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**Please email completed application to: [accounts@cedray.com.au](mailto:accounts@cedray.com.au)**

Date: \_\_\_\_\_

Account Name: \_\_\_\_\_

Registered Company Name: \_\_\_\_\_

A.B.N. \_\_\_\_\_

Postal Address: \_\_\_\_\_

Post Code: \_\_\_\_\_

Business/Delivery Address: \_\_\_\_\_

Phone No. \_\_\_\_\_ Email: \_\_\_\_\_

Director's/Proprietor's/Sole Trader's Name: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

Purchasing Officer: \_\_\_\_\_

Purchasing Officer Email: \_\_\_\_\_

Purchasing Officer Mobile No: \_\_\_\_\_

Accounts Payable Officer: \_\_\_\_\_

Accounts Payable Email: \_\_\_\_\_

Accounts Payable Mobile No: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

Year Business was Established: \_\_\_\_\_

References

- |          |              |
|----------|--------------|
| 1. _____ | Email: _____ |
| 2. _____ | Email: _____ |
| 3. _____ | Email: _____ |
| 4. _____ | Email: _____ |

I hereby allow Cedray Pty Ltd to obtain business references to enable this application to be processed.

Signed: \_\_\_\_\_ Position: \_\_\_\_\_

\_\_\_\_\_  
Please print Name of Person who completed the form:

**For Office Use Only**

Approved By:	Rep:	Account Number:
Opened By:		Price Code:
Final Advise sent to Customer:		Date:

# Terms and Conditions of Business

**Cedray Pty Ltd ACN 000 084 257 ("Cedray")**

Head Office: 81-83 Silverwater Road, Silverwater NSW 2128

Ph (02) 96485666 E [accounts@cedray.com.au](mailto:accounts@cedray.com.au) W [www.cedray.com.au](http://www.cedray.com.au)

## Glossary

### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any duties, fees, levies, expenses, taxes (including GST) and disbursements imposed by these Terms, including delivery and freight charges, transit insurance, cancellation fees, restocking fees, storage fees, merchant fees and dishonour fees and any other expenses that We incur in supplying Goods to You at amounts We advise from time-to-time.

**Credit Account** means the approved account You have with Us to purchase Goods on credit in accordance with these Terms.

**Customer** means any person, firm or company placing an order with Us for the purchase of Goods pursuant to these Terms, any Quote or Order (also referred to as "You" and "Your").

**Due Date** means the date listed on Our invoice for Your payment of Goods and any Additional Expenses.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

**Goods** means products, parts, equipment, merchandise and other goods supplied by Us to You pursuant to any Quote, Order and/or these Terms.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means an order for the purchase of Goods placed by You.

**PPS Law** means:

- (a) the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description and price of the Goods to be supplied by Us and valid for 30 days.

**Supplier** means the entity specified in these Terms as supplying Goods to You (also referred to as "Us", "We" and "Our").

**Website** means [www.cedray.com.au](http://www.cedray.com.au) as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods are being supplied;
- (b) a reference to writing includes email and any communication through Our Website;
- (c) a reference to these 'Terms' means these Terms and Conditions of Business;
- (d) a reference to a clause or paragraph is a reference to these Terms;
- (e) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

- (g) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (h) a reference to 'includes' or 'including' is not limiting and should be read as if the words 'but not limited to'; and
- (i) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

## Framework of these Terms

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of sale of all Goods supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document, including a Quote, Order or Invoice.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You acknowledge and agree that the signatory of these Terms jointly and severally entered into the Terms with the Customer.
- (c) You are deemed to have accepted these Terms by:
  - i) Signing and returning a copy of these Terms to Us; or
  - ii) Signing and returning an application for a Credit Account with Us; or
  - iii) Verbal acceptance; or
  - iv) Accepting a Quote from Us; or
  - v) Placing an Order with Us; or
  - vi) Paying Our Invoice for supply of Goods; or
  - vii) Other conduct that may reasonably be construed as acceptance of these Terms.
- (d) You engage Us to provide Goods strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) You agree that these Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of New South Wales applying the laws of that State.

### 3. CHANGES AND UPDATES TO THE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. We will provide You with 7 days' written notice of any updated or altered Terms and any updated or altered Terms will apply from expiry of the notice unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights stipulated by these Terms and We may choose not to accept any new Orders from You until You accept Our updated Terms.
- (b) Any updates, variations or changes that You request for the Terms or Goods are subject to Our consent (not unreasonably withheld) and will only apply if agreed to in writing by Our duly authorised officer.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of name, structure, status, trustee, partner, director, contact details, credit card or bank account details, or address. We may ask You for a new credit application, Terms or any personal guarantee in Your new entity name as restructured or

changed.

- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

## Ordering and Supplying

### 4. PRICES, QUOTATIONS AND ORDERS

- (a) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods to You. We may vary or cancel any Quote before an Order is accepted.
- (b) You may purchase Goods by placing an Order with Us. You warrant that the person who places the Order is authorised by You to do so.
- (c) Orders may be subject to minimum amounts as determined by Us in Our sole discretion from time-to-time.
- (d) We may vary or cancel any Quote before an Order is accepted, including the price of Goods.
- (e) We may accept or decline any Order by notifying You in writing or by supplying the Goods to You.
- (f) If You are a Customer who does not have a Credit Account, We will not be deemed to have accepted Your Order until payment in full has been made (by cash, EFT or cheque).
- (g) We may ask you to pay a deposit for an Order at any time and in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as directed by Us.
- (h) You may cancel an Order without penalty within 24 hours of placing the Order. You may cancel any other Order with Our prior written consent. Any Orders cancelled after 24 hours are subject to:
  - i) Cancellation fees at rates advised by Us from time to time; or
  - ii) Any expenses that We have incurred in fulfilling Your Order.
- (i) Prices of Goods specified on any of Our price lists or Quotes are applicable as at the date of despatch ex-warehouse and are subject to change from time to time with 7 days notice to You.
- (j) Unless the parties agree differently in writing, the price You must pay for Goods is the price specified in Our invoice including any Additional Expenses.

### 5. SUPPLY AND DELIVERY

- (a) Specifications for the Goods to be supplied under these Terms are contained in Your Orders as submitted from time-to-time.
- (b) We may make the Goods available for Your collection or deliver the Goods to You. Delivery may attract Additional Expenses and You agree to those Additional Expenses.
- (a) We may appoint a third party carrier to perform Our obligations of delivery under these Terms.
- (b) You authorise Us to deliver the Goods to the place nominated by You (or otherwise to the business address described in your account). You also authorise Us to leave Goods at this place whether or not any person is there to accept delivery.
- (c) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered.
- (d) You must provide a suitable and safe area for Us to deliver the Goods, including a site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
- (e) All delivery times indicated by Us are estimates only. Delivery times are subject to the Goods being available and subject to Our reasonable ability to make the delivery on that date. You agree that delivery of the Goods may be made in instalments. We will

endeavour to deliver Goods at the time you need, but if We fail to deliver Goods within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods.

- (f) You cannot refuse delivery of Goods that We have purchased on special or custom Order for You.
- (g) Delivery of Goods is deemed to occur (and Our obligation is thereby discharged) when the Goods are:
  - i) Handed to You or Your representative; or
  - ii) Delivered to Your nominated site; or
  - iii) Collected by You or Your representative, whichever occurs first.
- (h) If You do not collect the Goods by the nominated collection date, then We may deliver the Goods to any site You nominate or that appears on Your invoice for the Goods. We may also store the Goods or refuse to store the Goods if full payment has not been received from You.
- (i) You agree to inspect the Goods immediately on delivery.
- (j) You must pay all Additional Expenses We incur in relation to delivery, including delivery and freight charges, storage fees, permits and any other costs that We incur to deliver the Goods to You.
- (k) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

## How We Get Paid

### 6. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to purchase Goods.
- (b) We have no obligation to provide or continue providing credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (c) A Credit Account must only be used by You and it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.
- (d) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (e) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to reduce the surplus credit limit before accepting any further Orders.
- (f) You authorise Us to debit Your Credit Account with the price of Goods supplied to You and all other amounts owed by You (including Additional Expenses and interest payable under these Terms).
- (g) We may credit any payments received from You first against any interest charges and Additional Expenses. We may also set-off any credit amount that We owe to You against any debt You owe to Us.

### 7. PAYMENT

- (a) Unless the parties agree differently in writing, You must pay for Goods and all Additional Expenses by the Due Date.
- (b) All amounts payable are exclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods made under these Terms at the same time as payment for the Goods.
- (c) If You believe You have a set-off claim against Us, You cannot withhold payment of any invoice on that basis without Our prior written consent.
- (d) Payment must be made in a manner approved by Us. Certain payment methods may attract Additional Expenses and You agree to those Additional Expenses, including surcharges, payment processing fees, dishonour fees and other costs at amounts advised by us from time to time.
- (e) If You do not pay for Goods by the Due Date, in addition to any other remedies we have, We may:

- i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
- ii) Require You to pay cash on delivery of any further Goods;
- iii) Suspend any further deliveries of Goods or cease supplying Goods to You;
- iv) Demand Your immediate payment of all outstanding amounts;
- v) Retain any amounts paid by You; and
- vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- vii) Time is of the essence in relation payment and this section survives expiry or termination of these Terms.
- (f) Time is of the essence in relation payment and this section survives expiry or termination of these Terms.

## How We Manage Risk and Secure Payment

### 8. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in the Goods passes to You when the Goods are collected by You (or Your agent, representative or nominated carrier) or despatched from Our premises (whether by Us or a third party delivery agent).
- (b) Legal ownership of any Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (c) Until legal ownership of the Goods passes to You, You hold the Goods for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (d) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of payments received for Goods.
- (e) If You do not pay for any Goods by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.
- (f) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.

### 9. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the Goods, You:
  - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("Charge"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
  - ii) Authorise and consent to Us taking all actions necessary to give

- effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
- iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
- iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

### 10. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("Security Agreement") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods ("Security Interest").
- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("PPSR") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("PMSI"), pursuant to these Terms.

#### Assurances

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - 1. Attaches to the collateral that is intended to be covered by that Security Interest; and
    - 2. Is enforceable, perfected and otherwise effective; and
    - 3. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI under the PPSA; and
  - iv) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Goods of at least equal to the market value of the Goods; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is



not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### **Exclusion of Notices and Other Obligations**

- (h) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (i) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured part or a receiver exercises a right, power or remedy.
- (j) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

#### **Provision of Information**

- (k) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (l) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (m) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (n) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### **Other**

- (o) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (p) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

### **What Is Excluded, Limited and Indemnified**

#### **11. WARRANTIES AND EXCLUSIONS**

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law as amended from time to time ("the Act")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies, restricts or excludes the conditions, warranties, and undertakings and other legal rights under the Act and any other law applicable to the supply of Goods which cannot be modified, restricted or excluded.
- (b) Except as expressly set out in the Act or Our separate warranty terms and conditions, We make no warranties, guarantees or other representations in connection with Goods supplied under these Terms.

- (c) To the extent permitted by law, all other implied conditions and warranties are excluded, including:
  - i) all conditions and warranties as to the quality, merchantability of fitness for purpose of the Goods (whether express or implied and even if a particular purpose is made known to Us);
  - ii) No sale under these Terms constitutes a sale by sample or description. You acknowledge that a sample Good may vary from the Goods supplied and that any description of Goods is for identification purposes only;
  - iii) Particulars in leaflets, catalogues, drawings, brochures and other printed documents are illustrations only and form no part of the contract between You and Us and are not binding on us; and
  - iv) You are responsible for ensuring that the Goods are suitable for Your intended use. You agree that You have not relied on any inducement, representation or statement made by Us or on Our behalf in purchasing the Goods.

#### **12. LIMITATION OF OUR LIABILITY**

- (a) To the extent permitted by law, We may limit Our liability to You pursuant to these Terms by Our choice of:
  - i) re-supplying the Goods; or
  - ii) repairing the Goods; or
  - iii) paying the cost to repair the Goods; or
  - iv) refunding some or all of the invoice value paid by You for the Goods.
- (b) To the extent permitted by law, Our liability to You (including but not limited to Our breach of these terms, tort law or negligence) will not exceed the price of the Goods that We have supplied to You, except for the following types of Loss:
  - i) Personal injury (including sickness and death);
  - ii) Breach of privacy legislation;
  - iii) Breach of intellectual property rights;
  - iv) Breach of confidentiality;
  - v) Statutory liability that cannot be contracted out of;
  - vi) Property damage that is not covered by insurance.
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You for Loss in relation to the Goods if:-
  - i) The Goods have not been paid for;
  - ii) The Goods have been abused, misused or neglected by you;
  - iii) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
  - iv) The Goods have been incorrectly repaired, altered or modified;
  - v) The Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress; or
  - vi) Any Loss is the result of Your failure to assemble, use, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards.
- (e) Neither party will be liable for a breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include or affect Your obligation to pay for Goods supplied.

#### **13. INDEMNITIES**

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms, third party claims against Us and any claim made by You against Us.
- (b) Specifically, You must indemnify Us (or Our agents, employees or contractors) for and against:
  - i) Costs which We incur as a result of any breach, act or omission by You under these Terms, including legal or mercantile agent

fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and any action taken to secure any charge;

- ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with a Credit Account and supply of Goods;
  - iii) Any costs that We incur as a result of You cancelling Your Order after 24 hours, including Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any Loss arising out of Your failure to provide a safe, suitable and compliant Site for Us to supply and deliver the Goods (including delivering the Goods to an unattended site, Your failure to provide a suitable, safe and OHS compliant delivery site, Loss suffered as a result of third party carriers nominated by You, and property damage or personal injury caused by delivering or unloading the Goods);
  - vi) Any damage to the Goods that occurs between the time that risk in the Goods passes to You and the time that the full price of the Goods is paid by You to Us.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.
- (d) This indemnity does not apply to Loss which is directly caused by Our breach of these Terms or Our negligence.

### Dealing with Issues that Might Arise

#### 14. RETURNS

- (a) Unless We agree differently in writing, We are not required to accept returned Goods from You or provide You with a credit.
- (b) You may request a return of Goods in the following situations:
- i) You have received the incorrect product type or Order quantity due to an error by Us;
  - ii) The Goods are damaged or faulty at the time of delivery of the Goods.
- (c) If We agree to accept Goods by return, You must provide Your proof of purchase for the Goods being returned.
- (d) If You think any Goods supplied are defective, damaged, missing or misdelivered, You must:
- i) Notify Us in writing within 7 days of delivery and/or collection of those Goods; and
  - ii) Take all steps necessary to mitigate any Loss arising from any defect in the Goods supplied. You will be deemed to accept the Goods (including any responsibility for any defects) if You do not notify Us in accordance with these Terms.
- (e) All notifications under this section must be accompanied by:-
- i) Proof of purchase;
  - ii) Written details of the alleged defect including photographs;
  - iii) Appropriate documentation (such as installation and maintenance records); and
  - iv) You must allow Us or Our authorised representatives access to the Goods or Site for inspection.
- (f) We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned. You are responsible for any Additional Expenses associated with any return of Goods.
- (g) Goods cannot be returned in the following situations:
- i) Goods which are not in original or resaleable condition;
  - ii) Goods which have been subject to Your incorrect handling, storage or other environmental requirements;
  - iii) Any error in ordering by You, including incorrect product selection and Goods which You have over ordered;
  - iv) Goods which have already been on-sold.
- (h) If You incorrectly return Goods to Us, We will not return them to You unless by special arrangement and at Your risk and cost.

#### 15. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Goods or these Terms, then the parties must follow this dispute resolution procedure:
- i) The disputing party must give the other party written notification of the dispute;
  - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
    - 1. Refer the dispute to its respective senior management;
    - 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. Any ADC mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either 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 section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. 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.

#### 16. TERMINATION

- (a) By giving You written notice, We can:
- i) Suspend or cancel supply of Goods (including or any current Order);
  - ii) Suspend or terminate Your Credit Account, if You have one;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default with any credit reporting agency, where applicable;
  - v) Enforce Our rights under any Security Interest;
  - vi) Suspend or terminate the contract created by these Terms (collectively '**Our Termination Rights**')
- (b) We can exercise Our Termination Rights immediately when:
- i) You have not paid Our invoice by the Due Date;
  - iii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PSFA;
  - iv) You engage in illegal activity related to the Goods;
  - v) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
  - vi) An Insolvency Event occurs.
- (g) Otherwise, either party may terminate these Terms:
- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 3 days of the written notice; or

- ii) In all other circumstances, by giving the other party 14 days' written notice.
- (h) When these Terms are terminated:
  - i) We may exercise Our repossession rights for all unpaid Goods provided by these Terms;
  - ii) Either party may pursue any additional or alternative remedies provided by law.

## General Information

### 17. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Credit Account, these Terms or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

### 18. PRIVACY

- (a) We may collect Your personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with the Privacy Policy displayed on Our Website, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles.

### 19. ELECTRONIC COMMUNICATIONS

- (a) All communications between the parties (including purchase orders) must be in writing. In addition to any other delivery method, You agree to communicate and receive invoices by e-mail.
- (b) You agree that e-mail communications between the parties constitute an "electronic communication" within the meaning of the *Electronic Transactions Act 2000* (NSW) ("the Act")
- (c) You agree that the receipt and service of notices via e-mail is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (d) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Version: November 2023