

# GENERAL TERMS AND CONDITIONS OF SALE

## Finsbury Green Pty Ltd (ABN 52 007 743 151)

The Customer should carefully read all of the Terms below. We draw your attention to the following key sections in particular:

- **Clause 3:** The Company may give the Customer notice of its intention to vary a price to account for any variation requested by the Customer, or any change in the costs incurred by the Company in relation to the goods or services. Any amounts due in excess of the approved credit limit will become immediately due and payable.
- **Clause 4:** Payment defaults will incur a range of additional penalties (eg, default interest, recovery costs), and/or suspension or termination of the order.
- **Clause 6:** The risk in the goods, and all insurance responsibility, passes to the Customer immediately on the goods being delivered to the Customer or taken from the Company's premises.
- **Clause 8:** Unless otherwise specified in the quotation or agreed with the Company, the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer and/or advised point of delivery.
- **Clause 9:** Subject to any non-excludable rights the Customer may have, including under the ACL, the Company limits its liability owed to the Customer to the maximum extent allowed.
- **Clause 10:** The Customer is solely responsible for the content of the goods ordered.
- **Clause 12:** The Customer must inspect the goods for defects or shortfall, and notify the Company of any alleged non-compliance within the timeframes specified.

### 1 Definitions

**"ACL"** means the Australian Consumer Law Schedule of the Competition and Consumer Act;

**"Agreement"** means the agreement for the provision of goods or services by the Company to the Customer;

**"Company"** means Finsbury Green Pty Ltd (ABN 52 007 743 151);

**"consumer"** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

**"Customer"** means the person, jointly and severally if more than one, acquiring goods or services from the Company;

**"Force Majeure Event"** means an event beyond the reasonable control of a party, including but not limited to accident, act of God, act or threat of terrorism or war, breakdown, earthquake, epidemic, inclement weather, natural disaster, pandemic, import or export or travel restriction, shipping delay, expropriation or confiscation or requisition of the goods, imposition of onerous regulations by any government or government agency, industrial dispute, lockout or strike;

**"goods"** means goods supplied by the Company to the Customer;

**"GST"** means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

**"PPSA"** means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

**"services"** means services supplied by the Company to the Customer; and

**"Terms"** means these Terms and Conditions of Trade.

### 2 Basis of Agreement

- (a) This Application and any documents referred to herein constitute the whole of the Agreement and no understanding, arrangement or provision not expressly set forth in the Agreement shall be binding upon the parties.
- (b) No variation, modification or alteration of any of the terms of the Agreement shall be of any effect unless evidenced in writing and executed by each of the parties.
- (c) An Agreement is accepted by the Company when the Company accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services.
- (d) The Company in its absolute discretion may refuse to accept any offer.
- (e) The Customer must provide the Company with its specific requirements, if any, in relation to the goods and services.
- (f) The Company may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

### 3 Prices and Payment

- (a) Subject to clause 3(b) and 3(c), prices for the supply of the goods or services will be in accordance with the Company's Scale of Charges (as may be amended from time to time) on the day of delivery.
- (b) The Company may supply the Customer with a quote for goods or services. Any quotation provided to the Customer is:
  - (i) valid for 30 days or an alternative specified term;
  - (ii) an invitation to treat only;
  - (iii) only valid if in writing.
- (c) If the Customer accepts a quotation within the 30 days, the Company shall supply the goods or services for the price contained in the quote.
- (d) All prices for the supply of goods and services include GST and any other taxes or duties imposed on or in relation to the goods or services.
- (e) If the Customer requests any variation to the Agreement, the Company may notify the Customer of any change to the price to account for the variation and the Customer may:
  - (i) accept the change to the price; or
  - (ii) withdraw the request for the variation.
- (f) Where there is any change in the costs incurred by the Company in relation to goods or services, the Company may notify the Customer of the Company's intention to vary its price for the goods or services to take account of any such change, and the Customer may:
  - (i) accept the proposed change to the price and continue with the Agreement; or
  - (ii) reject the proposed change to the price and cancel the Agreement and pay all costs to date
- (g) All accounts are payable within 14 days or alternative agreed terms in writing. The time for payment is of the essence.
- (h) Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- (i) Payment terms may be revoked or amended at the Company's discretion immediately upon giving the Customer written notice.
- (j) If the Customer exceeds the credit limit granted to it, then the excess amount shall immediately become due and payable.

### 4 Payment Default

- (a) If the Customer defaults in payment by the due date of any amount payable to the Company, then all money which would become payable by the Customer to the Company at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Company may, without prejudice to any of its other accrued or contingent rights:
  - (i) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent for the period from the due date until the date of payment in full;
  - (ii) charge the Customer for, and the Customer must indemnify the Company from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or

in taking action to enforce compliance with the Agreement or to recover any goods;

(iii) cease or suspend supply of any further goods or services to the Customer;

(iv) by written notice to the Customer, terminate any uncompleted contract with the Customer.

- (b) Subject to any applicable statutory stay of proceedings, Clauses 4(a)(iii) and 4(a)(iv) may also be relied upon, at the Company's option:

- (i) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

- (ii) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

### 5 Passing of Property

- (a) Until the Company receives full payment in cleared sums for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer:

- (i) Title and property in the goods does not pass from the Company to the Customer and remains vested in the Company.

- (ii) If the goods are in the Customer's possession, the Customer holds the goods as fiduciary bailee for the Company and must store the goods so that they are clearly identifiable as the property of the Company.

- (iii) in addition to its rights under the PPSA, the Company may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Company, and for this purpose the Customer irrevocably licenses the Company from and against all costs, claims, demands or actions by any party arising from such action.

- (iv) The Customer must keep the Goods separate from its goods and maintain the Company's labelling and packaging;

- (v) The Customer may in the ordinary course of business, sell the goods to a third party but the proceeds of the sale to the third party must be held by the Customer as trustee for the Company in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee.

- (b) The Company, in respect of all sums owed by the Customer, has a general lien on all property of the Customer in the possession of the Company and may after 14 days notice to the Customer sell that property and apply the proceeds (net of any sale costs) in satisfaction of all or any part of the sums owed.

### 6 Risk

- (a) The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from the Company's premises.
- (b) The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by the Company, unless recoverable from the Company on the failure of any statutory guarantee under the ACL.

### 7 Personal Property Securities Act

- (a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

- (b) For the purposes of the PPSA:

- (i) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (ii) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future goods supplied by the Company to the Customer and the proceeds of the goods;

- (iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and

- (iv) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Company on the Personal Property Securities Register.

- (c) The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.

- (d) Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

- (e) The Company and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

- (f) To the extent permitted by the PPSA, the Customer agrees that:

- (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Company will apply only to the extent that they are mandatory or the Company agrees to their application in writing; and

- (ii) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

- (g) The Customer must immediately upon the Company's request:

- (i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

- (ii) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.

- (h) The Company may allocate amounts received from the Customer in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Company.

- (i) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the goods, except as otherwise required by law or that is already in the public domain.

### 8 Performance of Agreement and Delivery

- (a) Any period or date for delivery of goods or provision of services stated by the Company is an estimate only and not a contractual commitment.

- (b) The Company will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

- (c) If the Company cannot deliver the goods or complete the services by any estimated date, it will do so within a reasonable time.

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- (d) Subject to clause 8(i), the Company will arrange for the delivery of the goods to the Customer.
- (e) Unless otherwise specified, the price for the goods includes standard delivery to the Customer's nominated address as set out in the quotation. If the Customer requires a different manner or mode of delivery, or requires delivery to a different destination, then the Company will follow the variation process set out in clauses 3(e) and (f).
- (f) The Company may make part delivery of goods or provision of services and the Company may invoice the Customer for the goods or services provided.
- (g) The Customer indemnifies the Company against any loss or damage suffered by the Company, its sub- contractors or employees as a result of delivery, except where the Customer is a consumer and the Company has not used due care and skill.
- (h) If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods.
- (i) If agreed that the Customer will collect the goods, the Customer must collect the goods within 7 days of being advised they are ready, otherwise the Customer is deemed to have taken delivery of the goods.

## 9 Liability

- (a) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- (b) If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- (c) If the Customer on-supplies the goods to a person who is a consumer and
  - (i) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of the Company's liability to the Customer;
  - (ii) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Customer; howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- (d) If clause 9(b) or 9(c) do not apply, then other than as stated in the Terms or any written warranty statement the Company is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- (e) The Company is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than, if the Customer is a consumer, then to the extent the loss was reasonably foreseeable.
- (f) Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

## 10 Indemnity

The Customer is solely responsible for the content of the goods ordered by the Customer and indemnifies and keeps indemnified the Company from and against any liability, loss, expense, claims or demand for or arising from the content of the said goods.

## 11 Intellectual Property

- (a) The Company shall retain ownership and copyright of all data, computer files, drafts and other such working documents created by the Company in the course of preparing for or carrying out the goods, including, without limiting the generality of the foregoing, all modifications or enhancements that the Company may make to any data supplied by the Customer (hereinafter referred to as 'the working documents'). The Company shall not be under any obligation to keep or retain the working documents, but should it do so, the Customer shall have no rights whatsoever in relation to the working documents save that the Company may, in its absolute discretion, enter into a separate agreement with the Customer in relation to the supply of the working documents to the Customer upon such terms and for such price as may be agreed upon between the parties.
- (b) The Customer further agrees that it will retain a copy of all data or information supplied by it to the Company and agrees that it shall not hold the Company liable in any way should the said data or information supplied by it to the Company be lost, damaged or modified in any way by the Company.

## 12 Acceptance of Goods

- (a) The Customer is aware that defects can occur in relation to the goods due to liquids, solvents, glues or other materials used in the manufacturing process of the goods not having the same shelf life expectancy as the goods.
- (b) Any claims relating to shortfalls, damage or non-compliance with the specifications of the Agreement must be made in writing within 7 days of the date of receipt of the goods by the Customer. Subject to clause 12(e), if no claim is made within the said 7 day period, the said goods are deemed to have been accepted by the Customer as being without shortfall, damage or non-compliance with the Agreement specifications.
- (c) When any shortfall or claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Company, the Company may, at its option, replace the goods, or refund the price of the goods, resupply the services or refund the price of the services.
- (d) Unless required under the ACL for a failure of a statutory guarantee, the Company will not accept goods for return.
- (e) If the Customer is a consumer, nothing in this clause 12 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

## 13 Cancellation

- (a) If the Company is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- (b) No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Company once the order has been accepted.

## 14 Force Majeure

- (a) Subject to Clause 14(b), neither the Company nor the Customer is liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by a Force Majeure Event.
- (b) Nothing in this clause 14 operates to excuse the Customer from any obligation to pay money to the Company.
- (c) If a party is prevented from acting by a Force Majeure Event, that party must:
  - (i) promptly notify the other party of the existence and expected duration of the Force Majeure Event;
  - (ii) take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event; and
  - (iii) subject to clause 14(d), resume performance of the obligation prevented by the Force Majeure Event as soon as practicable.
- (d) If a Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or terminate the Agreement by written notice.

## 15 Miscellaneous

- (a) The failure of either party at any time to enforce any of the terms or provisions of this Agreement or to exercise any right hereunder shall not constitute a waiver of the same or affect the party's right thereafter to enforce the same.
- (b) If any Term of the Agreement is deemed to be unlawful or unenforceable, such term shall be severed from this Application and all other terms shall remain in force.
- (c) The Customer shall notify the Company of any change in the ownership of the Customer's business within 7 days of such change occurring and hereby indemnifies and keeps indemnified the Company from and against any liability, loss, expense, claims or demands arising from the failure of the Customer to so notify the Company.
- (d) The Customer hereby authorises the Company to disclose to, or obtain from, credit reporting agencies personal information regarding the Customer and/or its partners, directors or office bearers, for the purpose of assessing the credit worthiness of the Customer.
- (e) The address of each party shall be the address of the party for service of notices or other communications hereunder which may be effected by personal delivery, by post, facsimile or email. If service is effected by post the date of service shall be deemed to be the day after the day of posting. If service is effected by personal delivery the date of service shall be deemed the date of delivery. If service is effected by facsimile or email, the date of service shall be the day on which confirmation of successful transmission is received by the sender.
- (f) This Application shall be construed and take effect in accordance with the laws of the State of Victoria. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts