

**1. General**

1.1 In these Terms of Sale, the following words have the following meanings:

**Business Day** means any day other than a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia.

**Terms** means these Terms of Sale and Credit Application Form and in respect of each order of Goods from the Customer accepted by the Supplier, includes the order confirmation and invoice issued by the Supplier in respect of the relevant order.

**Customer** means the person who buys or has agreed to buy the Goods, being the person, company or other entity named overleaf in the attached credit form as the %Customer+.

**Goods** means all goods supplied by the Supplier to the Customer from time to time (now and in the future) and includes all the Goods described in the invoices issued by the Supplier to the Customer.

**GST** has the meaning given to it in clause 5.6(d) of these Terms of Sale.

**Supplier** means TCL Australia Pty Ltd (ACN 091 773 330), trading as TCL Hofmann.

1.2 Any Goods supplied by the Supplier to the Customer will be supplied on these Terms only. These Terms take precedence over any terms which may be offered by the Customer. The only circumstance where any variation to these Terms will apply is where the Supplier has expressly agreed in writing to that variation.

1.3 In the event of any conflict between the documents constituting the Terms, the order of precedence will be invoice, order confirmation, Credit Application Form and Terms of Sale.

1.4 Cancellation of or variations to an order may be accepted at the sole discretion of the Supplier, on such terms as the Supplier may specify.

1.5 If the Supplier has custom configured the Goods to the Customer's requirement and/or specifications, the order can only be changed, modified or cancelled once the Customer's order is in production if the Customer agrees to meet all costs incurred.

**2. Quotations**

Unless otherwise stated in writing by the Supplier:

(a) quotations will be open for acceptance for 30 days from date of quotation;

(b) where a quotation is based on dimensions, measurements, specifications or instructions, whether written or verbal, supplied by the Customer;

(i) acceptance of the quotation by the Customer is deemed acceptance that the Supplier has correctly interpreted all dimensions, measurements, specifications or instructions; and

(ii) any costs for additional work or Goods required as a result of any inaccuracy or misinterpretation of those dimensions, measurements, specifications or instructions will be for the Customer's account;

(c) all drawings, documents or other details submitted by the Customer with a quotation are for quotation purposes only and will not form part of these Terms; and

(d) GST is to be added to the prices quoted and will be paid by the Customer in addition to the price quoted.

**3. Order Confirmation**

3.1 For each order placed by the Customer, the Supplier may issue an order confirmation.

3.2 The order confirmation will state the price to be paid for the Goods, the payment terms for the Goods and the delivery arrangements for the Goods.

3.3 The terms of the order confirmation will be binding on the Customer.

**4. Price**

4.1 The price of the Goods will be the price contained in:

(a) the order confirmation, and if no price is stated then;

(b) an accepted quotation, and if not applicable then;

(c) the Supplier's price list current at the date the Goods are delivered.

4.2 The Customer acknowledges that the price of the Goods may be altered at any time without notice to the Customer if there is any increase in the Supplier's costs between the date of the order confirmation or quotation, and the date of delivery.

4.3 The price of the Goods excludes any amount payable in respect of GST, which will be paid by the Customer in addition to the price.

**5. Payment**

5.1 The price of the Goods, plus GST, is to be paid in full in the specified currency in accordance with the payment terms contained in the relevant order confirmation, and if no such terms are stated, then is to be paid in full no later than the due date indicated on the relevant invoice or in the absence of a due date, the 30<sup>th</sup> of the month following date of invoice. If at any time the Supplier forms the view that the Customer is likely to be unable to meet its payment or other obligations to the Supplier, the Supplier reserves the right to require payment for any Goods, in cash, before those Goods are delivered.

5.2 The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Supplier.

5.3 The Supplier may, at any time, regardless of the status of the order, change the payment terms and/or require the Customer to pay for the Goods by bank cheque or post dated cheque or secure payment for the Goods in any manner whatsoever. Where the Supplier requires the Customer to secure payment for the Goods, it may suspend performance of its obligations under these Terms until sufficient security, in the Supplier's opinion, is provided.

5.4 Any payment received by the Supplier from the Customer may be applied in reduction of any amount owing to the Supplier from the Customer, as determined by the Supplier.

5.5 If full payment for the Goods is not made in accordance with these Terms, the Customer will pay, at the Supplier's discretion (and without affecting any other rights the Supplier may have), on demand:

(a) interest at a rate equal to the 90 Day Bill Rate + 5%, from the date when payment is due until the date when payment is actually made; and

(b) all expenses and costs (including legal costs as between solicitor and client) incurred by the Supplier in obtaining or attempting to obtain a remedy for the failure to pay.

5.6 GST

- (a) Unless otherwise stated, all amounts payable under these Terms are expressed to be exclusive of GST. If GST is payable on a Taxable Supply, the amount payable will be the amount expressed in these Terms plus GST.
- (b) The Customer will not be required to pay any amount to the Supplier in respect of GST unless the Customer has received a Tax Invoice from the Supplier.
- (c) Each party warrants to the other party that it is registered for GST purposes.
- (d) For the purposes of this clause 5.6, the terms *GST*, *Taxable Supply*, and *Tax Invoice* have the meanings given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

## 6. Delivery

- 6.1 Unless otherwise agreed, the Supplier will arrange delivery of the Goods. The delivery arrangements will be as stated in the order confirmation and if no such arrangements are stated, will be as otherwise agreed. Delivery may be by instalments. Each instalment will be invoiced separately and paid for in accordance with the accepted quotation, if applicable or otherwise in accordance with these Terms.
- 6.2 The cost of the delivery of the Goods is as stated in the order confirmation or as otherwise agreed. The Supplier may, at the Customer's request, arrange delivery by other methods or at other times or store the Goods but will be entitled to charge the Customer for any additional costs the Supplier may incur.
- 6.3 The Supplier will endeavour to meet agreed delivery dates but will not be liable, nor may the Customer cancel any order, for late delivery.
- 6.4 Delivery will be considered to have been made when the Goods arrive at the delivery point stated in the order confirmation or as otherwise agreed with the Customer or, if the Customer is to arrange delivery of the Goods, when the Goods are available for collection by the Customer.
- 6.5 If the Customer fails or refuses to take delivery of the Goods, the Supplier shall (without affecting any other rights it may have) be entitled to recover from the Customer any expenses or additional costs incurred by the Supplier as a result of the failure or refusal.
- 6.6 All claims for delivery of an insufficient quantity of the Goods or for delivery of the wrong Goods or for Goods damaged in transit must be made to the Supplier within [2 Business Days] of delivery and in accordance with any procedures advised to the Customer from time to time. Any claim which the Customer does not notify the Supplier of within that time (time being of the essence) will be taken to have been absolutely waived.

## 7. Risk and Retention of Title

- 7.1 Risk in the Goods will pass to the Customer immediately on delivery of the Goods.
- 7.2 Title to the Goods delivered does not pass to the Customer until payment in full for those Goods has been received by the Supplier. The Customer also obtains good title to the Goods where it on-sells on ordinary commercial terms in the course of business.
- 7.3 Until title passes to the Customer, the following applies.
  - (a) The Customer is in a fiduciary relationship with the Supplier and shall hold the Goods as bailee for the Supplier.
  - (b) The Goods will be stored at the Customer's risk and in a manner so that they are readily distinguishable from other goods owned by the Customer and / or other persons.
  - (c) The Customer shall indemnify the Supplier against any claim arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession by the Supplier.
- 7.4 Any sale of the Goods under clause 7.2 shall be effected as bailee for the Supplier and the proceeds of that sale will be held on trust for the Supplier. The proceeds of those sales must be held in a separate account or otherwise clearly defined in the books and records of the Customer. 7.5 Without prejudice to any other rights of the Supplier established herein (including remedies for breach of contract), the Customer acknowledges that if, in breach of clause 7.3(b), it mixes the Goods with other products or items so that the Goods are no longer separately identifiable, the Customer and Supplier will be owners in common of the new product.

## 8. Warranties and Liability

- 8.1 All warranties, descriptions, representations or conditions whether implied by law or otherwise are, and, subject to clause 6.6, all other liability of the Supplier, whether in contract, tort (including negligence) or otherwise, is expressly excluded to the fullest extent permitted by law.
- 8.2 So far as the law permits, the liability of the Supplier for a breach of a condition or warranty that cannot be excluded is limited, at the Supplier's absolute discretion, to:
  - (a) the replacement or repair of the Goods;
  - (b) the supply of equivalent goods; or
  - (c) the cost of replacing or repairing the Goods or of acquiring equivalent goods.

The Customer agrees to release, hold harmless and indemnify the Supplier to the maximum extent permitted by law from and against any liability whatsoever and howsoever arising (including, without limitation, from negligence or wilful misconduct on the part of the Supplier or others) in connection with the sale of Goods by the Supplier.

- 8.3 Except where statute expressly requires otherwise, the Supplier is not liable in any event for any loss of profits or any consequential, indirect or special damage, loss or injury of any kind suffered by the Customer or any other person.
- 8.4 While the Supplier will make every effort to ensure the accuracy of any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods supplied by it or their use or application, to the extent permitted by law, the Supplier does not accept any liability or responsibility in respect of such advice.

## 9. Personal Properties Securities Act

- (a) The Customer acknowledges:
  - (i) that the transactions (including each and every future transaction) contemplated herein give rise to a Security Interest in the Goods as Collateral under and for the purposes of the PPS Act;
  - (ii) that the Supplier's Security Interest in the Goods is effective and attaches to the Goods immediately upon the Customer taking delivery of the Goods;
  - (iii) that the Supplier may register the Supplier's Security Interest on the PPS Register and the Customer consents to such registration;
  - (iv) that the Supplier may register the Supplier's Security Interest prior to the Attachment of the Supplier's Security Interest to the Goods;
  - (v) that the Goods are not Consumer Property;
  - (vi) that the Goods are Commercial Property (class for the purposes of the PPS Act - Other Goods) and Inventory;

- (vii) that the Supplier may from time to time, whether before or after the transactions contemplated herein, grant security interests (whether by mortgage, charge or otherwise) over its rights under these conditions.
- (b) The Customer hereby consents to the Supplier taking all steps the Supplier considers necessary or advisable to:
  - (i) perfect, maintain continuous perfection, protect, record or register, amend, improve, remove or end the registration of the Supplier's Security Interest in the Goods;
  - (ii) better secure the Supplier's Security Interest in respect of the Goods under the PPS Law.
- (c) The Customer must:
  - (i) do everything including signing all documents and giving all consents to cause the Supplier's Security Interest to attach to the Goods within the time for so doing (if any) specified in the PPS Act ;
  - (ii) do everything including signing all documents and giving all consents to enable the Supplier to register the Supplier's Security Interest within the time for so doing specified in the PPS Act;
  - (iii) do everything including signing all documents and giving all consents to enable the Supplier to cure any defect in registration of the Supplier's Security Interest;
  - (iv) not raise any objection to or seek to set aside or have set aside the registration of the Supplier's Security Interest unless and until the Customer has fully discharged its obligations under or in respect of the Supplier's Security Interest and, generally, the transactions contemplated herein;
  - (v) not grant or cause or permit to be granted any further Security Interest in relation to the Goods without the Supplier's prior written consent;
  - (vi) do everything including signing all documents and giving all consents to enable the Supplier to enforce the Supplier's Security Interest;

and the Customer hereby appoints the Supplier as the Customer's attorney for the purposes of giving effect to the Supplier's obligations herein.
- (d) The Customer must, forthwith upon the happening of any of the following relevant events, notify the Supplier of any:
  - (i) Statutory Demand under section 459E of the Corporations Act in respect of the Customer;
  - (ii) application to wind up the Customer whether on a voluntary or involuntary basis;
  - (iii) proposed resolution to wind up the Customer;
  - (iv) proposal to appoint an administrator to or to execute a Deed of Company Arrangement in respect of the Customer;
  - (v) issue of a Bankruptcy Notice under section 41 of the Bankruptcy Act in respect of the Customer;
  - (vi) application for a Sequestration Order under Division 2 of the Bankruptcy Act against the Customer;
  - (vii) presentation of a Debtors Petition under Division 3 of the Bankruptcy Act by the Customer whether alone or jointly with another person or persons.
- (e) The Customer must forthwith upon receiving a request for information in relation to the Supplier's Security Interest and otherwise as contemplated by section 275 of the PPS Act, and within a reasonable time prior to responding to the request, notify the Supplier of any such request and provide full details of the request and/or a copy of it.
- (f) The Customer acknowledges that it has a duty of confidentiality to the Supplier by reason of the matters contemplated in these conditions and the protection of the Supplier's goodwill inherent in the transactions contemplated herein.
- (g) The Customer must assist and provide all necessary consents and sign all necessary documents and do all necessary things to assist the Supplier in applying to a Court for an order exempting the Supplier from responding to the request or extending the time for responding to the request under section 278 of the PPS Act.
- (h) Without limiting any other indemnity in favour of the Supplier provided herein, the Customer hereby indemnifies the Supplier from and against any costs, damages, loss or liability of any kind (including legal costs on a full indemnity basis and disbursements in defending or settling the claim) however suffered or incurred by the Supplier ("Liability") by any breach of these conditions by the Customer.
- (i) The Customer acknowledges that:
  - (i) the Supplier's Security Interest in the Goods is a Purchase Money Security Interest within the meaning of the PPS Act; and
  - (ii) if the Customer sells any Goods under clause 7.2 the Supplier's Security Interest in the Goods attaches to the Proceeds;
  - (iii) by accepting a quotation, providing the Supplier with an order confirmation, making an order for supply of Goods or accepting a delivery of Goods from the Supplier, the Customer is adopting the Supplier's Terms for the purposes of the PPS Act; and
  - (iv) to the extent the Goods are installed in or affixed to other goods by the Customer, the Supplier's Security Interest continues in the Accession.
- (j) The law of the Commonwealth as it applies in Victoria governs the Security Interest contemplated herein.
- (k) In these Terms the following words and phrases have the meanings specified unless the context indicates otherwise:
  - (i) Attaches has the meaning given in section 19 of the PPS Act, and attached and attachment have corresponding meanings.
  - (ii) Collateral has the meaning given in section 10 of the PPS Act and refers to the Goods, and includes, without limitation, any Accession thereto or Proceeds thereof.
  - (iii) Consumer Property has the meaning given in section 10 of the PPS Act.
  - (iv) Commercial Property has the meaning given in section 10 of the PPS Act.
  - (v) Inventory has the meaning given in section 10 of the PPS Act.
  - (vi) PPS Act means the Personal Property Securities Act 2009 (Cth).
  - (vii) PPS Register means the Personal Property Securities Register established under the PPS Act.
  - (viii) Proceeds has the meaning given in the PPS Act.
  - (ix) Register means to register a Security Interest on the PPS Register and registration has a corresponding meaning;

- (x) Supplier's Security Interest means the Security Interest in the Goods contemplated by this Agreement.
- (xi) Security Interest has the meaning given in section 12 of the PPS Act.

**10. Returns**

Subject to clause 6.6, Goods may be accepted for return at the sole discretion of the Supplier, on such terms as the Supplier may specify.

**11. Intellectual Property**

- 11.1 Copyright and all other intellectual property rights in drawings, specifications and other technical information relating to the Goods remain the property of the Supplier.
- 11.2 If any Goods are supplied to the Customer's design, the Customer warrants that such design will not, and will not cause the Supplier to, infringe any copyright or other intellectual property rights of any other person. The Customer will indemnify the Supplier against all losses, costs, damages or liabilities incurred by the Supplier in the event of a claim being made that the manufacture or supply of those Goods infringes the copyright or other intellectual property rights of any other person.

**12. Dimensions and Specifications**

- 12.1 The Customer acknowledges that if the Supplier is required to match the dimensions and specifications of the Goods with particular specifications or dimensions, the dimensions or specifications of the Goods may not be an exact match.
- 12.2 The Supplier will use its reasonable endeavours to ensure that any specification or dimension variation is within limits agreed with the Customer or, where there is no such agreement, is reasonable.

**13. Other Rights of the Supplier**

If:

- (a) the Customer breaches any of these Terms and, if the breach is capable of remedy, the Customer fails to remedy the breach within 7 Business Days after receipt of a notice from the Supplier requiring remedy; or
- (b) in the Supplier's reasonable opinion, the Customer is likely to be unable to meet its payment or other obligations to the Supplier; or
- (c) the Customer becomes bankrupt, insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management,

then:

- (i) the Supplier may cancel or suspend any outstanding order with the Customer (without affecting any other rights of the Supplier);
- (ii) all amounts owing to the Supplier, whether due for payment or not, will immediately become due and payable;
- (iii) all costs incurred by the Supplier as a result of the cancellation or suspension of any order will be payable by the Customer, and will become immediately due and payable; and
- (iv) the Supplier may remove any Goods in the Customer's possession or control and dispose of them or retain them for its own benefit and for that purpose the Supplier may, without notice, enter directly or by its agents on any premises where it reasonably believes Goods may be stored, without prejudice to any claims for damages against the Customer, and without in any way being liable to any other person.

**14. Miscellaneous**

- 14.1 If at any time the Supplier does not enforce any of these Terms or grants the Customer time or other indulgence, the Supplier will not be construed as having waived that term or its rights to later enforce that or any other term.
- 14.2 Where any provision of these Terms is rendered void, unenforceable or otherwise ineffective by operation of law, this will not affect the enforceability or effectiveness of any other provision of these Terms.
- 14.3 The Supplier will not be liable to the Customer for any loss or damage directly or indirectly arising out of or in connection with any delay in delivery of the Goods, or failure to perform any obligation in these Terms where such delay or failure is caused directly or indirectly by any act of God, terrorism, armed conflict, strike, lock-out, industrial action, flood, storm, fire, civil commotion, intervention of a government, inability to obtain labour, or materials or facilities, accidents, interruptions of, or delay in transportation or any other cause beyond the control of the Supplier.
- 14.4 The Supplier has the right to unilaterally change these Terms from time to time by giving notice in writing to the Customer, such amendments to be of immediate effect in respect of any orders placed after the date of the notice. The Customer agrees to be bound by any such amendments.
- 14.5 The Supplier may assign any of its rights or obligations under these Terms without the consent of the Customer.
- 14.6 These Terms will be governed by and construed in accordance with the laws of Victoria, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and waives any right to claim that those courts are an inconvenient forum.

**Signed on behalf of company by:**

Full legal entity name: \_\_\_\_\_ ABN: \_\_\_\_\_

Trading as: \_\_\_\_\_

Signed: \_\_\_\_\_ Designation: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_