to the extent that section 115(7) of the PPSA allows them to be excluded, sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137, do not apply

to any enforcement by us of any security interest created under or in connection with these Terms.

19.7 The Customer waives its right to receive anything from us under section 275 of the PPSA and agrees not to make a request of us under that section. The Customer and we agree for the purposes of section 275(6) of the PPSA that neither the Customer nor us will disclose any information in the nature of that mentioned in section 275(1) of the PPSA.

20. Privacy

20.1 We agree to comply with the terms of our Privacy Policy which can be found on its website and the provisions of the Privacy Act 1988 (Cth).

21. Guarantor(s)

If applicable, and if we have agreed to provide you with Credit, then the Guarantor(s) agree to enter into the Guarantee, Indemnity and Charge in the form attached, to guarantee your Obligations under the Terms and Conditions, as more particularly set out in the Guarantee, Indemnity and Charge.