

TERMS AND CONDITIONS

- Delivery**
1. Unless otherwise stated the goods shall be delivered to the point of delivery specified in this quotation at no extra cost to the Applicant. The Applicant shall verify the goods against the delivery note at the point of delivery. The Supplier will not be responsible for any discrepancy between the delivery note and the goods actually delivered unless notified in writing by the Applicant immediately following delivery.
- Delays**
2. The quoted delivery date is applicable at the date of the Applicant's acceptance of this quotation and is made in good faith. The Supplier shall not be liable for damages resulting from delays in delivery that are caused by circumstances beyond its reasonable control including any failure by the supplier of the Supplier. In the event of such excused delays the date of delivery will be adjusted. No excused delay will relieve the Applicant from its obligation to accept and pay the goods.
- Title**
3. Property in the goods will not pass to the Applicant until payment in full of the invoiced price and all taxes and freight as invoiced has been made and the Applicant shall hold the goods as bailee for the Supplier until payment. Until such time as the goods have been paid for in full, the Supplier by its servants or agents may enter the Applicant's premises at any time without notice for the purpose of inspection or repossession of the goods in whole or in part.
- Risk**
4. Goods supplied by the Supplier to the Applicant shall be at the Applicant's risk immediately from the time of delivery and the Applicant shall take out such insurances as it thinks appropriate in respect to the goods.
- Variation In Cost**
5. The quotation price is subject to the rise and fall consistent with changes occurring between the date of quotation and the date of delivery in applicable labour awards, material costs, overseas exchange rates, duties and freight charges and the Supplier may elect to vary the quotation price so far as may be required by such changes with variation shall be binding on the Applicant.
- Limitation of Liability**
6. Subject to paragraph 7, the Applicant agrees that to the full extent permitted by the law the Supplier has not given any condition, warranty or representation whatsoever in favour of the Applicant:
 - (a) as to the condition or quality of the goods including without limitation latent and other defects and whether or not discoverable by the Supplier or the Applicant;
 - (b) as to the suitability or fitness for ordinary or any special use or purpose of the goods / or as to the correspondence by the goods to any description of the goodsand the Applicant agrees that subject to paragraph 7 the Supplier shall have no liability whatsoever to the Applicant in respect of any loss, damage or liability of any nature including consequential loss arising out of or in relation to any breach by the Supplier of its obligations under this quotation and that all conditions, warranties or other terms whether express or implied, statutory or otherwise inconsistent with these provisions are hereby excluded.
 7. Certain legislation such as Competition and Consumer Act 2010 implies into certain contracts terms which cannot be excluded by agreement. Where such terms apply this quotation shall be read as if they were repeated in this quotation and the liability of the Supplier in respect of any such terms shall to the extent be permitted by such legislation be limited to any one of the following at the Supplier's option:
 - (a) payment of the cost of repairing any goods or replacing those goods or supplying equivalent goods, whichever is the lesser, or
 - (b) the amount of fees paid by the Applicant under this quotation to the Supplier for the part of the goods in respect of which liability has arisen.
- Payment**
8. Unless otherwise stated in this quotation, terms of payment are net thirty (30) days from date of invoice and in the event the Applicant defaults in any payment when due, whether under this quotation or any other, the Supplier may at its option but without prejudice to its other lawful remedies defer delivery of the goods or cancel the whole of the agreement between the Supplier and the Applicant.
- Applicable law**
9. The laws of the State of New South Wales shall govern the rights and obligations of the parties and the parties shall irrevocably submit to the jurisdiction of the Courts of that State for the purpose of determining such rights and obligations.
- Entire Contract**
10. This document and other documents specifically referred to in this document as being part of the document constitutes the entire contract between the parties in respect of the goods and shall not be modified except in writing by both parties.
- Jurisdiction**
11. The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
 12. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
 13. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.
- Retention of title**
14. Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
 15. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
 16. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
 17. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
 18. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 14 hereof unless and until the funds held on trust are remitted to the Supplier.
 19. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
 20. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 19. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
21. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
 22. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA
- Waiver**
23. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
 24. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
 - (a) under section 95 to receive notice of intention to remove an accession;
 - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (e) under section 130 to receive a notice to dispose of goods;
 - (f) under section 132(2) to receive a statement of account following disposal of goods;
 - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - (j) under section 142 to redeem the goods;
 - (k) under section 143 to reinstate the security agreement; and
 - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.
- Costs**
25. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
 26. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
 27. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clause 25
 - (b) Secondly, in payment of any interest incurred.
 - (c) Thirdly, in payment of the outstanding invoice(s).
 28. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Applicant will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
 29. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 27 herein.
 30. Payments allocated (and/or reallocated) under clause 27 and 28 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.
- Miscellaneous**
31. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
 32. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
 33. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
 34. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
 35. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- Consent to register**
36. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
 37. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- Entire agreement**
38. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
 39. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.