



# VITAL ENVIRONMENT PTY LTD

## TERMS AND CONDITIONS OF TRADE

### 1. GENERAL

All sales are subject to these Terms & Conditions of Trade.

### 2. PAYMENT & SUPPLY OF GOODS

- 2.1 A purchaser seeking to purchase goods on credit must complete our Application for Commercial Credit.
- 2.2 The purchaser must pay for goods supplied on credit on or before 30 days from the invoice date.
- 2.3 We may charge interest on all amounts overdue at the rate of 15% per annum from the date payment fell due up to the date of payment.
- 2.4 You agree to reimburse to us any costs incurred in enforcing payment through debt collection agencies, lawyers or by other means.
- 2.5 If you fail to comply with these terms and conditions of trade, we may:-
  - withhold supply and dispose of any goods which are the subject of purchase orders;
  - commence legal proceedings to enforce payment of outstanding amounts and costs we incur in recovering those amounts;
  - To terminate the credit account.
- 2.6 We will not be liable to the purchaser for any loss or damage resulting directly or indirectly from the exercise of rights specified in Clause 2.5.

### 3. RISK

Where goods are delivered at our premises to a vehicle you or your consignee provides or to another method of transport you nominate, risk in the goods passes to you upon delivery. Where goods are transported from our premises by a vehicle or another method of transport we provide, risk in the goods passes to you when the goods are delivered to you or as you direct.

### 4. RETENTION OF TITLE

Despite any arrangement regarding credit, ownership of the goods will not pass to you until all monies owing to us for the goods have been paid. Until you have paid all accounts owed in full, the following will apply:-

- 4.1 You will hold the goods as bailee and keep the goods separate from other goods within your control not owned by us, properly stored, protected and insured.
- 4.2 You have the right to resell the goods in the ordinary course of business provided that proceeds of the sale are paid into a bank account separate from all other accounts you operate.
- 4.3 You will pay the monies arising from the sale of the goods to us sufficient to pay for the goods when you receive them, upon request. The part of the monies received by you for the goods which is equal to the monies owing to us will never become your property and will be held in trust by you for us.
- 4.4 You will maintain records in relation to the purchase and sale of the goods.
- 4.5 We may at any time enter your premises (or the premises of an associated company or agent where the goods are located) and remove such goods.
- 4.6 You will be liable for all costs incurred by us in exercising this right of retrieval, including all legal costs. We will not be liable for any loss or damage caused in exercising this right of retrieval.

### 5. QUOTATION

A written quotation is subject to change and is valid only for 30 days unless we extend it in writing.

## 6. PRICES

If we quote a price for goods to be dispatched at a later date, the price will be our standard price on the date of dispatch unless a contractual price agreement is in force between us.

## 7. RETURNS AND CLAIMS

We will not accept returns of stock without prior authorisation and returns will be subject to the following:

- 7.1 Stock must be unopened and in its original packaging, in good order and condition and must be accompanied by documentation showing:
  - Purchaser's name;
  - Invoice number;
  - Reason for return within 30 days;
- 7.2 Return of faulty stock
  - Any claims for faulty stock must be fully documented;
  - All items will be subject to inspection before credit can be considered and accordingly acceptance of the goods by us or our agents may not constitute acceptance of credit.
- 7.3 Delivery shortages or damage upon delivery:

Any claims in respect of delivery shortages or stock damage at the time of delivery must be notified within 48 hours of delivery of the stock.

## 8. CAPPED LIABILITY

- 8.1 You agree regardless of any negligence on our part, to release, hold harmless and indemnify us from and against all liabilities, claims, damages, losses, consequential losses (including loss of profit), costs, and expenses of whatever nature, however occurring which may accrue against or be suffered by us arising out of or in any way connected with the goods unless caused by wilful misconduct on the part of us or any of our servants or agents acting within the scope of their employment.
- 8.2 Pursuant to section 64A of the Australian Consumer Law this condition applies in respect of any of the goods or services supplied under this agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if you established that reliance on it would not be fair and reasonable.

Liability for breach of guarantee implied into this agreement by the Australian Consumer Law other than a condition implied by sections 51 to 53 is limited in the case of any of the following as determined by us:

- (i) the supplying of the goods and services again; or
- (ii) the payment of the cost of having the goods and services supplied again.

## 9. INDEMNITY

- 9.1 You indemnify us against:
  - (a) All losses incurred by us;
  - (b) All liabilities incurred by us; and
  - (c) All costs actually payable by us to our own representatives (whether or not under a costs agreement) and other expenses incurred by us in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal), in connection with any breach by you of this agreement.

## 10. ENTIRE AGREEMENT

This agreement is the entire agreement between the parties and supersedes all and any communications, negotiations, arrangements and agreements, whether oral or written, between the parties in respect of the matters that are the subject of this agreement.

## 11. SEVERANCE

If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.

## 12. ALTERATION TO AGREEMENT

Any modification, alteration, change or variation of or to any term or condition of this agreement will be ineffective unless made in writing and executed by and/or on behalf of each party in such manner as to be legally binding upon it.

## 13. NO SET-OFF OR WITHHOLDING OF PAYMENT

You will not claim any rebate or discount in advance of such entitlement having been recognised by us and included on the statement or invoice, and in particular you will not attempt to offset any alleged rebate, discount or entitlement against any money owing to us.

## 14. WAIVER

Failure of any party at any time to insist on performance of any provision of this agreement is not a waiver of that party's rights to insist on performance of that or any other provision of this agreement.

## 15. AUTHORITY OF SIGNING PARTIES

Each party executing on behalf of the Purchaser personally warrants that it has due authority to sign this agreement and that such authority has not and will not be revoked during the currency of this agreement.

## 16. PERSONAL PROPERTY SECURITIES ACT (PPSA)

16.1 This clause 16 applies to all goods supplied under clause 2 in which we retain ownership. Where applicable, terms used in this clause 16 have the same meaning as in the Personal Property Securities Act 2009 (the PPSA). For the purpose of the PPSA:

- (a) This agreement and:
  - (i) any order placed by you
  - (ii) delivery invoice; and
  - (iii) any Approved Application for a consumer credit account applying from time to time;form a security agreement for the PPSA under which our interest in the goods is secured;
- (b) you authorise us to register our interest in the goods purchased under this security agreement on the register established by the PPSA, including as a Purchase Money Security Interest;
- (c) the Collateral secured by this agreement is any goods ordered by you and delivered by us for which the purchase price has not been fully paid;
- (d) acceptance of delivery of goods ordered by you Attaches this security agreement to the Collateral;
- (e) Our interest under this security agreement is a Purchase Money Security Interest to the extent permitted by the PPSA;
- (f) You agree that sections 125, 128, 129, 130, 134(1), 135, 142 and 143 of the PPSA do not apply to this agreement and that we may retain or dispose of in any manner (including at any price or no price) goods repossessed under this clause at our entire discretion; and
- (g) if we take apparent possession of the Collateral under section 126 of the PPSA, then we may dispose of the Collateral on your premises, the manner of disposal to be at our discretion.

## 17. GST

If we have any liability to pay Goods and Services Tax (GST) on the supply of any goods or services, you must pay to us an amount equivalent to our GST liability at the same time as the consideration is paid for the goods or services (unless the consideration for that supply is expressed specifically to be GST inclusive).