

# TRADING TERMS AND CONDITIONS (ONLINE ORDERS/CASH ACCOUNTS)

(version 24 April 2017)

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise, the following words and phrases have the following meanings:

<b>Agreement</b>	means these Trading Terms and Conditions;
<b>Goods</b>	means all goods described on the Supplier's website or other publications, or otherwise offered for sale by the Supplier, from time to time;
<b>Confidential Information</b>	means all information (regardless of how the information is stored or delivered): (a) designated by a party, either orally or in writing, as confidential to that party or to a third party to whom that party owes an obligation of confidentiality; (b) disclosed or made available by a party which relates to that party's business, financial affairs, systems, products, developments, trade secrets, know-how, personnel, customers, clients and suppliers; (c) which given the circumstances of disclosure, would reasonably be regarded as confidential information of the party disclosing it or imparting a duty of confidence on the part of the recipient; and (d) derived or produced partly or wholly from information set out in paragraphs (a) to (c) above, whether that information is: (e) directly or indirectly disclosed or made available by or on behalf of a party to the other party; or (f) obtained or discovered by that other party in the course of performing their obligations under this Agreement, before, on or after the effective date of this Agreement or the effective date of an order; and
<b>Representatives</b>	means affiliates, employees, agents, officers, directors, auditors, advisors, partners, consultants, joint venturers or sub-contractors.

1.2 Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- (a) the **singular** includes the plural and vice versa;
- (b) where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a **party** to this Agreement includes the party's successors and permitted assigns;
- (d) a reference to a **person** includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (e) a reference to a **part, clause, annexure, exhibit, appendix** or **schedule** is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to this Agreement and a reference to this Agreement includes any annexure, exhibit, appendix and schedule;
- (f) a reference to a **right** or **obligation** of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (g) a reference to any **legislation** or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (h) specifying anything in this Agreement after the words **including, includes** or **for example** or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (i) no **rule of construction** applies to the disadvantage of a party because that party was responsible for the preparation of this document; and
- (j) a reference to **any thing** (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them.

## 2. STRUCTURE OF AGREEMENT

- 2.1 The Supplier must supply the Goods to the Customer and the Customer must purchase the Goods in accordance with each order submitted by the Customer which is accepted by the Supplier in accordance with this Agreement. Each order submitted by the Customer and accepted by the Supplier incorporates the terms of this Agreement by reference and forms a binding contract between the Customer and the Supplier.
- 2.2 In the event of a conflict between the terms of this Agreement and an order, the terms of this Agreement prevail. In the event of a conflict between the terms of this Agreement and any other terms of trade set out in any document of the Customer or elsewhere, the terms of this Agreement prevail.

## 3. SUPPLY OF GOODS

### *Order and Acceptance*

- 3.1 The Customer must submit orders for Goods to the Supplier in writing using the Supplier's standard order form (unless otherwise agreed) through the Suppliers' website using the online order process, or by facsimile or email. Orders must be submitted by authorised representatives of the Customer only.
- 3.2 Each order is deemed to be a separate offer by the Customer to purchase the Goods on the terms of this Agreement which the Supplier is free to accept or decline at its absolute discretion. The acceptance of each order by the Supplier is subject to availability of the Goods at that time.
- 3.3 The Supplier must notify the Customer of the Supplier's acceptance or rejection of an order for Goods in writing through the Suppliers' website during the online order process, or by facsimile or email.
- 3.4 The Customer may amend or cancel an order only:
  - (a) prior to the Supplier accepting that order; or

(b) if the order has been accepted by the Supplier, with the written consent of the Supplier.

3.5 Nothing in this Agreement requires the Supplier to give the Customer any right of priority over the Supplier's other distributors or customers.

#### ***Delivery***

3.6 The Supplier must use all reasonable endeavours to deliver each order of Goods to the Customer. All dates for delivery of Goods are given by the Supplier in good faith but are estimates only and the Supplier is not liable for any failure to deliver the Goods to the Customer on those dates. Delays in delivery of Goods do not entitle the Customer to cancel the order or refuse to take delivery of the order. The Supplier reserves the right to make partial shipments or deliveries of parts of an order. The Supplier may choose the method of delivery of the Goods in its absolute discretion.

3.7 The Supplier excludes all liability for any failure or delay in delivering Goods to the Customer to the extent that the failure or delay is caused by the Customer's failure to comply with its obligations under this Agreement.

3.8 If the Customer fails to take delivery of Goods on the date for delivery notified to the Customer or specified in the order for those Goods, delivery of the Goods is deemed to have been completed at 9.00am on the date for delivery notified or specified in the order.

#### ***Title and Risk***

3.9 Title and risk in the Goods passes from the Supplier to the Customer upon delivery to the Customer.

#### ***Inspection and Defective Goods***

3.10 The Customer must inspect all Goods upon delivery and notify the Supplier of any missing, damaged or defective Goods:

- (a) where the defect in the Goods is apparent on normal visual inspection, immediately upon delivery; or
- (b) where the defect in the Goods is latent, within a reasonable time of that latent defect becoming apparent.

Any notice given by the Customer to the Supplier under this clause 3.10 must include photographs of the delivered Goods showing where the Goods are missing, damaged or defective together with Goods identification information including the order number and invoice number.

3.11 To the maximum extent permissible by law, if the Customer fails to notify the Supplier of any missing, damaged or defective Goods under clause 3.10, the Customer is deemed to have accepted the Goods and the Supplier is not liable to the Customer for those missing, damaged or defective Goods.

3.12 Subject to clause 3.13, if the Customer has notified the Supplier under clause 3.10, the Supplier's liability in respect of any missing, damaged or defective Goods is limited, at the choice of the Supplier, to repayment of the price paid by the Customer for those Goods, the repair of the Goods, or the replacement of the Goods.

3.13 To the maximum extent permissible by law, the Supplier excludes all liability for any damaged or defective Goods where:

- (a) the Customer makes any further use of those Goods after giving notice in accordance with clause 3.10;
- (b) the damage or defect arose as a result of the Customer failure to follow the Supplier's oral or written instructions as to the storage, handling, and use of the Goods or (if there are none) good trade practice regarding the same;
- (c) the damage or defect arose as a result of the Supplier following any logistics requirements or other requirements supplied by the Customer;
- (d) the Customer alters or repairs the Goods without the prior written consent of the Supplier;
- (e) the damage or defect arose as a result of the Customer's wilful damage or negligence; or
- (f) the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

#### ***Return of Goods***

3.14 If the Supplier has agreed to the return of damaged or defective Goods under clause 3.12 or for any other reason, the Customer must obtain an authorisation number from the Supplier and return the Goods to the Supplier by the method of transport as directed by the Supplier.

3.15 If the Supplier has agreed to the return of damaged or defective Goods under clause 3.12 and the Customer has complied with clause 3.14, the costs of return must be paid for by the Supplier. If the parties have agreed to the return of Goods for any other reason, the costs of return must be paid for by the Customer and the Supplier reserves the right to charge the Customer a fee for re-stocking the returned Goods.

3.16 If the Supplier has agreed to the return of damaged or defective Goods under clause 3.12 and the Customer has complied with clause 3.14, the costs of return must be paid for by the Supplier.

## **4. PRICES AND PAYMENT**

#### ***Price***

4.1 The prices for Goods and other charges to be paid by the Customer for the supply of Goods are set out in the Supplier's website or other publications. All prices may change from time to time without notice at the Supplier's discretion. Prices and other charges are confirmed in accepted orders for the Goods. Unless stated otherwise, all prices and other charges are stated exclusive of GST or any other taxes, levies, or charges (if any) payable. If payable, the Supplier will be entitled to add on GST and any other taxes, levies, or charges to its invoices.

#### ***Invoice***

4.2 The Supplier must provide the Customer with a tax invoice in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) in relation to any charges payable. Each invoice will include the payments made, description of Goods to be provided, relevant order numbers and dates, and the ABN of the Supplier. If the Customer reasonably requests, the Supplier must provide explanations or further information regarding any invoice delivered by the Supplier.

#### ***Payment***

4.3 The Customer must make all payments in clear funds during the online order process using the payment methods specified on the Supplier's website. Payments made using credit cards may incur a surcharge which may vary from time to time.

4.4 If payment cannot be processed for any reason, the Supplier may reject the order and must notify the Customer of this rejection.

## 5. TERM AND TERMINATION

- 5.1 This Agreement and any accepted orders for the supply of Goods may be terminated immediately by the Supplier:
- (a) at any time by giving written notice to the Customer;
  - (b) by written notice to the Customer where the Customer has materially breached this Agreement and where the Customer has failed to remedy that breach within 14 days of the date of service of a written notice from the Supplier specifying the breach and requiring that it be remedied; and
  - (c) by written notice to the Customer where the Customer has materially breached this Agreement and that breach is incapable of remedy.
- 5.2 Despite clause 5.1, any rights of the parties accrued prior to expiry or termination of this Agreement and clauses 3.9 (Title and risk), 4 (Prices and payment), 5.2 (Termination), 6 (Liability), 7 (Warranties), 8 (Confidentiality), 9 (Privacy), and 12 (General) survive expiry or termination of this Agreement for any cause.

## 6. LIABILITY

- 6.1 The Customer expressly agrees that use of the Goods is at the Customer's risk. To the fullest extent permissible by law, the Supplier's liability for breach of any term implied into this Agreement by any law is excluded.
- 6.2 All information, specifications and samples provided by the Supplier in relation to the Goods are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- 6.3 To the fullest extent permissible by law and subject to any statutory right which cannot be excluded, the Supplier gives no warranty in relation to the Goods provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods supplied to the Customer;
  - (b) any delay in supply of the Goods; or
  - (c) any failure to supply the Goods.
- 6.4 Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) suffered as a result of the Customer's reliance on that advice, recommendation, information, assistance or service.
- 6.5 To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- 6.6 If any Goods supplied under this Agreement are supplied to the customer as a "consumer" of goods or services within the meaning of that term in the Australian Consumer Law or relevant state legislation, the Customer will have the benefit of certain non-excludable rights and remedies in respect of the Goods. Nothing in this Agreement excludes or restricts or modifies any guarantee, condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred. Where liability for breach of any guarantee, condition, warranty, or right can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods.
- 6.7 The Customer indemnifies the Supplier on a continuing basis and on a full indemnity basis from and against any liability, loss, expense or demand for or arising from any false, misleading, deceptive or misdescriptive representation or statement made by the Customer in respect of the Goods to any person.

## 7. WARRANTIES

- 7.1 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and to perform this Agreement.
- 7.2 If the Customer is a partnership, the Customer warrant and represents that all partners have executed this Agreement.

## 8. CONFIDENTIALITY

- 8.1 No Confidential Information disclosed by one party (**Disclosing Party**) to the other party (**Recipient Party**) may be disclosed by the Receiving Party to any person except:
- (a) Representatives of the Receiving Party requiring the Confidential Information for the performance of obligations under this Agreement or the exercise of its rights under this Agreement if:
    - (i) the Recipient Party has made those Representatives aware of the terms upon which the Confidential Information has been disclosed by the Disclosing Party to the Recipient Party; and
    - (ii) those Representatives have agreed to confidentiality obligations at least as restrictive as those set out in this Agreement;
  - (b) with the prior written consent of the Disclosing Party which consent may be given or withheld in its absolute discretion;
  - (c) if the Receiving Party is required to do so by law, regulatory authority or stock exchange; or
  - (d) if the Receiving Party is required to do so in connection with legal proceedings relating to this Agreement.
- 8.2 No Confidential Information of the Disclosing Party may be used by the Receiving Party for any purpose other than the performance of obligations under this Agreement or the exercise of its rights under this Agreement.
- 8.3 The Receiving Party must take all reasonable steps to:
- (a) protect the Confidential Information and keep it secure from theft, loss, damage or unauthorised access or alteration; and
  - (b) cooperate and assist the Disclosing Party in any action it takes to protect the Confidential Information.

- 8.4 The Receiving Party must inform the Disclosing Party immediately if it becomes aware or suspects there has been a breach of the obligations of this clause 8 (Confidentiality) or unauthorised disclosure of the Confidential Information by the Receiving Party or any of its Representatives.
- 8.5 Clauses 8.1, 8.2 and 8.3 do not apply to Confidential Information which:
- (a) is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Disclosing Party;
  - (b) the Receiving Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Disclosing Party (unless that knowledge arose from disclosure of information in breach of an obligation of confidence);
  - (c) the Receiving Party acquires from a source other than the Disclosing Party, Representatives of the Disclosing Party where that source is entitled to disclose it; or
  - (d) is independently developed by any Representative of the Receiving Party, or partner, consultant, licensee, sublicensee, joint venturer of the Receiving Party, who had no access to the Confidential Information and where the independent development can be proven by contemporaneous written documentation.
- 8.6 The Receiving Party must destroy or return to the Disclosing Party all documents or other materials containing or referring to the Confidential Information which are in the Recipient Party's possession, power or control or in the possession, power or control of persons who have received Confidential Information from it upon the termination of this Agreement or at any time if requested to do so by the Disclosing Party.
- 8.7 The Disclosing Party makes no express or implied representation or warranty as to the accuracy, completeness or utility of its Confidential Information. All Confidential Information remains the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. This Agreement does not grant from the Disclosing Party to the Receiving Party any licence or other rights with respect to the Confidential Information of the Disclosing Party other than those expressly stated in this Agreement.

## 9. PRIVACY

- 9.1 The Supplier must comply at all times with the provisions of the applicable privacy laws including any relevant subordinate legislation, directions, guidelines, and determinations or recommendations of the Information Commissioner (Privacy Laws) in connection with the performance of its obligations under this Agreement. The Supplier will only collect, use, store, transfer, delete, disclose or otherwise process "personal information" and "sensitive information" each as defined in the Privacy Laws (Personal Information) in accordance with the instructions of the Customer and as reasonably required in connection with the performance of the Supplier's obligations under this Agreement.
- 9.2 The Supplier must not disclose Personal Information to any third parties other than to the Supplier's Representatives to whom such disclosure is reasonably necessary in order for the Supplier to carry out its obligations under this Agreement, at the specific request of the Customer, or to the extent required by law or under a court order.

## 10. NOTICES

- 10.1 A notice or other communication including a request, demand, consent or approval to be made or given to or by a party to this Agreement:
- (a) must be in writing unless expressly specified otherwise;
  - (b) must be signed by an authorised officer of the party giving or making it, or (on its behalf) by any solicitor, director, secretary or authorised agent of that party;
  - (c) must be delivered by hand (including courier delivery), posted by prepaid post, sent by facsimile, or sent by email, to the address, facsimile number or email address (as the case may be) of the addressee set out in this Agreement, or as otherwise notified by that party to the other parties from time to time; and
    - (i) is deemed to be duly given or made:
    - (ii) if delivered by hand, on delivery;
    - (iii) if by prepaid posted letter, on the third (or fifth, if posted to or from a place outside Australia) business day after posting;
    - (iv) if by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
    - (v) if by email, on sending (unless the sender's computer reports that the message has not been delivered),  
but, if notice is received on a day other than a business day or later than 5.00 pm (local time) in the place of receipt, it will be deemed to have been delivered at 9.00 am on the next succeeding business day in that place.

## 11. FORCE MAJEURE

- 11.1 If any party is unable to carry out its obligations under this Agreement by reason of any act of God, strike, lockout, or other industrial disturbance, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, earthquake, explosion, governmental restraint, or any other event whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of a party relying on that event (**Force Majeure Event**), that party must give the other party prompt written notice of the Force Majeure Event with reasonably full particulars concerning it.
- 11.2 After a party has given notice of a Force Majeure Event, the obligations of that party, so far as they are affected by the Force Majeure Event, are suspended during the continuance of the Force Majeure Event and neither party is liable for any delay or failure to perform its obligations under this Agreement if the delay or failure is due to a Force Majeure Event.
- 11.3 As soon as practicable following such notification, the parties will consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement or the Order. An affected party must use its best efforts to remove the Force Majeure Event as quickly as possible.

## 12. GENERAL

- 12.1 This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party will have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 12.2 The Customer must not issue or make any public announcement or disclose any information regarding the subject matter of this Agreement or its existence without the prior written approval of the Supplier unless it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

- 12.3 The Customer must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the Supplier's prior written consent, which consent may be granted or withheld in its absolute discretion.
- 12.4 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. This will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of the provision in any other jurisdiction.
- 12.5 Waiver of a breach or of any right of election arising from a breach of this Agreement must be in writing and signed by the party granting the waiver. A breach or any right of election arising from a breach of this Agreement is not waived by any failure to or delay in the exercise, or partial exercise, of that right of election or any other right.
- 12.6 Any variation of this Agreement or an order must be in writing and signed by the parties.
- 12.7 Each party must take all steps, execute all documents and do everything reasonably required by any other party to give effect to the transactions contemplated by this Agreement.
- 12.8 This Agreement and all orders agreed by the parties contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to the subject matter.
- 12.9 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement.
- 12.10 Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Agreement and other ancillary documents. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and anything done or to be done under this Agreement must be paid by the Customer.
- 12.11 This Agreement and all orders are governed by the laws of Queensland and both parties submit to the exclusive jurisdiction of the courts of that State.