

GENERAL TERMS OF TRADE

These *General Terms of Trade* apply broadly to all transactions between us. Documents issued by us in regards to a transaction will identify, if necessary, special terms and conditions.

Interpretation

"Good faith" means honesty in fact in the conduct or transaction concerned and is a notion that is extended to include negotiations precedent or subsequent to this agreement.

"Business Day" means any day other than a Saturday, Sunday, or public holiday.

Time is of the essence as it pertains to the performance of its respective obligation under this Agreement and the transaction contemplated and is a *primary consideration* when interpreting the reasonableness of time in a particular situation.

Reasonable Time. Whenever the Agreement between us requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by our consent. What is reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

Description of the Parties

We are the "Seller", that is, the person who sells or contracts to sell goods or services.

You are the "Buyer", that is, the person who buys or contracts under authority of another, whether expressly or impliedly, to buy goods or services.

"Guarantor" means that person who has furnished, under a separate agreement, an undertaking in favour of us stating that your performance under this Agreement will be discharged to the our full satisfaction. There is no obligation imposed upon us to keep a Guarantor or Guarantors, as may be required from time to time, informed as to your performance or non-performance hereunder.

The Subject Matter to be Supplied

"Goods" means those things which are moveable and have been identified or referenced in some way by the Parties and are for use primarily in the commercial context, including certificates or coupons exchangeable for such goods, and including goods, which at the time of sale or subsequently, are to be affixed to real property whether or not severable therefrom. Goods must be both existing and identified before any interest in them can pass.

"Services" means *work, skill, labour and services*, including, but not limited to, services furnished in connection with repair, alteration, or improvement of a premises, or services furnished in connection with the sale or repair of goods. The supply of services may be based upon a supply of goods component or vice versa.

The transactions contemplated hereunder may be for the supply of goods or services or may be some combination of both.

Payment

1. The buyer must pay the price indicated on the invoice for the goods or services issued by the seller. Any price estimate or quote made by the seller or any agent or employee of the seller or contained in advertisements, catalogues, price lists or other similar matter, is not binding on the seller and the buyer accepts and acknowledges that the price of the goods and services will be that as set out in the seller's invoice. However, if the buyer satisfies the seller that the price on the invoice is an error then the seller will reissue the invoice showing the correct price.
2. The seller reserves the right, on giving prior written notice to the buyer, to vary the price of the goods or services ordered by the buyer, between the date of the buyer's order and the date of delivery to take account of things such as (but without limitation):
 - (a) any increase in labour costs, costs of materials or services;
 - (b) change in exchange rates.
3. The seller's prices are quoted exclusive of taxes, duties and other imposts which, if chargeable, are payable by the buyer whether they are imposed or brought into force before or after acceptance of the buyer's order.
4. The seller may charge the buyer a handling fee as may from time to time be specified in the seller's price lists. Such handling fees will be shown on the invoice for the goods or services.
5. The buyer agrees to pay on demand all costs (including, without limitation, legal fees as between solicitor and own client) incurred by the seller or the seller's agents relating to the recovery of any amounts payable by the buyer to the seller under the agreement.
6. Without prejudice to any other remedies the seller may have for any overdue payment, the seller may charge on a daily basis to the buyer interest at a rate equal to 5% per annum over the seller's principal banker's overdraft rate from time to time, from

the due date for payment until the overdue amounts are paid. Interest will accrue after as well as before judgment which the seller may obtain against the buyer.

7. All payments by the buyer must be made in full without any deduction or right of set off or counter claim.
8. Without prejudice to any other remedies which the seller might have:
 - (a) failure by the buyer to pay for goods in accordance with the agreement; or
 - (b) failure by the buyer to otherwise comply with the terms of the agreement; or
 - (c) if the seller deems the buyer's credit to be unsatisfactory, will entitle the seller to cease supply of future goods or services to the buyer and cancel any current orders for sale of goods. Upon such cancellation and without prejudice to any other remedies which the seller might have, all credit in favour of the buyer will cease and all payments outstanding will become immediately due and payable to the seller. The seller may also take possession of such item of goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way.
9. In accepting any payments from the buyer, the seller will not be bound by any conditions or qualifications or terms which the buyer may have attached to those payments.

Delivery

1. Delivery is deemed to be made:
 - (a) when the buyer or the buyer's agent is given possession of the goods at the seller's premises or elsewhere (loading is then at the buyer's risk); or
 - (b) when the goods arrive at the buyer's premises (unloading is then at the buyer's risk);whichever is the earlier.
2. On delivery:
 - (a) the goods are at the buyer's sole risk; and
 - (b) insurance is the buyer's responsibility.
3. The seller will choose the carrier and method of transportation of the goods, unless otherwise agreed in writing by the seller. The seller will dispatch the buyer's order for goods in one delivery or by instalments (where the seller accepts an order which provides for delivery by instalments). Failure to deliver any instalment will not entitle the buyer to refuse to accept delivery or any remaining instalments.
4. Where the buyer requests a particular method of delivery and if the seller agrees (in writing) then the buyer will cover the cost of delivery by that method from the point of dispatch of the goods or service by the seller.
5. Any quotations of delivery times agreed by the seller are made in good faith but are estimates and not commitments and no delay in delivery will entitle the buyer to refuse to accept delivery or cancel its order.

Shortages

Liability for shortages in the quantity of the goods delivered is limited to making up the shortages. No claim for shortages in quantity will be allowed unless the buyer gives written notification of the shortage in writing within seven days of the delivery and gives the seller reasonable opportunity to take all necessary steps to investigate the claim.

Retention of Title

1. It is expressly agreed that ownership is reserved and legal and equitable title to and property in all goods supplied by the seller is and remains vested in the seller until payment in full has been received by the seller in respect of such goods and all other moneys owing by the buyer to the seller.
2. Until the buyer has paid the seller in full for the goods the buyer must not sell (unless such sale is in the ordinary course of the buyer's business), dispose of, do anything that would render the goods liable to be seized or distrained and must not grant a security interest or lien over the goods. However, if the goods sold in the ordinary course of the buyer's business, the buyer must, if the buyer has not already paid the seller for the goods, hold the proceeds of sale of such goods on trust for the seller and separate from the buyer's own money and immediately pay such proceeds to the seller on request.
3. Unless the buyer has sold the goods in the ordinary course of its business, the buyer will store the goods in such a way that it is

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clearly identified as the property of the seller and keep the goods in good order and condition.

- For the purpose set out in clause 9 or for the purposes of inspecting each item of goods or ensuring due compliance by the buyer with the provisions of the agreement the seller and its agents are irrevocably authorised to enter any premises where the seller believes the goods may be, which may include the premises of any other party. The buyer will indemnify the seller on demand in respect of any cost or liability incurred by the seller in exercising its rights under this clause.

Seller's Liability and Maintenance Guarantee

- The buyer acknowledges that it must rely upon its own judgment as to the nature, quality and condition of the goods supplied by the seller and as to their sufficiency for any use or purpose and the buyer acknowledges that the seller is under no duty to ascertain the suitability of the goods for any purpose whatsoever and that no such representation has been made by the seller.
- In the case of goods not manufactured by the seller, the buyer is entitled to only such benefits as the seller may receive under any guarantee given to the seller by the manufacturer of the goods. The seller will not be liable for consequential or other damages.
- Any warranties expressed or implied by law or statute, in respect of the goods whether in respect of quality, fitness for intended purposes or otherwise, are excluded to the extent that such law or statutes permits exclusion.
- If the goods are manufactured by the seller and if the seller is otherwise ever liable to the buyer, the liability of the seller, arising from any defect or non-compliance of the goods is, subject to the Consumer Guarantees Act 1993, limited to the replacement or repair of the goods within the guarantee period if stated by the seller, or otherwise within 12 months of the date of delivery of the goods provided that the liability of the seller is in all cases limited to the amount of the invoice price of the goods. At the termination of the relevant guarantee period all liability on the seller's part ceases.
- The liability of the seller under clause 4 does not cover:
 - any defect caused or contributed to by the buyer; or
 - any attempt to repair the defective goods, where such repair is done by any person or persons not authorised by the seller to make repairs.
- If the seller elects to replace any defective goods, the buyer will be responsible at its cost and at its risk for shipment of the defective goods to the seller's premises.
- The seller's liability under clause 4 is for the benefit of the buyer only and the seller has no liability to any purchaser of the goods from the buyer. The buyer will indemnify the seller against any claims by the buyer's employees, agents, purchasers or other persons in respect of any loss, damage or injury arising from any defect or non-compliance of the goods.
- If the buyer is acquiring the goods for the purposes of a business, then all the guarantees and remedies in the Consumer Guarantees Act 1993 are excluded.

Personal Property Securities Act

- The buyer grants to the seller a security interest in the goods and the proceeds of the goods and the buyer acknowledges that the agreement creates a purchase money security interest in the goods and the proceeds of the goods. The buyer will, if the seller requests, sign any documents (including any new agreements), provide all necessary information and do anything else required by the seller to ensure that the seller's purchase money security interest is a perfected security interest.
- The buyer will not enter into any security agreement that permits any other person to register any security interest in respect of the goods or the proceeds.
- If the goods are for the buyer's business use the buyer agrees, to the extent Part 9 of the PPSA applies, that it will have no rights under Part 9 (Enforcement) of the PPSA. For example, but without limitation:
 - the buyer will have no rights under sections 114(1)(a) (to receive a notice of sale), section 117(1)(c) (relating to distribution of surplus), and section 133 (reinstating the agreement);
 - the buyer waives its rights under section 116 (to receive statement of account), section 119 (to recover surplus) and sections 120(2) and 121 (to receive notice of any proposal to retain the goods and object to any proposal).
- The buyer waives its right under the PPSA to receive a copy of any verification statement or financing change statement.
- The buyer agrees that where the seller has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

- For the purpose of this clause "PPSA" means the Personal Property Securities Act 1999.
- The expressions "personal property", "purchase money security interest", "security agreement", "security interest", "perfected security interest", "verification statement" and "financing change statement" have the meanings given to them under, or in the context of the PPSA.

General

- The seller may, and the buyer may not, vary or replace the agreement and it will be a condition of the seller continuing to supply goods to the buyer that the buyer agrees to sign any variation or replacement of the agreement if required by the seller.
- To be effective, any waiver of any or all of the terms and conditions in the agreement by the seller must be in writing.
- The buyer may not assign all or any of its rights or obligations under the agreement without the prior written consent of the seller.
- The seller is not bound, unless otherwise stated in the agreement, by any error or omission on any invoice, order form or other document or statement issued by the seller.
- Where the seller has rights and remedies at law or otherwise in addition to the rights set out in the agreement, those rights and remedies will continue to apply.

Access

The buyer irrevocably permits the seller or any person authorised by the seller in writing, upon giving reasonable notice to enter any premises where the goods are reasonably believed to be held. The buyer also agrees to indemnify and hold the seller harmless for reasonable costs of removal, enforcement, and legal action in respect of the removal of goods the subject of this Agreement.

The effects of statutory provisions

Nothing in this provision purports to operate to exclude statutory provisions where it is an offence to do so or if it renders these terms and conditions invalid.

Notices

Notices, demands, or requests provided for or permitted to be given must, at all times, be in writing and may be given to the address identified on the most recent transaction document by—

- Personal Delivery
- Express or Registered Post with delivery confirmation
- Facsimile Transmission with receipt confirmation

Privacy Act and Credit Information

The buyer and the Guarantor jointly and severally acknowledge and agree that the seller is authorised to make approaches to any credit reporting agency to obtain a report about the creditworthiness of either the Buyer or the Guarantor or both.

The buyer and the Guarantor jointly and severally authorise the seller to engage in the exchange of information with a credit reporting agency or with other such parties as are necessary to give effect to the contract and to the ongoing relationship between the parties hereto.

The buyer and the Guarantor jointly and severally acknowledge that the information referred to in the previous paragraph may include information about the creditworthiness, credit standing, credit history, credit capacity, and credit providers of either the Buyer or the Guarantor or both.