

## General

- These Terms and Conditions ("Conditions") apply to all contracts between Abco Products Pty Ltd ABN 33 147 347 019 ("Abco") and the purchaser ("Purchaser") of any goods, products ("Goods") supplied by Abco on credit (if sold or supplied on credit) or otherwise ("Contract") whether they are signed by any party or not.

## Interpretation

- In these Conditions:
  - ACL** means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
  - CCA** means the Competition and Consumer Act 2010 (Cth);
  - Event of Default** means the occurrences set out in clause 43 ;
  - Goods** means any item of whatsoever nature supplied or to be sold by Abco to the Purchaser; and
  - GST** means the tax payable on certain goods within the meaning of the GST Act;
  - GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
  - Metropolitan Area** means the area which, in Abco's opinion, is within the metropolitan area of Perth or Sydney.
  - Payment** means a Payment in Australian dollars.
  - Payment Terms** means Terms that have been agreed with Abco.
  - PPSA** means the Personal Property Securities Act 2009 (Cth);
  - Purchaser** means a person who acquires Goods from Abco;
  - Purchaser Order** means any order or instruction given by the Purchaser to Abco for the supply of Goods, including, without limitation, any document entitled "Purchase Order" or any other document containing the description of the required Goods, to be supplied by Abco to the Purchaser;

## Entire agreement

- These Conditions will prevail over any terms, conditions, representations or understandings between the Purchaser and Abco in relation to the Goods, whether or not any inconsistency arises.
- Every contract for the supply of Goods pursuant to any Purchase Order incorporates these Conditions and constitutes the entire agreement between Abco and the Purchaser. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that contract.
- The Purchaser acknowledges, represents and warrants to Abco that in any decision or matter concerning or in connection with any Goods it has relied solely on the terms expressed in these Conditions and in writing in an Purchase Order for the supply of Goods and has not relied on any prior negotiations, proposals, understandings, representations, or conduct of Abco or Abco's employees or agents.

## Formation of contract

- Abco expressly rejects each and any conditional order made by the Purchaser.
- A contract is formed when Abco receives each and any Purchase Order and either sends a written acceptance to the Purchaser or dispatches the Goods pursuant to a Purchase Order.

## Orders and prices

- Abco reserves the right to accept or decline, in whole or in part, any Purchase Order for Goods placed by the Purchaser.
  - The Purchaser waives any claim for shortage of any Goods delivered if the Purchaser has not lodged a written claim with Abco within 48 hours from the date of receipt of the Goods by the Purchaser.
- Unless otherwise stated, all prices for Goods are exclusive of all applicable taxes and charges. Where the Goods sold provided are subject to GST, the Purchaser is liable to pay any applicable amount of GST at the same time as Payment for Goods is made.
- The prices, and product specifications shall be the price and specifications contained on Abco's website and/or any price-list, pamphlet or brochure, or any information provided by Abco to the Purchaser and are subject to change at the absolute discretion of Abco and without notice to the Purchaser.
- The Purchaser acknowledges that they are purchasing the Goods for resale or commercial purposes and not for personal, household or domestic use.
- Orders must be made using Abco Code Number, as stated in the Pricelist of Abco or on the website of Abco. Abco will not accept responsibility for wrongly supplied products where codes are incorrect or not quoted when placing orders, and in particular telephone through orders or hand written faxes, which are sometimes unclear as to the Purchaser's intention.
- Deposits paid by the Purchaser for drums noted on Abco's published price list as being returnable will be refunded by Abco only if the drums are returned with bungs inserted or lids & rings attached (as the case may be) and are in Abco's opinion in good order & condition.

## Delivery

- All orders are subject to delivery fees payable by the Purchaser, unless agreed otherwise by Abco.
- Abco will endeavour to dispatch all Goods within any timeframe stipulated in a Purchase Order however it will not be responsible for any loss or damage associated with Goods being dispatched whether it is arranged at the Purchaser's request or at the Purchaser receiver's request.
- Any time or date provided by Abco for completion, delivery and/or dispatch is an estimate only and does not constitute a representation, or term of the contract, nor shall it be part of the description of the Goods and is not of the essence of the contract. All branded pallets remain the responsibility of the Purchaser and the freight company.

- Abco is deemed to have delivered the Goods when they are:
  - collected by the Purchaser; or
  - made available for unloading at the Purchaser's nominated delivery address (whichever occurs first).
- In relation to deliveries outside the Metropolitan area, unless the Purchaser specifies, the Purchaser may use any carrier it deems appropriate.
- The Purchaser is liable to pay for deliveries outside the Metropolitan area subject to the application of Clause 15.

## Payment

- Time for Payment for Goods supplied by Abco is of the essence.
- Unless otherwise agreed in writing by Abco, Payment for the Goods must be made by the Purchaser in accordance with invoices issued by Abco to the Purchaser. Abco may, at its absolute discretion, require the Purchaser to pay a deposit.
- At the end of each month, the Purchaser will receive a statement of account ("Statement"), which clearly indicates the total amount payable. Subject to the agreed Payment Terms between the parties to the Contract, the balance of the Statement is payable in full and shall only be treated as being paid once the Payment has been received by Abco.

## Risk and retention of title

- Unless otherwise provided in these Conditions, the Goods supplied by Abco to the Purchaser shall be at the Purchaser's sole risk immediately upon their delivery to the Purchaser, their collection by the Purchaser or its agent, or upon delivery to the Purchaser's carrier in case of delivery outside the Metropolitan area.
- The Purchaser agrees that title to Goods is retained by Abco until it receives from the Purchaser:
  - Payment in full for the purchased Goods; and
  - all other monies owing by the Purchaser to Abco at any time.
- Where the Goods comprise a number of items, the property of Abco in each item comprising the Goods will not pass to the Purchaser for any individual item until Payment in full is received for all items.
- Prior to title in the Goods passing to the Purchaser, the Purchaser agrees that:
  - it acts as bailee of the Goods until such time as property in them passes to the Purchaser and that this bailment continues for each item of the Goods until the price has been paid in full;
  - it must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
  - it must not sell the Goods except with the prior written consent of Abco or in the ordinary course of the Purchaser's business, provided that any such sale is at arms' length and on market terms;
  - any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Abco in a separate account; and
  - it must not create any encumbrance over the Goods which is inconsistent with Abco's title and ownership of the Goods.

## No sale by description

- All descriptions, specifications and illustrations or any other information in relation to the Goods contained in catalogues, price lists or other advertising material of Abco or elsewhere are approximations only and intended by Abco to be a general description for information and identification purposes and do not create a sale by description.

## Returns and cancellations

- Any cancelled Purchase orders will result in the Purchaser being liable for the greater of a \$30.00 processing fee or 10% of the order price.
- Except as provided otherwise by the ACL, returns of all other Goods are subject to prior approval of Abco at its absolute discretion upon a written request by the Purchaser made within 7 days from the date of delivery of Goods. Goods must be unused, undamaged and in their original packaging upon the inspection of Abco quality control team.
- All credit for Goods that have been approved for return will incur a restocking fee of 10% of the invoiced value of the returned Goods upon approval of Abco's quality control team. The Purchaser must bear any costs associated with the return of Goods.
- Goods defined by Abco as "special order only" or non-stock products are non-returnable.

## Inaccuracies

- The Purchaser must inspect all Goods as soon as they are delivered as soon as they are rendered and must notify Abco in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods within 24 hours of the delivery of the Goods. The Purchaser will be deemed to have accepted the Goods thereafter.
- If the Purchaser notifies Abco under clause 32, Abco may at its sole discretion replace or give a credit for the Goods.
- If the Purchaser does not notify Abco under clause 32, Abco will not be responsible for any loss or damage arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in the Goods.

## Warranty and liability

- Abco makes no express warranties or representations in relation to the Goods supplied by it.
- Abco will not be responsible in any way whatsoever for the consequence of any representation or conduct made in connection with the Goods whether by its employees, agents or sub-contractors or otherwise to the Purchaser or any third parties. The Purchaser agrees that all such representations and/or advice are/is accepted or relied upon by the Purchaser entirely at the Purchaser's risk.

37. Abco's liability to the Purchaser or any third parties (whether arising under statute, contract, tort (including negligence), equity or otherwise)) for any defect in the Goods, or the quality of the Goods, will in all cases be limited to the cost of repair or replacement of such Goods.
38. Subject to clause 37, to the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by Abco, the manufacturer or a third party) pertaining to or in connection with the Goods and any obligation of Abco to replace or refund any Goods again are excluded.
39. Abco will not be liable for any consequential loss or damage of any kind suffered by the Purchaser as a result of the supply of the Goods by Abco to the Purchaser.

#### Indemnity and Waiver

40. The Purchaser agrees to indemnify and hold Abco harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by Abco, and from and against all actions, proceedings, claims or demands made against Abco, arising:
- as a result of the Purchaser's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
  - as a result of any other negligence or other breach of duty by the Purchaser's in connection with the Goods; and/or
  - as a result any breach of these Conditions by the Purchaser.
41. Any failure or delay by Abco to enforce any of its rights under these Conditions does not operate as a waiver of those rights.

#### Default and termination

42. Abco may issue a notice of default in the event of a breach of this Contract by the Purchaser by giving 5 days for the default to be remedied.
43. Each of the following occurrences constitutes an event of default:
- the Purchaser breaches or is alleged to have breached these Conditions for any reason (including, but not limited to, defaulting on any Payment due under these Conditions) and fails to remedy that breach within the timeframe of clause 49;
  - the Purchaser, being a natural person, commits an act of bankruptcy;
  - the Purchaser, being a corporation, is subject to:
    - a petition being presented, an order being made or a meeting being called to consider a resolution for the Purchaser to be wound up, deregistered or dissolved;
    - a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* (Cth) being appointed to all or any part of the Purchaser's property and undertaking; or
    - the entering of a scheme of arrangement (other than for the purpose of restructuring);
  - the Purchaser purports to assign its rights under these Conditions without Abco's prior written consent;
  - the Purchaser ceases/threatens to cease conduct of its business in the normal manner.
44. On the occurrence of an event of default, all invoices issued by Abco to the Purchaser will become immediately due and payable.
45. Where an event of default occurs, except where Payment in full has been received by Abco, Abco may:
- terminate the Contract;
  - terminate any or all orders and credit arrangements (if any) with the Purchaser;
  - refuse to deliver Goods;
  - pursuant to clause 46, repossess any Goods delivered to the Purchaser, the Payment for which has not been received; or
  - retain (where applicable) all money paid on account of Goods or otherwise.
  - demand immediate Payment of all outstanding amounts ("Total Indebtedness") subject to interest at Commonwealth Bank maximum overdraft rate for sums up to \$50,000.00 and such money with all interest shall be recoverable by Abco from the Purchaser.
46. Subject to clause 43 and the PPSA, if the Purchaser fails to pay any amount of the Purchaser's total indebtedness when it is due to Abco, Abco may without notice and without prejudice to any of its other rights and remedies recover and/or resell the Goods or any of them. For that purpose, the Purchaser:
- authorises Abco (without prior notice to the Purchaser) to enter any premises where goods the title in which remains in Abco ("Abco's Goods") may be situated and to use such reasonable force as may be required to enter any such premises and to take possession of Abco's Goods;
  - undertakes to Abco to procure the consent of all persons having any interest in the premises where Abco's Goods may be situated, to entry of those premises by Abco
  - indemnifies and keeps indemnified Abco from all claims, actions or suits whatsoever out of or in connection with or in relation to the entry by Abco to any premises where Abco's Goods may be situated;
  - shall reimburse Abco for all expenses incurred by it in recovering and/or reselling Abco's Goods.
47. If the Purchaser adds any parts or accessories to Abco's Goods, Abco shall become the owner of those added parts and accessories as security for full Payment by the Purchaser of all monies due to Abco by the Purchaser for Abco's Goods (as long as the value of the total security is less than 5 times the amount due to Abco by the Purchaser) and the term "Abco's Goods" for the purpose of this sub-clause shall here appropriately be read and construed accordingly.
48. If the Purchaser makes new goods or other goods from or with Abco's Goods or if Abco's Goods become a constituent part of or mixed with other goods, Abco shall become the owner of those new goods or other goods as security for full Payment by the Purchaser of all monies due to Abco by the Purchaser for Abco's Goods (as long as the value of the total security is less than 5 times the amount due to Abco by the Purchaser), and the term "Abco's Goods" for the purpose of this sub-clause shall where appropriately be read & construed accordingly.

#### Notice

49. Where, pursuant to these Conditions, a party is required to give notice to the other party, such notice must be in writing and it is deemed to have been given and served on a party:
- if delivered personally, on the same day on which it was delivered;
  - if sent by post, it is taken to have been given on the day it would have been delivered in the ordinary course of post;
  - if sent by fax, at the time recorded on the transmitting machine;
  - if sent electronically, at the "time of dispatch" within the meaning of section 13 of the *Electronic Transactions Act 2001* (WA).

#### Compliance

50. Abco acknowledges that where the ACL applies with respect to Goods, certain guarantees and rights are provided by the CCA and ACL.
- any rights provided to the Purchaser by the ACL or CCA that by statute cannot be excluded that are inconsistent with any term of these Conditions are to prevail over any terms of these Conditions to the extent of the inconsistency;
  - nothing in these Conditions purports to derogate from or exclude any rights provided by the ACL or CCA that by statute cannot be excluded or modified.
51. The Purchaser acknowledges and agrees that Abco may register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under section 157 of the PPSA to receive notice of any verification of the registration.
52. If the Purchaser defaults in the performance of any obligation owed to Abco under these Conditions, Abco may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA.
53. To the extent permitted by law, the Purchaser and Abco agree that the following provisions of the PPSA do not apply to the enforcement by Abco of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 137, 142 and 143.
54. The Purchaser must promptly do anything reasonably required by Abco to ensure that Abco's security interest is a perfected security interest & has priority over all other security interests in the Goods.
55. Nothing in clauses 51-54 is limited by any other provision of these Conditions or any other agreement between the parties. If a term used in these clauses has a particular meaning in the PPSA, it has the same meaning in those clauses.
56. The Purchaser must comply with all laws, bylaws and statutory and regulating authority applicable to the Purchaser and in particular without limitation all those relating to the environment, safety, dangerous goods, storage, handling, insurance and sale of goods supplied by the Abco under these Terms and Conditions of Sale.

#### Recovery of costs

57. Any expenses, costs or disbursements incurred by Abco in recovering any outstanding monies owing by the Purchaser, including debt collection fees and solicitor-client legal costs, must be paid by the Purchaser on a full indemnity basis.

#### Variations

58. These Conditions may be varied unilaterally by Abco at any time and in its sole discretion.
59. Any variations to these Conditions will apply to every Purchase order made by the Purchaser and accepted by Abco after the expiry of 7 days' notice of the variation to the Purchaser. Notwithstanding any other provision of these Conditions, notice may be effected for the purpose of this clause by provision of the new Conditions as varied or by publication on Abco's website.
60. No variation to these Conditions will apply with respect to any Purchase Order already made by the Purchaser before notice is given under clause 49.

#### Privacy and credit reporting

61. Abco may collect information in relation to the Purchaser, for the purpose of providing the Goods, in accordance with the laws relating to the collection and disclosure of personal information under the *Privacy Act 1998* (Cth) as amended from time to time.
62. Where the Goods are supplied on credit, the Purchaser irrevocably authorises Abco, its employees and/or agents to make such inquiries as are deemed necessary to investigate the Purchaser's credit worthiness, including (without limiting) the making of inquiries from persons nominated as trade referees, bankers, or any other credit providers ("Information Sources") or credit reporting agencies, and the Purchaser hereby authorises the Information Sources to disclose such information to Abco.

#### Force majeure

63. Abco will not be responsible for any delay in or failure of performance of supply or delivery of Goods caused by circumstances beyond its control including but not limited to, strikes, lock-outs, labour disturbances, acts of government, riot, civil war, commotion, fire, flood, failure of power supply or similar event and shall not be liable for any consequential loss, damage or claim suffered by the Purchaser or any other party as a result of such event.

#### Severance and Governing Law

64. If a court of competent jurisdiction decides that any part of these Conditions is invalid or unenforceable, then that part of the Conditions will be modified (if possible) so as to make it enforceable. If it is not modified, then it will be severed and the rest of the Conditions will continue to operate.
65. This contract is governed by the law of Western Australia.
66. Any legal action in relation to each contract against any party or its property may be brought in any court of competent jurisdiction in the state of Western Australia, and the parties submit to the jurisdiction of that state.
67. To the extent permitted by law, the *Sale of Goods Act 1985* (WA) does not apply to any contract between Abco and the Purchaser.