

CONDITIONS OF SALE

1. Definitions

- 1.1. "Conditions" means the terms of these Conditions of Sale.
- 1.2. "Consumer" means a consumer as defined in the Australian Consumer Law.
- 1.3. "Customer" means any person or corporation that acquires goods or services from the Supplier;
- 1.4. "Goods" means all goods supplied by the Supplier to the Customer;
- 1.5. "Goods/Services" means all Goods and/or Services supplied by the Supplier to the Customer;
- 1.6. "Small Business Contract" means a small business contract as defined in the Australian Consumer Law.
- 1.7. "Services" means all services supplied by the Supplier to the Customer.
- 1.8. "Supplier" means NEDERMAN MIKROPUL PTY LTD (ACN 002 459 672 ABN: 75 002 459 672) of 848 Mountain Highway, Bayswater, Victoria, 3153.

2. Application of the Conditions

- 2.1. Unless otherwise agreed in writing, the Conditions will apply exclusively to every contract for the sale of Goods/Services by the supplier to the Customer and cannot be varied or supplanted by any other Conditions without the prior written consent of the Supplier.
- 2.2. Any written quotation provided by the Supplier to the Customer concerning the proposed supply of Goods/ Services is valid for 30 days, unless otherwise stated in the quotation, and is an invitation only to the Customer to place an order based upon that quotation. The quotation may include additional terms which are not inconsistent with the Conditions.
- 2.3. These Conditions and any additional terms in the Suppliers quotation are the entire agreement between the Supplier and the Customer and no other terms (whether on a purchase order or not) will apply.
- 2.4. The Customer will comply with the procedure (if any) prescribed by the Supplier for the placing of orders.
- 2.5. The Supplier will not be deemed to have accepted an order or an offer by the Customer unless it has communicated acceptance to the Customer in writing or has delivered the Goods/Services stated in the order.

3. Payment

- 3.1. Payment must be made within 30 days of the date of the Supplier's invoice.
- 3.2. The Supplier may withdraw any credit terms or require the provision of security at any time.

4. Payment Default

- 4.1. If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any other remedy available to it: -
 - (a) charge the Customer 10% interest on any sum due until the date of payment in full;
 - (b) charge the Customer for all expenses and costs (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - (c) cease or suspend for such period as the Supplier thinks fit, supply of any further Goods/Services to the Customer;
 - (d) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier;
 without effect on the accrued rights of the Supplier under any contract.
- 4.2. Subject to any provision in the Corporations Act 2001 (Cth) to the contrary, clauses 4.1(c) and (d) may also be relied upon, at the option of the Supplier:
 - (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Customer is a corporation and, it enters into any scheme of arrangement or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

- 4.3. In the event of a dispute, the Customer will not be entitled to withhold payment of any undisputed amount due to the Supplier.

5. Passing of Property in Goods

- 5.1. Until full payment in cleared funds is received by the Supplier for all Goods/Services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer: -
 - (a) title and property in all Goods remain vested in the Supplier and do not pass to the Customer;
 - (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
 - (c) the Customer must keep the Goods separate from its goods and maintain the labelling and packaging of the Supplier;
 - (d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account;
 - (e) the Customer must deliver up all Goods to the Supplier immediately upon service of a written demand;
 - (f) the Supplier may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

6. PPS Interest

- 6.1. The Customer grants a security interest in the Goods and the proceeds (as defined in the Personal Property Securities Act 2009 ('PPSA')) to secure the obligation to pay the purchase price of the Goods and other obligations to the Supplier under this agreement (together the "Indebtedness").
- 6.2. The Customer waives any right to receive notice in relation to any registration or amendment to a registration on the Personal Property Security Register ('PPSR').
- 6.3. Any payments received from the Customer shall be deemed to be made and applied by the Supplier in the following order (unless we otherwise determine): (1) to any obligation owed by the Customer which is unsecured, in the order in which the obligations were incurred; (2) to any obligations that are secured, but not by a purchase money security interest ('PMSI'), in the order in which those obligations were incurred (3) to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
- 6.4. Subject to clause 4.3, if the goods are held by the Customer as inventory (as defined in the PPSA), then the Customer may sell or lease the Goods in the ordinary course of business. Otherwise until the Customer has paid all money owing to the Supplier, the Customer must not sell or grant a security interest in the Goods without written consent from the Supplier.
- 6.5. To the extent permissible by law, the Customer agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: Section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notice to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143.
- 6.6. Section 115(7) of the PPSA allows for the contracting out of provision of the PPSA, the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- 6.7. Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

7. Pricing

- 7.1. Prices for the supply of Goods/Services exclude:
 - (a) sales tax, consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the Goods/Services; and
 - (b) the cost of freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer to the point of delivery.

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- 7.2. Where there is any change in the costs incurred by the Supplier in relation to the Goods/Services, the Supplier may, subject to clause 14, vary its price for Goods/Services on order to take account of any such change.
- 7.3. If the Customer is a Consumer or this agreement is deemed, at the time of making the agreement, to be a Small Business Contract, then the Supplier will not vary the price for any Goods which have already been ordered.
- 8. Delivery of the Goods**
- 8.1. Any period or date for delivery of Goods/Services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the Goods/Services.
- 8.2. All costs of freight and delivery of the Goods/Services at the agreed delivery address shall be borne by the Customer.
- 8.3. If the Customer is unable or fails to accept delivery of the Goods/Services, the Customer will be liable for all costs incurred by the Supplier due to storage, detention, double cartage, travel expenses or similar causes.
- 9. Risk and Insurance**
- All risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon delivery of the Goods to the Customer.
- 10. Warranty**
- 10.1. All Goods/Services supplied shall be free from defects in materials and workmanship for a period of 12 months, or such longer period as specified by the Supplier, from the date of delivery.
- 10.2. This warranty does not apply in circumstances where:
- the Goods are not defective;
 - the Goods were used for a purpose other than for which they were intended;
 - the Goods were repaired, modified or altered by any person other than the Supplier;
 - the defect has arisen due to misuse, neglect or accident;
 - the defect has arisen due to incorrect installation of the Goods;
 - the defect has arisen due to normal wear and tear on the Goods;
 - the Goods have not been stored or maintained as recommended by the Supplier; or
 - the Customer is in breach of the Conditions.
- 10.3. If the Goods/Services covered by the warranty pursuant to clause 10.1 is found to have a minor failure, the Supplier shall repair or rectify the defective Goods/Services within a reasonable time.
- 10.4. If the Goods/Services covered by the warranty pursuant to clause 10.1 is found to have a major failure, the Supplier shall provide a replacement or refund to the Customer within a reasonable time.
- 10.5. If a Customer intends to exercise the warranty entitlements pursuant to this clause, the Customer should cease using the Goods when a fault arises and make a warranty claim with the Supplier.
- 10.6. The warranty claim must include:
- Date of purchase
 - Place of purchase
 - Part Number
 - Serial/Control Number
 - Reason for claim
- 10.7. The warranty claim must be made within the period provided in clause 10.1 and addressed to the Operations Manager.
- 10.8. The Customer will not be liable for expenses related to the warranty claim pursuant to this clause.
- 10.9. This clause will apply subject to clause 11.
- 11. Australian Consumer Law**
- 11.1. This clause will apply if the Customer is deemed to be a Consumer or if this agreement is deemed, at the time of making the agreement, to be a Small Business Contract.
- 11.2. The Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, the Customer is entitled:
- to cancel the Service contract with Supplier; and
 - to a refund for the unused portion, or to compensation for its reduced value.
- 11.3. The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or Service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done the Customer is entitled to a refund for

the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

12. Liability

Except as set out in this clause 11 or 12,

- any term, condition or warranty in respect of the quality, fitness for purpose, condition, description assembly, manufacture, design or performance of the goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- The Supplier will not be liable for any loss or damage suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of goods.
- Nothing in the Conditions is to be interpreted as excluding, restricting or modifying the effect of excluding, restricting or modifying the application of any State or federal legislation applicable to the sale of goods which cannot be excluded, restricted or modified.
- If the Customer is deemed to be a Consumer or this agreement is deemed, at the time of making the agreement, to be a Small Business Contract, clause 12 will apply to the extent permissible by the Australian Consumer Law.

13. Cancellation

No purported cancellation or suspension of an order or contract for Goods/Services by the Customer will be binding on the Supplier after that order has been accepted by the Supplier

14. Goods Returned

Goods returned will be subject to a 20% handling fee at the discretion of the Supplier.

15. Variation

- The Supplier may vary these Conditions at any time and the amended Conditions apply from the date of the Supplier provides written notice of the variation, unless clause 15.2 applies.
- If the Customer is a Consumer or this agreement is deemed, at the time of making the agreement, to be a Small Business Contract, then the Customer may elect not to proceed with any quotation or order for Goods/Services intended to be the subject of the variation by variation by written notice to the Supplier within 7 days of receiving notice of the variation, provided that the Customer shall be liable for all Goods/Services delivered prior to the date of such election.

16. Safety Devices

No special safety devices are included unless specified by the Customer and agreed to by the Supplier. Any costs incurred are for the Customer's account.

17. Shipment

Any special loading, crating or boxing specified by the Customer in respect of the equipment referred to in this agreement will be charged as an additional cost and payable as such to the Supplier by the Customer in terms of payment as stated in the contract between the Customer and the Supplier.

18. Intellectual Property

- All intellectual property rights (including all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such our rights and interests), including those developed during the supply of goods remain the sole property of the Supplier at all times.
- If the Supplier terminates this agreement, the Supplier may immediately reclaim any material incorporating the Supplier's intellectual property and the Customer grants an irrevocable licence to enter upon the Customer's premises to reclaim such material without incurring liability to the Customer or any other person.

19. Export Control

- If Customer exports goods/services (hardware and/ or software and/ or technology as well as corresponding documentation) delivered by Supplier, Customer shall comply with all applicable national and international export (and re-export) control regulations.