

## DEFINITIONS

In these Terms and Conditions of Sale:

“the Supplier” means Metcom Pty Ltd, ABN 23629871745

“the Customer” means the entity named on the “Contract of Sale” to which these Terms and Conditions are attached.

“Goods” means any products supplied and or installed by the Supplier that are the subject of an order placed by the Customer with the Supplier from time to time.

“Services” includes, but is not limited to, any other services invoiced to the Customer by the Supplier, its agent, employed or servant from time to time.

“Credit” means the supply of Goods or services before payment.

“Entity” means a person(s), company, firm, partnership, corporation, trust, joint venture or any trader of any description.

“Quotation” means the quotation described in clauses 2, 3 and 4.

“PPSA” means the Personal Property Securities Act 2009 (Cth) as amended from time to time. A term used in these Terms and Conditions has the same meaning as in the PPSA.

## PAYMENT TERMS

- 1) The Buyer agrees to pay 50% of the order price upon placement of order and the balance when the goods have been delivered and installed unless otherwise agreed to by the Supplier in writing.

## QUOTATION

2. The Supplier may, if at the request of the Customer, provide a quotation specifying:
  - a) The goods required to be supplied in order to fulfill the customer’s instructions; and
  - b) an estimate of the Supplier’s charge for the performance of any extra work to be supplied..
  - c). Any quotation provided by the Supplier is subject to these Terms and Conditions of Sale.
3. The Customer shall give the Supplier 60 days advance notice prior to installation regarding any changes to the quantity or items ordered for delivery. Pricing will be adjusted where necessary.

## SUPPLY OF GOODS AND SERVICES

4. Placement of an order by the Customer for the supply of Goods or services by the Supplier to the Customer confirms the Customer’s agreement to these Terms and Conditions of Sale.
5. The Supplier reserves the right to accept or decline any order from the Customer in whole or in part.
6. The Customer agrees that there is no binding contract until an order has been accepted by the Supplier.
7. The Supplier reserves the right to make part supply of any order from the Customer and may invoice accordingly.
8. Failure to supply a total order shall not invalidate these Terms and Conditions.
9. The Supplier reserves the right to vary the prices quoted to the Customer, if the variation is a result of an increase in the manufacturer’s costs and pricing.
10. The price for the sale of the Goods shall be as shown in the Supplier’s price list subject to the right of the Supplier to change the prices of its products without notice.
11. If the Supplier changes the price of products after the Customer places an order, the prices listed at the time of the placement of the order shall apply to the order.
12. The price of the Goods does not include delivery, freight or insurance to the Customer’s premises unless otherwise stated.
13. Unless otherwise stated, all prices quoted by the Supplier exclude Goods and Services Tax (GST).
14. The Customer must place orders for Goods to the Supplier by way of telephone, letter, fax or email. All orders made by telephone must be confirmed in writing.
15. The Supplier may accept an order by a written notice to the Customer after the assessment of the Customer’s credit status. The Supplier may decline any order received from the Customer by a written notice to the Customer within five (5) working days of receipt of the order by the Supplier. Any order not declined pursuant to this clause shall be considered to have been accepted by the Supplier.

## RETURN OF GOODS AND CANCELLATION OF ORDER

16. The Customer cannot cancel an order once accepted by the Supplier unless the Supplier consents in writing to the cancellation and the Customer indemnifies the Supplier for any loss incurred by the Supplier.
17. Return of Goods will be considered only if the Goods are damaged (through no fault of the Customer) and the Supplier is notified of the damage or fault, within seven (7) days of delivery of the Goods. Damaged or faulty Goods must be held for inspection by a Supplier’s representative prior to any action or consideration of a return to the Supplier. Goods cannot be returned to the Supplier until such time as written permission is given to do so.
18. Return of Goods accepted by the Supplier may be subject to a handling charge at the discretion of the Supplier. Any such charge will be the responsibility of the Customer.
19. The Customer agrees that a signed delivery docket by the Customer, its officer or an authorised person on behalf of the Customer shall constitute acceptance of the Goods in the specification and condition at delivery.
20. The Customer must attach to all returns, a return authorisation number provided by the Supplier.
21. The Supplier shall not be liable for any damage or defects in the products that have been caused by the improper storage, warehousing or transport or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair of the products by the Customer.
22. Goods supplied may be returned within seven (7) days of delivery provided the following conditions are satisfied:
  - a. Goods for return are accompanied by written approval, the invoice and delivery docket to which the Goods relate;
  - b. The Goods are returned in their original condition and original packaging;
  - c. The Goods have not been used or damaged and must be of merchantable quality; and, the Customer agrees to pay the Supplier

the cost associated in returning the Goods.

## PRICES

23. The price quoted may be subject to change due to material and cost fluctuations. The price charged will be the price set by the Supplier in accordance with the Supplier's pricing and charges in effect at the date of the Supplier's acceptance of the Customer's order.

## GST

24. All State and Federal government charges applicable to these goods, including GST will be borne by the Customer.

## INDEMNITIES, WARRANTIES AND AUTHORISATION

25. The Customer warrants that the Supplier shall be entitled to rely on all information supplied by the Customer as continuing up to and including the date of receipt of written notice from the Customer advising the Supplier of any change.
26. If any of these Terms and Conditions or any part thereof is rendered illegal, then such term and condition or part thereof shall be severed from these Terms and Conditions and the validity of the remainder shall in no way be affected.
27. Certain legislation may imply warranties, terms or conditions that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent to which the Supplier is entitled to do so, its liability is limited at its option to:
- The replacement or resupply of the Goods; or
  - The repair of the Goods; or
  - The payment of the cost of replacement of the Goods; or
  - The payment of the cost of the repair of the Goods.
28. The Customer shall immediately notify the Supplier in writing upon the discovery of any defect in the Goods. The Customer shall not carry out any remedial work or installation to alleged defective Goods without first obtaining the written consent of the Supplier to do so.
29. The Customer indemnifies the Supplier against any liability for any direct, indirect or consequential injury, loss or damage arising out of any act, default or omission of, or any representation made by the Customer, its agents or servants.
30. The Customer expressly acknowledges and agrees that it has not relied upon and the Supplier is not liable for any advice given by the Supplier, its agents or servants in relation to the suitability for any purpose of Goods or materials supplied by the Supplier.
31. The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Customer has been provided with an opportunity to independently verify the accuracy of such representation.
32. The Supplier shall not be under any liability in respect of defects in Goods delivered or for any injury, damage or loss resulting from such defects or from any associated work completed except to the extent that any statute applicable to these Terms and Conditions prevent the exclusion, restriction or modification of such terms and conditions.

## DELIVERY OF PRODUCTS TO CUSTOMER

33. The Customer acknowledges that the delivery times provided are estimates only. While the Supplier shall use all reasonable endeavors to meet agreed delivery dates, the Supplier shall not be liable to the Customer for any loss or damage whatsoever should it be delayed or prevented from delivering Goods, supplying services, or otherwise performing any of its contractual obligations due to any cause or circumstances beyond the Supplier's reasonable control. In the event of any delay in delivery or supply, as aforesaid, the due date shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance.
34. The Customer acknowledges that the Supplier may be unable to deliver the Goods due to the following circumstances beyond its control, including but not limited to, Machinery breakdowns, Labor or industrial disputes, labor shortage, fires, floods, priorities required or requested by any Public Authority, delays in transportation, lack of transportation facilities or restrictions imposed by any laws or any cause beyond the control of the Supplier.
35. Delivery dates are not to be treated as an essential condition of the sale.
36. The Supplier shall not accept liability for any loss, damage or delay incurred by the Customer or its customers due to late or non-delivery of Goods and Services.
37. Delivery of Goods to the Customer's agent, carrier or representative shall constitute delivery to the Customer.
38. If the Customer nominates their own vessel or vehicle to deliver the Goods to the Customer, then risk will pass when the Goods are loaded onto the Customer's nominated vessel or vehicle and the Customer shall be responsible for arranging the insurance of those Goods.
39. Where the Customer has nominated their own vessel or vehicle for delivery, the Supplier shall not be liable to the Customer for any loss in the event of any failure in delivery or failure by the Customer to arrange its own insurance.
40. The Supplier reserves the right to make part delivery of the Customer's order and separately invoicing such part delivery. The Customer shall pay for the part delivery without regard to the subsequent delivery.
41. All deliveries and prices are ex-warehouse, unless otherwise agreed to by the parties, and the Customer accepts all responsibility for deliveries once they leave the Supplier's warehouse.
42. Freight costs and insurance are the responsibility of the Customer unless otherwise agreed between the parties
43. A part delivery of an order shall not invalidate the balance of the Customer's order. Any failure on the part of the Supplier to deliver within the specified time period shall not entitle the Customer to repudiate the contract with regard to the balance remaining undelivered and any account due and payable.
44. If the Supplier makes a delivery of the Customer's order and any one of those Goods is defective for any reason:
- It is not a repudiation of these Terms and Conditions; and
  - The defective Goods are a severable breach that gives rise only to a claim for compensation in respect of that defective installment.
45. The Customer shall provide delivery instructions to the Supplier at the time of placing an order. The Customer shall be liable for any additional costs incurred by the Supplier due to the Customer's incorrect delivery instructions provided to the Supplier.
46. The Supplier shall not be liable to the Customer for, and the Customer waives its rights to claim any loss or damages caused by an event of an inadvertent mistake in relation to an order for or the delivery of Goods.
47. Delivery dates shall not be varied once they have been agreed, without Supplier's prior written approval. Should the Supplier agree to postpone delivery, the Goods in question shall be stored at Customer's risk and the Supplier reserves the right to impose a weekly storage charge.
48. Where delivery of the Customer's order is postponed by the Customer for more than three (3) months, the Supplier may at the Supplier's discretion, revise the Supplier's current list price and that may increase the prices of the Goods ordered.
49. The Supplier may at its discretion sell any Goods still in its possession three (3) months after the mutually agreed deferred delivery date and seek damages for any loss incurred by the Supplier as a result of the deferment in the delivery date or non-delivery of the Goods to the Customer.
72. Every reasonable effort will be made by the Supplier to make delivery of Goods on or by any date requested by the Customer. However, if the Supplier by any reason or circumstance, including the Supplier's negligence or breach of duty, fails to deliver any Goods, the Supplier shall not be liable to the Customer for any consequential loss or damage which the Customer may suffer.
73. The Supplier may, in its absolute discretion, stop delivery of Goods to the Customer if:
- The Customer is trading outside the terms of these Terms and Conditions; or
  - The Customer's account balance exceeds the credit limit set by the Supplier; or
  - The Supplier believes, on reasonable grounds, that the Customer is or may become insolvent or that its financial position has significantly deteriorated.
  - The Customer has entered into any financial arrangement with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.

## **PASSING OF RISK**

74. Goods supplied by the Supplier to the Customer shall be at the Customer's risk immediately upon:
  - a. Delivery of the Goods to the Customer, its agent or servant or into its custody or control; or
  - b. Collection of the Goods by the Customer's carrier, agent or servant.
75. The Customer shall keep the Supplier's Goods separate from any other Goods and properly marked, stored, protected and insured.
76. The Customer shall, at its own cost, insure the Goods for their full insurable value against all of the usual risks.
77. The Customer will produce evidence of such insurance to the Supplier, if required.

## **RETENTION OF TITLE**

78. Legal and equitable ownership of the Goods will not pass to the Customer until the Customer has paid to the Supplier, the invoiced amount(s) for the Goods in the Customer's possession at time of payment.
79. The Customer agrees with the Supplier that they will treat the Supplier's interest in the Goods as a security interest, which will be a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
80. Until such time payment is made by the Customer, the Customer shall, at the direction of the Supplier, store the Goods in a proper and workmanlike manner subject only to its right to deal with the Goods in the ordinary course if its business and any monies received as a result of such dealing shall be held by the Customer for the benefit of the Supplier.
81. The Supplier may at any time, without notice to the Customer and without prejudice to any other rights which it may have as against the Customer, terminate any contract connected with the Goods and enter upon any premises owned or occupied by the Customer where the Supplier reasonably believes the Goods may be stored, repossess the Goods without liability for any damage caused, and subsequently dispose of the Goods at the Supplier's discretion if:
  - a. Payments of outstanding invoices are not made by the Customer in accordance with these Terms and Conditions and any other written arrangement between the Supplier and the Customer.
  - b. The Supplier receives notice of or reasonably believes that:
    - i. A third person may attempt to levy execution against the Goods;
    - ii. The Customer is insolvent (within the meaning of the Corporations Law) or bankrupt;
    - iii. The Customer has entered into any arrangement or composition with its creditors, gone into liquidation, or has appointed a receiver, a receiver and manager or administrator.
82. If, in addition, any of the Goods still in possession of the Customer exceeds those Goods in respect to which payment is still owed by the Customer to the Supplier, the Supplier, at its absolute discretion, shall have the right to determine in relation to which Goods the Supplier retains ownership.
83. The sale of the Goods by the Customer to a third party prior to the passing of title to the Customer will be deemed to have been made by the Customer as agent for the Supplier, and the sale proceeds sufficient to cover the price of the Goods shall be held in trust for the Supplier as its property.

## **PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**

84. The Customer acknowledges and agrees that:
  - a. These Terms and Conditions constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all Goods (and their proceeds) previously supplied by the Supplier to the Customer and in all in future Goods (and their proceeds).
  - b. The Customer has received valuable consideration from the Supplier in the Supplier providing Credit to the Customer under these Terms and Conditions.
  - c. Further, in consideration of the Supplier supplying the Goods to the Customer, at the Customer's request, the Customer, by signing these Terms and Conditions:
    - i. Grants to the Supplier, at the Supplier's discretion, a security interest or purchase money security interest ("PMSI") in the Goods;
    - ii. Agrees that any of the Goods or Proceeds of sale of the Goods coming into existence after the date of these Terms and Conditions will come into existence subject to:
    - iii. The security interest or PMSI granted in these Terms and Conditions; and
    - iiii. The terms of these Terms and Conditions.
  - d. The security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Customer by the Supplier when the customer takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Terms and Conditions.
85. The Customer is to take all steps, will execute all necessary documents and do such further acts as may be required by the Supplier to register the security interest granted to the Supplier under these Terms and Conditions pursuant to the requirements of the PPSA to ensure that:
  - a. these Terms and Conditions or any security interest or PMSI arising under them, are enforceable as against the Customer or any third party; and
  - b. Protect, perfect, record, or better secure the position of the Supplier under these Terms and Conditions as a first ranking security.

## **REGISTRATION AND NOTICES UNDER THE PPSA**

86. The Supplier reserves the right to register a financing statement in respect of any Goods supplied by the Supplier to the Customer under these Terms and Conditions and in respect of which credit has been extended by the Supplier to the Customer.
87. The cost and expense of registering a financing statement or a financing change statement is to be paid by the Customer and may, where applicable, be invoiced against the Customer's account with the Supplier.
88. The Customer:
  - a. waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Terms and Conditions, unless the notice or statement is required by law and
50. The Customer agrees not to allow any person to register a financing statement over any of the Goods supplied to the Customer by the Supplier without the prior written consent of the Supplier and that the Customer must immediately notify the Supplier if it becomes aware of any persons taking steps to register a financing statement in relation to the Goods.
51. The Customer agrees to perfect and maintain any security interest or PMSI that it may have in the Goods under the PPSA.

## **NO ACCESSIONS OR COMMINGLING OF GOODS**

52. The Customer must not allow the Goods to become accessions or commingled with other Goods unless the Supplier has first perfected any security interest or PMSI that the Supplier has in relation to the Goods.

## **PERFECTION**

53. If the Supplier perfects any security interest or PMSI that the Supplier has in relation to the Goods, the Customer must not do anything that could materially adversely affect:

- a. the Supplier's business; or
- b. in the opinion of the Supplier, the Supplier's security position under these Terms and Conditions.

#### **PAYMENTS MADE IN RESPECT OF THE GOODS**

54. Despite any statement to the contrary by the Customer, every payment to the Supplier in respect of the Goods must be taken as a payment:
- a. firstly, of the amounts held by the Customer in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
  - b. secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
  - c. thirdly, for any Goods that the Customer has sold but for which it has not received the proceeds; and
  - d. fourthly, for whatever Goods the Customer has not sold as the Supplier elects.

#### **CONFIDENTIALITY**

55. Except as required by law, these Terms and Conditions and subject to the PPSA, the Supplier and the Customer agree to treat these Terms and Conditions as confidential.
56. Neither the Supplier nor the Customer will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these Terms and Conditions.

#### **GOVERNING LAWS**

57. These Terms and Conditions and any other contract incorporating them shall be governed by the laws of the state of New South Wales .

#### **PRIVACY DISCLOSURE AND CONSENT**

58. All sole traders, partners, directors, and shareholders of the "Customer" hereby agree and consent to the "Supplier" to exchange credit information on them with other industry groups, credit bureaus, credit insurance underwriters and reporting agencies in respect to the operation of this account and or the personal information held on file.

#### **ALTERATIONS TO CONDITIONS**

59. These conditions will not be varied unless the Supplier agrees in writing.

#### **CSG Waiver**

89. A Customer Service Guarantee (CSG) is a guarantee that is prescribed under the Telecommunications (Consumer Protection and Service Standards) Act 1999). The CSG gives you certain rights in connection with standard telephone services. These rights include your right to be provided information about the CSG and the right to receive compensation if we fail to meet the minimum performance standards in relation to service connection times, fault repair times and keeping appointments to provide you with a Service. More details about the CSG are available on the CMA website [www.acma.gov.au](http://www.acma.gov.au).
- a. Our Phone Service is provided on the basis that you waive the CSG, as we believe this typically enables us to provide you with better value
  - b. If you waive your CSG and withdraw this waiver within 5 working days, we have the right to refuse to provide you with the Service, and/or terminate the Service.

#### **Priority Assistance**

We do not offer priority assistance, nor support for medi-alert services and monitored alarm systems. Priority assistance is offered by Telstra for people who may be reliant on a telephone service because of a serious medical condition. If you have a medialert or priority assistance service or believe that you are eligible, please consider this before proceeding with your order