

## Terms and Conditions

### 1. Definitions and Interpretation

Conditions means these Account Terms and Conditions.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Customer** means the party making this application for credit.

**Goods** means any goods supplied by the Supplier including but not only semi-finished shapes and stock, valued added finished parts customized for the Customer and all related or ancillary goods.

**Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

**Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

**Real Property** means all real property interests held by the Customer now or in the future.

**Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.

**Supplier** means, in connection with the supply of any Goods, Gantiel Vensott E.P.S. Pty Ltd making the supply to Customer.

**Supplier Ts&Cs** means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer.

Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.

### 2. Structure of this document

- a. These conditions are intended to regulate key trading terms including the extension of credit in connection with the supply of Goods by the Supplier to the Customer.
- b. The terms set out in Clauses 3-17 of these Conditions are incorporated by reference as part of the Supplier Ts&Cs. Those terms are legally binding between the Supplier and the Customer and should be read together with the Supplier Ts&Cs.
- c. The terms set out in Clauses 18-20 form an agreement directly between the Customer and the Supplier. Those terms are legally binding between the Customer and the Supplier.

### 3. Customer obligations

- a. These Conditions apply if the Supplier accepts any order for Goods from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods to the Customer and to refuse to supply any Goods to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- b. If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to the Supplier when due, suffers an Insolvency Event or makes any misrepresentation to the Supplier, the balance of the Customer's account to the Supplier will become due and payable immediately.
- c. The Customer agrees that it must:

- i. pay, without any deduction or setoff, the price charged by the Supplier for Goods supplied to the Customer on delivery or performance, or, if credit terms are offered, within 30 days following the end of the month during which the goods or services were supplied or provided.
- ii. pay for any additional charges if the Customer subsequently directs that delivery agreed between the parties be amended in any manner from those specified in the original order, and each delivery will be a separate quantity and a novation of the original contract and may be priced accordingly.
- iii. pay all expenses incurred in unloading and discharging the goods on arrival at the nominated delivery address and accept full responsibility for the Goods and pay or indemnify the Supplier for any expenses whatsoever incurred in respect thereof from the time when the Goods have been delivered to delivery address nominated by the Customer.
- iv. pay any fees to register or maintain any security interest held by the Supplier in respect of Goods supplied to the Customer.
- v. advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods supplied.

#### **4. Overdue accounts and security**

- a. Any amount not paid by the due date will incur interest at a rate of 10% calculated daily and compounded monthly.
- b. The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 6.
- c. A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

#### **5. Retention of title**

The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply.

- a. Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such goods or use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- b. Until Goods are sold or used in the ordinary course of the Customer's business, the Customer must keep the Goods safe and free from deterioration, destruction, loss or damage, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- c. The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- d. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

## 6. Security Interest

- a. The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- b. The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.
- c. The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.
- d. For any Goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- e. The Customer hereby waives any rights the Customer may otherwise have to:
  - i. receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
  - ii. apply to a Court for an order concerning the removal of an accession under section 97
  - iii. object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135
- iv. receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.
- f. For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

## 7. Risk

Risk in relation to any Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at the Supplier's premises on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.

## 8. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Supplier Ts&Cs or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

## 9. Limitation of Liability

To the maximum extent permitted by law and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier Ts&Cs, or arising out of or in connection with the supply of specific Goods of including pursuant to or for breach of these Conditions, Supplier Ts&Cs or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- a. the Supplier shall have no liability to the Customer for any Consequential Loss;
- b. the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9 (b) do not apply to the extent that any Loss is directly attributable to:
  - i. the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Ts&Cs or negligence; or
  - ii. fraud by the Supplier.

Each party must take reasonable steps to mitigate any Loss it suffers or incurs

## 10. GST

If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier 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).

#### **11. Insurance**

Where material is sold at a price including insurance the Supplier will arrange at its cost insurance which will attach from the warehouse of the Supplier whilst the Goods are in transit only until the Goods arrive at the destination of the Customer.

Should the Customer arrange for its own freight, the risk passes to the Customer once the Goods are picked up from the Supplier's warehouse.

#### **12. Pallets**

Any pallets used for the delivery of Goods remain the sole property of the Supplier and must be returned to any of the Suppliers or its agents' warehouses, stores, factories or offices, upon request and at the Customer's expense. Any pallets not returned after fourteen (14) days after request are to be paid for in full by the Customer at a valuation determined by the Supplier. Such valuation shall be final and binding as between the parties.

#### **13. Acknowledgements by Customer**

- a. Any Goods may be manufactured in whole or in part by any manufacturer in any part of the world.
- b. Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods is given in good faith and is believed by the Supplier to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by the Supplier in relation to any Good supplied by the Supplier is provided without liability or responsibility on the part of the Supplier. The Supplier also makes no warranty or statement and expressly negates any implied or expressed condition that the Goods will be suitable for a particular purpose or end use for the Customer. The Customer accepts all risk and responsibility for consequences arising from the use of Goods whether singly or in combination with other products.
- c. If an order is placed which is conditional on the Customers approval of a sample provided by the Supplier gives no undertaking express or implied that the Goods supplied will be exactly the same as the sample although every effort will be made to supply goods similar to the sample. The Customer is not discharged from his obligations under these Supplier Ts&Cs should the Goods be found not to be precisely the same as the sample.

#### **14. Quotations and Orders**

Unless otherwise stated quotations will remain valid for seven (7) days from the date of the quotation after which date they are subject to alteration or withdrawal without notice.

- a. A quote or an order is only accepted when the Supplier confirms acceptance in writing and until then the estimates and quotations submitted by the Supplier are not binding.
- b. Any modification must be confirmed in writing by the Supplier confirmation by the Supplier in writing.

#### **15. Cancellation**

- a. Once an order is issued by the Customer in writing to the Supplier, no cancellation, variation or suspension of any order by the Customer shall be binding on the Supplier unless accepted in writing by the Supplier.
- b. Should the Supplier agree to vary, suspend or cancel an order, the Supplier reserves the right to demand what it considers to be a fair and reasonable price and/or compensation, at the Suppliers option.

#### **16. Force Majeure**

The Supplier accepts no liability where delivery within any time agreed is prevented or hindered by reason of delays in manufacture or transportation arising from any of the following causes or being in any way incidental thereto: Acts of God; wars; insurrection or internal disturbances; fires; floods or accidents; breakdowns of plant or machinery; unavailability of or delays in shipping or other transport strikes or lockouts of work men; shortages or other default by suppliers of fuel, power or raw material; priority for supplies claimed by the Federal, State or Territorial Governments of the Commonwealth of

Australia or any overseas government; or any unforeseen happenings or events beyond the company's control. In the event of any occurrence occurring within the scope of the aforementioned then:

- a. any delays in manufacture or transportation thereby incurred shall not give rise to any cause of action by the Customer against the company
- b. during the period such delay continues the Supplier and the Customer shall each have the option to suspend or cancel any subsequent obligation or balance of obligations on either of their parts provided that:
- i. on any such suspension or cancellation by the Customer any material appropriated to the contract by the supplier whether partly or fully processed at the time of such occurrence shall be accepted by the Customer and subsequent invoice be paid in full.

#### **17. Guarantee to Supplier**

- a. The Customer has requested the Supplier facilitate the extension of credit terms to the Customer. The Customer acknowledges that the Customer will receive a valuable commercial benefit as a result of the Supplier facilitating the extension of credit terms.
- b. The Customer guarantees to the Supplier that the Customer will pay all amounts payable to the Supplier from time to time for the supply of Goods to the Customer when they are due including interest and taxes. The Customer's guarantee continues until all these amounts have been paid in full.
- c. The Customer must pay the Supplier for its reasonable costs in administering (including enforcing or taking any other action in connection with its rights) this guarantee.
- d. The Customer remains liable to the Supplier under this guarantee and the Customer's obligations under this guarantee will not be affected by any refusal by the Supplier to provide further credit to the Customer or a variation in the Supplier Ts&Cs between the Supplier and Customer.
- e. The Supplier may at any time release or discharge the Customer from this guarantee and give time for payment, accept any composition from or make any other arrangements with the Customer without releasing or discharging any other guarantor or otherwise prejudicing or affecting the Suppliers rights and remedies against the Customer.
- f. As long as this guarantee remains in existence the Customer may not, without the Suppliers consent, reduce the Customer's liability under this guarantee by claiming that the Customer or any other person has a right of set-off or counterclaim against the Supplier.
- g. Where the Customer is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this guarantee and indemnity whether past, present or future notwithstanding the provisions of any legislation or any other similar enactment in amendment, modification or substitution regulating partnerships.
- h. A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- i. If the Customer enters into this guarantee as a trustee of any trust, then the following provisions shall apply:
  - i. the Customer shall be personally liable for the performance of all obligations and undertakings under this guarantee
  - ii. the Customer warrants that the Customer has full, complete and valid authority pursuant to the trust to enter into this guarantee
- iii. notwithstanding that there is no reference to a specific trust the Suppliers' rights of recourse shall extend to both the Customer's assets personally and the assets of the trust
- iv. the Customer undertakes to the Supplier that the Customer's rights of indemnity against the trust assets have not been excluded by the provisions of the trust or by any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.
- j. The Customer's obligation to pay to the Supplier the amounts referred to under this document is a primary obligation and the Supplier is not obliged to proceed against or enforce any security or other right against the Customer or demand payment from the Customer before those amounts become due for payment.

#### **18. Privacy disclosure and consent**

The Customer authorises the Supplier:

- a. obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer
- b. use, disclose or exchange with other credit providers about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts, and
- c. disclose the contents of any credit report on the Customer to the Supplier and any of their solicitors and mercantile agents

If the Customer does not provide the information requested in this document, the Supplier may be unable to process the application.  
The Supplier complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals.

#### **19. Governing Law**

Clauses 18 and 19 of these Conditions is governed by and is to be interpreted according to the laws in force in the state where the Goods are supplied and the parties submit to the non-exclusive jurisdiction of the courts operating in that state. Where the Goods are supplied to multiple states, Clauses 18 and 19 of these Conditions is governed by and is to be interpreted according to the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts operating in New South Wales. The operation of the United Nations Convention on Contracts for the Sale of International al Goods is hereby excluded.