

## **TERMS & CONDITIONS**

### **1. APPLICATION**

- 1.1 These Terms apply together with all Contracts, Orders, quotations and offers made or accepted by the Company to the Customer unless otherwise agreed by the Company in writing.
- 1.2 The Company may include additional terms in a quotation or Contract that will operate in addition to these Terms.
- 1.3 If there are any inconsistencies between these Terms and the terms of a contract entered into by the Company and Customer, the terms of that contract will prevail to the extent of any inconsistency.
- 1.4 These Terms cannot be varied or replaced by any other terms, unless otherwise agreed by the Company in writing.
- 1.5 The Company can vary or amend these Terms at any time by providing written notice to the Customer including any such variations or amendments and will apply to quotations or Orders placed on the date specified in the notice.
- 1.6 These Terms are governed by and construed in accordance with the laws of the state of Victoria, Australia. The Customer and the Company submit to the jurisdiction of the state of Victoria.

### **2. QUOTATIONS**

- 2.1 Any quotation provided by the Company proposing a supply of Products and/or Services to the Customer is valid for 60 days.
- 2.2 In its sole discretion, the Company may withdraw or amend a quotation by providing written notice to the Customer.

### **3. ORDERS**

- 3.1 The Customer upon placing an Order with the Company is deemed to have accepted and agreed to be legally bound by these Terms whether such Terms have been signed or otherwise approved by the Customer.
- 3.2 These Terms are accepted by the Company and a Contract is entered into when the Company accepts, in writing, an Order from the Customer (**Order Confirmation**) or supplies the Customer with Products and/or Services.
- 3.3 These Terms apply to each subsequent Order placed by you the Customer for the supply of Products and/or Services the and the Company is not obliged to provide a copy of these Terms for each and every Order placed.
- 3.4 If the Customer places the Order subject to finance, the Company in its discretion is not obliged to supply the Products and/or Services until the Customer can provide evidence to the Company's satisfaction that such finance will be provided.

### **4. SPECIFICATION**

- 4.1 The Company's Products and Services are supplied in accordance with Specifications. Any Specifications that are provided with an Order are deemed to be understood and accepted by the Customer.
- 4.2 Unless otherwise specified in the Order, Contract, Quotations provided by the Company to the Customer, the Customer is responsible for examining and testing the Products and Services at their own cost to ensure that they are suitable for the Customer's own purposes or proposed use.
- 4.3 Subject to the ACL, the Company accepts no liability for the fitness or suitability of the Products and Services for the Customer's own purposes or proposed use.

### **5. PRICE**

- 5.1 Prices are subject to change, and the Company reserves the right to change the Price to a reasonable degree by providing written notice to the Customer.
- 5.2 For example, the Company may change the Price if:
  - 5.2.1 There is a change in the Specifications provided by the Company or Customer at the time a quotation or other written representation is given;
  - 5.2.2 There is a change in the costs incurred by the Company in relation to the supply of the Products and/or Services.

### **6. PAYMENT**

- 6.1 Full payment of the Price is due to the Company 7 days from date the invoice is issued to the Customer, unless otherwise stipulated on the invoice or agreed by the Company in writing.
- 6.2 The Company reserves the right to require full payment on the day the Products and/or Services are supplied.
- 6.3 The Company may require the Customer to pay a deposit upon commencement of a Contract or prior to the supply of Products and/or Services.
- 6.4 Payment by cheque is not deemed to be made until the cheque has been cleared.
- 6.5 The Company is entitled to set off against any amount the Company may owe the Customer.
- 6.6 If you do not pay the Price as and when it falls due to the Company, in addition to any other costs that the Company can recover from you under the Terms, it may charge you:
  - 6.6.1 Interest at the Default Rate per month calculated on a daily basis; and

6.6.2 Any costs and expenses the Company incurs with commercial or mercantile agents and legal costs in recovering any unpaid amounts owing by the Customer to the Company.

## **7. DEFAULT**

7.1 A **Customer Default** occurs when:

- 7.1.1 The Customer breaches these Terms or any other terms in a Contract with the Company;
- 7.1.2 The Customer fails to pay some or all of the payment due to the Company pursuant to Clause 7;
- 7.1.3 The Customer, as an individual, commits an act of bankruptcy or becomes insolvent or its credit standing alters adversely;
- 7.1.4 The Customer, being a body corporate, ceases to carry on its business or becomes insolvent or any step is taken (including an application, proceeding, resolution or notice) for the winding up or dissolution of the business, or for the appointment of a bankruptcy trustee, administrator, receiver, liquidator or similar functionary; or
- 7.1.5 The Customer's credit standing, in the opinion of the Company, is at risk or has been impaired.

7.2 In the event of a Customer Default, the Company may do any or all of the following:

- 7.2.1 Require the Customer pay the Company all money which would have been payable at a later date immediately upon written demand;
- 7.2.2 Charge the Customer interest on any money due at the Default Rate per month calculated daily;
- 7.2.3 Cease or suspend the supply of any Products and/or Services to the Customer;
- 7.2.4 Terminate any other uncompleted Contract with the Customer by providing written notice;
- 7.2.5 Charge the Customer for, and seek indemnity from, all costs and expenses incurred as a result of the Customer Default or in taking action to enforce compliance with the Contract or recover its Products;
- 7.2.6 Treat the Contract as repudiated and sue for breach of contract or other remedies available to the Company;
- 7.2.7 Exercise any other rights which the Company may have under applicable State or Federal law.

## **8. ORDER CANCELLATION OR VARIATION**

8.1 If the Company is unable to supply Products and/or Services, the Company may cancel an Order at any time with written notice, even if an Order Confirmation has been sent.

8.2 If the Customer or Company wishes to cancel or vary an Order, this must be done so in writing no later than 24 hours prior to the delivery date of the Products/and or Services. Cancellation or variation of an Order becomes effective upon the written approval by the Company.

8.3 In the event an Order is cancelled or varied:

- 8.3.1 If some of the Products and/or Services in the order have already been supplied, the Company may exercise its right to charge its interest for all Products and/or Services that have been supplied or that are already in the process of being supplied;
- 8.3.2 If the supply of the Products and/or Services is already substantially completed, the Company may charge for the full amount set out in the Order, Contract, agreement or invoices issued to the Customer; or
- 8.3.3 If the Products have been made to order or are otherwise not immediately available for resale at a similar price, the Company may charge for the full amount set out in the Order, Contract, agreement or invoices issued to the Customer from time to time.

8.4 If an Order is cancelled by the Company, the Customer is entitled to a refund of any prepayments made by the Customer, but only to the extent that such prepayments relate to the Products and/or Services that the Company fails to supply.

8.5 If an Order is cancelled by the Customer in accordance with clause 8.2, the Company retains the right to charge the Customer for any costs and expenses the Company has incurred or will incur because of the cancellation.

## **9. DELIVERY AND COLLECTION**

9.1 The Company will arrange for the delivery of Products/Services to the Customer, unless a collection has been arranged.

9.2 The Company will have an obligation to deliver the Products/Services, which is discharged upon the delivery of the Products/Services at the Customer's nominated delivery destination.

9.3 Any time period or date given by the Company for the delivery of Products/Services is an estimate only and is not a binding under the Contract.

- 9.4 Subject to the ACL, the Company will take reasonable steps to meet any estimated delivery date given for the Products/Services, but will not be liable for any loss or damage suffered by the Customer for a failure to meet the estimated time.
- 9.5 The Company retains the right to deliver Products/Services in parts and may invoice the Customer for the parts of the Products/Services that have been delivered.
- 9.6 The obligation to deliver Products/Services imposed by this Clause 9 is subject to the Company's ability to secure labour, materials and other services for the supply of the Products/Services.
- 9.7 In the event of a partial or complete failure to deliver Products/Services, the Customer is entitled to a refund of prepayments made to the Company, but only to the extent that these prepayments were made in relation to the Products/Services the Company failed to deliver.
- 9.8 If a collection of Products has been arranged, the Customer must collect the Products within 7 days of being notified that they are ready for collection, unless otherwise agreed by the Company in writing.
- 9.9 If the Customer is unable or unwilling to accept delivery of Products, or fails to collect the Products, the Company may arrange for storage of the Products at the Customer's own risk and cost.
- 9.10 Product deliveries that require a carrier other than the Company's usual carrier may incur additional freight charges at the Customer's expense.
- 9.11 Risk and insurance responsibility related to the Products/Services will pass onto the Customer immediately upon delivery of the Products/Services.

#### **10. PASSING OF TITLE**

- 10.1 Title to and ownership of the Products will remain with the Company until the Customer pays the Company the Price of the Products and any other amounts the Customer may owe the Company under a Contract.
- 10.2 Up and until title passes to the Customer, the Customer must:
- 10.2.1 Store the Products and identify the Products as the Company's property;
  - 10.2.2 Upon demand from the Company, deliver up the Products and provide reasonable assistance to the Company to repossess the Products;
  - 10.2.3 Hold the proceeds of any sale of the Products on trust for the Company in a separate account and not deposit

in that account money received from any other entity (however a failure to do so does not affect the Customer's obligation to deal with the proceeds as a trustee);

- 10.2.4 Keep proper and complete stock records covering the receipt, identification, storage, location, sale and movement of Products and provide these to the Company upon their reasonable request; and
- 10.2.5 Keep Products insured against theft, damage or destruction.

10.3 In the event of a Customer Default as defined in Clause 8, the Company is entitled to take possession of the Products and the Customer irrevocably authorises the Company to enter onto the land and/or buildings of the Customer and use all necessary tools and equipment to take possession of the Products.

#### **11. SHORTAGES**

- 11.1 In the event that the quantity or description of the Products supplied does not correspond with the quantity or description stated in the Order:
- 11.1.1 In the case of an under-supply, the Customer will only be liable to pay for the Products actually supplied; and
  - 11.1.2 In the case of an over-supply, the Customer will only be liable to pay for the Products as provided in the Order and permits the Company to collect any over-supply. Over-supply does not give rise or entitle the Customer to any claim for damages, or the ability to rescind the Terms.
- 11.2 Any Products supplied by the Company that were not in the Order, or are deemed to be over-supply remain the property of the Company, and Customer must comply with the requirements of Clause 11.
- 11.3 If the Customer identifies a shortage, within 7 days of the supply of the Products they must notify the Company in writing providing:
- 11.3.1 Proof of purchase;
  - 11.3.2 Complete and proper details of the alleged shortage;
  - 11.3.3 Documentation evidence stipulating the date of supply, invoice number, purchaser name/address; and
  - 11.3.4 Any other information or evidence that the Company reasonably requests.
- 11.4 If the Customer does not notify the Company pursuant to Clause 11.3, they are deemed to have accepted the Products.

## 12. REFUNDS AND RETURNS

12.1 The Company and the Customer agree to be bound by the terms of the Company's Warranty Statement.

12.2 Where the Company accepts that there has been a breach of the Warranty Statement, the Company will either repair, replace or refund the Product and/or Service.

12.3 The Customer must not return any products to the Company without its prior written consent. The Products must be in a saleable condition.

12.4 The Company will not accept Products for return that:

- 12.4.1 Have been specifically manufactured, specially finished, imported or acquired to fulfil the Contract;
- 12.4.2 Are discontinued Products or no longer stocked by the Company;
- 12.4.3 Have been altered or modified in anyway; or
- 12.4.4 Have been misused.

12.5 Nothing in this Clause purports to modify, limit or exclude any right or remedy that the Customer has if they are covered by the ACL.

## 13. LOCAL LAW AND STANDARDS

13.1 The Customer is responsible for observing all applicable local laws in relation to their use of the Company's Products and/or Services.

13.2 The Customer is responsible for obtaining certifications, licences, permits and other authorisations required by the applicable local law in relation to their use of the Company's Products and/or Services.

## 14. PERSONAL PROPERTY SECURITIES

14.1 The terms and expressions used in this Clause have the meanings given to them in the PPSA, unless otherwise defined in these Terms.

14.2 The Customer grants the Company a security interest in all Products supplied under a Contract, which they may register on the Personal Properties Securities Register (PPSR).

14.3 The Customer must do whatever is necessary, including executing any documents, providing all relevant information, and co-operating fully with the Company to give the Company a valid security interest over all Products which are registerable on the PPSR.

14.4 The Customer irrevocably grants the Company the right to enter the Customer's land and buildings to take any action required to enforce or protect the Company's security interest.

14.5 To the extent permitted by the PPSA, the Customer and Company agree that the rights of the Customer and the obligations of the Company under Chapter 4 of the PPSA will apply only to the extent that they are mandatory or non-excludable.

14.6 Unless the right is unable to be excluded, The Customer waves any rights to receive notice under the PPSA, including but not limited to Sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157.

14.7 The Customer agrees to pay on demand any costs, and indemnify the Company of any losses, arising from or in connection with the registration of the Property on the PPSR or any other action taken by the Company to protect their security interest.

14.8 The Company has absolute discretion to apply money received from the Customer in any way it sees fit (including applying payments made by the Customer for additional Products/Services to cover past debts, or applying funds in any manner required to preserve any Purchase Money Security Interest it has).

14.9 The Contract and these Terms are classed as a security agreement, and any security interest will be a continuing and subsisting interest with priority to the fullest extent permitted by law over any other registered or unregistered security interest. The Customer must keep the Products free of any charge, lien, or other security interest, and must not deal with the Products in any way that may prejudice any rights of the Company under the Contract or the PPSA.

14.10 The Customer must notify the Company of any change in the Customer's business structure that may affect the Company's rights under the Contract or the PPSA no less than 7 days prior to any changes taking effect.

## 15. LIABILITY AND INDEMNITY

15.1 These Terms or any Contract do not include by implication any term, condition or warranty other than those expressly stated in these Terms and the Company Warranty Statement.

15.2 The Company is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealing of the Products by the Customer or a third party, other than as stated in these Terms and the Company's Warranty Statement.

15.3 The Company will not be held liable for any indirect or consequential loss or expenses suffered by the Customer or any third party, other than as provided for in these Terms and the Company's Warranty Statement.

15.4 The Customer must indemnify the Company against all claims arising from the installation, maintenance, repair or other service of the Company's Products if the installation, maintenance, repair or service was undertaken by a party other than the Company or its authorised agents.

15.5 The Customer must indemnify the Company against all claims arising from the supply of the Company's Products and/or Services where the claim arises from any special requirements or Specifications of the Customer.

15.6 If the Customer is defined as a Consumer, nothing in this Clause purports to modify, limit or exclude any right or remedy available for a breach of the Consumer Guarantees under the ACL.

#### **16. FORCE MAJEURE**

16.1 The Customer or the Company will not be held liable under the Contract to the extent that one or both parties are affected by events beyond its reasonable control (**Force Majeure Event**), including but not limited to, an Act of God, war, civil disturbance, governmental action or restrictions, import or export regulations, industrial disputes or strikes, difficulties in obtaining workmen or materials, breakdown of machinery, fires, environmental disasters or public health emergencies.

16.2 If a Force Majeure Event occurs, the Customer or the Company may suspend or terminate the Contract by providing written notice.

#### **17. INTELLECTUAL PROPERTY**

17.1 The Company retains all rights, title and interest in all Intellectual Property associated with the supply of Products and/or Services.

17.2 The Customer agrees that the supply of Products and/or Services does not constitute a transfer of any Intellectual Property.

17.3 The Customer must not:

- (a) Claim a right, title or interest in the Company's Intellectual Property;
- (b) Use, reproduce or copy the Company's Intellectual Property for any unauthorised purpose;

17.4 Any modification, variation, improvement or derivation of the Company's Intellectual Property will remain the Company's property. The Customer assigns to the Company any Intellectual Property rights that it may obtain by undertaking any modification, variation, improvement or derivation of the Company's Intellectual Property.

17.5 The Customer holds itself out as the owner or licensee of any intellectual property which the Customer requires the Company to

use as part of the supply of the Products and/or Services. The Customer must indemnify the Company against all liabilities, costs, expenses and claims associated with the use of any such intellectual property.

#### **18. CONFIDENTIALITY**

18.1 The Customer must not use or disclose any Confidential Information other than as permitted by these Terms or written permission given by the Company.

18.2 The Company and Customer (including its agents) must take all reasonable steps to prevent any use or disclosure of Confidential Information received by them in the course of any dealings.

18.3 This Clause does not apply to the following information:

- (a) Information that becomes publicly known through no fault of the Customer or Company;
- (b) Information that is required to be disclosed under any law, order of law or other binding authority;
- (c) Information that is disclosed to a professional services adviser that is bound by a professional duty of confidentiality.

#### **19. PRIVACY**

19.1 The Customer agrees to the Company Collecting, using and disclosing the Customer's personal information for various purposes in accordance with the Company Privacy Policy as amended from time to time.

#### **20. WAIVER**

20.1 The Company does not waive any right relating to these Terms unless it is waived in writing. A single or partial waiver of any right in a Contract or any of the Terms herein will not prevent any other exercise of that right or any other rights under these Terms.

20.2 Any delay or failure of the Company to enforce these Terms shall not prejudice the Company's ability to enforce any rights arising from these Terms, Contract, Quotation or Order.

#### **21. SEVERABILITY**

21.1 If any of these Terms are unenforceable under any applicable State or Federal law, it must be read down to be enforceable. If it cannot be read down, the term must be severed from these Terms without affecting the enforceability of any other terms.

#### **22. DEFINITIONS**

22.1 In these Terms & Conditions:



**ACL** means Australian Consumer Law, found in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and Regulations as amended.

**Company** means Access Entry Pty Ltd (ABN: 84 602 327 024).

**Confidential Information** means any proprietary or confidential documents, knowledge, information, prices, tools, formulas, samples, models, drawings, data sheets, manuscripts or other technical documentation supplied by the Company to the Customer.

**Consumer** is as it is defined under the ACL.

**Contract** means any written agreement entered into by the Company and Customer for the supply of Products and/or Services, including these Terms.

**Customer** means the person, legal entity, partnership, or trust (jointly and severally if more than one), requesting or acquiring Products and/or Services from the Company.

**Default Rate** means the interest rate that is 2% above the rate fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time.

**GST** means the tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property** means all registered and unregistered rights in present and future copyright, trademarks, designs and patents, trade secrets, confidential information and all rights conferred under statute, common law or equity in relation to the above.

**In writing** means written correspondence in handwritten, printed, or electronic form.

**Order** means a purchase order or other order the Customer provides to the Company requesting the supply of Products and/or Services.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and Regulations as amended.

**Price** means the cost of the Products and/or Services as provided in the Company's quotations, price lists or other specific arrangements.

**Privacy Policy** means the Company's privacy and credit reporting policy, accessible on the Company's website.

**Products** means all goods, equipment and other facilities manufactured by the Company and offered for sale.

**Services** means all maintenance, repairs, advice, design, procurement, installation, or other services supplied by the Company and offered for sale.

**Specification** means the agreed specifications, the Company's intended purposes, or the scope of the Product and/or Services as set out in an Order Confirmation or Contract.

**Tax Invoice** has the same meaning as in the *A New Tax System (Goods and Services tax) Act 1999* (Cth).

**Terms** means all provisions in these Terms & Conditions.

**Warranty Statement** means the Company's express warranty statement, accessible on the Company's website.

**Access Entry Pty Ltd**

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