

# **TERMS AND CONDITIONS OF SALE**

## **1. CONTRACT**

**1.1** Andrew Kohn Pty Ltd ABN 16 881 812 311 (the "Supplier") supplies Goods to the Customer subject to the following trading Terms and Conditions of Sale ("Terms").

**1.2** To the extent that these Terms purports to be an acceptance of an Order, or offer, or amounts to a counter offer, it shall be capable of acceptable only on the basis of the Terms and by acceptance or delivery of the Goods.

**1.3** These Terms constitute a complete and exclusive statement of the general conditions of sale between the Supplier and the Customer.

**1.4** The Supplier reserves the right to stop supply, withdraw credit facilities and/or close the Customer's account at any time without prior notice. Interest may be charged on overdue accounts.

## **2. Definitions**

The following definitions apply to the Terms unless the context otherwise necessarily requires:

- (a) "Customer" means the applicant in the Application for Credit;
- (b) "Event of Default" has the meaning provided in clause 12;
- (c) "Financing Statement" has the meaning given to it by the PPSA;
- (d) "Financing Change Statement" has the meaning given to it by the PPSA;
- (e) "Goods" means any goods supplied by the Supplier to the Customer from time to time pursuant to these Terms;
- (f) "Invoice" means the tax invoice annexed to these Terms;
- (g) "Nominated Address" means the registered address of Customer or any other address nominated by Customer by written notice to the Supplier;
- (h) "Order" means any written or verbal request by the Customer to the Supplier for the supply of Goods;
- (i) "PPSA" means the Personal Property Securities Act 2009 (Cth);
- (j) "Secured Property" means any Goods over which a Security Interest is created pursuant to clause 14;
- (k) "Security Agreement" means the security agreement under the PPSA created between the Customer and the Supplier by these Terms;
- (l) "Security Interest" has the meaning given to it by the PPSA;
- (m) "Supplier" means Andrew Kohn Pty Ltd ABN 16 881 812 311;
- (n) "Terms" means these Terms and Conditions and any variation thereto which has been expressly agreed, acknowledged or accepted by the Supplier.

## **3. Interpretation**

**3.1** The following rules of interpretation shall apply to the Terms unless the context otherwise necessarily requires.

**3.2** References in the Terms to the Supplier or the Customer includes references to their respective successors and permitted assigns.

**3.3** Words and expressions, including defined terms in singular form include a reference to cognate words and expressions in plural form and vice versa and the words and expression importing a particular gender include respective references to cognate words and expressions importing each other gender.

**3.4** Unless otherwise specifically indicated, a reference in the Terms to a clause, sub-clause, paragraph or sub-paragraph is a reference to a clause, sub-clause, paragraph or sub-paragraph of the Terms .

## **4. PRICE**

**4.1** Subject to sub-clause 4.2, the price to be paid for the Goods shall be the current price as charged by the Supplier . Price may be subject to variation without notice.

**4.2** Notwithstanding sub-clause 4.1, any price to the Customer shall not be varied for a period of 30 days from the date of the quotation except where the Customer requests early delivery of the Goods.

**4.3** In the event the Customer requests early delivery of the Goods pursuant to clause 4.2 , the price to be paid for the Goods may, at the Supplier's sole discretion, be varied by the Supplier to incorporate any additional costs incurred to effect early delivery.

## **5. INVOICES**

**5.1** Invoices will be issued by the Supplier on or after Goods have been delivered to the Customer's Nominated Address.

**5.2** The full amount set out in the invoice issued pursuant to clause 5.1 shall be paid by the Customer within 28 days from the date of the invoice.

## **6. INTEREST**

**6.1** In the event payment of any amount invoiced pursuant to clause 5.1 is not received by Supplier within 28 days from the date of the invoice,("the Outstanding Amount") interest will be payable by Customer on the Outstanding Amount at the rate of 18% per annum or any other rate determined by the Supplier from time to time and shall accrue until the outstanding amount and any applicable interest has been paid in full.

## **7. DELIVERY**

**7.1** Provided that an Event of Default is not subsisting the Supplier shall deliver the Goods to the Nominated Address within 1 month of the Supplier's receipt of an Order by Customer or at such other time as agreed between the Customer and the Supplier.

**7.2** The Customer acknowledges and agrees that the delivery of Goods by the Supplier within a variation of ±10% of the quantity provided in the Order will constitute a good commercial delivery of an Order.

**7.3** Where, due to absence of sufficient identification or for any other reason, the Nominated Address cannot be located ,or for any other reason beyond the control of the Supplier, the Goods cannot be delivered, the Goods shall be returned to the Supplier and the costs and expenses incurred by the Supplier shall be added to the price of the Goods.

**7.4** Where the Nominated Address is unattended by the Customer or any of its agents or servants, a certificate signed by the Supplier or any of the Supplier's agents or servants stating the time, date and place of delivery shall be *prima facie* evidence of the Goods' delivery. .

## **8. ACCEPTANCE**

**8.1** The Customer will immediately inspect the Goods upon delivery and, subject to clause 8.2, the Customer will be deemed to have accepted the Goods at that time.

**8.2** No claim for shortages or for damaged or defective Goods may be made by the Customer unless written notice of such claim is received by the Supplier within 7 days of delivery.

**8.3** In the event that the Customer claims that Goods delivered are faulty or defective, the following procedure shall apply:

- (a) Goods apparently exhibiting fault or defect shall be set aside and notice of such fault or defect shall be served on the Supplier;
- (b) a representative of the Supplier will inspect the Goods in question; and
- (c) if after inspection by the Supplier it is established that the Goods are faulty or defective, then the Supplier will refund the price of the defective or faulty Goods paid or, at the Supplier's option, replace the defective or faulty Goods.

## **9. RISK/PROPERTY**

**9.1** Risk in the Goods shall pass to the Customer immediately upon delivery to the Nominated Address.

**9.2** Notwithstanding the passing of risk, property in the Goods shall not pass to the Customer until the price of Goods has been paid.

**9.3** Upon ordering goods from the Supplier, the Customer shall be deemed to have appointed the Supplier or its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of a charge over the Goods with respect to the amounts owing to the Supplier by the Customer.

**9.4** The Customer shall hold all Goods payment for which has not been received by Supplier separately from all other Goods and upon trust for the Supplier.

**9.5** Clause 9.2 applies notwithstanding any extension of credit by the Supplier to the Customer.

## **10. CREDIT**

**10.1** The Supplier may in its discretion determine the credit limit whereby the Customer shall make payments when required to ensure the amount outstanding from time to time remains within the limit determined.

**10.2** The Supplier may at any time without notice terminate any extension of credit to the Customer and require immediate payment of all or other amounts owing by the Customer to the Supplier.

**10.3** The Customer shall not be entitled to retain any amount owing to the Supplier at any time notwithstanding any default or alleged default of the Supplier of the Terms .

## **11. WARRANTIES AND EXCLUSION OF LIABILITY**

**11.1** The Terms are applicable to the Order and supply of all Goods and, so far as is permitted by law, no other terms, conditions, agreements, warranties, representations or understandings whatsoever, whether express or implied, shall bind either the Supplier or the Customer.

**11.2** The Customer acknowledges and declares that the Customer has read the Terms and understand the same and that no warranty, assurance or representation has been made regarding the quality, fitness for use, suitability or merchantability of the Goods for any purpose whatsoever and that in all things the Customer has relied entirely on the Customer's own knowledge skill and judgement.

**11.3** Where any Act of Parliament or any statutory modification or re-enactment thereof implies into the Terms any term, condition, warranty or representation, the liability of the Supplier for the breach of such term, condition, warranty or representation shall be limited at the option of the Supplier to any one or more of the following:

- (a) the replacement of Goods or the supply of equivalent Goods; or
- (b) payment of the cost of replacing Goods or of acquiring equivalent Goods.

## 12. DEFAULT

In the event that the Customer:

- (a) fails to pay any outstanding amount owing to the Supplier pursuant to subclause 5.2 or 6.1, or defaults under the Terms; or
  - (b) becomes, threatens or resolves to become or is in jeopardy of becoming subject to any insolvency administration; or
  - (c) ceases or threatens to cease conducting its business in the normal manner; or
  - (d) breaches its obligations under clause 14 (each an "Event of Default")
- the Supplier may without notice:
- (i) refuse any further delivery of Goods; and
  - (ii) repossess any Goods delivered to the Customer payment for which has not been received by Supplier.

## 13. FORCE MAJEURE

The Supplier will be not liable to the Customer for damages for any delay in the delivery of the Goods and neither party shall be liable in damages to the other for any interruption in the supply of acceptance of Goods or for any other act or omission which but for this present clause might constitute breach of the Terms if such delays, failure to deliver or accepted delivery, act or omission are caused by force majeure or any cause beyond the control of whom, but for this clause, would be in breach of the Terms.

## 14. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

**14.1** The Customer acknowledges and agrees that these Terms and any Invoice issued under these Terms:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a Security Interest in:
  - (i) all Goods previously supplied by the Supplier to the Customer (if any); and
  - (ii) all Goods that will be supplied in the future by the Supplier to the Customer.

**14.2** The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Customer may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ("PPSR");
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in Clauses 14.2(a)(i) or 14.2(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any goods charged;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
- (d) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

**14.3** To the extent section 115(1) allows this, sections 95, 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply to any Security Interest created under these Terms and any Invoices issued under these Terms.

**14.4** To the extent section 115(7) allows this, sections 127, 129(2), 132, 134(2), 135, 136(3), (4) and (5) and 137 of the PPSA will not apply to any Security Interest created under these Terms and any Invoices issued under these Terms.

**14.5** The Customer waives any right to receive any notice required to be provided under the PPSA (including under sections 144 and 157) in respect of any Security Interest unless the requirement to give the notice cannot be waived or excluded.

**14.6** The Customer shall unconditionally ratify any actions taken by the Supplier under Clauses 14.1 to 14.6 of these Terms.

## 15. FURTHER ASSURANCE

**15.1** The Customer must, whenever requested by the Supplier and at the cost of the Customer do or cause to be done anything requested by the Supplier:

- (a) for more satisfactorily assuring or securing to the Supplier the Secured Property in a manner not inconsistent with any of the provisions of these Terms; or
- (b) for assisting in the execution or exercise of any power, including, without limitation:
  - (c) executing any notice, consent, document or amendment to these Terms;
  - (d) delivering any title document; or
  - (e) doing any other thing that the Supplier considers necessary or desirable to:
    - (i) ensure that these Terms or any Security Interest arising under it is enforceable, effective and perfected, including if possible, by control;
    - (ii) register, protect, perfect, record, or better secure the position of the Supplier under these Terms; or
    - (iii) obtain or preserve the priority of the Security Interest constituted under these Terms.

## 16. INDEMNITY

**16.1** The Customer agrees to indemnify the Supplier against any claim, loss, liability or damage, costs, charges and expenses (including the Supplier's legal costs on a solicitor/ own client basis) suffered or incurred by the Supplier which arises directly or indirectly in relation to:

- (a) any breach of these Terms by the Customer;
- (b) any contravention of any law by the Customer; or
- (c) an action brought or threatened against the Supplier by any third party which arises directly or indirectly from your purchase or use of the Goods.

**16.2** The Customer agrees to pay such expenses to the Supplier immediately on demand.

## 17. GENERAL PROVISIONS

**17.1** Any covenant or provision of the Terms being a whole clause or part of clause which is invalid, unlawful or void or unenforceable shall be capable of severance without affecting any other covenants or provisions of the Terms.

**17.2** Headings shall not affect the construction of the Terms.

**17.3** The Terms shall be governed by and shall take effect in accordance with the laws of Victoria and the parties irrevocably submit to the nonexclusive jurisdiction of the Courts of the State of Victoria.

**17.4** A failure or omission by either party at any time to enforce or require strict or timely compliance with any provision of the Terms shall not in any way effect or impair that provision or the rights of that party to avail itself of or to enforce the remedies it may have in relation to that or earlier or later breach or non-performance of that provision.

**17.5** Any notice, demand, consent or other document, communication, notice required or authorised to be given under the Terms will be sufficiently given if in writing and delivered personally or by pre-paid registered post or facsimile transmission to the address of the other party previously noted.