



1. Definitions and interpretation

1.1. Definitions

In these terms of trade:

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Australian Consumer Law means section 3 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

Business Day means a day other than a Saturday, Sunday or public holiday in Australia.

Confidential Information has the meaning given in clause 21(a).

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Delivery Location means, in relation to Goods, the Suppliers factory located in Prestons, NSW

Force Majeure Event means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under these terms of trade (such events could include war, the threat of war, industrial action, failure of supply of water, power or other deliverables or services, fire, flood or other natural disaster).

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

GST Law has the meaning given in the GST Act.

Intellectual Property Rights means all intellectual property rights of any kind anywhere in the world, whether registered or unregistered, including trade marks, patents, copyright, processes, know-how, designs or other like rights or any right to apply for registration of any of them.

Order means a written order for Goods in the form specified by the Supplier (or in any other form that the parties may agree from time to time).

Payment Due Date has the meaning given in clause 10.2(b)(i).

PPS Law means:

- (c) the Personal Property Securities Act 2009 (Cth) (**PPSA**) and any regulation made at any time under the PPS Act (each as amended from time to time); and

(d) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Price means, in relation to Goods, the amount set out in the invoice which will be calculated as:

- (e) the amount for the Goods as set out in the Quote and any Additional Charges; or
- (f) where no Quote has been provided by the Supplier, the Supplier's charges for the Goods described in the Order applicable at the time of placement of the Order.

Supplier means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns.

Quote means a written description of the Goods to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

1.2. Interpretation

In these terms of trade, headings are for ease of reference only and do not affect the interpretation of these terms of trade, and unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing persons include individuals, firms, partnerships, trusts, associations, companies and corporations;
- (d) references to clauses, paragraphs and schedules are references to the relevant clause or paragraph in, or schedule to, these terms of trade;
- (e) any reference to a party is to a party to these terms of trade and includes that party's personal representatives, successors and permitted agents;
- (f) a reference to a monetary amount, \$, AUD or AUD\$ is a reference to Australian dollars;
- (g) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
- (h) the word "including" (and related forms including "includes") means "including without limitation".

2. General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3. Agreement to buy and sell Goods

In consideration of the Customer paying to the Supplier the Price for the Goods, the Supplier agrees to supply the Goods to the Customer on the terms and conditions set out in these terms of trade.

4. Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 45 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to supply Goods until the Quote has been accepted by the Customer. This occurs by the Customer completing an Order form and returning the form to the Supplier.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote to these terms of trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under chapter 3, part 3-2, division 1 of the Australian Consumer Law, this estimate is not binding upon the Supplier.

5. Orders

5.1. Form and content of Orders

- (a) Every Order by the Customer for the provision of Goods must be submitted in writing. Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods ordered and the Supplier's Quote (if any). Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (b) All Orders are subject to these terms of trade. Any other terms supplied or referenced by the Customer are expressly denied unless previously signed in writing by the Supplier.
- (c) Orders must be signed by an authorised representative of the Customer and may specify a required date of delivery. The Supplier does not guarantee delivery by the required date but will use reasonable effort to meet any such date.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.
- (e) The Supplier may in its absolute discretion refuse to provide Goods where:
 - (i) Goods are unavailable for any reason whatsoever;

- (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (f) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5.2. Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or both.
- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6. Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (ii) storage costs for Goods not collected from the Supplier within 10 Business Days of the date on which the Goods are manufactured, fabricated, created or formed;
 - (iii) delivery, courier, packing or handling charges not included in the Quote;
 - (iv) Government or council taxes or charges not included in the Quote; or
 - (v) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

7. Acceptance of Orders

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 24 hours of delivery, the Customer is deemed to have accepted the Goods and to have

accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this clause affects the Customer's rights for any alleged failure of a consumer guarantee under the ACL.

8. Delivery of Goods

8.1. Collection

- (a) Goods will be made available for collection by the Customer at the Delivery Location.
- (b) The Supplier will use its best endeavours to ensure that the Goods are available for collection by the Customer (or an agent or courier engaged by the Customer) at the Delivery Location on or by any lead time specified in the Quote (**Delivery Date**) for the Goods;
- (c) If the Goods are available for collection at the Delivery Location before the Delivery Date, the Supplier will notify the Customer in writing when the Goods are available for collection; and
- (d) The Customer (or an agent or courier engaged by the Customer) must collect the Goods from the Delivery Location within 20 Business Days after receiving notification from the Supplier that the Goods are available for collection.

8.2. Delivery

- (a) The Supplier may, at its sole discretion, arrange delivery of Goods to the Customers designated location. Any such delivery will be subject to Additional Charges.
- (b) If an Order specifies that Goods are to be delivered by the Supplier (or by an agent or courier engaged by the Supplier) to the Customers designated delivery location, the Supplier (or its agent or courier) will use its best endeavours to deliver the Goods to the Customers designated delivery location by the Delivery Date.

8.3. Late or failed delivery

The Supplier is not liable for any delay in delivering Goods or in making Goods available for collection, or failure to deliver Goods or make Goods available for collection.

8.4. Delivery in instalments

Goods may be delivered in instalments only if specified in the Quote.

8.5. When delivery occurs

Goods will be deemed to be delivered:

- (a) if the Order specifies that the Goods are to be made available for collection by the Customer at the Delivery Location, when the Goods are available for collection; or
- (b) if the Order specifies that the Goods are to be delivered by the Supplier (or by an agent or courier engaged by the Supplier) to the Customers designated delivery location, on completion of unloading the Goods at the Customers designated delivery location.

9. Packing of Orders

9.1. Packaging of Goods

The Supplier will ensure that Goods are packaged securely so as to protect them from being lost in transit or being damaged during transportation by or to the Customer having regard to:

- (a) the fragility and perishability of the Goods; and
- (b) the method of transportation used to transport the Goods.

10. Invoicing and payment

10.1. Issue of invoices

- (a) The Supplier may, in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
 - (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (iii) upon completion of the provision of the Goods or Services or any time after such completion, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

10.2. Payment of invoices

- (a) The Price is exclusive of GST unless stated otherwise.
- (b) The Customer must pay the Price plus GST for any Goods as set out in any invoice issued in relation to the Goods under clause 10.1:
 - (i) within 30 Business Days after receipt of that invoice (Payment Due Date);
 - (ii) in full, without deduction or set-off;
 - (iii) in cleared funds; and
 - (iv) to the bank account nominated by the Supplier.
- (c) If the Customer does not pay the full Price for the Goods by the Payment Due Date, interest will be calculated and charged by the Supplier on any outstanding amount. Interest will be calculated at the rate of 10% per year. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

- (d) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (e) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (f) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

10.3. GST

- (a) If a payment by a party under or in connection with these terms of trade (including a payment referred to in clause 10.3(b)) is the consideration for a taxable supply, then, subject to the supplier of the taxable supply providing that party with a valid tax invoice for the supply, that party must pay an amount on account of GST in respect of that payment to the supplier:
 - (i) as an additional amount in accordance with GST Law; and
 - (ii) at the same time, and in the same manner, as the payment is payable (or as the parties otherwise agree in writing).
- (b) If a payment due under these terms of trade is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, then that payment will exclude any GST forming part of the amount to be reimbursed or indemnified to the extent to which that other party can claim an input tax credit.

11. Passing of title and risk

11.1. Title and Risk

- (a) Title in and to Goods passes to the Customer when the Supplier receives full payment of the Price for the Goods.
- (b) Risk in Goods remains with the Supplier until delivery of the Goods occurs in accordance with clause 8.5, after which time the Customer assumes the risk in the Goods.

11.2. Supply of Goods without payment in full

- (a) Until title to the Goods passes to the Customer, the Supplier holds a security interest in the Goods and all proceeds from the sale of the Goods as contemplated under the PPSA and clause 12; and
- (b) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier the Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;

(c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of the Goods, and:

- (i) the Customer makes a new object from the Goods, whether finished or not;
- (ii) the Customer mixes the Goods with other goods; or
- (iii) the Goods become part of other goods (New Goods),

the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.

(d) For the avoidance of doubt, under clause 11.2(c), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.

(e) Despite clause 11.2(b), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:

- (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owed by the Customer to the Supplier have been paid; or
- (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.

11.3. Rights and restrictions in relation to Goods

(a) This clause applies in relation to Goods until all amounts owed by the Customer to the Supplier for the Goods are fully paid.

(b) Without limiting any other clause in these terms of trade, the Supplier reserves the following rights in relation to the Goods:

- (i) the right to ownership of the Goods; and
- (ii) if the Customer has not paid the Price for the Goods by the Payment Due Date in accordance with clause 10.2:
 - A. the right to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) upon reasonable notice, without liability for trespass or any resulting damage (except to the extent caused by the wilful misconduct or negligence of the Supplier or its employees or agents), and retake possession of the Goods; and
 - B. subject to, and in accordance with, the PPSA, to keep or resell any Goods repossessed pursuant to clause 11.3(b)(ii)A above.

11.4. Customer restrictions and obligations

The Customer agrees that, until it has made full payment for the Goods:

- (a) it has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;
- (b) it cannot claim any lien over the Goods;
- (c) it will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Supplier;
- (d) it will not supply any of the Goods to any person, or use any of the Goods, outside of its ordinary or usual course of business;
- (e) it will insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business;
- (f) it must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods; and
- (g) where it is in actual or constructive possession of the Goods:
 - (i) it will not deliver the Goods or any document of title to the Goods to any person except as directed by the Supplier; and
 - (ii) it is in possession of the Goods as a bailee of the Goods and owes the Supplier the duties and liabilities of a bailee.

12. PPSA

- (a) For the purposes of this clause, Collateral means:
 - (i) the Goods;
 - (ii) all the Customer's present and after-acquired property, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest;
 - (iii) all the Customer's present and after-acquired property, which is the subject of a Trust, including anything in respect of which the Customer as trustee of the Trust has at any time a sufficient right, interest or power to grant a security interest; and
 - (iv) all the present and after-acquired property of a Partnership of the Customer, including anything in respect of which the Partnership has at any time a sufficient right, interest or power for the Customer to grant a security interest (and each partner's interest in the Partnership).
- (b) All other capitalised terms used but not defined within these terms of trade or this clause 12 shall have the respective meanings given to them in the PPSA.
- (c) The Customer agrees and acknowledges that the title to Collateral supplied on credit is retained by the Supplier until such time that all debts are duly discharged, and that the Supplier's title is not displaced by possession of the Collateral by the Customer or any third party.

- (d) The Customer acknowledges and agrees that these terms of trade, and any subsequent sales agreements and Quotes are an accepted and adopted Security Agreement between the Supplier and the Customer for the purposes of the PPSA, and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the parties includes any arrangements documented by emails or information or documents exchanged electronically.
- (e) In requesting the Supplier provide Goods, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- (f) The Customer acknowledges, agrees and grants to the Supplier, a Security Interest in:
 - (i) all Collateral and any proceeds previously supplied or that will be supplied in the future by the Supplier to the Customer; and
 - (ii) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- (g) The above Security Interest secures all moneys owing by the Customer to the Supplier under these terms or otherwise.
- (h) The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Collateral with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- (i) The Customer acknowledges that the Security Interest over Collateral or their proceeds arising under these terms as and where applicable will be a Purchase Money Security Interest (**PMSI**).
- (j) The Customer will do everything reasonably required of it by the Supplier to enable the Supplier to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- (k) The Security Interests arising under this clause 12 will be perfected by the Supplier prior to the Customer obtaining possession of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- (l) The Supplier does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- (m) Any time the Customer makes a payment to the Supplier, irrespective of whether the payment is made under or in connection with these terms of trade, the Supplier may apply that payment:
 - (i) first, to satisfy an obligation that is not secured;
 - (ii) second, to satisfy an obligation that is secured, but not by a PMSI;
 - (iii) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
 - (iv) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- (n) For the avoidance of doubt and without prejudice to the Supplier's rights under the PPSA, the Customer:

- (i) may sell the Goods (including inventory) to its customers and if it does so, then the Supplier will have a Security Interest in the proceeds of sale; and
 - (ii) will, where and when applicable and instructed by the Supplier, implement, maintain and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- (o) The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- (p) The Customer agrees not to disclose to an 'Interested Person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these terms as the Security Agreement between the Customer and the Supplier.
- (q) The Customer will notify the Supplier immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these terms.
- (r) The Customer's right to possession of Goods still owned by the Supplier under these terms of trade will cease if:
- (i) the Customer being an individual, commits an act of bankruptcy; or,
 - (ii) the Customer being a corporation, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement; or
 - (iii) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
 - (iv) the Customer fails to comply with any demand for payment issued by the Supplier; or
 - (v) the Customer is in breach any of these terms of trade or is in default of any other agreement with the Supplier.
- (s) The Customer agrees that the Supplier is entitled to exercise the rights contained in section 123 of the PPSA to enter any premises where the Goods supplied by the Supplier are still unpaid for and repossess such Collateral. The Customer agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Collateral pursuant to these terms of trade including any claims brought by third parties.
- (t) The Customer agrees that repossession and retention of the Collateral pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer, as is equivalent to the Supplier's estimation of the market value of the Collateral as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Collateral.
- (u) Until any obligations owed to the Supplier by the Customer are discharged in full, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.

- (v) The rights and obligations of the Supplier and the Customer under these terms of trade will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.

13. Rejections and returns of Goods

- (a) The Customer must not return the Goods to the Supplier unless the Supplier, acting reasonably, consents to the return of the Goods.
- (b) Any items accepted by the Supplier for return will be subject to a 15% restocking fee. The Supplier reserves the right to refuse any request for returns.

14. Warranties

- (a) Certain Goods supplied under these terms of trade may have a limited warranty against structural defects (**Mantova Warranty**). The Mantova Warranty is subject to the Customer complying with all terms of the Mantova Warranty. The Mantova Warranty terms will be provided by the Supplier on request.
- (b) Proof of purchase must be provided when making a claim under the Mantova Warranty.
 - (i) All claims under the Mantova Warranty will be reviewed and inspected by a Supplier representative to determine whether the claim is covered by the Mantova Warranty.
 - (ii) Where a claim is covered by the Mantova Warranty, the resolution provided by the Supplier will be either repair or replacement of the Good and will be determined at the Supplier's sole discretion.
- (c) Other than as set out in clause 14(a), and to the fullest extent permitted by law all other warranties and conditions, whether express or implied by statute, common law or otherwise, are excluded.

15. Limitation of liability

15.1. General

The Supplier's total liability under these terms of trade will not exceed the amount paid by the Customer in accordance with the invoice issued in relation to the Goods supplied.

15.2. Liability for indirect or consequential loss

- (a) Subject to clause 15.2(b), to the fullest extent permitted by law, neither party is liable to the other party under or in connection with these terms of trade (whether such liability arises in tort (including negligence), contract, under statute or otherwise):
 - (i) for any loss beyond the normal measure of damages that every plaintiff in a like situation would suffer; or
 - (ii) without limiting clause 15.2(a)(i), for any loss of profit, revenue, commercial opportunity, savings, discount or rebate (whether actual or anticipated), reputation or goodwill.
- (b) The limitations of liability set out in clause 15.2(a) do not apply in respect of:
 - (i) death or personal injury caused by a party's negligence;

- (ii) any loss to the extent it is caused by a party's fraud, gross negligence or willful misconduct; or
- (iii) any other losses which cannot be excluded or limited by applicable law.

15.3. Australian Consumer Law

- (a) Where the Customer acquires Goods as a 'consumer' within Australian Consumer Law these provisions do not, and no provision of these terms of trade exclude, restrict or modify or have the effect of excluding, restricting or modifying:
 - (i) the application of any provision of Australian Consumer Law in relation to the supply of Goods;
 - (ii) the exercise of a right conferred by such provision, or
 - (iii) liability of the Supplier for breach of condition or warranty implied by such a provision.
- (b) Where legislation implies in these terms of trade any condition or warranty that cannot be excluded or modified, the liability of the Supplier for a breach of such is limited to replacement or repair of the Goods or refund of the price paid by the Customer.
- (c) The Customer acknowledges that the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption and which are typically acquired for the purpose of resale. However, if the Australian Consumer Law applies in relation to an Order made under these terms of trade, the following is an additional term of this Agreement where required by law:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

16. Intellectual Property Rights

- (a) All Intellectual Property Rights in and to the Goods (including their labelling and packaging) remain the property of the Supplier.
- (b) Nothing in these terms of trade operates as an assignment, transfer, licence or other disposition of any Intellectual Property Rights of a party to the other party.

17. Force Majeure

- (a) A party affected by a Force Majeure Event will not have any liability under, or be deemed to be in breach of, these terms of trade for any delays or failures in performance of these terms of trade which result from that Force Majeure Event, provided that the party affected by that Force Majeure Event promptly notifies the other party in writing:
 - (i) when such circumstances cause a delay or failure in performance; and
 - (ii) when they cease to do so.
- (b) If a Force Majeure Event causes a delay or failure in performance of these terms of trade by a party for a continuous period of more than 3 months, either party may terminate these terms of trade by written notice to the other party.

18. Termination

18.1. Default by Customer

Each of the following occurrences constitutes an event of default:

- (a) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
- (b) the Customer, being a natural person, commits an act of bankruptcy;
- (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under part 5.3A of the Corporations Act 2001 (Cth) being appointed to all or any part of the Customer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (iv) any assignment for the benefit of creditors;
- (d) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
- (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.

18.2. Termination by the Supplier

- (a) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these terms of trade;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 11.2(b), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.

18.3. Termination arrangements

Upon termination of these terms of trade:

- (a) the Supplier must deliver to the Customer any Goods that are the subject of Orders accepted before the termination date, in accordance with these terms of trade;
- (b) the Customer must pay to the Supplier:

- (i) the Price for any Goods delivered under clause 18.3(a); and
 - (ii) the Price for any Goods under any outstanding invoices relating to Goods delivered before the termination date; and
- (c) subject to clauses 18.3(a) to 18.3(b) and clause 22.5, each party is discharged from any further obligations under these terms of trade.

19. Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party or party legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

20. Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation (Guidelines) which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This clause survives termination of these terms of trade.
- (d) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.

- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21. Confidentiality

- (a) Each party acknowledges that, by virtue of these terms of trade, it may be afforded access to, and acquire knowledge of, the other party's proprietary information and documents of a confidential nature (**Confidential Information**).
- (b) A party receiving any Confidential Information of the other party must not disclose or use that Confidential Information without the prior written consent of the other party, except to the extent disclosure is expressly permitted by these terms of trade or required by law.
- (c) The parties agree that neither party will disclose Confidential Information of the other party pursuant to a request under section 275(1) of the PPSA

22. General

22.1. Notices

A notice or other communication to or by a party to these terms of trade must be:

- (a) in writing addressed to the address or email address of the recipient as shown on the Quote (or as notified in writing by the recipient to the other party from time to time); and
- (b) signed by the sender or by a director or secretary of the sender.

22.2. Assignment

Each party acknowledges and agrees that:

- (a) the rights and duties created by these terms of trade are personal to the respective parties; and
- (b) neither party may effect any sale, transfer, assignment, mortgage, charge or any other legal or equitable disposition of any of such rights or duties without the prior written consent of the other party.

22.3. Amendment

These terms of trade and any Quotes issued by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms. These terms of trade are not to be amended except in writing executed by each party.

22.4. No Warranty

In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.

22.5. Survival

- (a) Clauses 1, 10.2, 11, 12, 12(a), 14, 15, 18.3, 19, 11.3, 21 and 22, and any other clauses by their nature intended to survive termination or expiry of these terms of trade, survive termination or expiry of these terms of trade.
- (b) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.

22.6. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

22.7. Governing law and jurisdiction

- (a) These terms of trade are governed by and must be construed in accordance with the laws of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time under or in connection with these terms of trade.