



TERMS & CONDITIONS OF TRADE

Definitions

In these conditions:

Agreement means any order placed by the Customer and accepted by the Supplier.

ACL means Schedule 2 to the CCA.

Business Day means a day on which trading banks, as defined in section 5(1) of the *Banking Act 1959* (Cth) are open for general banking business in New South Wales, excluding Saturdays, Sundays or public holidays in New South Wales.

CCA means the *Competition and Consumer Act 2010* (Cth)

Customer means the purchaser of Goods. For the avoidance of doubt, the purchaser of Goods refers jointly and severally to the party with an obligation to make payment for the Goods and the party that placed the order with the Supplier.

Goods means any goods supplied by the Supplier to Customer.

Group means, in relation to a body corporate, that body corporate and all its Related Bodies Corporate.

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means that person (or persons), or entity who agrees to be liable for the debts of the Customer on a principal debtor basis.

Intellectual Property Rights means all copyright and rights in the nature of copyright, design rights, patents, trade marks, data base rights, applications for any of the above, moral rights, know-how, domain names or any other intellectual or industrial property rights (and any licences in connection with any of the same) whether or not registered or capable of registration and whether subsisting in Australia or any other part of the world.

Interest Rate means the prescribed rate pursuant to section 100 of the *Civil Procedure Act 2005* (NSW).

Materials means any material capable of containing or representing information, including documents, files, databases, computer programs (whether in object code, source code or any other form), working papers, magnetic media, prototypes, replicas, mock-ups and models.

PPSA means the *Personal Properties Securities Act 2009* (Cth).

Related Body Corporate of a body corporate means another body corporate which is related to the first body corporate within the meaning of the *Corporations Act 2001* (Cth).

Services means any services supplied by the Supplier to Customer

Supplier means The Hanna Group Pty Ltd or any member of its Group (ABN 17 000 592 745).

Terms and Conditions means these Terms and Conditions of Trade.

1. TERMS, ORDERING AND PRICE

- 1.1. The Customer acknowledges that it has read and accepted these Terms and Conditions prior to signing the Application for a Trading Account and prior to each Agreement.
- 1.2. By placing an order for Goods or Services with the Supplier, the Customer agrees to purchase those Goods or Services subject to these Terms and Conditions. An order is binding on Customer when placed, but not binding on Supplier until accepted by Supplier either expressly or by performance.
- 1.3. These Terms and Conditions apply to all transactions between Supplier and the Customer including all quotations, offers, orders or sales and will prevail over any other (and subsequent) conditions not expressly agreed to by Supplier, to the extent of any inconsistency.
- 1.4. These Terms and Conditions may be varied from time to time by the Supplier at its sole discretion. The Supplier shall not be required nor be responsible to notify the Customer of the existence or content of any such variation. The Terms and Conditions (as published on the website of the Supplier) at the time of acceptance of any order, or part of an order, shall apply.
- 1.5. Supplier is under no obligation to accept any order or request for Goods or Services by Customer, nor under any obligation to supply until an order is accepted by Supplier. The Supplier may accept an order in part or whole. The Supplier may part accept an order by part performance thereof. The Supplier retains the right to refuse orders under a minimum value at its absolute discretion.
- 1.6. The price to be paid for the Goods or Services shall be as expressly agreed between the parties or otherwise such price as indicated on the Supplier's general price list as amended from time to time.
- 1.7. Prior to acceptance of an order, Supplier may change its general list prices at any time without notice. The Customer is not entitled to any credit connected to any such change in pricing and is bound by the new price amended prior to acceptance of an order.

2. NEW CUSTOMERS

- 2.1. Applications for a Trading Account must be lodged in writing or through the Supplier's website on our Trading Account Application and Terms and Condition of Trade form, which is available on request. New accounts will not be opened until the completed form is received by our office and relevant information checked and approved. Should an account be approved, the Customer will be informed in writing with a Customer Account acceptance letter.
- 2.2. Supplier will only supply approved Customers.

3. TERMS OF PAYMENT

- 3.1. These terms of payment apply to any supply under these Terms and Conditions.
 - 3.2. The Customer will be notified from time to time if payment must be affected as a Cash Sale or on [30] Day Credit, this status may change from time to time at the discretion of Supplier. Depending on the most recent Supplier requirements, Customer must effect payment to the Supplier in one of the following two options below:
 - a. **Cash Sale:** payment must be made and cleared with Supplier prior to despatch of the Goods/provision of Services.
 - b. **[30] Day Credit:** Payment must be made in full and received by the Supplier within thirty (30) calendar days of the Supplier issuing an invoice to the Customer. All accounts not paid by the due date will be placed on credit hold and will revert to terms of 'Cash Sale' (without any applicable discount) until all outstanding
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payments are satisfied. The Supplier may withdraw credit approval at any time and without notice to the Customer. If an account is inactive for a period of 6 months or more, the account may be closed at the discretion of the Supplier and without notice to the Customer. [A settlement discount of 1.8% will be applied if payment is received by the Supplier within 7 Business Days of the issue of the invoice. For the avoidance of doubt, the discount is applied to Goods and Services supplied and may not be applied to freight charges (if any).]

- 3.3. All payments must be made by way of credit card or by way of electronic funds transfer ('EFT') to the bank account nominated by the Supplier, unless otherwise advised by the Supplier.
- 3.4. The Supplier may charge a service fee where payment is made by way of credit card.
- 3.5. The Customer shall not be entitled to any set off or deduction from the purchase price for any sums owed or claimed to be owed to the Customer by the Supplier.
- 3.6. Prior to accepting any Application for a Trading Account or any order, the Supplier may require a guarantor/s to jointly and severally guarantee to the Supplier the payment of all debts by the Customer (Guarantor). The Customer and the Guarantor/s acknowledge the guarantee will be a continuing guarantee and will not be in any way waived or affected by any time or indulgence granted by the Supplier to the Customer.

4. INVOICES

- 4.1. Goods are invoiced at the time of order acceptance and will include GST and delivery charges where applicable.
- 4.2. Invoices must be paid strictly on their terms and time is of the essence.

5. DELIVERY

- 5.1. Delivery of Goods may not be refused by the Customer after an order has been accepted by the Supplier. Delivery is to the delivery point accepted by the Supplier.
- 5.2. The Customer shall make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to accept delivery of the Goods as arranged, then the Supplier shall be entitled to charge a fee for redelivery at the current rate charged by the freight carrier. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of the Agreement. Additional fees may be incurred.
- 5.3. The Supplier may charge for freight and handling to particular destinations at rates dependent on distance and volume of Goods supplied. Additional freight charges may be charged where the Customer requests urgent delivery of the Goods. The rates are subject to change at any time without notice.
- 5.4. The Customer bears responsibility for checking the Goods upon delivery. Receipt by the Customer, or its officers, servants or agents, without complaint shall be prima facie evidence that the Goods have been delivered in good order and condition and in accordance with the Agreement. Receipt of the Goods as described is considered acceptance of the Goods by Customer. Customer will accept any variation of quantity supplied of plus or minus 10% as being the correct quantity as ordered.

6. CREDITS & CLAIMS

- 6.1. These Terms and Conditions do not exclude any statutory rights available to the Customer and must in all cases be read subject to those statutory rights.
- 6.2. In the case of damage to Goods, a written complaint must be made by the Customer to the Supplier within two (2) Business Days of receipt of the Goods.
- 6.3. Unless a written complaint is made within the time limits specified in Clause 6.2 no action may be brought against the Supplier.
- 6.4. No goods shall be accepted for credit/return unless authorised by a representative of the Supplier and a restocking fee may apply.
- 6.5. Goods may not be accepted for credit in a damaged or defaced condition that is other than a fault in manufacture or a fault/responsibility of the Supplier.
- 6.6. Any costs incurred or loss suffered by the Supplier in respect of or arising as a result of any unauthorised return by the Customer may be deducted by the Supplier from any credit granted by it to the Customer or add it as a cost to the amount outstanding.
- 6.7. In the event of a justified objection notified by the Customer to the Supplier in accordance with these Terms and Conditions, the Supplier may, at its option:
 - a. reduce the purchase price by agreement with the Customer;
 - b. accept the return of the Goods and, subject to the Goods being returned in the same condition as when they were delivered to the Customer, refund to the Customer the purchase price if already paid; or
 - c. replace the Goods.

7. DISPUTES

- 7.1. Customer agrees it will not take any legal action against Supplier until it has engaged in good faith discussions with Supplier to try and resolve and settle and claims or issues connected in any way to these Terms and Conditions.

8. DEFAULT

- 8.1. If any payment due to Supplier by Customer is not received by the due date, or if there is any breach of any provision of these Terms and Conditions the Supplier may charge interest on any overdue amounts at the Interest Rate from the date when payment becomes due.
 - 8.2. The Customer and any Guarantor indemnifies the Supplier against all damages, claims, losses, expenses, costs (including legal costs on an indemnity basis) and disbursements incurred by the Supplier connected to any breach of these Terms and Conditions by the Customer, or the negligence of the Customer, or the default generally of Customer.
 - 8.3. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation under these Terms and Conditions, the Supplier may without any liability to the Customer and with no requirement of notice suspend, withhold or terminate the supply of Goods and Services to the Customer and any of its other obligations under these Terms and Conditions.
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9. CANCELLATION

- 9.1. The supplier may cancel any Agreement to which these Terms and Conditions apply or withhold or cancel delivery of any Goods or Services at any time before the Goods are delivered (Services provided) by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage howsoever arising from such cancellation or withholding.
- 9.2. In the event that the Customer cancels any order for Goods or Services, the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of revenue and profits) up to the time of cancellation.

10. RECOVERY OF LEGAL COSTS

- 10.1. The Supplier is entitled to recover any legal and/or collection costs incurred by the Supplier from the Customer relating to the Customer's failure to meet any of these Terms and Conditions for whatever reason.

11. TITLE & RISK

- 11.1. Risk in the Goods passes to Customer upon delivered.
- 11.2. Title in the Goods does not pass to the Customer until:
 - a. the Customer has paid the purchase price for the Goods in full and there is no debt owing by the Customer to the Supplier on any account, or
 - b. the Goods are sold onto a customer of Customer.
- 11.3. The Customer agrees that the Supplier has a Purchase Money Security Interest (as defined in the PPSA) attaching to all Goods in order to secure payment by the Customer to the Supplier of all money owed in connection with the supply of those Goods ('PPSA Security Interest'). The Customer agrees to do all things necessary to assist the Supplier to perfect its PPSA Security Interest.
- 11.4. In the case of payment default the Customer authorises the Supplier to take possession of any Goods in which it has a PPSA Security Interest pursuant to these Terms and Conditions and includes Goods which payment terms are not yet expired or overdue.
- 11.5. The Customer hereby irrevocably authorises the Supplier, its officers, servants and agents to enter the Customer's premises for the purpose of taking possession of Goods. The Customer acknowledges that the Supplier shall not be liable for any damage or injury caused to any of its premises (whether by the Supplier or its officers, servants or agents) in retaking Goods. Until title in Goods passes to the Customer, the Customer agrees to store the Goods separately from all other goods in such a way as to allow the Goods to be identified as the Supplier's and keep them fully insured against all usual risks of damage or loss at the Customer's expense.
- 11.6. The following provisions of the PPSA do not apply: Sections 95, 130, 132(3)(d), 132(4), 135(1)(a) and 143. The Customer agrees to waive its rights under section 157 of the PPSA.

12. INSURANCE

- 12.1. The Customer acknowledges that:
 - a. the Goods are carried at the Customer's sole risk and not at the risk of the Supplier;
 - b. the Supplier is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - c. under no circumstances will the Supplier under any liability with respect to the arranging of any such insurance and no claim will be made against the Supplier for failure to arrange or ensure that the Goods are insured adequately or at all.

13. EXCLUSION OF WARRANTIES, LIABILITY

- 13.1. All conditions, terms and warranties that are or might otherwise be implied by law, practice, trade usage, or international convention, are excluded to the fullest extent permitted by law.
- 13.2. To the maximum extent permitted by law and subject to the rights conferred on a consumer under the ACL, where such is applicable, which cannot be excluded or modified by agreement, the Supplier makes no representations, guarantees or warranties in connection with the Goods or Services apart from those expressly set out in these Terms and Conditions
- 13.3. Provisions of the CCA, the ACL, State or Territory law, and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law the Supplier's liability under those provisions is limited at the Suppliers option to:
 - a. (in connection with Goods) replace the Goods or supply equivalent Goods; or pay the cost of replacing the Goods or of acquiring equivalent Goods, and
 - b. (in connection with Services) supplying the Services again, or the payment of the cost of having the Services supplied again.
- 13.4. Supplier relies on the statements set out in this clause as essential conditions of these Terms and Conditions. Customer has not relied on any representation made or implied by Supplier or arising out of or implied by its conduct save for as expressly set out in these Terms and Conditions. To the extent that Supplier has made or implied, or by conduct given rise to or implied, any representation that is not expressly stated in these Terms and Conditions, Customer is not proceeding in reliance on the representation. Supplier makes no promise, representation or otherwise in relation to any benefit Customer may obtain by entering into an Agreement save as set out herein and Supplier guarantees in no way any increased sales, transactions, revenue, goodwill or profit or any other benefit that may flow from Customer having entered into an Agreement.

14. OTHER DAMAGE EXCLUDED

- 14.1. Subject to any statutory provisions, the Supplier is not liable for, and the Customer does not rely on being able to claim against the Supplier for any loss or damage; or any Consequential Damage; under or in connection with or arising out of the supply of the Goods or Services to the Customer or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any order for Goods or Services, and whether or not the possibility or potential extent of the loss or damage was known or foreseeable and whether in contract or for negligence or any other tort or for breach of statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorised or required. 'Consequential Damage' includes all indirect,



special or consequential loss or damage, and includes (whether direct or indirect) all economic loss or damage, lost income or profit, loss of opportunity, increased or wasted costs, damage to tangible or intangible property, claims made by others, and losses or costs or expenses associated with investigation.

15. NO ASSIGNMENT

- 15.1. The Customer must not assign or purport to assign any of its rights under these Terms and Conditions without the prior consent of the Supplier
- 15.2. In the event that the Customer sells its business, the Customer shall be responsible to notify the Supplier in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable to Supplier for the payment of Goods subsequently sold to a third party on the Customer's account as if the Customer had ordered the Goods itself.

16. FORCE MAJEURE

- 16.1. The Supplier shall have no liability whatsoever under or in any way related to its obligations under these Terms and Conditions to the extent that such fulfilment is prevented by circumstances beyond its reasonable control, including but not limited to natural disasters, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, accidents, breakdowns, import or export restrictions, acts of terrorism, or acts of war ('Force Majeure').
- 16.2. Should any event of Force Majeure occur, the Supplier may, without liability or compensation to any person including the Customer, terminate the Agreement by written notice to the Customer.

17. PRIVACY

- 17.1. The Customer and/or the Guarantor/s agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.
- 17.2. The Customer and/or the Guarantor/s agree that the Supplier may exchange information about the Customer and/or the Guarantor/s with credit providers (and credit reporting agencies) either named as trade referees by the Customer and/or the Guarantor/s or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - a. to assess an Application for a Trade Account by the Customer;
 - b. to notify other credit providers of a default by the Customer;
 - c. to notify a credit reporting agency of a default by the Customer;
 - d. to exchange information with other credit providers (and credit reporting agencies) as to the status of this credit account, where the Customer is in default with Supplier or any other credit providers; and/or
 - e. to assess the credit worthiness of the Customer and/or the Guarantor/s.
- 17.3. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit pursuant to Section 18K(1)(h) of the *Privacy Act 1988* (Cth).
- 17.4. The Supplier may give information about the Customer to a credit reporting agency for the following purposes:
 - a. to obtain a consumer credit report about the Customer; and/or
 - b. to allow the credit reporting agency to create or maintain a credit information file in relation to the Customer.

18. INTELLECTUAL PROPERTY

- 18.1. The Customer warrants and represents that it has full title to or the required authorisations to use all Materials it supplies to Supplier and that the use of those Materials by Supplier will not infringe any rights of any third party.
- 18.2. Customer indemnifies and holds Supplier harmless against any loss, claim, damage, fine, penalty, costs (including professional costs on an indemnity basis) or the like incurred by Supplier connected to a breach of clause 18.1.

19. GENERAL

- 19.1. If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and effect.
 - 19.2. Where the Supplier fails to enforce any of these Terms and Conditions or fails in any way to exercise its rights under them, the Supplier will not be deemed to have waived those rights with respect to any continuing or subsequent breach of any term or right under these Terms and Conditions.
 - 19.3. These Terms and Conditions will prevail over any terms and conditions contained in any offer made by the Customer or any document used by the Customer which purports to have contractual effect.
 - 19.4. These Terms and Conditions and any Agreement are governed by and construed in accordance with the law in force in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and courts that hear appeals from those courts
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