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ABN: 54 610 264 090

## TERMS OF TRADE

The following terms of trade ("**these Conditions**") apply to and form part of any sale between OMS Australasia Pty. Ltd. ("the Supplier") ABN 54 610 264 090 and the Customer for the sale of the Goods or Services by the Supplier to the Customer.

These Conditions replace any previous terms and conditions.

### 1. Definitions and Interpretation

- 1.1 Where the context permits, the following expressions will have the meanings given to them:

"Business Day"	means any day other than a Saturday, Sunday or a designated Public Holiday in Victoria;
"Customer"	means a party acquiring Goods or Services or Services from the Supplier;
"Goods"	means products supplied or to be supplied by the Supplier to the Customer from time to time (including accessories, spare parts and equipment).
"Intellectual Property Rights"	means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application;
"Order"	is a written order to purchase clearly identified Goods or Services (including quantity, specifications and other relevant matters) at a price specified in a Quotation signed by or on behalf of the Customer;
"PPSA"	means the <i>Personal Property Securities Act 2009</i> (Cth);
"Quotation"	is a quotation as to the price of specified Goods or Services given by the Supplier to the Customer; and
"Services"	means services performed or to be performed by the Supplier for the Customer from time to time.

- 1.2 In the interpretation of these Conditions, unless specified to the contrary:
- (a) time is of the essence;
  - (b) words importing the singular include the plural and vice versa;
  - (c) words importing any gender include all other genders;
  - (d) a reference to a natural person includes a company or other corporate body and vice versa;
  - (e) a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
  - (f) the obligations on the part of a Customer who is a natural person includes his heirs, executors, administrators and assigns; and
  - (g) the obligations on the part of a Customer which is a company or other corporate body includes its successors and assigns.
- 1.3 Any obligation imposed by these Conditions on a Customer comprised of two or more persons (whether natural, corporate or a combination of the two) binds them jointly and each of them severally.
- 1.4 The Customer may not, without the consent of the Supplier, raise a set off or counterclaim available to it against the Supplier in reduction of its liability under these Conditions;
- 1.5 Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Conditions.
- 1.6 If the time for performing any obligation under these Conditions expires on a non-Business Day, then time is extended until the next Business Day.
- 1.7 A waiver by the Supplier of a default by the Customer under these Conditions will not constitute a waiver of another or continued default of the same nature or any other provision of these Conditions.
- 1.8 In the event that any or part of these Conditions is held to be unenforceable, the unenforceable part shall be severed and the remainder of these Conditions shall remain in full force and effect.
- 1.9 These Conditions embody the entire agreement and understanding between the parties concerning its subject matter, and succeeds and cancels all other agreements, understandings and representations concerning the subject matter of these Conditions.
- 1.10 These Conditions can be varied by the Supplier at any time, provided written notice of the variation is given to the Customer, with such variation to apply to all Orders and Quotations after the date of notification.
- 1.11 These Conditions are to be governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the state and federal courts located in Victoria.

### 2. Formation of Contract

- 2.1 Quotations issued by the Supplier will not constitute an offer to sell specified Goods or Services at specified price, but rather will constitute an invitation to the Customer to make an offer to purchase the specified Goods or Services at the quoted price by placing an Order. A contract for the supply of Goods or Services by the Supplier to the Customer is formed when the Supplier accepts an Order.
- 2.2 Once an Order is accepted by the Supplier, the Customer may not cancel the Order without the Supplier's consent. The Customer indemnifies the Supplier in respect of all direct and indirect costs, expenses and losses incurred as a result of the cancellation of an order.
- 2.3 These Conditions apply to and form part of every contract for the supply of Goods or Services by the Supplier to the Customer. Orders are only accepted upon and subject to these Conditions.
- 2.4 Any qualification, addition, variation or provision which conflicts with these Conditions which appears on the Customer's Order shall not form part of the contract between the Supplier and the Customer unless such change appears on the face of the order duly accepted by an authorised person of the Supplier or is otherwise confirmed by the Supplier in writing.

### 3. Pricing

- 3.1 Goods or Services are invoiced at the prices current on the date of delivery.
- 3.2 All prices quoted are in Australian dollars.
- 3.3 All standard Goods or Services must be paid for by the Customer on or before the date which is 30 days after the end of the month in which the invoice for the Goods or Services was sent to the Customer except where the Supplier specifies otherwise.
- 3.4 Subject to clause 3.5, the following conditions apply where Goods or Services are custom built, built for purpose, ordered in bulk quantities or the Goods or Services supplied are specialty items:
- (a) For orders under \$10,000.00, each invoice must be paid strictly within 7 days from the date of the invoice;
  - (b) For orders equal to or over \$10,000.00:
    - (i) A deposit equal to 30% of the whole order must be paid at the time the order is placed;
    - (ii) An amount equal to 60% of the whole order must be paid immediately prior to shipment from the local or international manufacturer as advised by the Supplier; and
    - (iii) The balance of 10% must be paid strictly within 7 days after delivery of the order.
- 3.5 The payment terms outlined in clause 3.4 above apply unless the Supplier specifies otherwise in writing.
- 3.6 Any tax (including GST) or other duty on the production, sale, shipment or supply of any Goods or Services sold by the Supplier now imposed or hereafter becoming effective shall be added to the price quoted and shall be paid by the Customer to the Supplier.
- 3.7 Delivery charges will be charged to the Customer by the Supplier unless otherwise agreed by the Supplier in writing.
- 3.8 If after acceptance of an Order and up until and including the date of delivery there are increases in the costs incurred by the Supplier due to fluctuations in the cost of raw materials, the Goods themselves, currency exchange rates, duty rates, freight rates or any other factors beyond the control of the Supplier, the Supplier reserves the right to increase the prices to include allowance for such increased costs by notice in writing to the Customer.
- 3.9 A further charge of \$25 is payable by the Customer to the Supplier for all orders under the minimum order value of \$100. The Supplier may increase this charge and the threshold at which it applies without notice.

### 4. Delivery

- 4.1 The Supplier shall arrange delivery of the Goods or Services to the location agreed by the Supplier and the Customer unless the Customer has arranged to collect the Goods or Services from the Supplier.
- 4.2 The Supplier will not be liable for any loss or damage which may be suffered by the Customer (including consequential loss or damage) arising out of a delay in the delivery of Goods or Services, a failure to deliver any Goods or Services or from delivery of damaged or defective Goods or Services.
- 4.3 Without limiting the operation of the previous subclause, the Customer must accept and pay the full invoiced costs for the Goods or Services ordered notwithstanding a delay in the delivery of the Goods or Services, a failure to deliver any Goods or Services or delivery of damaged or defective Goods or Services.
- 4.4 The Supplier reserves the right to deliver any one or more consignments as part delivery with each consignment to be paid for in accordance with these Conditions.
- 4.5 The Customer must notify the Supplier of any damage to Goods, defective Goods or Services or short delivery within 24 hours of delivery falling which the Customer will cease to have a claim for the damage, defects or short delivery.
- 4.6 If the Supplier determines (at its sole discretion) that the delivery contained a shortfall or damaged or defective Goods then the Supplier will arrange for any missing, damaged or defective items to be dispatched to the Customer.
- 4.7 Risk for any loss or damage to the Goods from whatever cause shall be borne by the Customer from the time the Goods are dispatched or collected by the Customer from the Supplier's premises.
- 4.8 The Customer will be responsible for and indemnifies the Supplier for loss or damage to the Goods from the time of delivery.



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## 5. Default

### 5.1 The Customer is in default if:

- (a) it breaches any of these Conditions and either the breach cannot be remedied or, if it can be remedied, fails to remedy it within 7 days after receiving written notice of the breach;
- (b) it fails to make a payment to the Supplier by its due date;
- (c) being a natural person it commits an act of bankruptcy;
- (d) being a corporation it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets; or
- (e) it has any execution levied against its property.

### 5.2 In the event of a default, the Supplier will be entitled, without the obligation to give any notice to the Customer and in addition to any other rights, to:

- (a) payment of interest on all overdue accounts at the rate of 2% per calendar month, calculated daily and capitalized monthly, for each day that the amount is overdue;
- (b) the commission it may have to pay to any recovery agent arising from such default or in recovering overdue amounts;
- (c) its actual legal costs on an indemnity basis incurred in relation to such default or in recovering overdue amounts or in otherwise seeking compliance with these Conditions;
- (d) immediate payment for Goods or Services, the payment which would otherwise not have been then due and payable;
- (e) disallow any discounts otherwise claimable by the Customer;
- (f) terminate or suspend delivery of any order which is the subject of any other sale between the Supplier and the Customer; and
- (g) treat the Customer's default as repudiation or any existing contract for the purchase of Goods or Services and recover any unpaid sum plus the interest, recovery agent's, and legal costs referred to in (a), (b) and (c) above from the Customer by way of liquidated damages.

### 5.3 If these conditions are terminated or expire for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a) the parties are immediately released from their obligations under these Conditions except those obligations listed in clauses 5 (Default), 10 (Limitation of Liability and Indemnity), and 11 (Intellectual Property) and any other obligations that, by their nature, survive termination; and
- (b) each party retains the claims it has against the other in respect of prior breaches of these Conditions.

## 6. Returns

- 6.1 Goods will not be accepted for return for credit without the prior approval of the Supplier, which may be granted with or without conditions or withheld at its unfettered discretion.
- 6.2 Without limiting the previous subclause, the Supplier may impose an administrative charge or surcharge on any return and provide a refund in the form of a credit against future orders or may replace the Goods as it determines, solely at its discretion.
- 6.3 Non-standard or specially manufactured or labelled Goods are not returnable.
- 6.4 The Supplier may in its absolute discretion require the Customer to pay any charge, levy or tax associated with the return of Goods including, but not limited to, freight costs.

## 7. Non-Standard Goods

- 7.1 Where Goods or Services have been specially manufactured for the Customer, have been imported or are held in inventory by the Supplier specifically for the Customer ("Non-Standard Goods"), the Customer undertakes to purchase at the current purchase price all inventory of such Non-Standard Goods within 7 days of receiving notification from the Supplier.

## 8. Pallets

- 8.1 If specified by the Supplier, all pallets on which Goods are delivered to the Customer remain the property of the Supplier and must be returned to the Supplier at the Customer's expense in good order and condition to the factory or store of the Supplier from which they were delivered. Pallets will be deemed to be in the Customer's possession until received at such factory or store. To the extent permitted by law, all risk whatsoever and all costs associated with the pallets vests in the Customer and the Customer agrees to replace the pallets with pallets of a similar type and quality or reimburse the costs thereof in respect of pallets that are not returned in good order and condition to the Supplier within one month of delivery of the Goods.

## 9. Title and Property in Goods

- 9.1 Title to and ownership of and property in the Goods shall pass to the Customer only upon the Supplier receiving payment in clear funds of the full purchase price and any freight charges, taxes and interest or other monies due and while the Goods remain the property of the Supplier the Customer holds them on trust for the Supplier and the Customer shall store or keep them in a manner which clearly identifies them as the property of the Supplier.
- 9.2 If the Customer defaults under these Conditions, all of the Customers rights, including the right to be paid any money, under any contract pursuant to which the Customer has hired, sold or otherwise provided the Goods or any part of them, whether separately or together with other things, to third parties are automatically assigned to the Supplier with effect from the date of the default, but only to the extent necessary to enable the Supplier to recover the amount owed to it by the Customer.

### 9.3 Until the Customer pays all amounts it owes to the Supplier:

- (a) the Customer must keep all Goods insured against theft, damage and destruction on behalf of the Supplier (and if the Customer fails to insure the Goods the Supplier may do so and invoice the Customer for the cost of insurance);
- (b) the Supplier may enter premises where the Goods are stored to inspect them on reasonable notice; and
- (c) the Customer acknowledges that it holds the Goods as a bailee on behalf of the Supplier.

### 9.4 The Customer may on-sell the Goods prior to payment in full of the purchase price as agent for the Supplier provided that the proceeds received from the on-sale are held on trust for the Supplier until payment in full of the purchase price and are not mixed with other funds of the Customer until the purchase price is paid to the Supplier. The Customer agrees to indemnify the Supplier on a full indemnity basis and hold the Supplier harmless from liability for any loss damage or cost arising from any inaccurate or incomplete representations to third parties.

### 9.5 If any Goods are used in a manufacturing process or mixed with other materials, the Customer must record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately hold that amount on trust for and remit that amount from the proceeds of sale to the Supplier.

### 9.6 If the Customer does not pay for any Goods on the due date, the Supplier is irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the Goods are stored at other premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or anyone claiming through the Customer whatsoever.

### 9.7 If any of the Goods are not paid for in full by the due date, the Customer must not allow any person to create, have or acquire any security interest in the Goods.

### 9.8 The Customer acknowledges that the Supplier holds a security interest capable of registration pursuant to the PPSA in all Goods (including all present and after-acquired Goods which have not been paid for) and in all present and after acquired personal property of the Customer to secure payment of the amount the Customer owes to the Supplier from time to time. The Customer further acknowledges that the security interest will continue until the Supplier gives a final release in respect of it.

### 9.9 The Customer acknowledges and agrees that the Supplier may take all necessary steps to register its security interest under the PPSA, and hereby irrevocably consents to the Supplier doing so. The Customer further undertakes to promptly provide any information or supply any documentation and do all such things as required by the Supplier to enable it to perfect its security interest in the Goods in accordance with the PPSA.

### 9.10 The Customer acknowledges that the Goods constitute commercial property and hereby waives its right to receive notification from the Supplier of the registration of the security interest pursuant to section 157(3) of the PPSA.

## 10. Fitness for Purpose

- 10.1 The Customer acknowledges that it has made due inquiry and relies on its own skill and judgment when deciding whether the Goods or Services are fit for purpose.
- 10.2 It is the Customer's responsibility to satisfy itself that Goods or Services are of a description, quality and character suitable for the purpose for which they are purchased and, to the extent permitted by law, the Supplier shall not be liable in any way for any loss or damage (including direct, indirect or consequential) arising from the failure of the Customer to so satisfy itself.

## 11. Information and Warranties

- 11.1 All samples, drawings, descriptive matter and specifications issued by the Supplier are issued or published for illustration only and do not form part of the Quotation or the Order unless specifically referred to therein.
- 11.2 The Supplier will not be liable for any losses or damage, either directly or indirectly incurred by the use of or in reliance upon the information provided therein or for any errors, omissions or inaccuracies in the information provided.
- 11.3 The Supplier, if applicable, assigns to the Customer any warranty received from the original manufacturer of the Goods so far as the Supplier is permitted to do so.

## 12. Customer Warranties

- 12.1 The Customer:
  - (a) warrants to the Supplier that the Customer has read and understood these Terms of Trade;
  - (b) warrants to the Supplier that all information supplied by or on behalf of the Customer to the Supplier in connection with the supply of Goods or Services is true and accurate and not misleading;
  - (c) warrants that the Customer has not relied on any representation or statement made by or on behalf of the Supplier in connection with the supply of Goods or Services that has not been clearly and expressly stated in these Terms of Trade;
  - (d) acknowledges that the Supplier has relied on the information supplied by or on behalf of the Customer in supplying Goods or Services; and
  - (e) warrants that the supply of Goods or Services to the Customer and the use of Goods or Services by the Customer will not make the Supplier liable to any prosecution, claim or other action under any applicable law.
- 12.2 The Customer indemnifies the Supplier and holds the Supplier harmless against all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or



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incurred by the Supplier in connection with any breach of the warranties of the Customer set out in these Terms of Trade.

- 12.3 Without limiting the liability of the Customer under the indemnity above, the Supplier may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any action, suit, proceeding, claim or demand brought or made against it by any person in connection with any breach of the warranties given by the Customer under these Terms of Trade and the Customer agrees that the indemnity extends to any cost or expense incurred by the Supplier in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.
- 12.4 The Supplier reserves the right to refuse to do or to omit to do anything, or to refuse to comply with any request or direction of the Customer, which in the reasonable opinion of the Supplier would constitute or result in a breach of any warranty given by the Customer under these Terms of Trade or a breach by the Customer of any contract for the supply of Goods or Services pursuant to these Terms of Trade.

### 13. Limitation of Liability and Indemnity

- 13.1 To the extent permitted by law, the Supplier excludes all statutory or implied conditions and warranties and any other liability the Supplier may have to the Customer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.
- 13.2 To the extent permitted by law, the Supplier limits its liability which cannot be legally excluded under all statutory or implied conditions and warranties and any other liability the Supplier may have to the Customer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action, to whichever of the following the Supplier determines at its discretion:
- (a) supplying equivalent Goods or Services again;
  - (b) paying of the cost of acquiring equivalent Goods or Services again; or
  - (c) specifically to Goods, repairing those Goods.
- 13.3 The Customer must give the Supplier written notice of any claim it may have against the Supplier in connection with the Goods or Services the Supplier supplies to the Customer within 12 months of when the Supplier supplies them to the Customer failing which the Supplier will not be liable for that claim.
- 13.4 The Customer indemnifies the Supplier against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those arising from any actions, suits, proceedings, claims or demands, made against or suffered by the Supplier, arising out of the Supplier supplying the Goods or Services in accordance with these Conditions or arising out of the Customer breaching any of the

Customer's obligations (which includes any negligent act or omission by the Customer or its agents) under these Conditions.

### 14. Intellectual Property

- 14.1 Ownership of all Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods or Services and any related documentation provided to the Customer pursuant to the Order belongs to and will vest in the Supplier.
- 14.2 Nothing stated in these Conditions shall be construed as an implied or express transfer of the Intellectual Property Rights to the Customer or any other party.
- 14.3 The Customer shall not use any of the Supplier's Intellectual Property Rights including copyright, trademarks, logos, know-how and any other type of intellectual property belonging to the Supplier without the prior written consent of the Supplier.

### 15. Confidential Information

- 15.1 All information furnished or made available by the Supplier to the Customer in connection with the subject matter of these Terms of Trade or the supply of Goods or Services shall be held in the strictest confidence by the Customer. The Customer agrees not to use such information or disclose such information to others without the Supplier's prior written consent. The obligations in this paragraph will not apply to any information which:
- (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer of any obligation herein;
  - (b) the Customer can show by written records was in the Customer's possession prior to disclosure by the Supplier; or
  - (c) is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to the Supplier with respect to such information.

### 16. Force Majeure

- 16.1 Without prejudice to any other provision hereof the Supplier will not be liable for any failure to fulfil any terms of any agreement or inability to supply any Goods or Services if such fulfilment is delayed, hindered or prevented by any circumstances not within the Supplier's direct control including without limiting the generality of the foregoing strikes or lock-outs, material shortages, the Supplier's suppliers' failure to supply, labour disputes, war, hostilities or the threat or apprehension thereof or compliance with any order or request of any competent government authority or department or court of law.