



Section 24

Terms and Conditions

Edition 3

TERMS AND CONDITIONS OF SALE - AAP INDUSTRIES PTY LIMITED

1. INTERPRETATION

In these Terms and Conditions and in any Contract to which these Terms and Conditions apply, unless inconsistent with the context:

- a) AAP means AAP Industries Pty Limited (ACN 000 402 826) or such other company related to AAP which accepts the Purchase Order;
- b) Act means the Competition & Consumer Act 2010;
- c) Cash Rate Target means the percentage specified by the Reserve Bank of Australia as cash rate target.
- d) Claim means any claim, demand, action or proceeding;
- e) Collateral has the meaning given under the PPSA and in particular for the purposes of this Contract, the personal property that is not used predominantly for personal, domestic or household purposes as identified in clause 8 hereof to which the Security Interest has attached;
- f) Conditions means these Terms and Conditions;
- g) Contract means the contract between AAP and the Purchaser for or in relation to the sale and purchase of Goods and/or Services;
- h) Goods means any item of whatsoever nature which is sold or to be sold by AAP to the Purchaser;
- i) Intellectual Property means all trade marks, patents, registered designs, copyright, logos, designs, drawings and software;
- j) PPSA means the Personal Property Securities Act 2009 as amended;
- k) PPS Register means the personal property securities register established under section 146 of the PPSA;
- l) Prescribed Terms means any terms, conditions, guarantees and warranties which the Act and any other law expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

The following statement only applies to a Consumer Sale of Goods or Services as defined in the Act:

"AAP's 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 for compensation for any other reasonable 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";

- m) Price means the price of the Goods and/or Services as agreed by the Purchaser and AAP at the time the Contract is formed pursuant to clause 2 below;
- n) Purchaser means the Purchaser on the Purchase Order;
- o) Purchase Order means an offer by the Purchaser for the purchase of Goods and/or Services;
- p) Security Interest has the meaning given under the PPSA;
- q) Services means all or any part of the services to be provided by AAP pursuant to the Contract;
- r) Standard Specifications means AAP's standard specification for the Goods current at the time the Goods are delivered to the Purchaser. Copies of the Standard Specifications are available upon request from AAP;
- s) Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa; and
- t) The headings in these Conditions are provided for convenience only and do not effect the interpretation thereof.

2. GENERAL

- a) The Contract is formed by AAP's acceptance of the Purchase Order. Written acceptance of the Purchase Order by AAP or commencement of performance of any work or services pursuant to the Purchase Order by AAP shall constitute acceptance of the Purchase Order.
- b) All Purchase Orders supplied by the Purchaser are subject to acceptance by AAP and no Contract between AAP and the Purchaser comes into existence until AAP accepts the Purchase Order.
- c) These Conditions apply to all Contracts entered into between AAP and the Purchaser.
- d) Subject to any Prescribed Terms, these Conditions embody the sole Terms and Conditions of the Contract between AAP and the Purchaser and supersede all other conditions and agreements between the parties, unless expressly amended in writing by AAP.
- e) These Conditions shall without further notice apply to all future transactions between AAP and the Purchaser in relation to the sale and purchase of Goods and/or Services, whether or not this document is delivered or executed in the course of the transaction.
- f) For the avoidance of doubt, none of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Purchaser (including without limiting the foregoing those included in a Purchase Order or like document from the Purchaser) shall apply to or form part of the Contract and any such terms and conditions by the Purchaser are expressly rejected by AAP, except and to the extent otherwise agreed in writing by AAP.
- g) No variation or abrogation of these Conditions shall be effective unless it is evidenced in writing signed on behalf of AAP.
- h) These Conditions supersede all terms and conditions of sale previously issued by AAP.

3. PRICE

- a) The Price will be fixed from the date the Contract is formed.

4. GOODS AND SERVICES TAX

In this clause:

- a) GST refers to Goods and Services Tax under a New Tax System (Goods and Services) Act 1999 (GST Act) and the terms used have the meaning as defined in the GST Act.
- b) The Price and all other amounts agreed to be paid by the Purchaser to AAP, is exclusive of GST.

5. PAYMENT

- a) Unless otherwise agreed in writing by AAP, payment by the Purchaser to AAP will be made on or before the last day of the month following the month in which the invoice was issued by AAP to the Purchaser.
- b) Time for payment of the Price for the Goods and/or Services shall be of the essence of the Contract and if the Purchaser fails to pay the Price when due AAP may treat the Contract as repudiated by the Purchaser or may, unless payment in full is made, suspend delivery of the Goods the subject of the Contract and any Goods the subject of any other Contract with the Purchaser without incurring any liability whatsoever to the Purchaser in respect thereof. In addition, without prejudice to such other rights of AAP, the Purchaser shall (if so required by AAP) pay interest to AAP on the outstanding amount of the Price at the rate equal to the

Cash Rate Target as at the date invoice was issued by AAP to the Purchaser increased by two (2) percentage points until the Price is paid in full.

- c) Notwithstanding any rights of lien to which AAP may otherwise be entitled, AAP shall have a specific lien (including a right of sale) over the Goods the subject of the Contract and any Goods the subject of any other contract with the Purchaser until the Price of the Goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the Price of the Goods in respect of any off set or counter claims.
- d) If the Purchaser defaults in payment or breaches these Conditions then it will be liable for all costs incurred by AAP and will indemnify AAP against any loss, liability, charge, expense, outgoings or payment which AAP suffers, incurs or is liable for in respect of the recovery of moneys owing by the Purchaser to AAP.

6. DELIVERY

- a) Any time or date named and accepted by AAP for completion, delivery, despatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the Contract or part of the description of the Goods and is not of the essence of the Contract.
- b) Unless otherwise stated in writing AAP may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these Conditions shall apply to each partial delivery or delivery by instalments.
- c) The Purchaser shall notify AAP within 7 days of delivery of any shortfall in or loss or damage to Goods delivered. Failure to so notify shall, subject to the requirements of any Prescribed Terms, disentitle the Purchaser to any remedy in respect of the shortage, loss or damage.

7. RISK AND TITLE

- a) Except where AAP is storing the Goods on behalf of the Purchaser, AAP will bear all risks for the Goods until the earlier of delivery to the Purchaser's address or collection by the Purchaser from AAP's premises. The Purchaser will bear all risks for the Goods where AAP stores the Goods on behalf of the Purchaser.
- b) Property and title in the Goods supplied by AAP to the Purchaser will not pass to the Purchaser until such time as the Goods the subject of the Contract and all other Goods supplied by AAP to the Purchaser have been paid for in full. Until that time, the Purchaser shall store the Goods, including Goods into which the supplied Goods have been mixed, in such a manner as to show clearly that they are the property of AAP and shall upon AAP's demand deliver up such Goods to AAP. In default of such delivery AAP may by its servants and agents enter the Purchaser's premises at any time without notice to repossess the Goods.
- c) Subject to the PPSA, until such time as the Goods have been paid for in full the Purchaser is at liberty to sell the Goods, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof in trust for AAP and promptly account to AAP for those proceeds in payment of the Price for the Goods.
- d) The Purchaser and AAP agree that the provisions of this clause apply notwithstanding any agreement between the parties under which AAP grants the Purchaser credit.

8. PERSONAL PROPERTY SECURITIES ACT 2009

- a) The terms "Collateral", "Debtor", "Financing Statement", "Financing Change Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
- b) The Purchaser acknowledges and agrees that by accepting these Conditions which form part of the Contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:
 - i) AAP holds (as Secured Party) a Security Interest over all of the Goods and all other present and after acquired Goods supplied by AAP to the Purchaser (Goods) and any Proceeds of the sale of those Goods ("Collateral");
 - ii) that any purchase by the Purchaser on credit terms from AAP will constitute a purchase money security interest as defined under section 14 of the PPSA ("PMSI");
 - iii) the PMSI granted herein will continue to apply to any Goods coming into existence or proceeds of sale of Goods coming into existence;
 - iv) AAP will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods;
 - v) any AAP Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all other registered or unregistered Security Interest;
 - vi) until title in the Goods pass to the Purchaser, it will keep all Goods supplied by AAP free and ensure all such Goods are kept free of any charge, lien or Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of AAP under the Contract or the PPSA; and
 - vii) in addition to any other rights under these Conditions or otherwise arising, AAP may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Purchaser, to search for and seize, dispose of or retain those Goods in respect to which the Purchaser has granted a Security Interest to AAP.
- c) The parties acknowledge that AAP is entitled to register its interest in the goods supplied or to be supplied to the Purchaser under these Conditions on the PPSA Register as Collateral.
- d) The Purchaser undertakes to:
 - i) sign any further documents and provide such information which AAP may reasonable require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
 - ii) indemnify and upon demand reimburse AAP for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;
 - iii) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of AAP; and
 - iv) provide AAP not less than 7 days prior written notice of any proposed change in the Purchaser's name, address, contact numbers, business practice or such other change in the Purchaser's details registered on the PPS Register to enable AAP to register a Financing Change Statement if required.
- e) AAP and the Purchaser agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Contract.
- f) The Purchaser hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- g) The Purchaser waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.
- h) Unless otherwise agreed in writing by AAP, the Purchaser waives its right to receive a verification statement in accordance with section 157 of the PPSA.
 - i) The Purchaser shall unconditionally ratify any actions taken by AAP under this clause 8.
 - j) This clause 8 will survive the termination of the Contract to the extent permitted by law.

9. WARRANTIES AND EXCLUSIONS OF LIABILITY

- a) AAP warrants that the Goods when delivered to the Purchaser will comply with the Standard Specification for the Goods. AAP is not required to supply Goods with any specification or characteristics that are outside any such description for the Goods (if any) or the Standard Specifications.
- b) AAP shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Purchaser.
- c) The Purchaser acknowledges, agrees, represents and warrants that:
- as the use of the Goods is outside the control of AAP, the Purchaser is satisfied that the Goods when supplied will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those Goods, even if that purpose is made known to AAP at any time;
 - the Purchaser has or will in a timely manner conduct all mandatory or prudent tests and apply to all mandatory or prudent quality control checks and procedures to ensure the Goods and any product that is produced from them will be without defect and suitable or fit for any purpose required for them; and
 - the Purchaser has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by AAP or anyone on its behalf in respect of the Goods, other than those that are expressly contained in the Contract.
- d) The Purchaser releases and indemnifies AAP and its officers employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it, whether on their own or jointly with the Purchaser and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Purchaser of any warranty provided by it under paragraph c) of this clause.
- e) AAP as expressly set out in the Contract and except for liability under any Prescribed Terms:
- all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the Contract or the performance of AAP's obligations under the Contract or to any Goods or Services supplied by AAP under the Contract are excluded, except for those conditions and warranties as to title in the Goods; and
 - without limiting the generality of the foregoing, AAP gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the Goods for their ordinary or any special use or purpose, and the description of the Goods in any Contract or any other document shall not import any such condition, warranty or guarantee on the part of AAP.
- f) Notwithstanding anything to the contrary herein contained but subject to the provisions of any Prescribed Terms, AAP's liability in respect of any Claim by the Purchaser arising in any way out of the Contract or its performance or from any failure to perform the Contract including (without limiting the generality of the foregoing) for breach of any condition, warranty or guarantee contained in the Contract or in any Prescribed Term and whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:
- if any guarantee under the Act is applicable to any Goods or Services supplied by AAP and AAP's liability is due to a failure to comply with the guarantee and such failure cannot be remedied or is a major failure as defined in the Act (each such failure hereafter referred to as a Relevant Failure), AAP's liability is as stated in the Act in respect of that Relevant Failure;
 - if the liability is due to a failure to comply with any condition, warranty or guarantee (including any guarantee under the Act) in respect of any Goods or Services supplied by AAP under the Contract and such failure is not a Relevant Failure, AAP's liability is limited as follows in respect of such failure:
 - if the failure is in respect of Goods, AAP's liability is limited to replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, payment of the cost of replacing the Goods or of acquiring equivalent Goods, or payment of the cost of having the Goods repaired, as determined by AAP in its sole discretion; and
 - if the failure is in respect of Services, AAP's liability is limited to the supply of the Services again or payment of the cost of having the Services supplied again, as determined by AAP in its sole discretion.
- g) Any condition, warranty, guarantee (including any guarantee under the Act), terms or obligations expressed or implied by law or otherwise relating to the Contract or the performance of AAP's obligations under the Contract or to any Goods or Services supplied by AAP under the Contract will not apply to AAP and AAP will not be liable for any loss or damage to the Purchaser and the Purchaser will not be entitled to any Claim against AAP whatsoever where:
- the Goods, from any time after the delivery to the Purchaser, are subjected to incorrect usage, failure to comply with AAP's instructions (whether in writing or verbal), misuse, wilful damage, negligence, fair wear and tear or use of the Goods with incompatible products;
 - the Goods are subjected to any alteration and/or repair and/or maintenance without AAP's prior written consent;
 - work or maintenance are supplied in relation to the Goods other than by a person authorised in writing by AAP;
 - the Purchaser resets faults in the Goods without first obtaining written consent from AAP;
 - the Purchaser:
 - fails to notify AAP of any defect in the Goods (defective goods) within seven days after those defects are first noticed by the Purchaser; and
 - fails to give AAP a reasonable opportunity (from the time that the Purchaser gives notice pursuant to clause 9g)v)(A) to inspect the defective Goods including any defective Goods that have been attached to or incorporated in any real or personal property.
- h) To the extent permitted by law, AAP will have no liability to the Purchaser, however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity arising out of or in connection with the Contract or its performance.

10. RETURN OF GOODS

- a) Goods supplied to the Purchaser are not returnable except as provided in clause 9 above.
- b) If the Goods are in accordance with clause 9a) and all Prescribed Terms and are otherwise in compliance with the provisions of the Contract, AAP may from time to time under exceptional circumstances and in its absolute discretion, choose to accept the return of the Goods from the Purchaser. A cancellation fee will apply and the Purchaser will also reimburse AAP for all costs associated with the delivery and return of the Goods.

11. INDEMNITY

The Purchaser will indemnify and keep indemnified AAP and its successors and assigns from and against any claim, liability, loss or damage AAP may sustain, as a result of any breach,

act or omission, arising directly or indirectly from or in connection with this Contract by the Purchaser or its representatives.

12. FORCE MAJEURE

AAP shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any event of force majeure. Without limiting the generality of the foregoing, this includes any liability whatsoever for any delay in completion, delivery, despatch, shipment or arrival of the Goods or in the tender of any documents or the like.

"event of force majeure" includes any acts of God, war, riots, strikes, lock outs, trade disputes, fires, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of AAP.

If there is an event of force majeure, AAP will notify the Purchaser of the event and the likely impact on its performance under the Contract. If the event affects the capacity of AAP to complete its material obligations under the Contract in a timely manner, AAP may by notice to the Purchaser terminate the Contract without any liability whatsoever on its part arising from such termination.

13. COST RECOVERY

Any expenses, costs or disbursements incurred by AAP in recovering any outstanding monies owing by the Purchaser including debt collection fees and solicitors costs shall be paid by the Purchaser.

14. TERMINATION

if:

- the Purchaser fails to pay any moneys due and payable pursuant to the Contract; or
- the Purchaser breaches, repudiates or terminates the Contract; or
- winding up proceedings are commenced against the Purchaser; or
- a Liquidator, Administrator, Receiver, Manager or Controller (as defined by the Corporations Act 2001 is appointed to the Purchaser or any part of its assets; or
- the Purchaser commits an act of bankruptcy (as defined by the Bankruptcy Act 1966); or
- AAP has reasonable belief that the Purchaser is insolvent or a party may attempt to levy any form of execution against the Goods; or
- the Purchaser suspends, or threatens to suspend, the conduct of its business; or
- the Purchaser becomes unable to pay its debts as and when they fall due, then AAP may terminate the Contract, in which case clause 15 herein of these Conditions will apply.

15. TERMINATION AND CANCELLATION

In the event that the Purchaser purports to terminate and/or repudiates or cancel the Contract, or if AAP terminates the Contract pursuant to the Contract, then, without prejudice to its other rights and remedies, AAP may recover from the Purchaser all costs and expenses incurred by AAP in its performance of the Contract, and all loss and damages arising from or relating to the termination or repudiation including but not limited to the cost of any Goods ordered but not delivered (which cannot be cancelled).

16. INTELLECTUAL PROPERTY RIGHTS

- Property, right and title to all Intellectual Property relating to the Goods remains with AAP. The Purchaser will be entitled to a non exclusive, non transferable licence of the Intellectual Property to the extent it is required for the proper use and performance of the Goods.
- All Intellectual Property created during the course of the supply of the Goods or as a result of work done in connection with the supply of the Goods will be the property of AAP. The Purchaser will execute all documents evidencing ownership of the Intellectual Property as AAP may reasonably require.

17. WAIVER

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

18. LICENSES, DUTIES, ETC.

The payment of any taxes and the obtaining and maintenance in full force and effect of any necessary export or import licenses, authorisations or consent in respect of the Goods is the sole responsibility of the Purchaser and AAP shall be under no liability whatsoever in respect of Goods exported or imported without any necessary licenses, authorisations or consent.

19. INDUSTRIAL PROPERTY RIGHTS

The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of AAP attached to or placed upon the Goods.

20. NOTICES

Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre paid first class post, recorded delivery, commercial courier.

21. ASSIGNMENT

The Purchaser may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever.

22. SUB-CONTRACT

AAP reserves the right to sub-contract the performance of any Contract or part thereof to any other party or person or corporation it may determine.

23. PROPER LAW AND JURISDICTION

This Contract shall be governed by and construed in accordance with the laws of New South Wales, Australia. The Purchaser agrees to submit to the non exclusive jurisdiction of the New South Wales Courts and courts of appeal therefrom for all purposes of or in connection with this Contract.