

ONTHEGO GROUP PTY LTD TERMS OF SALE

TERMS AND CONDITIONS OF SALE DATED _____ BETWEEN ONTHEGO
GROUP PTY LTD (ACN 159 056 087) (“the Company”) AND

 (“the Customer”)

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions:

- (a) “Business Day” means any day between the hours of 8:30am and 5:00pm, other than a Saturday or Sunday, bank holiday or public holiday in the Australian Capital Territory;
- (b) “Credit Facility” means an agreement between the Company and the Customer where the Company provides a credit facility to the Customer enabling the Customer to purchase Goods from the Company in advance of payment;
- (c) “Goods” means the goods supplied by the Company to the Customer under these Terms and Conditions of Sale and as set out on the Invoice or Quotation;
- (d) “GST” means the tax payable on taxable supplies under the GST Law;
- (e) “GST Law” means the *A New Tax System (Goods and Services) Tax Act 1999* (Cth) or any subsequent Act imposing such a tax and includes any subordinate legislation in respect of those Acts;
- (f) “Intellectual Property” means all intellectual property, including any logos, patents, patent applications, trade marks, service marks, trade or business names, registered designs, unregistered design rights, copyrights, moral rights, know how, trade secrets, domain names, internet addresses, rights in confidential information, and all or any other intellectual properties, whether registered or unregistered, and including all applications and rights to apply for any of the same;
- (g) “Invoice” means the invoice provided by the Company to the Customer setting out the agreed price for supply of the Goods;
- (h) “Logo Surcharge Fee” means \$5.50 ex. GST
- (i) “Quotation” means a quotation provided by the Company to the Customer setting out the quoted price for the supply of the Goods.

1.2. These terms and conditions:

- (a) apply to all Goods and Services provided by the Company to the Customer.
- (b) subject to any Credit Facility, form the sole agreement between the Company and the Customer and supersede and exclude to the extent possible at law:
 - (i) any terms and conditions in previous offers or orders; and
 - (ii) any statements, representations or conduct made or done prior to entering into these terms and conditions.

2. QUOTATION, PRICE AND PAYMENT

2.1. Unless otherwise specified:

- (a) all Quotations, except for price, are valid for acceptance within 30 days;
- (b) quoted prices will include GST unless otherwise indicated and are subject to change without notice;
- (c) the Company reserves the right to adjust prices to the Company’s prices prevailing at the time of shipment;
- (d) Invoices must be paid in accordance with the payment terms specified on the Invoice;
- (e) all unpaid or overdue accounts attract a 4% per month interest charge calculated on a daily basis;
- (f) payment via credit card will attract a 1.5% surcharge for Visa and MasterCard or a surcharge as determined from time to time.

2.2. The Quotation price does not include the cost of freight unless stated. The Customer is required to reimburse the Company for any freight charges incurred by the Company on the Customer’s behalf.

2.3. If any payment owing to the Company after issue of an Invoice is overdue according to the terms of the Invoice, the Company at its discretion, reserves the right to refer the account to a collection agency or the Company solicitors for recovering of the debt and the Customer is responsible for all costs and expenses incurred by the Company in collecting the amounts overdue including legal fees on solicitor-client basis or a full indemnity basis, whichever is higher.

3. ORDERS

3.1. The Customer must place an order with the Company in writing.

3.2. The Company may decline, by written notice to the Customer, any order, in whole or part, at any time prior to delivery of the Goods, without obligation.

3.3. The Customer shall pay to the Company any loss, damage and expense incurred in relation to cancellation of any order.

3.4. The Company reserves the right to suspend or discontinue the supply of Goods to the Customer where the Customer is in default of these terms and conditions.

4. DELIVERY AND TITLE

- 4.1. All risk for loss and damage to Goods shall pass to the Customer upon delivery to the Customer or the address where the Customer has directed the Company to deliver the Goods.
- 4.2. The Company may withhold delivery of the Goods until the Customer has complied with the payment terms specified on the Invoice, or where the Company delivers Goods in advance of payment, the Company shall retain title to the Goods until full payment has been received.
- 4.3. Pending full payment, the Customer shall store the Goods in a way that clearly shows the Company's title, and in the event of resale or use before payment the Customer shall account to the Company for the proceeds of the sale until its Goods are paid for in full by the Customer. In the event that the Customer uses the Goods to manufacture products for re-sale, the Customer agrees to hold the proceeds of any sale, to the extent required to pay any amounts owing to the Company under these terms and conditions, on trust for the Company and agrees to pay such amount to the Company upon request.
- 4.4. The Customer's right to possession of the Goods shall cease if, not being a company, the Customer commits an available act of bankruptcy, or if a company, a receiver or administrator or manager becomes entitled to take possession of any assets, or any proceedings are instituted for the winding up of the company. In these circumstances, the Company may repossess the goods and may enter the premises where the Company reasonably believes the goods might be.
- 4.5. The Company will not be liable for any loss or damage whether in contract, tort or otherwise and whether direct or indirect arising out of delay in delivery.
- 4.6. Unless otherwise agreed, where the Customer has nominated an address to the Company, the Company shall at the Customer's expense deliver the goods to this address. If the nominated address is unattended or if delivery cannot otherwise be effected, or the goods cannot be despatched due to any act, matter or thing beyond the control of the Company, the Company in its sole discretion may store the goods at the Customer's risk and expense or take such other steps it considers appropriate.
5. **PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")**
- 5.1. In this clause the words "financing statement", "financing change statement", "security agreement", and "security interest" each have the meaning given to them by the *Personal Properties Securities Act 2009* (Cth) "PPSA".
- 5.2. Upon execution of these terms and conditions the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all goods that have been supplied by the Company to the Customer under these terms and conditions.
- 5.3. The Customer undertakes to:
 - (a) promptly sign any further documents and to provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in this clause;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses (including legal costs) incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the prior written consent of the Company;
- 5.4. The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 5.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.6. The Customer waives their rights as a grantor or a debtor under sections 142 and 143 of the PPSA.
- 5.7. Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 5.8. Until full payment for the goods is provided to the Company by the Customer, or where the Customer's right to possession of the Goods ceases in accordance with clause 4.4, the Company has the right to enter the Customer's premises and take control of the Goods.
- 5.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
6. **RETURNS AND DEFECTS**

- 6.1. The Company shall only accept returns on the basis that the Goods provided do not comply with the Quotation or Invoice or are defective Goods. The Company will not accept returns on the basis of change of mind by the Customer. The Customer shall give written notice to the Company of any claim ascertainable upon reasonable inspection of Goods within 14 days after the receipt of Goods.
- 6.2. In the case of defective Goods, the Company agrees to replace or repair the Goods, provided that:
- (a) the Customer has complied with clause 6.1;
 - (b) the Goods have been stored in a proper and appropriate manner;
 - (c) the Goods are returned to the Company in the condition that they were delivered;
 - (d) the Customer can provide a copy of the Quotation or Invoice for which the defective Goods relate.
- 6.3. The Company shall not be liable for normal variations in tolerance, dimension, weight or quality of Goods.
- 6.4. Where Goods are supplied to the Customer's specifications, the Customer indemnifies the Company from any liability, loss or damage suffered by the Company in respect of any claim that the Goods infringe any patent, design or similar rights.
- 6.5. Subject to those provisions of the *Competition and Consumer Act 2010* (Cth), and any other rights implied by law, which cannot be excluded by agreement between parties:
- (a) the Company makes no warranties, either express or implied, as to merchantability, fitness for a particular purpose, or otherwise, with respect to the Goods;
 - (b) in no event shall the Company be liable to contract, tort (including negligence) or otherwise for any loss of prospective profits or production, wasted overheads or expenses or special, indirect or consequential damages, or for machine work labour charges, or for any expenses resulting from the use by the Customer of defective Goods or the inability to use same;
 - (c) the Company's liability shall be limited at the Company's sole discretion to the replacement or repair of Goods.

7. COMPANY LOGO

- 7.1. The Customer agrees to have the Company's logos and branding displayed on the Goods in accordance with any specifications, illustrations, drawings or data supplied by the Company to the Customer or in accordance with the Company's Style Guide as amended from time to time. Where the Customer requests that the Company's logo is not displayed on the Goods, the Customer agrees to pay the Logo Surcharge Fee to the Company.

8. INTELLECTUAL PROPERTY DRAWING, DOCUMENTATION AND INFORMATION

- 8.1. Where the Seller has designed or drawn Goods for the Client, then the Intellectual Property in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion and as approved by the Company in writing.
- 8.2. Any descriptive specifications, illustrations, drawings and data, either submitted by the Company with a quotation or tender or otherwise provided by the Company to the Customer are illustrative and approximate only and do not form any part of any agreement entered into between the Company and the Customer unless expressly agreed in writing by the Company.
- 8.3. Any drawings or other documents or other documents submitted and any information supplied by the Company to the Customer remains the property of the Company and constitutes confidential information of the Company (to the extent it is not in the public domain) and the Customer shall keep all such confidential information confidential and shall not use any such drawing, documents and information for any other purpose other than stipulated by the Company nor provide the same to third parties.

9. FORCE MAJEURE

- 9.1. Should the Company be delayed, hindered or otherwise prevented from complying with these terms and conditions by reason of events or circumstances beyond the reasonable control of the Company including but not limited to acts of God, wars, riots, strikes lockouts, trade disputes, or labour disturbances, breakdown of plant and machinery, accident, storm, fire, flood, difficulties in obtaining materials, transport or labour or any other circumstances affecting the supply of Goods and Services, then the Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer whether as a direct or indirect result of any such occurrences.

10. GENERAL

- 10.1. This Agreement shall be governed by the law of the Australian Capital Territory and the Customer irrevocably submits to the jurisdiction of the Courts of the Australian Capital Territory.

- 10.2. The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 10.3. Any provision in these terms and conditions which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the terms and conditions.
- 10.4. These terms and conditions may only be amended or supplemented in writing, signed by both parties.
- 10.5. The rights, duties and obligations and liabilities of the parties under these terms and conditions are several and not joint or collective. Each party will be solely responsible only for its obligations as specified in these terms and conditions.
- 10.6. Any notice, requotes, demand, consent or other communication must be served in writing to the parties address as set out on the Quotation or Invoice and shall be deemed to have been duly given or made if it is:
 - (a) delivered personally to the relevant party – in which case it will be deemed to be received on the Business Day that it is delivered;
 - (b) sent by prepaid post to the relevant party at the usual place of residence last known to the party giving the notice or, in the case of a company, at the registered office of the relevant company – in which case it will be deemed to be received three Business Days after it is sent;
 - (c) sent by facsimile transmission to the facsimile number of the relevant party last known to the person giving the notice – in which case it will be deemed to be received on the day it is sent if a Business Day, otherwise on the next Business Day; or
 - (d) sent by electronic mail to the relevant party's email address as notified by the relevant party from time to time – in which case it will be deemed to be received on the day it is sent if a Business Day, otherwise on the next Business Day.