

TERMS AND CONDITIONS OF SUPPLY ("TERMS")

Interpretation

1. In these Terms:
 - 1.1 "**Credit Application**" means the credit application form to which these Terms are annexed (if applicable);
 - 1.2 "**Customer**" means the purchaser of Goods to be supplied by the Supplier as detailed in the Invoice and/or Credit Application;
 - 1.3 "**Goods**" means the goods to be supplied by the Supplier to the Customer as detailed in the Invoice and includes any part or parts thereof;
 - 1.4 "**Invoice**" means the invoice issued by the Supplier to the Customer which details the Goods and the Price to which these Terms are annexed (if applicable);
 - 1.5 "**PPSA**" means the *Personal Properties Securities Act 2009*;
 - 1.6 "**Supplier**" means the Supplier named in the Invoice and/or the Credit Application; and
 - 1.7 "**Price**" means the total amount payable for the Goods as detailed in the Invoice, including applicable GST, cost of special packaging (if any) and delivery to the Customer.

General

2. These Terms will apply to the supply of Goods despite any conflicting terms proposed by the Customer, unless waived in writing by the Supplier.

Supply of the Goods

3. The Supplier agrees to supply the Goods and the Customer agrees to purchase the Goods on these Terms.

Payment

4. Unless otherwise agreed by the Supplier in writing, the Customer must pay the Price without deduction in accordance with the payment terms detailed in the Invoice and/or Credit Application. The Supplier may require a deposit on the placement of an order by the Customer.
5. The Supplier may charge and the Customer will pay interest on all amounts not paid by the Customer on the due date at the current NAB Overdraft rate plus 2 % per annum. Interest will be calculated daily and may be capitalised monthly until full payment has been made by the Customer.
6. Allowance to the Customer of additional time to pay the Price will not constitute a waiver by the Supplier of any of these Terms nor be construed as the Supplier granting a credit facility to the Customer. No credit facility will be granted to the Customer unless confirmed in writing by the Supplier.
7. In the event of non-payment of the Price in accordance with these Terms, the Customer will pay all reasonable collection expenses, legal costs and any other expenses incurred by the Supplier in connection with the non-payment.
8. If payment of the Price is not made by the Customer in accordance with these Terms, the Customer acknowledges and agrees that the Supplier has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Goods. For that purpose, the Supplier's employees, agents or

workers may without notice enter any place the Supplier may enter any place the Supplier believes the Goods to be without committing a trespass.

9. The Supplier will have no obligation to make good any damage caused by such recovery or removal and the Supplier will not be liable for and the Customer will indemnify the Supplier against any costs, claims, damages or losses suffered by the Customer as a result of such removal.

Delivery

10. Any delivery times proposed by the Supplier are estimates only and the Supplier will not be liable for any claim or cost resulting from late or non-delivery of Goods.
11. The Customer waives any claim for shortage of Goods delivered or damaged prior to or during the course of delivery, if the Supplier is not notified in writing of the shortage within 7 days from the date of receipt of Goods by the Customer.

Title and risk

12. In relation to all Goods:
 - 12.1 title in the Goods will not pass to the Customer until the Price is paid in full;
 - 12.2 risk in the Goods will pass to the Customer immediately upon delivery or collection of the Goods; and
 - 12.3 until the Supplier receives full payment of the Price, the provisions of clause 14 apply and the Supplier has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Goods free from any claims by the Customer.
 - 12.4 The Customer will indemnify the Supplier against any costs, claims, damages or losses suffered by the Supplier or a third party as a result of the Customer's inability to pay the Price.
13. In relation to all Goods, if the Customer has not paid the Price but sells or otherwise disposes of the Goods or any part of them, the monies received in respect of the disposal of the Goods will be held on trust by the Customer for the Supplier and will be payable immediately to the Supplier.

Personal Property Securities Act 2009 (Cth) ("PPSA")

14. Where the Supplier has supplied Goods to the Customer but where title in the Goods has not yet passed to the Customer, the Customer acknowledges and agrees that:
 - 14.1 these Terms constitute a Security Agreement for the purposes of the PPSA;
 - 14.2 the Customer will grant the Supplier a purchase money security interest ("**PMSI**") under the PPSA in the Goods and their proceeds to secure all amounts owed to the Supplier by the Customer;
 - 14.3 the Supplier may register the PMSI on the Personal Property Securities Register ("**PPSR**");
 - 14.4 it will undertake to do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the Personal Properties Securities Register;

- 14.5 it undertakes not to change its name in any form or other details on the PPSR without first notifying the Supplier; and
- 14.6 it will, if required by the Supplier, pay to the Supplier the cost of registering and maintaining registration of the Customer's PMSI on the PPSR, within 14 days of the request.
- 14.7 The Supplier need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- 14.8 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(7) of the PPSA) and the Customer must not authorise the disclosure of such information.
- 14.9 The Customer appoints the Supplier as its attorney to sign in the Customer's name all documents which the Supplier considers necessary to enforce and to protect its rights under these Terms.
- 14.10 The Customer agrees that to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA.
- 14.11 The Customer acknowledges that unless otherwise defined in these Terms, the terms and expressions used in this clause 14 have the meanings given to them, or by virtue of, the PPSA.

No Warranty

15. To the maximum extent permitted by law, the Supplier gives no warranty in relation to the Goods. The Supplier will have no liability whatsoever to any party resulting from any negligence or misuse of the Goods; or for any consequential loss, injury, damages or expenses suffered directly or indirectly by the Customer or by any of the Customer's employees, agents, contractors, clients or customers in connection with the Goods.

Liability

16. To the maximum extent permitted by law:
 - 16.1 the sole liability of the Supplier in respect of defective Goods is either (at the election of the Supplier) the re-supply of the defective Goods to the Customer or refund of the price paid by the Customer for the defective Goods
 - 16.2 the Supplier will not be liable for any contingent, consequential or punitive damages arising in any way whatsoever. The Customer acknowledges this express limitation of liability and agrees to limit any claim accordingly; and
 - 16.3 the Supplier will not be liable for any claim, loss of expense sustained or incurred by a person arising in any way as a result of the unavailability of the Goods, or any delay in delivery of the Goods or any part thereof.
17. The Customer will indemnify and will continue to indemnify the Seller against any liability, loss, damage, claim, action, demand, costs, or expenses incurred or suffered by the Supplier, including, but not limited to:
 - 17.1 any breach of these Terms;

- 17.2 any breach of any laws by the Customer;
- 17.3 any act or omission (negligent or otherwise) by the Customer; or
- 17.4 any action or trespass resulting from the Supplier entering the location in accordance with clause 8.

18. These limitations and indemnities continue after the expiration or termination of these Terms.

Termination

19. These Terms may be terminated at any time by mutual agreement between the parties.
20. These Terms may be immediately terminated by the Supplier if:
 - 20.1 the Customer is in breach of these Terms and fails to remedy that breach within 7 days of receiving notice to do so;
 - 20.2 the Customer fails to pay any amount outstanding to the Supplier after receiving 7 days prior notice that the amount is outstanding; or
 - 20.3 the Customer becomes bankrupt or insolvent.

Returned goods

21. Goods may only be returned with the Supplier's consent which must be requested within 7 days of delivery of the relevant Goods. All returned Goods must be shipped at the Customer's cost. No credit will be given for incorrect order freight costs.

Governing law

22. These Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.

Notices

19. Any notice to be given by one party to the other must be signed by the party giving the notice or by one of its duly authorized officers. The notice may be faxed to the intended recipient's facsimile number or e-mailed to the intended recipient's e-mail address. The notice will be deemed to have been received by the intended recipient upon receipt by the sender of a successful facsimile transmission answerback or in the case of e-mail, on the day of transmission provided that the sender is able to give evidence of transmission and the intended recipient does not give evidence of non-receipt.