

Westlab Pty Ltd
ACN 606 662 113
(Company)
Trading Terms and Conditions
For Sale of Goods

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

1 Interpretation

In these Terms unless the contrary intention appears:

Additional Charges includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Company arising out of the sale of the Goods.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means the person to or for whom the Goods are to be supplied by Company.

Force Majeure Event means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of

transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Customer by Company and includes any services provided by Company to Customer.

Intellectual Property Right means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchase Price means the list price for the goods as charged by Company at the date of delivery or such other price as may be agreed by Company and the Customer prior to delivery of the Goods in Australian dollars exclusive of GST.

2 Order for Goods

2.1 The Company reserves the right to cancel, at any time before delivery and for whatever reason, an Order that it has previously accepted. The Company may do this for example, but without limitation, where:

2.1.1 the Company's suppliers are unable to supply Goods that they have previously promised to supply;

- 2.1.2 an event beyond the Company's control, such as storm, fire, flood, earthquake, terrorism, power failure, war, strike or failure of computer systems, means that the Company is unable to supply the Goods within a reasonable time;
- 2.1.3 Goods ordered were subject to an error on the Website, for example, in relation to a description, price or image, which was not discovered prior to the Order being accepted;
- 2.2 An order given to Company is binding on Company and the Customer, if:
- 2.2.1 an acceptance is provided for or on behalf of Company (whether in writing by online order or e-mail, or verbally including by telephone); or
- 2.2.2 the Goods are supplied by Company in accordance with the order.
- 2.3 An acceptance of the order by Company is then to be an acceptance of these Terms by Company and the Customer and these Terms will override any conditions contained in the Customer's order. Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Company until accepted by it.
- 2.4 An order which has been accepted in whole or in part by Company cannot be cancelled by the Customer without obtaining the prior written approval of Company, which it may refuse in its absolute discretion.
- 3 Description of Goods**
- 3.1 All brand, types or styles of Goods published for sale by the Company are indicative only and may be replaced by an equivalent or better product. All published dimensions are nominal only.
- 3.2 The product is approved by the regulatory authority in Australia where required.
- 3.3 Products are sold within Australia and New Zealand only.
- 4 Warranties**
- 4.1 The Company provides a limited warranty in relation to its Westlab 4-IN-1 Safety Cabinets. Such warranty is set out in the document entitled "Product Warranty Statement" available on the Company website and is governed by the terms and conditions set out therein.
- 4.2 Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 4.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Company are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:
- 4.3.1 any increased costs or expenses;
- 4.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 4.3.3 any loss or expense resulting from a claim by a third party; or
- 4.3.4 any special, indirect or Consequential Loss or damage of any nature

whatsoever caused by Company's failure to complete or delay in completing the order to deliver the Goods.

5 Limitation of Liability

5.1 The Company's liability is limited, to the extent permissible by law and at the Company's option, to;

5.1.1 in relation to the Goods:

- 5.1.1.1 the replacement of the products or the supply of equivalent products
- 5.1.1.2 the repair of the products
- 5.1.1.3 the payment of the cost of replacing the products or of acquiring equivalent products; or
- 5.1.1.4 The payment of the cost of having the products repaired

5.1.2 Where the Goods are services:

- 5.1.2.1 the supply of service again; or
- 5.1.2.2 the payment of the cost of having the services supplied again.

5.2 To the extent permitted at law, any claims to be made against the Company for short delivery or delivery discrepancies of Goods must be lodged with the Company in writing within 7 days of the delivery date. The Company may decline any claim for the replacement of Goods supplied if:

- 5.2.1 the Company is not permitted to inspect the goods on request;
- 5.2.2 the Goods were free of faults, defects and damage on supply; or

5.2.3 there is reasonable evidence that the Goods were damaged after supply by misuse or unreasonable use.

6 Repair Notice

6.1 Where Goods are repaired by the Company in accordance with clause 4.1.1.2, the Customer acknowledges and agrees:

- 6.1.1 that the repair of the Goods may result in the loss of any user-generated data and it will ensure that it has made a copy of any data saved on the Goods;
- 6.1.2 The Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.

6.2 Clause 5.1 constitutes a repair notice under the Australian Consumer Law, set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (ACL) where the Customer is a consumer under the ACL

7 Handling Fees

7.1 The Customer is required to pay the Company's current handling fees in addition to the Purchase Price of the Goods where applicable. Handling fees are available from our customer service team.

7.2 Additional handling fees may apply for bulky items, dangerous goods, and special shipping requirements.

8 Delivery

8.1 The times quoted for delivery are estimates only and Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Company.

- 8.2 Risk in accepting the Goods passes on delivery to the Customer. Until payment of the Purchase Price the Goods must be maintained in the condition they were received.
- 8.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

9 Returns, Replacements and Credits

- 9.1 To the extent permitted at law, returns must be first authorised by the Company and a Return Stock Authority (RSA) form must be obtained by the customer from the Company which is valid for 30 days.
- 9.2 To obtain a Goods Returned number the customer must quote on the RSA form, the date of purchase and the original invoice number.
- 9.3 The Customer is required to return the goods by prepaid freight and are to include the RSA form.
- 9.4 Returns are subject to a restocking fee of 20% of the Purchase Price of the Goods payable by the Customer.
- 9.5 For change of mind returns, Westlab Pty. Ltd. gives you 90 days from date of purchase to return a product that you've changed your mind on for a refund or exchange, provided the product:
- 9.5.1 is still in its original and saleable condition and packaging,
- 9.5.2 has not been worn or used and, if perishable product, is not expired
- 9.6 The Company will only accept returned Goods if the Goods and packaging are received in an unused and original condition.
- 9.7 The return of incorrectly supplied goods at the Company's expense will be returned by

the carrier of the Company's choice and will not accept freight charged for Goods returned by other means.

- 9.8 To the extent permitted by law, Goods specially purchased, manufactured, machined or cut to size to the Customer's specifications cannot be returned and are not covered by the Company's 30-Day Return Policy.

10 Same Day Dispatch

- 10.1 The 'Same Day Dispatch Guarantee' refers to items showing the 'Same Day Dispatch Countdown Clock' only applies to orders placed before 2pm AET.
- 10.2 The guarantee is only applicable to the Company's standard working hours of 8am to 5pm, Monday to Friday and excludes weekends and public holidays.
- 10.3 The guarantee is void on any orders placed under review for any reasons and Company will not be held responsible for any unforeseen circumstances whereby the guarantee cannot be fulfilled which is inclusive of but not limited to; power outages, natural disasters, technical problems.

11 Price and Payment

- 11.1 The Customer must pay the Purchase Price and the Additional Charges to Company on or before delivery of the Goods to the Customer or within the agreed upon payment terms assigned to the Customer.
- 11.2 If the Customer is in default, Company may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 11.3 Any trade accounts must be discharged as agreed in writing within the terms specified on the Customer's account. Interest is

charged at the rate of 3% per month (calculated and accruing daily) from the expiry of the payment period until the date payment is received by Company.

11.4 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

11.5 Rewards and bonus offers are restricted to one per customer within the validation period.

12 Price Variation

12.1 The Company reserves the right to vary the Purchase Price with prior notice to the Customer:

12.1.1 if a variation of the Goods which are to be provided is requested;

12.1.2 where additional Goods are required due to the discovery of hidden or unidentifiable difficulties (including but not limited to, further faults which are found on disassembly and/or further inspection) which are only discovered upon commencement of the Services; or

12.1.3 in the event of an increase to the Company in the cost of labour or parts which are beyond the Company's control.

12.2 The requirement for prior notice referred to in clause 12.1 does not apply if the increase to the Purchase Price arises as a result of any Goods that are required to be provided by the Company for an emergency or as a necessity.

13 Intellectual Property

13.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will

only be used for the purposes of satisfying these Terms.

13.2 The Customer warrants that the use by Company of any intellectual property provided by Customer to Company so that Company may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.

13.3 The Customer must indemnify and keep indemnified Company against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Right of the third party due to Company's use in the production of the Goods of any branding, artwork or other intellectual property provided to Company by Customer.

14 Retention of Title

14.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Company until payment in full for the Goods and all sums due and owing by the Customer to Company on any account has been made. Where payment is made by cheque, it is not deemed to have been received by us until the bank clears the cheque. Until the date of payment:

14.1.1 the Customer has the right to sell the Goods in the ordinary course of business;

14.1.2 the Goods are always at the risk of the Customer.

14.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:

- 14.2.1 if any payment to Company is not made promptly before the due date for payment;
- 14.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Company is dishonoured;
- 14.3 In the event of a default by the Customer, then without prejudice to any other rights which Company may have at law or under this Agreement:
- 14.3.1 the Company or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.
- 14.3.2 the Company may recover and resell the Goods;
- 14.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Company and the Customer may be ascertained. Company must promptly return to the Customer any goods the property of the Customer and Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.
- 14.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay Company such funds held in trust upon the demand of Company.
- 14.4 Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Company.
- 15 PPSA**
- 15.1 Defined terms in this clause have the same meaning as given to them in the PPSA.
- 15.2 Company and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:
- 15.2.1 a Purchase Money Security Interest ("PMSI") in favour of Company over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and
- 15.2.2 a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
- 15.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

- 15.4 The Proceeds of sale of the Collateral referred to in clause 15.2.1 falls within the PPSA classification of "Account".
- 15.5 Company and the Customer acknowledge that Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds. The Company may refuse to sell or supply Goods to the Customer until the Customer provides all details and data needed to enable it to register a security interest under the PPSA.
- 15.6 To the extent permissible at law, the Customer:
- 15.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Company.
- 15.6.2 agrees to indemnify Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;
- 15.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Company; and
- 15.6.2.2 enforcement or attempted enforcement of any Security Interest granted to Company by the Customer;
- 15.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;
- 15.6.4 agrees to waive its right to do any of the following under the PPSA:
- 15.6.4.1 receive notice of removal of an Accession under section 95;
- 15.6.4.2 receive notice of an intention to seize Collateral under section 123;
- 15.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;
- 15.6.4.4 receive notice of disposal of Collateral under section 130;
- 15.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);
- 15.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
- 15.6.4.7 receive notice of retention of Collateral under section 135;
- 15.6.4.8 redeem the Collateral under section 142; and
- 15.6.4.9 reinstate the Security Agreement under section 143.
- 15.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

16 Liens

The Customer acknowledges that Company may have a common law or statutory lien over the

Goods. In the event that there is no such lien, the Customer agrees that Company has a general lien over all Goods including the right to sell the same where the Customer is in default under these Terms.

17 On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

- 17.1 inform any third party involved of these Terms;
- 17.2 inform any third party of Company's product warranties if any; and
- 17.3 not make any misrepresentations to third parties about the Goods.

18 Trustee Capacity

If Customer is the trustee of a trust (whether disclosed to Company or not), Customer warrants to Company that:

- 18.1 Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
- 18.2 Customer has the right to be indemnified out of trust assets;
- 18.3 Customer has the power under the trust deed to enter into this Agreement; and
- 18.4 Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

19 Indemnity

To the full extent permitted by law, Customer will indemnify Company and keep Company indemnified from and against any liability and any loss or damage Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

20 Force Majeure

- 20.1 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.
- 20.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these terms in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

21 General

- 21.1 Neither party excludes or limits the application of any statute (including but not limited to the Competition and Consumer Act 2010 (Cth) (CCA) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.
- 21.2 These Terms are to be construed in accordance with the laws from time to time in the State of Victoria and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

21.3 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

Company _____

21.4 The Customer acknowledges that it has been provided with an opportunity to read, consider, negotiate and discuss any of these Terms with the Company prior to entering into the Terms.

Name: _____

Signature: _____

21.5 Any conditions found to be void, unenforceable, invalid or illegal may, to that extent be severed from the Agreement.

Position: _____

21.6 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

Date: _____

Disclosure of Key Terms relating to the supply of goods or services to consumers

Section 47A Fair Trading Act 1987 (NSW) ("the Act")

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Trading Terms between Westlab Pty Ltd (**Us, We, Our**) and the Customer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

1. **Clause 4 - Exclusion of Warranties**

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate you for:

Any increased costs or expenses you may incur;

Any loss of profit, revenue, business, contract or anticipated savings;

Any loss or expense resulting from a claim by a third party; or

Any special, indirect or Consequential Loss or damage of any nature.

2. **Clause 5 – Limitation of Liability**

This clause limits the remedies available to You if the Goods or services provided by Us are faulty, for example we may replace the Goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

3. **Clause 19 – Indemnity**

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

4. **Clause 6 - Repair Notice**

In the event that You require a repair of your Goods, this clause constitute a repair notice as required under the Australian Consumer Law, set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (ACL) where You are a consumer under the ACL. Please see clause 6 for further details.