

## TERMS AND CONDITIONS OF TRADING

- 1. General:** These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer's order form, posted on the internet or otherwise).
- 2. Payment:** (i) The Customer agrees to pay the Seller within thirty (30) days from the date of the Invoice unless otherwise agreed in writing failing which the Seller may charge interest at the daily rate of 0.06% on the unpaid balance of the amount due from the due date for payment until the date that the total sum due to the Seller is paid in full. (ii) Legal costs incurred recoverable as a debt owed by the customer. (iii) Clients outside Australia agree that payment be made within 30 days of proof of delivery to shipping agent not 30 days after goods arrive at their ultimate destination. (iii) In some cases items are buy in items and full or part payment is required before goods can be manufactured.
- 3. Price Dispute:** Unless the customer advises the seller other within 14 days of the invoice date the invoice price is deemed accepted.
- 4. Property and Risk:** Property and risk in respect of the goods shall remain with the Seller until delivered to the Customer or the Customer's shipping agent.
- 5. Sales to Consumers:** Clauses 6 -9 do not apply to sales to Consumers.
- 6. Claims:** (i) The Customer will be deemed to have accepted the goods as being in accordance with its order unless it notifies the Seller in writing of its claim within 7 days of receipt of the goods. (ii) No return of allegedly defective or faulty goods will be accepted by the Seller unless the Seller has been given prior written authorization for the return. Any products manufactured, modified or bought specifically for the customer cannot be returned for credit. Goods returned must be in original packaging and condition. The Seller is entitled to recover a restocking fee.
- 7. Force Majeure:** If for any reason beyond the control of the Seller (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown), orders cannot be filled at the time stipulated by the Customer, the Seller shall be entitled to determine the order and the Customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the Seller to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination,
- 8. Commercial Warranty:** All warranties whether expressed or implied and whether statutory or otherwise with regards to the goods supplied by the Seller as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law. The liability of the Seller for damages arising out of the contract shall be limited to the costs of rectification of any faulty workmanship or material or the replacement of any faulty goods and the Seller accepts no responsibility or liability whatsoever including liability for negligence, goods that do not correspond with the description on the Seller's invoice and or the packaging of the goods sold or any liability for consequential loss however arising.
- 9. Freight :** The Seller shall not be liable for freight costs on goods returned to it by the Customer. Insurance is to be provided by the customer. The Seller is not liable for damages arising from property damaged in transit.
- 10. Consumer Warranty:** In relation to goods or services provided to Consumers, the seller's goods come with guarantees that cannot be excluded under the Australian Consumer Law. The buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure'.
- 11. Credit Terms:** A purchase on credit will entitle the seller to register a PMSI under PPSA. (i)The expiry date of and Security Interest created shall be following payment of the goods in full. (ii)A PMSI granted in favour of the seller will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence. (iii)The seller will continue to hold a PMSI despite the goods being processed, commingled or incorporated in other goods. (iv)A PMSI will be a continuing and subsisting

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interest in the goods with priority to the fullest extent permitted by law over all other registered or unregistered security interests. (v) Sections 96, 125 and 132(3)(d) and 132(4) PPSA do not apply to any security agreement created with the seller. (vi) The buyer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. (vii) The buyer waives its rights as a grantor and/or a debtor under sections 142 and 143 PPSA. (viii) Unless otherwise agreed in writing by the seller, the buyer waives its right to receive a verification statement in accordance with s.157 PPSA.

**12. Change of Ownership:** The customer agrees to notify the Seller in writing of any change of ownership of the Customer within 7 days from the date of such change and indemnifies the Seller against any loss or damage incurred by it as a result of the Customer's failure to notify the Seller of any change.

**13. Cancellation:** Orders placed with the Seller cannot be cancelled without the written approval of the Seller. In the event that the Seller accepts the cancellation of any order placed with it shall be entitled to charge a reasonable fee for any work done on behalf of the Seller to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

**14. Certificate:** A Certificate signed by an officer of the Seller will be prima facie evidence of the Customer's liability to the Seller at the date of the Certificate.

**15. Default Event:** The Customer authorises the Seller by its servants or agents to enter upon any premises occupied by the Customer without notice and re-take possession of the goods if the applicant breaches these terms and conditions or if an Insolvency Event occurs.

**16. Jurisdiction:** The proper law of all contracts arising between the Seller and the Customer is the law of Western Australia and the parties agree that all claims and disputes relating to the goods sold shall be submitted to the non-exclusive jurisdiction of the courts in Western Australia.

#### Defined Terms

**"ACL"** means the Australian Consumer Law.

**"Collateral"** means the meaning given under the PPSA and in particular for the purposes of these Terms and Conditions the personal property that is not used predominately for personal, domestic or household purposes to which the Security Interest has attached.

**"Consumer"** means a person who is a consumer under the ACL.

**"Goods"** includes goods manufactured or imported by the seller and property of the buyer left with the seller for repair.

**"Grantor"** has the same meaning as given in the PPSA and for the purposes of these Terms and Conditions means Howard Porter.

**"Insolvency Event"** includes an order made or resolution passed to wind up the Customer, an administrator being appointed, an application being made to the court to appoint a controller, a security interest holder taking possession of any of the Customer's property or any analogous event.

**"PMSI"** means a purchase money security interest under section 14 of PPSA.

**"PPSA"** means the Personal Property Securities Act 2009 and its Regulations.

**"Price"** means the price stated in the order form.

**"Security Interest"**: has the same meaning as given in the PPSA.

**"Secured Party"** means the Seller.

**"Seller"** means Westernex Supply Pty Ltd A.B.N. 25 009 378 063

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