

# Terms & Conditions of Trade

## 1. Definitions

- 1.1 "Supplier" means Premium Equipment Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Premium Equipment Pty Ltd
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between the Supplier and the Customer in accordance with clause 2 below.
- 1.5 "Delivery" means the time at which the Customer comes into physical possession of the goods".

## 2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by the Supplier to the Customer from time to time in respect of the Goods supplied.
- 2.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due seven (7) days following the date of the invoice.
- 2.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 3. Risk

- 3.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 3.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

## 4. Title to Goods (including any incidental items supplied as part of any Services)

- 4.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Customer has met all of its other obligations to the Supplier.
- 4.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Customer in accordance with clause 4.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
  - (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
  - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
  - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## 5. Personal Property Securities Act 2009 ("PPSA")

- 5.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 5.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and the Customer grants to the Supplier a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
- 5.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 5.3(a)(i) or 5.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;
  - (e) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 5.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.  
Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 5.7 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 5.3 to 5.5.

- 5.8 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 6. Security and Charge

- 6.1 In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 6.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 6.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 6 including, but not limited to, signing any document on the Customer's behalf.

## 7. Default and Consequences of Default

- 7.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).

## 8. Privacy Act 1988

- 8.1 The Customer agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.
- 8.2 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 8.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 8.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time):
  - (a) the provision of Goods; and/or
  - (b) the marketing of Goods by the Supplier, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 8.5 The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 8.6 The information given to the credit reporting agency may include:
  - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that the Supplier is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by the Supplier has been paid or otherwise discharged.

## 9. General

- 9.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 9.3 The Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 9.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.5 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

I HAVE READ AND UNDERSTAND THESE Terms & Conditions

SIGN:.....NAME:.....DATE:.....