

## **TERMS AND CONDITIONS OF TRADING**

### **1. General**

These terms and conditions shall apply to the exclusion of all others including any Terms and Conditions of the Customer (whether on the Customer's order form or otherwise). No goods or services will be supplied by the Seller on any terms or conditions other than those set out herein and by taking delivery of the goods the Customer shall be deemed to agree to these Terms and Conditions. For the purposes of these Terms and Conditions Seller shall mean and include the party named and include the party to whom goods and services are sold and or in whose name an Account is maintained by the Seller.

### **2. Payment**

The Customer agrees to comply with the trading terms of the Seller and payment for goods or services shall be made by the Customer to the Seller thirty (30) days from the date of the statement. It is agreed that if the Customer does not make payment within the period specified herein then the Seller shall have the right to impose a default charge of 0.06% per day to any amount outstanding for more than thirty (30) days from the date of the statement.

### **3. Claims**

- a) The Customer will be deemed to have accepted the goods as being in accordance with its order unless it notifies the Seller in writing of its claim within 7 days of receipt of the goods.
- b) No return of allegedly defective or faulty goods will be accepted by the Seller unless the Seller has given prior written authorisation for the return.

### **4. Warranty**

All warranties whether expressed or implied and whether statutory or otherwise with regard to the goods supplied by the Seller as to quality, fitness for purpose or any other matter are hereby excluded insofar as any such warranties are incapable of exclusion at law.

### **5. Freight Costs**

The Seller shall not be liable for freight costs on goods returned to it by the Customer.

### **6. Costs**

Should payment remain outstanding beyond the Seller's payment terms as outlined in Clause 2, the Customer is liable for all costs including legal costs (on a solicitor/own client basis) and mercantile agents fees incurred by the Seller in recovering the amount outstanding.

### **7. Change of Ownership**

The Customer agrees to notify the Seller in writing of any change of ownership of the customer within 7 days from the date of such change and indemnifies the Seller any loss or damage incurred by it as a result of the Customer's failure to notify the Seller of any change.

### **8. Cancellation**

Orders placed with the Seller cannot be cancelled without the written approval of the Seller. In the event that the Seller accepts the cancellation of any order placed with it shall be entitled to charge a reasonable fee for any work done on behalf of the Seller to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

### **9. Lien**

The Customer hereby acknowledges that the Seller has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.

### **10. Title to Goods**

- a) Notwithstanding anything to the contrary express or implied, property in the goods shall remain with the Seller and shall not pass to the Customer until the Seller has received payment in full for the goods and the Customer has discharged in full all its accounts with the Seller.
- b) If payment is made by the customer by way of cheque ownership shall not pass to the Customer until the cheque has been honoured.
- c) Until the goods are paid for in full the Customer shall hold the goods as a Trustee for the Seller.
- d) In the event that the Customer fails to pay the Seller for the goods by the due date required for payment under the Seller's terms of trade, the Customer (without prejudice to the Seller's rights as an unpaid Seller or any of its other rights and remedies to retake possession of the Seller's goods from the Purchaser) hereby agrees to deliver up the goods to the Seller upon demand by the Seller and consents to the Seller retaking possession of the goods which remain unpaid.
- e) The parties acknowledge that by supplying or accepting goods on the terms herein specified, it is not intended to create a charge, mortgage or other security interest over any of the goods supplied.

### **11. Power to Sell Goods**

Nothing herein contained shall prevent the Customer from selling the goods to any third party provided that the proceeds of any such sale shall be held in trust by the Customer for the Seller has received payment in full for the goods.

### **12. Certificate**

A Certificate signed by an officer of the Seller will be prima facie evidence of the Customer's liability to the Seller at the date of the Certificate.

### **13. Jurisdiction**

The proper law of all contracts arising between the Seller and the Customer is the law of the State of New South Wales and the parties agree that all claims and disputes relating to the goods sold shall be determined in the Court of competent jurisdiction nearest Sydney.