

TERMS AND CONDITIONS
S-JADE Pty Ltd Trading As Ezymore
ABN 52 604 635 850

1. Background

These terms and conditions apply to each contract for the supply of goods or services as more specifically particularised in those contracts (**Goods**) by or on behalf of S-JADE Pty Ltd Trading As Ezymore ABN 52 604 635 850 of 12-16 FERNDILL ST, SOUTH GRANVILLE NSW 2142 (**Ezymore**) to any customer (which for the purposes of these terms and conditions includes a customer's directors, officers, employees, contractors, sub-contractors and agents) (**Customer**).

2. Interpretation

2.1 In these terms and conditions, except where the context otherwise requires:

- (a) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (b) a rule of construction does not apply to the disadvantage of a party because that party was responsible for the preparation of these terms and conditions or any part of it;
- (c) a reference to '\$' is to Australian currency; and
- (d) the singular includes the plural and vice versa.

3. Terms and conditions

3.1 A contract for the supply and purchase of Goods (**Contract**) will be formed, on these terms and conditions, immediately when Ezymore accepts an order from a Customer for Ezymore to provide Goods (**Order**).

3.2 Ezymore will be taken to accept an Order, on these terms and conditions, only when Ezymore confirms the Order by:

- (a) commencing any action required to supply the Goods; or
- (b) providing written or verbal notification to the Customer that Ezymore has accepted that Order.

3.3 If a Customer makes an offer by way of an Order or otherwise, and that offer is made on terms other than these terms and conditions, unless Ezymore expressly says otherwise, acceptance of that offer is only on these terms and conditions and not otherwise.

4. Risk and Ownership of, and Title to, Goods

4.1 No Order or Contract includes any term, condition, warranty, representation or undertaking as to a date for Completion (as defined below) or other delivery date. Any indication by Ezymore of an expected date for Completion or delivery does not create any binding term or representation and may not be relied upon by a Customer.

4.2 The Customer assumes the risk of loss or damage to Goods from the time at which completion of the Goods occurs (**Completion**), which will occur on the earliest of the following events:

- (a) if the Goods are to be collected by or on behalf of the Customer, Ezymore notifying the Customer that the Goods are available for collection; or
- (b) if Ezymore has agreed to arrange for collection of the Goods on behalf of the Customer, completion of the loading of those Goods onto a transportation vehicle from the premises of Ezymore in relation to delivery of those Goods to that Customer.

4.3 Legal and equitable title in the Goods remains with Ezymore until such time as full payment is made of all amounts owing by the Customer to Ezymore such that the Customer's total indebtedness to Ezymore under each Contract is discharged.

4.4 The Customer acknowledges and agrees that until its total indebtedness under each Contract is discharged:

- (a) the Customer holds the Goods as bailee of Ezymore;
- (b) a fiduciary relationship exists between Ezymore and the Customer for this purpose; and
- (c) the Customer will ensure that the Goods are adequately separated from other goods so that they are clearly identifiable as the property of Ezymore.

4.5 If:

(a) the Customer fails to pay any amount owing under a Contract when it is due;

(b) an event specified in clause 8 occurs; or

(c) the Customer is otherwise in default under a Contract, then Ezymore may, without prejudice to any other its other rights and remedies, recover and/or re-sell the Goods or any of them, and may enter at any time upon the Customer's premises by its employees and/or agents for that purpose without being liable for trespass, negligence, injury to property or payment of any compensation to the Customer or any other person.

4.6 If the Goods are resold, or products manufactured using the Goods are sold by the Customer (prior to Ezymore having been paid in full for the Goods), the Customer must hold (in a separate identifiable account as the beneficial property of Ezymore) such part of the proceeds of any such sale as represents the price of the Goods sold or used in the manufacture of the products sold, and must pay that amount to Ezymore immediately upon request. If the Customer intermingles those proceeds of sale with the Customer's other funds, the Customer acknowledges that Ezymore has a beneficial interest in those intermingled funds to the extent of the monies owing to Ezymore in respect of the relevant Goods sold or used.

4.7 Despite the provisions above, Ezymore is entitled to bring and maintain an action or claim against the Customer for the purchase price of any Goods supplied.

4.8 In respect of a Contract, if a claim for a shortage of Goods has not been lodged with Ezymore by the end of the next business day (which, for the avoidance of doubt includes a day on a weekend or public holiday if the Customer operates business on that day) following collection or delivery of the Goods, Ezymore will be taken to have delivered all of the Goods the subject of the Contract.

5. Goods to be Collected by a Customer

5.1 Unless a Customer notifies Ezymore in an Order that the Customer will collect the Goods once the Goods are available, and Ezymore accepts that Order, Ezymore will upon formation of a Contract be taken to have been appointed as the Customer's agent to arrange for delivery of the Goods.

5.2 Subject to clause 5.3(a), Ezymore will not be liable for freight and delivery costs associated with shipping the Goods from Ezymore to the Customer and the Customer acknowledges that it is liable to reimburse Ezymore for the costs incurred in arranging for the shipping of Goods.

5.3 Ezymore may, in its absolute discretion:

- (a) arrange for the whole or part of the costs of freight and delivery of Goods to be free of charge to a Customer; and
- (b) postpone the delivery of Goods in stock so that those Goods are delivered with all Goods being manufactured in relation to an Order.

5.4 If a Customer requires the Goods to be delivered at a particular time in the day, the Customer must notify Ezymore in writing at the time of placing an Order and Ezymore will use its reasonable endeavours to deliver the Goods at the requested time. Any scheduling fees attributable to the delivery of the Goods will be payable by the Customer.

5.5 A Customer must notify Ezymore in writing at the time of placing an Order if that Customer does not have facilities to unload pallets. If a Customer fails to do so, Ezymore may charge the Customer any costs incurred in relation to redelivery of the Goods and loading fees.

5.6 A Customer may specify in an Order that it will collect the Goods from the premises of Ezymore but if it has not collected those Goods within three days of the Completion date, Ezymore may:

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(a) continue to store the Goods on the Customer's behalf (whether on-site or at another location); or
(b) arrange for the delivery of the Goods to an address provided by the Customer,
and in each case all costs incurred by Ezymore relating to any safe-keeping, transportation, freight, storage, handling, insurance, government, statutory or regulatory charges that relate to the supply of the Goods (if any) (**Delivery Costs**) will be payable by the Customer, unless otherwise agreed in writing with Ezymore, together with a storage fee payable to Ezymore (in an amount set by Ezymore from time to time) in respect of each day from Completion until and including the day on which the Goods no longer remain in the possession of Ezymore (**Storage Fee**).

5.7 If no person is available to accept delivery of the Goods as arranged by Ezymore, Ezymore may elect to:

- (a) leave the Goods (or authorise the transporter of such Goods to leave them) at the address for delivery, in which case risk of those Goods continues to lie with the Customer; or
- (b) have the Goods returned to Ezymore (at the Customer's cost) for safe keeping, in which case the Customer will be liable for all costs of delivery and return in relation to the unsuccessful delivery as well as for Delivery Costs and the Storage Fee. The risk of Goods the subject of this clause continues to lie with the Customer.

6. Price and Payment

6.1 Unless otherwise expressly stated, all prices are exclusive of GST. If GST is, or becomes, payable in respect of any supply made by Ezymore to the Customer, the payment for that supply will be increased by an amount equal to the GST payable.

6.2 Subject to clauses 6.1 and 7, the purchase price payable by the Customer to Ezymore in respect of the supply of the Goods (**Purchase Price**) is:

- (a) as set out in Ezymore' most recent price list (irrespective of whether a Customer has a copy of that price list or not); or
- (b) as agreed by Ezymore (for Goods made in accordance with specifications provided by the Customer or a third party on behalf of the Customer in relation to Goods that are otherwise unavailable as a product of Ezymore),
and may be increased by Ezymore for any Delivery Costs or Storage Fee.

6.3 Ezymore may issue an invoice to a Customer in respect of Goods (**Invoice**) at anytime.

6.4 An Invoice must be paid by a Customer on the Due Date. The **Due Date** is:

- (a) for Customers who have an account with Ezymore, the last day of the following month from the date the Invoice is raised; and
- (b) for Customers who do not have an account with Ezymore, the due date specified on the Invoice.

6.5 If the Customer fails to pay any Invoice in full on or before the Due Date, the Customer must pay to Ezymore any costs, expenses or losses which Ezymore incurs as a result of that failure (including, without limitation, costs associated with the collection of any unpaid amounts) and Ezymore may (without prejudice to any other rights or remedies that it may have) charge interest at a rate not exceeding the Commonwealth Bank of Australia's overdraft rate on the amount of the overdue Invoice.

6.6 If a Customer's Invoice remains unpaid for more than 15 days, Ezymore may stop work on all current and ongoing Orders, suspend deliveries to the Customer or terminate any Contract in relation to undelivered Goods (**Stop Order**) until all unpaid amounts have been paid in full.

6.7 Ezymore may, in its absolute discretion, impose a credit limit on a Customer's account, where any Orders made by the

Customer exceeding the credit limit will be placed on a Stop Order until the Customer reduces its outstanding account to an amount within the credit limit designated by Ezymore.

6.8 Notwithstanding anything to the contrary above, Ezymore is entitled to apply any payment received towards any Goods supplied to the Customer.

7. Long-Term Supply Orders

7.1 Subject to clauses 7.2 to 7.4, Ezymore may, at its absolute discretion, agree to provide Goods to a Customer over an agreed period (**Supply Period**) and for an estimated number of Goods (**Estimated Supply**) for supply by the Customer to a specified end-user notified in advance to Ezymore (**Specified End-User**) at an agreed price (**Long-Term Agreed Price**).

7.2 Any Orders for Goods subject to a Long-Term Supply Order made during the Supply Period (**Subsequent Order**) must be paid for by the Customer at the current price of the Goods at the time of the Order.

7.3 Subject to clause 7.4, and the Customer providing written evidence that the Goods, the subject of a Subsequent Order, have been purchased from the Customer by the Specified End-User for use by that user, the Customer will be entitled to a credit on its account with Ezymore in an amount equal to the difference between the Long-Term Agreed Price and the cost of the Goods at the time of the Order (**Credit**). For the avoidance of doubt, the Credit will be calculated at the end of the Supply Period in relation to each item.

7.4 A Customer will only receive a Credit once the number of Goods ordered in the Supply Period is equal to or greater than the Estimated Supply.

8. Insolvency

8.1 If the Customer becomes, or resolves to become, or takes any steps or has any steps taken in relation to it becoming, insolvent, bankrupt or have a receiver, administrator, liquidator, trustee or similar official appointed, then:

- (a) the Customer must notify Ezymore immediately;
- (b) all amounts owed by the Customer to Ezymore in relation to a Contract become immediately due and payable; and
- (c) the Customer's right to possession of any Goods supplied by Ezymore which have not been paid for in full by the Customer ceases, and Ezymore will be entitled to recover possession of those Goods in accordance with the provisions of clause 4.4.

9. Warranties

9.1 The Customer:

- (a) warrants that it has read and understood these terms and conditions and has had the opportunity to obtain independent legal advice about their terms and effect;
- (b) warrants that all information supplied to Ezymore in connection with the supply or manufacture of Goods is true and accurate and acknowledges that Ezymore has relied on that information in supplying or manufacturing the Goods; and
- (c) acknowledges that Ezymore has relied on the Customer to make its own assessment of the appropriateness of the Goods for the Customer's particular situation and any third parties to whom the Goods are supplied by the Customer (including a Specified End User).

9.2 The Customer must use Goods in accordance with the relevant Standards Australia Limited standard (including as listed in Ezymore' most recent catalogue) and, in the event that no standard is listed for particular Goods, in accordance with best industry practice.

9.3 The Customer must keep Ezymore indemnified against all claims, expenses and liabilities of whatever nature including without limiting loss of profit, which may be made against Ezymore

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(whether by the Customer or a Specified End User including its directors, officers, employees, contractors, sub-contractors or agents) or which Ezymore may sustain, pay or incur arising out of the manufacture or sale of the Goods, except in so far as the same arises from Ezymore' negligence or breach of the Contract.

10. Returns

10.1 Ezymore will, within 14 days of a Customer's Order, accept return of the Goods and refund the Purchase Price to the Customer if:

- (a) the Goods are standard Goods that did not involve any further manufacture or alteration by Ezymore in accordance with specifications provided by or on behalf of the Customer;
- (b) the Customer pays the cost of returning the Goods to Ezymore; and
- (c) the Customer pays a packaging fee, determined by Ezymore from time to time and with regard to the particular item being returned.

11. Limitation and Exclusions of Liability

11.1 In this clause 11.1, **Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as amended or replaced from time to time.

11.2 Ezymore accepts no liability as to the structure or performance of Goods manufactured in accordance with design specifications provided by or on behalf of the Customer.

11.3 To the extent that the Customer acquires Goods or services from Ezymore as a consumer within the meaning of the Australian Consumer Law, the Customer may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Similarly, Ezymore have offered the Customer a voluntary warranty under the express terms of Ezymore' warranty arrangements as nominated by Ezymore from time to time (**Voluntary Warranty**).

11.4 Nothing in this clause 11 operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, any valid Voluntary Warranty, or any other statute where to do so would:

- (a) contravene that statute; or
- (b) cause any term of these terms and conditions to be void, (**Non-excludable Obligation**).

11.5 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute are expressly excluded under these terms and conditions.

11.6 Except in relation to Non-excludable Obligations, Ezymore' liability to the Customer arising directly or indirectly under or in connection with these terms and conditions or the performance or non-performance of a Contract and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

- (a) Ezymore will have no liability whatsoever to the Customer for any loss, harm, damage, cost or expense (including legal fees), or in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and
- (b) the aggregate of Ezymore' liability to the Customer is otherwise limited to an amount not exceeding the consideration paid by the Customer under a Contract.

11.7 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by

the Australian Consumer Law), except for Goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which Ezymore' liability is not limited under these terms and conditions), Ezymore' liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to:

- (a) the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired; or
- (b) payment of the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired.

11.8 The provisions of this clause 11 are subject to any other terms expressly agreed in writing between Ezymore and the Customer, including under the terms of the Ezymore' Voluntary Warranty (if applicable).

12. Right of entry

12.1 The Customer grants to Ezymore and any director, representative, associate, officer, employee, agent or subcontractor of Ezymore (**Authorised Person**), a licence to enter the Site for the purposes of:

- (a) conducting repairs or maintenance to the Goods;
- (b) removing the Goods; and
- (c) any other activities ancillary to, or necessary to facilitate, the removal of the Goods or any equipment upon termination of this Contract.

12.2 The Customer will provide each Authorised Person with access to water, electricity, toilet and washing facilities.

12.3 The Customer will ensure that all other third party consents necessary for the Authorised Person to access the Site as described in this clause are obtained prior to access being required.

13. Information and Privacy

13.1 Information collected by Ezymore from the Customer may be used and accessed in accordance with Ezymore' privacy policy from time to time as published on <http://ezymore.com.au>.

13.2 Without limiting clause 13.1, the Customer acknowledges and agrees that Ezymore may exchange information about its credit arrangements, credit worthiness, credit standing, credit history and/or credit capacity with other credit providers. If the Customer is a company or a trust, the aforementioned also refers to any directors of the company or directors of the trustee of the trust.

14. Miscellaneous

14.1 Ezymore owns (and a Contract does not transfer ownership of) all intellectual property rights (including, without limitation, trade marks, registered designs, patents and know how) in or in connection with or relating to the Goods.

14.2 Ezymore may, at any time after acceptance of an Offer and before Completion of the Goods, by notice to the Customer provided verbally or in writing, terminate a Contract (in which case neither party will have any obligations under the Contract).

14.3 A Customer may only terminate a Contract by notice to Ezymore in writing before:

- (a) for Goods in-stock that only require dispatch by Ezymore, before the Goods are dispatched; or
- (b) for Goods requiring manufacture, two business days after acceptance of the relevant Offer.

14.4 On the termination of a Contract by a Customer, the Customer will be liable for any costs incurred by Ezymore in relation to the manufacture, shipping and delivery of the Goods to the Customer (whether or not the Goods are complete or delivered to the Customer).

14.5 These terms and conditions may be amended by Ezymore from time to time as published on <http://ezymore.com.au>.

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14.6 These terms and conditions (and each Contract) are governed by the laws of South Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of South Australia.

14.7 If any term or part of a term of these terms and conditions is illegal or unenforceable it may be severed and the remaining terms or parts will continue in force.

15. Personal Property Securities Act 2009 (PPSA)

15.1 The Customer grants Ezymore a security interest in all Goods supplied by Ezymore as security for all indebtedness owed whatsoever to Ezymore.

15.2 The Customer agrees, to the extent permitted by law:

- (a) to promptly give Ezymore all assistance and information (including signing any documents) as Ezymore requests to ensure that Ezymore has a perfected first ranking security interest in all Goods (and the proceeds thereof) supplied by Ezymore;
- (b) that Ezymore may register a financing statement on the Personal Property Securities Register against the Customer;
- (c) that notices or documents required or permitted to be given to Ezymore under the PPSA may be given in accordance with the PPSA;
- (d) not to change its name without notifying Ezymore in writing of the Customer's intention to change its name at least 10 business days prior to doing so;
- (e) that it waives its rights to receive a copy of any verification statement under the PPSA; and
- (f) that the parties contract out of the Customer's rights, and the Customer waives its rights, under sections 95, 118, 121, 125, 130, 132, 135, 142 and 143 of the PPSA.

15.3 A word or expression used in this clause which is defined in the PPSA has the same meaning in this clause, unless the context otherwise requires.

Executed as an agreement.

Customer

If Individual:

Signed by _____ in the presence of:

_____	_____
Signature of witness	Signature

_____	_____
Name of witness (print)	Name (print)

Date: / /

If Company:

Signed for and on behalf of

(full name and ACN of company)

by: _____ (name)

Signature

Name (print)

Date: / /

S-JADE PTY LTD TRADING AS (EZYMORE)

Signed for and on behalf of Ezymore

Signature

Name (print)

Date: / /

Please note: The bottom of all pages of the Terms & Conditions must be signed and returned for your credit application to be processed.