

1 Definitions and interpretation

1.1 **Definitions.** In these Terms and Conditions, unless the context requires otherwise:

Accepted Order means a Purchase Order accepted by the Supplier on these Terms and Conditions.

Agreement means the agreement between the Supplier and the Customer for the supply of Products, consisting of:

- (a) the Commercial Details;
- (b) an Accepted Order; and
- (c) these Terms and Conditions.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition Consumer Act 2010* (Cth).

Authority means any government, semi governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Bank Account means:

Account name: V. Orlandi Australia

BSB: 063 594

Account Number: 1037 3732

Business Day means a day which is not a Saturday, Sunday or public holiday in Victoria.

Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

Commercial Details means the commercial details attached to these Terms and Conditions.

Consumer Guarantee means a consumer guarantee as it applies to supplies made under this agreement, as set out in under Part 3-2, Division 1 of the *Australian Consumer Law*.

Default Rate means the pre-judgment interest rate set pursuant to the *Penalty Interest Rate Act 1983* (Vic) expressed as a percentage per annum.

Delivery Address means the delivery address described in the Commercial Details.

Delivery Date means the delivery date described in an Accepted Order.

Event of Default means an event of default described in clause 11.1.

Force Majeure Event means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.

GST has the meaning given in GST Law.

GST Law has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means the happening of any one or more of the following events:

- (a) in relation to a natural person:
 - i. that person being unable to pay his or her debts as and when they fall due;
 - ii. an application and filing for bankruptcy being made in respect of that person; or
 - iii. a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person's assets or undertakings or any of them; or

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(b) in relation to a body corporate:

- i. that body corporate being unable to pay its debts as and when they fall due;
- ii. a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them;
- iii. an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
- iv. that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
- v. that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Intellectual Property means any and all items in which Intellectual Property Rights subsist, existing now or in the future and whether or not registered or registrable that are used in connection with the Products, including the Technical Drawings.

Intellectual Property Rights means all current and future registered and unregistered rights and all renewals and extension of those rights in respect of copyright, marks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Invoice means an invoice issued by the Supplier to the Customer following acceptance of a Purchase Order.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

Customer means the person described as such in the Commercial Details.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Products mean products specified in an Accepted Order.

Purchase Order means a purchase order issued by the Customer to the supplier in writing on these Terms and Conditions.

Security Interest has the meaning given in the PPSA.

Supplier means the person described as such in the Commercial Details.

Taxes means any tax, levy, charge, impost, rates, duty, fee, deduction, compulsory loan or withholding tax which is (or is able to be) assessed, levied, imposed or collected by or payable to any Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed or made on or in respect of the above.

Technical Drawings means any technical specifications, drawings or other product information supplied by the Supplier to the Customer in connection with the Products.

Terms and Conditions means clauses 1 to 14 of these terms and conditions.

1.2 Interpretation

In these Terms and Conditions:

- (a) a reference to the singular includes the plural and vice versa;
- (b) a reference to a given gender includes all other genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (e) a reference to a person includes a natural person, a company or other entities recognised by law;

- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes fax transmission;
- (h) all references to parties are to the parties to this agreement;
- (i) a reference to a party includes the party's executors, administrators, successors and permitted assigns;
- (j) where any obligation is imposed on, or any benefit takes effect for, two or more persons, the obligation binds or takes effect for the benefit of (as the case may be) those persons jointly and each of them severally;
- (k) any word not defined in these Terms and Conditions will be given its meaning set out in other components of this Agreement or, if not otherwise define, its ordinary and natural meaning; and
- (l) in the event of inconsistency the following order of priority should apply to the Agreement:
 - i. an Accepted Order; then
 - ii. Terms and Conditions.

1.3 Headings

The headings are for ease of reference only and do not affect the interpretation of this Agreement.

2 Purchase Orders

- 2.1 The Customer may submit a Purchase Order to the Supplier specifying:
 - (a) the amount and type of Products it wants supplied;
 - (b) the address for delivery of those Products; and
 - (c) any special delivery instructions for those Products (provided always that the delivery date for each Purchase Order must fall on a Business Day).
- 2.2 Each Purchase Order constitutes an offer by the Customer to purchase the Products specified in that Purchase Order on the terms of these Terms and Conditions (to the exclusion of any other terms other than those which apply or cannot be excluded by operation of law).
- 2.3 The Supplier may, in its sole discretion:
 - (a) accept a Purchase Order by supplying the Products specified in that Purchase Order (each an **Accepted Order**); or
 - (b) decline a Purchase Order (without being obliged to give reason for doing so) by giving notice to that effect to the Customer.
- 2.4 If the Supplier is accepts a Purchase Order (an **Accepted Order**), it will issue the Customer with an Invoice, specifying the Products to be supplied on the terms of this Agreement.
- 2.5 If the Supplier is unable to supply the quantity of a Product specified in a Purchase Order but is able to supply a lesser quantity, it may give notice to that effect to the Customer. The Customer may offer to purchase the lesser quantity by placing a new Purchase Order with the Supplier.
- 2.6 The Supplier reserves the right to stipulate a minimum order quantity at any time for the Products.

3 Freight and insurance

- 3.1 Unless otherwise agreed in writing:
 - (a) the Supplier will arrange for the freight of the Products to the Delivery Address at the Customer's cost; and
 - (b) the Supplier will not arrange insurance of the Products during freight; and
 - (c) the price for the Products is exclusive of all freight and all freight and other carrier costs and any insurance associated

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with a delivery must be paid by the Customer on the terms of the Supplier's Invoice and in accordance with clause 6.

4 Delivery Date

- 4.1 The Supplier will endeavour to deliver the Products on the Delivery Date.
- 4.2 The Delivery Date is an estimate only and the Supplier accepts no liability to the Customer or to any other person if it is unable to deliver Products within an estimated delivery time.
- 4.3 The Supplier reserves the right to charge the Customer reasonable storage costs if the Products are unable to be delivered, for any reason not caused by the Supplier, to the Customer on the Delivery Date.

5 Acceptance of Products

- 5.1 On delivery of Products to the Customer, the Customer must immediately check the quantity against the delivery confirmation and visually inspect the Products for their quality and condition.
- 5.2 For the purpose of clause 9.3, the Customer will be deemed to have:
 - (a) accepted each Product received in a delivery from the Supplier;
 - (b) acknowledged that it is satisfied as to all of the quantity, condition, quality and saleability of that Product;
 - (c) to the maximum extent permitted by law, waived any rights it has to make claims against the Supplier relating to the quantity, condition, quality or saleability of that Product; and
 - (d) assumed full responsibility for the maintenance of the quality, condition and saleability of that Product after its delivery by the Supplier,

unless it gives the Supplier a written notice setting out the nature of any defects within 5 Business Days of the delivery of the Product.

6 Price and payment

- 6.1 The price of the Products will be as set out in the Invoice.
- 6.2 The Supplier will Invoice the Customer for Products supplied in accordance with the Agreement prior to despatch of the Products.
- 6.3 Invoices are payable on the terms set out in the Commercial Details unless otherwise agreed in writing.
- 6.4 The price of the Products quoted in the Invoice is exclusive of GST. In addition to the price payable for the Products, where required by law, the Customer must pay to the Supplier, in accordance with a valid tax invoice issued by the Supplier, the GST payable in respect of the supply of the Products.
- 6.5 All payments made under this Agreement must be paid to the Supplier's Bank Account.
- 6.6 The Customer must pay all amounts due to the Supplier (whether under these terms and conditions or otherwise):
 - (a) without set-off, deductions counter-claims or conditions; and
 - (b) in available cleared funds to the Bank Account.
- 6.7 If the Customer owes any amount to the Supplier (whether under these terms and conditions or otherwise), the Supplier may, in its sole discretion and without prejudice to any of its other rights, do one or more of the following:
 - (a) withhold all future supplies of Products until that amount has been paid in full; or
 - (b) set-off that amount against any amount owing by the Supplier to the Customer.
- 6.8 If an amount due under these terms and conditions is paid after the due date the Customer must pay the Supplier, in addition to the overdue amount:
 - (a) interest at the Default Rate calculated based on a 365 day year from the date of the default until the date the amount (together with all accrued interest) is paid in full; and
 - (b) all costs and expenses incurred by the Supplier in collecting the overdue amount.



6.9 The Customer's obligation to pay an amount owing applies notwithstanding any delay in the delivery of the Products.

7 Title and risk

7.1 Risk in the Products passes to the Customer upon despatch of the Products from the Supplier's premises by the Supplier or its agent or representatives.

7.2 Until the Supplier has received payment in full for all Products supplied by the Supplier under this Agreement:

- (a) title to the Products shall remain with the Supplier;
- (b) until payment in full is received under this Agreement, the Customer holds the Products as bailee for the Supplier; and
- (c) the Products shall, so far as practicable, be kept separate from other goods of the Customer, so as to be readily identifiable as the property of the Supplier.

7.3 Upon default of the Customer of the due performance or observance of any other obligation under these Terms and Conditions, including an Insolvency Event the Supplier may by notice in writing to the Customer enter upon the Customer's premises to remove any of the Products to which the Supplier has retained title and for this purpose the Customer shall afford the Supplier all reasonable assistance to locate and take possession of the Products.

7.4 The Customer acknowledges that by virtue of clause 7.2, the Supplier has or will have a Security Interest in the Products and the proceeds from the sale of the Products for the purposes of the PPSA.

7.5 The Customer acknowledges that the Supplier may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist the Supplier to achieve perfection of this Security Interest under the PPSA.

7.6 The Customer and the Supplier agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):

- (a) section 117 (obligations secured by interests in personal property and land);
- (b) section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 129 (disposal by purchase);
- (e) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
- (f) section 132(3)(d) (contents of statement of account after disposal);
- (g) subsection 132(4) (statement of account if no disposal);
- (h) section 142 (redemption of collateral); and
- (i) section 143 (reinstatement of security agreement).

7.7 The Customer waives its right to receive a verification statement under section 157 of the PPSA.

8 Customer obligations

8.1 The Customer warrants and agrees that at the date of this Agreement and at all times whilst the parties are bound to this Agreement:

- (a) the Customer and each member of the Customer's personnel has the requisite skill, ability, expertise, experience, training and resources to fit, adjust and use the Products and perform the Customer's obligations under this Agreement;
- (b) the Products will be fitted, adjusted and used with skill and due care;

(c) **Supply Agreement – Terms and Conditions** the Customer will do all things necessary to ensure that the Intellectual Property is protected and not infringed by any third party;

(d) the Customer has the right, power, authority and entitlement to execute this Agreement and perform the Customer's obligations under this Agreement;

(e) the Customer has obtained and will maintain and comply with all Approvals in connection with the Products;

(f) the Customer will comply with all laws and in connection with the Products;

(g) the Customer is familiar with the risks associated with the Products.

8.2 Where the Customer is supplied with Intellectual Property under this Agreement, including Technical Drawings, the Customer:

(a) has made its own enquires in respect of the nature and content of the Intellectual property;

(b) must not rely upon the Intellectual Property, particularly the Technical Drawings, in connection with the fitting, adjustment or other use of the Products,

(c) is granted a royalty free licence to use the Intellectual Property during the term of this Agreement;

(d) must not disclose the Intellectual Property to any third party without the Supplier's consent.

9 Warranties and Liability

9.1 The parties acknowledge that the Customer intends to use the Products, and any Technical Drawings, in the course of its production or manufacture and the Consumer Guarantees do not apply to this Agreement.

9.2 The Supplier makes no express or implied warranties under these terms and conditions in relation to any Products and the Technical Drawings, except those separately provided by the Supplier to the Customer in clause 9.3.

9.3 The Supplier warrants to the Customer in respect of the Products (not including the Technical Drawings) that upon despatch of the Products from the Supplier's premises, the Products are free from material defects.

9.4 The warranty in clause 9.3 expires upon the earlier of:

- (a) the fitment, alteration or other use of the Products by the Customer; or
- (b) twelve (12) months from the date of despatch by the Supplier.

9.5 To the maximum extent permitted by law, the Supplier will not be liable for indirect, consequential, special, punitive or exemplary damages including but not limited to loss of profits, loss of business, loss by reason of delay, whether arising in negligence, from breach of contract or otherwise, in connection with these Terms and Conditions.

9.6 To the maximum extent permitted by law, the Supplier limits its liability for breach of these terms and conditions in relation to any particular supply of Products, to the price of the Products.

9.7 To the maximum extent permitted by law the Supplier's liability for breach of clause 9.3, or the Consumer Guarantees if the Consumer Guarantees apply at law, is limited to any one or more of the following, at the Supplier's election:

- (a) the replacement of the Products or the supply of equivalent Products;
- (b) the repair of the Products;
- (c) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
- (d) the payment of the cost of having the Products repaired.

9.8 This clause 9 continues to bind the parties after this agreement is terminated.



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10 Release and indemnity

- 10.1 The Customer agrees to use and possess any Products, and Technical Drawings, at its own risk. The Customer agrees that the Supplier bears no responsibility or liability for any Loss to any of the Customer's or a third party's property (including the Products).
- 10.2 To the fullest extent permitted by law the Customer releases and discharges the Supplier and its agents and employees from:
- (a) all Claims and demands on the Supplier; and
 - (b) any Loss whatsoever and whenever caused to the Customer or its agents or employees or any third party whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial Loss or otherwise,
- arising directly or indirectly from or incidental to a breakdown of, or defect in any Products (and any Technical Drawings) or any accident to or involving any Products or their use, operation, repair, maintenance or storage (whether occasioned by the Supplier's negligence or otherwise) or which may otherwise be suffered or sustained in, upon or near any Products.
- 10.3 The Customer indemnifies and holds the Supplier harmless to the full extent permitted by law for any Loss whatsoever arising in connection with the supply of and use of the Products (and any Technical Drawings) by the Customer, including any breach of this Agreement.

11 Default and termination

- 11.1 Each of the following events is an Event of Default, namely:
- (a) if the Customer fails to pay any amount due and payable under this agreement on the due date for payment and such failure continues for more than 5 Business Days;
 - (b) the Customer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than 10 Business Days after notice from the Supplier requiring the Customer remedy the breach;
 - (c) the Customer sells or closes its Business or relocates the Products without written notice to the Supplier;
 - (d) the Customer suffers an Insolvency Event;
 - (e) where the Customer is a partnership it is dissolved, threatens or resolves to dissolve or is in jeopardy of dissolving; or
 - (f) the Customer being a natural person dies.
- 11.2 If an Event of Default occurs the Supplier may at its option:
- (a) suspend or withhold supply under this Agreement;
 - (b) by proceeding by appropriate court action, either at law or in equity, enforce performance by of the applicable terms and provisions of this Agreement or recover damages for the breach concerned; and / or
 - (c) terminate this Agreement and, the Customer's right to possession of the Products by notice in writing to the Customer. Upon service of such notice all of the Customer's rights to possess or use the Products, for which title remains with the Supplier, will terminate and the Supplier may, directly or by its agent, take possession of the Products. Any rights in respect of a Claim for Loss occasioned by the Supplier taking possession of the Products are expressly waived by the Customer.
- 11.3 Where the Supplier considers that an Event of Default constitutes a breach of a fundamental term of this Agreement, in addition to any other rights, the Supplier may give written notice to the Customer confirming that the Agreement has been repudiated by the Customer and the Supplier may pursue all remedies available to it in connection with such repudiation.
- 11.4 Without prejudice to the Supplier's right to pursue the Customer for Loss arising from a breach of this Agreement, upon the expiry of this Agreement or early termination under this clause 11 the Customer must immediately pay the Supplier all amounts owing under this Agreement.

- 11.5 The parties agree that the Supplier's rights to repossess the Products pursuant to this clause 11, ceases when the Customer has paid all monies owing to the Supplier under this Agreement.

12 Force Majeure

- 12.1 The Supplier will not be liable for any loss incurred as a result of delay or failure to observe any of these terms and conditions due to an event of Force Majeure. The Supplier's obligations under these terms and conditions will be suspended and will resume as soon as the cause of the Force Majeure has ceased to have effect.

13 Privacy

- 13.1 The Supplier may provide details of this Agreement to a credit reporting agency for the purpose of:
- (a) obtaining a credit report; and
 - (b) allowing the credit agency to maintain a file,
- in respect of the Customer and/or the Guarantors.
- 13.2 The Supplier will endeavor to take reasonable commercial steps to protect all personal information provided by the Customer in accordance with the Australian Privacy Principles of the *Privacy Act 1998* (Cth).

14 General

- 14.1 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.
- 14.2 The Agreement operates as a 'standing agreement' and each Accepted Order shall constitute a separate contract for supply of the Products between the parties and the Supplier may enforce its rights under this Agreement against an Accepted Order, multiple Accepted Orders or the Agreement as a whole.
- 14.3 Except as required by law, the Customer must not disclose to any person without the Supplier's prior written consent the existence of, or details in, the Agreement or any other information the Supplier gives the Customer.
- 14.4 Unless the parties enter into a new agreement, these Terms and Conditions will govern the future supply of Products to the Customer and each order constitutes a separate contract for the sale of the Products and the breach of any one such contract will be deemed a breach of the Agreement as a whole, and may be enforced jointly or severally at the Supplier's discretion.
- 14.5 If any provision of the Agreement is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these terms and conditions.
- 14.6 All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these terms and conditions does not prevent any other exercise of that right or the exercise of any other right.
- 14.7 Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- 14.8 Time is of the essence in respect of all amounts payable pursuant to these Terms and Conditions.
- 14.9 Clauses 1,6,7,9,10,14 and any indemnities survive termination or expiration of this Agreement.
- 14.10 The Agreement is governed by and is to be construed in accordance with the laws applicable Victoria, Australia.