

tribata.

Terms and Conditions

1. General

The whole of the agreement between the Supplier and the Customer is set out in these Terms and Conditions as amended from time to time (“**Terms and Conditions**”). Any other contractual terms of the Customer (whether upon the Customer’s order or elsewhere) that are contrary to, or inconsistent with, these Terms and Conditions will not apply nor will they constitute a counter-offer. By ordering, receiving delivery and/or supply of all or a portion of the goods and/or materials (“**Products**”), the Customer will be deemed to have accepted these Terms and Conditions and to have agreed that these Terms and Conditions will apply to the exclusion of all others.

2. Agreement

The Supplier agrees to sell, and the Customer agrees to purchase, the Products as set out in the Supplier’s quotation and these Terms and Conditions.

3. Payment

- 3.1. The price payable by the Customer for the Products will be as set out in the Supplier’s quotation (which, unless the quotation provides otherwise, will remain current for 30 days) for those Products (“**Price**”). Otherwise, the Price will be determined by the Supplier by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order).
- 3.2. The Customer must pay the Price, and any other amounts contained in the Supplier’s invoice, within 30 days of the date of the Supplier’s invoice.
- 3.3. Unless otherwise specified in writing,:
 - (a) the Price excludes any statutory, tax including any Goods and Services Tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*, duty or impost levied in respect of the Products for which the Supplier has not, in writing, allowed in calculating the Price; and
 - (b) the Price includes costs and charges in relation to insurance, packing (other than the standard packing of the Supplier), and delivery, if arranged by the Supplier, unless otherwise specified on the Supplier’s invoice.

4. Delivery and supply

- 4.1. Any times quoted for delivery and/or supply of the Products are estimates only and the Supplier will not be liable for failure or delay to delivery/supply.
- 4.2. The Customer will not be relieved of any obligation to accept or pay for Products by reason of any delay in delivery/supply or dispatch.
- 4.3. The risk of damage and/or loss of any Products will pass to the Customer upon the earlier of dispatch or the Products being available for collection.
- 4.4. If the Customer is unable or fails to accept delivery of the Products, the Supplier may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by the Supplier. Such action will be deemed to be delivery to the Customer. The Customer will be liable for all costs, charges and

expenses incurred by the Supplier on account of storage, detention, double cartage/delivery or similar causes.

- 4.5. The Supplier will arrange for the delivery of the Products to the location specified in the Supplier's quotation or as otherwise agreed by the parties.
- 4.6. No order may be cancelled, whether in whole or in part, by the Customer unless the Supplier has first agreed in writing to such cancellation or partial cancellation.

5. Claims

- 5.1. The delivery docket of the Supplier or its transport contractor will be prima facie evidence of the delivery of the Products in clean and good condition, and proper working order.
- 5.2. To the extent permitted by law, all complaints, claims, or notification of lost Products, incomplete Products, Products damaged in transit or Products that do not comply with the Customer's order must be submitted to the Supplier in writing within seven (7) business days of the date of the invoice rendered for the supply of the Products. Failing which, the Customer will be deemed to have accepted the Products and will not refuse to pay for the Products on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's order.

6. Change in Design

- 6.1. Unless otherwise specified, all specifications, drawings and particulars of dimensions and performance characteristics are approximate only. Descriptions and illustrations contained in catalogues, price lists and other written material are intended to present a general idea of the Products and none of these will form part of the Terms and Conditions or other agreement.
- 6.2. The Customer acknowledges that some Products' sizes and dimensions may vary can occur at manufacture and may not match the description provided by the Supplier.

7. Retention of Title and Personal Property Securities Act 2009

- 7.1. By accepting these Terms and Conditions, the Customer acknowledges and agrees that these Terms and Conditions contemplate and may constitute a security agreement for the purposes of the PPSA and may create a security interest in all of the Customer's present and after-acquired Products supplied by the Supplier.
- 7.2. Until full payment has been made for all Products, and any other sums in any way outstanding from the Customer to the Supplier from time to time:
 - (a) property in the Products will not pass to the Customer, and the Customer holds the Products as bailee for the Supplier (returning the same to the Supplier on request);
 - (b) the Supplier retains a security interest in all Products previously supplied by the Supplier to the Customer (if any) and all Products that will be supplied in the future by the Supplier to the Customer during the continuance of the parties' relationship;
 - (c) the Customer agrees to store the Products on its premises separate from its own or any other person's goods, and in a manner which makes them readily identifiable as the Supplier's Products;
 - (d) the Products will nevertheless be at the risk of the Customer from the time of dispatch or as outlined as otherwise specified in these Terms and Conditions; and

- (e) the Supplier is irrevocably authorised by the Customer to enter any premises at any time where the Products are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Products, and any property to which the Products are attached, or in which the Products are incorporated.
- 7.3. If the Customer purchases the Products for the purpose of resupply or if the Customer resupplies the Products:
- (a) the Products are inventory for the purposes of the PPSA;
 - (b) the Customer is only authorised to sell those Products (or any portion of them) to third parties as the fiduciary agent of the Supplier provided that there will be no right to bind the Supplier to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Products (or any portion of them) will be held on trust for the Supplier pursuant to the fiduciary relationship.
- 7.4. In the event that the Products (or any portion of them) are attached, fixed, transformed or incorporated into any other goods or products produced by the Customer (or a third party), then title in the Products will remain with the Supplier until the Customer has made payment for all Products, and the Supplier will have a security interest in those Products, and the Customer must hold a proportion of any payment ("**relevant proportion**") received by the Customer for such Products on trust for the Supplier, and the Supplier will have a security interest in that relevant proportion. The Customer expressly acknowledges that the relevant proportion will be equal to the dollar value of the portion of the Products incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such Products is received as payment first of the relevant proportion.
- 7.5. The Customer undertakes to:
- (a) promptly and at its own cost, sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) that the Supplier may reasonably require to register a financing statement, financing change statement or any other required document on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement, financing change statement or any other required document on the Personal Property Securities Register or releasing any Products charged thereby;
 - (c) not register, or permit to be registered, a financing change statement or a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) give the Supplier at least 14 days' prior written notice of any proposed change in the Customer's name or any other change in the Customer's details; and
 - (e) immediately advise the Supplier of any material change in its business practices that would result in a change in the nature of proceeds derived from any sales of the Products.
- 7.6. The Supplier and the Customer agree that nothing in sections 130(1)(a) and 143 of the PPSA will apply to these Terms and Conditions.
- 7.7. The Customer waives its rights as a debtor under sections 92, 93, 94, 95, 97, 118, 121, 132, 135, 137, 140 and 142 of the PPSA.
- 7.8. Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.9. Neither party may disclose information of the kind to which section 275(1) of the PPSA refers. The Customer waives any right that the Customer may have or, but for

this clause 7.9, may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of such information, and otherwise agrees not to exercise any rights it may have under sections 275(7)(c) and (d) without the Supplier's written consent. To the extent that it is not inconsistent with this clause constituting a confidentiality agreement for the purpose of section 275(6)(a) of the PPSA, the Supplier may disclose information of the kind to which section 275(1) of the PPSA refers to the extent that the Supplier is not doing so in response to a request by an interested person.

- 7.10. The Customer further agrees that where the Supplier has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- 7.11. The Customer unconditionally ratifies any actions taken by the Supplier under clauses 7.1 to 7.9 under and by virtue of the power of attorney given by the Customer to the Supplier, and agrees that this clause will survive termination of this agreement or any other agreement between the Supplier and the Customer for the sale of the Products.

8. Warranty, Liability and Indemnity

- 8.1. Subject to clause 8.2:
- (a) the only guarantee, warranty or condition provided in relation to any Product is any express warranty that the Supplier provides; and
 - (b) the Supplier excludes all liability in relation to the Products, whether in contract, tort or otherwise, including all liability for any consequential loss or damage.
- 8.2. Nothing in clause 8.1 excludes, restricts or modifies:
- (a) the application of any consumer guarantee in the Australian Consumer Law ("**ACL**") or any similar provision in the law of any State or Territory that cannot be excluded, restricted or modified ("**Similar Provision**");
 - (b) the exercise of any right conferred by the ACL or Similar Provision; or
 - (c) the Supplier's liability under the ACL or Similar Provision.
- 8.3. Subject to clause 8.2:
- (a) the Customer indemnifies the Supplier for any claims or proceedings from any person in connection with:
 - i. any loss, damage or injury or damage to any property or person arising from the Customer's use of any Products provided under these Terms and Conditions; and/or
 - ii. any breach by the Customer of any of its obligations under these Terms and Conditions;
 except to the extent that the loss, damage or injury was caused by the negligence of the Supplier.

9. Returns

- 9.1. Products must be returned to the Supplier within 14 days after the Customer's receipt of the Products unless otherwise agreed in writing by the Supplier.
- 9.2. The Products must be in its original packaging, be in new condition, suitable for resale, and be undamaged in any way. The Customer must provide proof of purchase at the time of return.
- 9.3. Any freight charges will be the Customer's responsibility and the Customer will be responsible for all damage incurred during return shipment.

- 9.4. If the return is accepted by the Supplier, in its sole discretion, the Customer must not deduct the price of any anticipated credit or payment from any payment due to the Supplier, unless otherwise agreed by the Supplier in writing.
- 9.5. Nothing in this clause excludes, restricts or limits the Customer's rights under the ACL or Similar Provision.

10.Default

10.1. In the event that the Customer:

- (a) defaults in any payment or other obligation under these Terms and Conditions;
- (b) commits an act of bankruptcy or insolvency or passes a resolution for winding up or a petition is presented for its winding up or enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally;
- (c) has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets;
- (d) then, without prejudice to the Supplier's other rights:
 - i. the Supplier may suspend the further supply of Products;
 - ii. all amounts payable to the Supplier will, whether or not due for payment, become immediately payable;
 - iii. the Supplier may charge the Customer interest on any amount outstanding at the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic) plus 2 per cent calculated daily on any overdue amount;
 - iv. the Supplier may cancel or change the terms of payment before supply of Products to the Customer;
 - v. the Supplier may terminate any agreement with the Customer immediately by written notice to the Customer and the Supplier may immediately repossess the Products;
 - vi. the Supplier may charge the Customer for all reasonable expenses and costs (including debt collection costs and legal costs on an indemnity basis, and the cost of recovering the Products) incurred resulting from the default or any other matter in this clause in relation to the exercise of the Supplier's rights against the Customer.

10.2. If the Supplier defaults in any obligation under these Terms and Conditions, the Customer may terminate this agreement after the Customer has provided the Supplier with written notice detailing the default and the Supplier fails to rectify the default within 30 days of that notice.

10.3. The termination of any agreement between the parties does not affect their accrued and other rights under these Terms and Conditions and in particular under clauses 3, 7, 8 and 10.

11.Force majeure

The Supplier will be released from its obligations in the event of national emergency, war, or if any other cause beyond the control of the Supplier renders provision of the Products impossible, where all money due to the Supplier will be paid immediately and, unless prohibited by law, the Supplier may elect to terminate this agreement by written notice.

12.Miscellaneous

12.1. These Terms and Conditions will be governed by and interpreted according to the laws of Victoria and the Supplier and the Customer submit to the jurisdiction of the courts in Victoria.

- 12.2. The Supplier's failure to enforce any of these Terms and Conditions will not be construed as a waiver of its rights.
- 12.3. A notice must be in writing and handed personally or sent by email, facsimile or pre-paid mail to the last known address of the addressee.
- 12.4. No rule of construction applies to the disadvantage of the Supplier because it was responsible for the preparation of these Terms and Conditions or any other agreement between the parties.
- 12.5. The Supplier may amend these Terms and Conditions at any time and the terms (as amended) will apply to any subsequent sale by the Supplier to the Customer.

13. Interpretation

In these Terms and Conditions unless the context indicates otherwise:

"Customer" means the persons, companies or entities, jointly and severally if there is more than one, acquiring Products from the Supplier, and include the Customer's successors, heirs and permitted assigns;

"Deposit Amount" means the deposit amount, if any, specified in the Supplier's quotation; **"Financing change statement"** has the meaning given to it by the PPSA;

"Financing statement" has the meaning given to it by the PPSA;

"PPSA" means *Personal Property Securities Act 2009* (Cth);

"Security agreement" means the security agreement under the PPSA created between the Customer and the Supplier;

"Security interest" has the meaning given to it by the PPSA; and

"Supplier" means Tribata Group Pty Ltd as trustee for Tribata Group Unit Trust.