

Key Terms

This Agreement is between the supplier (referred to as *we, our or us*) and the customer (referred to as *you or your*) and consists of these Key Terms and the General Conditions.

Payment terms

- As per invoice

Annual interest rate on late payments

- 15% per annum

Period for returning obviously defective goods

- 7 days after delivery

Jurisdiction and governing law

- Victoria, Australia

General Conditions

1. Effect of this Agreement

The Agreement applies in relation to any goods we sell you even if it is not signed and it overrides any inconsistent terms or conditions in any purchase orders or other documents you use (unless we specifically sign a document agreeing otherwise).

2. Quotations

Prices and other details in any quotation, pro forma invoice or other document that we provide are only valid for 30 days or such other limited time period as stated in the document.

3. Orders

You acknowledge that once you place an order with us, we may order or manufacture goods especially for you and we may not permit you to vary or cancel the order unless you compensate us for the losses we incur or we otherwise consent.

4. GST

Unless otherwise stated, the prices for the goods are exclusive of Goods and Services Tax (GST). You must pay GST at the same time and in the same manner as the consideration for the goods. We will give you a tax invoice showing the applicable GST.

5. Delivery

We will use reasonable endeavours to deliver the goods to the delivery point and on the date requested in your order. However, we will not be liable for any losses you, or any other party, suffer as a result of a delay or failure to deliver the goods.

6. Risk in the goods

Risk in the goods will pass to you when you take possession of them.

7. Return of obviously defective goods

You must inspect the goods on delivery and may return them as defective if they:

- are not of *acceptable quality* (as defined in the Australian Consumer Law); or
- do not conform to an agreed specification.

The *period for returning obviously defective goods* is set out in the Key Terms. If you fail to return the goods (or notify us of any shortfall in the quantity delivered) within this period, you must pay for them in full despite any shortfall or defects (other than non-obvious or latent defects that you could not be

reasonably expected to have identified within the time period).

We will cover the charges for returning the goods if we accept that they are defective.

8. Payment terms

You must pay us for the goods on the *payment terms* in the Key Terms.

9. Interest on late payments

If you fail to pay us strictly within the *payment terms*, then you must pay the *annual interest rate on late payments* in the Key Terms. The interest will be calculated daily on the amount outstanding.

10. Title and our security interest

Although you will assume the risk in the goods when you take possession, until you pay for them:

- we will retain ownership and title;
- you hold them on our behalf as fiduciary bailee; and

However, you may dispose of the goods in the ordinary course of business on the basis that you will be taken to hold the proceeds of sale or trade on trust for us until you pay for them.

11. Personal Property Securities Act (PPSA)

You acknowledge that under the Personal Property Securities Act 2009 Cth (*PPSA*):

- this Agreement constitutes a security agreement;
- you grant us a purchase money security interest in the goods and any proceeds; and
- we may register a financing statement on the Personal Property Securities Register (*PPSR*),

You agree to provide information and do anything we reasonably require for us to register, maintain and enforce our security interest.

12. Provision of information under PPSA not required

You waive the requirement to provide information under various provisions of the PPSA. In particular, you agree that as provided for in:

- section 157 – we are not required to give you a verification statement;
- section 144 – we are not required to give you notices under section 95, 118, 121, 130, 132 and 135; and
- section 275 – we are not required to provide interested persons with information relating to our security interest and neither are you.

13. Terms defined in the PPSA

Terms defined in the PPSA (including *purchase money security interest, verification statement, proceeds* and various other terms) have the same meaning when used in this Agreement.

14. Enforcement expenses

You must pay any reasonable expenses (including legal fees) we incur to enforce our rights under this Agreement.

15. Our warranties

We warrant that the goods we deliver will:

- match the description in the invoice and any agreed specification;
- be free of third-party claims or undisclosed securities; and
- be of *acceptable quality* as defined in the Australian Consumer Law.

16. Limitation of liability

We limit our liability in relation to the sale of goods to you as follows:

- apart from the warranties in this Agreement or any express guarantees, we exclude all warranties and guarantees (whether written or oral);
- our liability for any claims (whether for negligence, breach of contract or statute) is limited at our option to either:
 - (i) replacing the goods or supplying equivalent goods; or
 - (ii) repairing of the goods; or
 - (iii) paying you the cost of having the goods replaced or repaired; and
- we are not liable for any indirect, incidental, special and/or consequential losses, liability, costs or damages; any loss of business opportunity, production, profits or savings; or any reasonably foreseeable losses.

However, this limitation of liability does not apply if it would restrict, modify or exclude your rights in a way that is not permitted under the Australian Consumer Law or other applicable laws.

17. Variations

We may vary this Agreement by giving you written notice at any time. The variation will only affect future orders.

18. Jurisdiction and governing law

The *jurisdiction and governing law* in the Key Terms apply to this Agreement. The courts of the jurisdiction are entitled, non-exclusively, to resolve disputes about this Agreement.