

Condition of Sales

1 INTERPRETATION

1.1 In these terms and conditions:

- (a) Accession means an "Accession" as defined in PPSA 2009.
- (b) Account means an "Account" as defined in s 10 of PPSA 2009.
- (c) Amendment Demand means a demand that a registration of a Security Interest be amended in accordance with PPSA 2009.
- (d) Collateral means any personal property provided by you to DMA to secure payment of your debts or performance of your obligations.
- (e) Commingled Goods means "Commingled Goods" as defined in s 10 of PPSA 2009.
- 1.6
- (f) Control means "Control" as defined in ss 25-29 of PPSA 2009.
- (g) Debtor means "Debtor" as defined in s 10 of PPSA 2009.
- (h) DMA means Direct Memory Access Pty Ltd of 5 Carbon Court, Osborne Park, WA
- (i) Financing Change Statement means a "Financing Change Statement" as defined in s 10 of PPSA 2009.
- (j) Financing Statement means a "Financing Statement" as defined in PPSA 2009.
- (k) Goods means any items of whatever nature which DMA sells to you.
- (l) Inventory means "Inventory" as defined in s 10 of PPSA 2009.
- (m) Possession means "Possession" as defined in s 24 of PPSA 2009.
- (n) PPSA 2009 means the *Personal Property Securities Act 2009* (Cth), as amended.
- (o) PPS Regulations means the PPS Regulations 2010 promulgated under PPSA 2009, as amended.
- (p) Proceeds means "Proceeds" as defined in s 31 of PPSA 2009.
- (q) Processed goods means Commingled Goods as defined in s 10 of PPSA 2009.
- (r) Purchase Money Security Interest or PMSI means a "Purchase Money Security Interest" as defined in s 14 of PPSA 2009.
- (s) Registration Event means "Registration Event" as defined in s 155 of PPSA 2009.
- (t) Security Interest means a Security Interest as defined in s 12 of PPSA 2009 and it includes the interests provided for in s 12(3) of PPSA 2009.
- (u) You means the You or any person acting on behalf of and with your authority or any person purchasing Goods from DMA.

- 1.2 Nothing in these terms and conditions excludes or modifies any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded or modified.

2 GENERAL

These terms and conditions form part of the sales agreement between DMA and You. They prevail over all terms and conditions of your order to the extent of any inconsistency between the two.

3 TERMS AND CONDITIONS OF SALE

- 3.1 The Goods and all other products sold by DMA to You are sold on these Condition of Sale.
- 3.2 The Goods supplied by DMA to you under this contract are not intended, and are not to be used, for personal, household or domestic use.

4 DMA'S QUOTATIONS

Unless previously withdrawn, DMA's quotations are open for acceptance within the period stated in them. If no period is stated, within 14 days only after the quotation date, DMA may refuse any order based on a quotation within 7 days after the receipt of the order. Orders made pursuant to any quotation do not bind DMA unless such an order is expressly accepted by DMA.

5 PACKING

You are responsible for the cost of any special packing and packing materials used in relation to the Goods notwithstanding that such cost is omitted from any quotation.

6 DELIVERY

- 6.1 The Goods will be delivered to your nominated delivery address as set out in your Order form.
- 6.2 The delivery times are estimates only. DMA is not liable for late delivery or non-delivery.
- 6.3 DMA is not liable for any loss, damage or delay occasioned to the You or your customers arising from late or non-delivery or late installation of the Goods.
- 6.4 DMA may at its option deliver the goods to You in any number of instalments unless You have instructed DMA in writing that You will not take delivery by instalments.
- 6.5 If DMA delivers any of the goods by instalments, and any one of those instalments is defective for any reason:
 - (1) it is not a repudiation of the contract of sale formed by these conditions; and
 - (2) the defective installment is a severable breach that gives rise only to a claim for compensation.
- 6.6 DMA will impose a handling charge for all Orders requiring delivery by DMA to You, The handling charge will be determined and charged to the You at the discretion of DMA.

7 LOSS OR DAMAGE IN TRANSIT

- 7.1 DMA is not responsible for any loss or damage to Goods in transit.
- 7.2 DMA agrees to assist you as DMA may regard as reasonably necessary to press claims against carriers provided that You:
 - (a) notify DMA and the carriers in writing within 24 hours of the receipt of the Goods; and
 - (b) lodge a claim against the carrier within 3 days of the date of receipt of the Goods.

8 PRICES and ADDITIONAL EXPENSES

Unless otherwise stated, all prices quoted by DMA are net, exclusive of Goods and Services Tax (GST), of freight, insurance, customs duties, exchange, shipping expenses. You must pay these additional expenses to DMA.

9 PAYMENT

- 9.1 The purchase price in relation the Goods is payable in full on delivery of the Goods. All payments must be made in cash unless You have been trading with DMA for 3 months or if DMA agrees otherwise. After 3 months, acceptable forms of payment are cash, bank cheques, company cheques, credit card and direct deposit. DMA may refuse payment by personal cheques unless accompanied by identification, which DMA may (in its absolute discretion), consider acceptable.
- 9.2 If You have made prior arrangement with DMA, You may deposit payment of the purchase price for Goods directly into DMA's bank account unless otherwise notified. The banking details for DMA are:

BANK: National Australia Bank
BRANCH: Osborne Park
ACCT NAME: D.M.A.
BSB#: 086 420
ACCT#: 64103 7006

10 PROVISION OF CREDIT

The provision of credit by DMA to You, and the terms of such credit, is at the absolute discretion of DMA. Without prejudice to the generality of the foregoing:

- (a) DMA may in its absolute discretion extend or continue to extend credit to You subject to the provision of
 - (i) such details as DMA may require; or
 - (ii) security whether by personal guarantees or other security in a form which is acceptable to DMA; or
- (b) DMA may in its absolute discretion cancel or vary credit made available to You in which case You must immediately pay to DMA the cash amount of the credit withdrawn.

11 RETURN OF GOODS

- (a) DMA is not obliged to accept Goods returned from You, if you simply changed your mind.
- (b) DMA may accept return on the following basis:
 - (i) The goods have not sustained physical damage such as (but not limited to), burnt chips, scratch marks, bent/broken pins, and shipping damage;
 - (ii) The return or claim is accompanied by a valid invoice.
 - (iii) The Goods are returned with the original packing and in a merchantable condition to be determined by DMA.
 - (iv) You pay a restocking fee of 15% of the value of the goods plus an administrative charge of \$27.50 (including GST).

12 RETENTION OF TITLE

- 12.1 The property of DMA in the goods remains with DMA until DMA has been paid in full for the goods under all individual contracts for the supply of the Goods between DMA and You.
- 12.2 Despite cl 12.3 and 12.4, if You supply any of the goods to any person before all moneys payable by You have been paid to DMA (and have not been claimed or clawed-back by any person standing in the place of or representing You), You agree that:
 - (a) you hold the proceeds of re-supply of the goods on trust for and as agent for DMA immediately when they are receivable or are received;
 - (b) you must either pay the amount of the proceeds of re-supply to DMA immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for DMA;
 - (c) any accessory or item which accedes to any of the goods by your act or of any person at the Your direction or request becomes and remains the property of DMA until DMA is paid in accordance with cl 13.1 when the property in the Goods (including the accessory) passes to You;
 - (d) if You fails to pay for the goods within the period of credit (if any) extended by DMA to You, DMA may recover possession of the Goods at any site owned, possessed or controlled by You and You agree that DMA has an irrevocable licence to do so without incurring liability to You or any person claiming through You.

- 12.3 You are a bailee of the Goods until such time as property in them passes to You. This bailment continues in relation to each of the Goods until the price of the Goods has been paid in full.
- 12.4 In connection with the goods while they remain the property of DMA:
- (a) You have no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation DMA owes to You;
 - (b) You cannot claim any lien over the goods;
 - (c) You will not create any absolute or defeasible interest in the goods in relation to any third party except as may be authorised by DMA;
 - (d) where You are in actual or constructive possession of the goods:
 - (ii) You will not deliver them or any document of title to the Goods to any person except as directed by DMA; and
 - (iii) it is in possession of the goods as a bailee of those goods and owes DMA the duties and liabilities of a bailee.
 - (e) pending payment in full for the goods, You:
 - (i) must not supply any of the goods to any person outside of your ordinary or usual course of business;
 - (ii) must not allow any person to have or acquire any security interest in the goods;
 - (iii) must insure the goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where You carry on business;
 - (iv) must not remove, deface or obliterate any identifying plate, mark or number on any of the goods;

13 Purchase Money Security Interests

- 13.1 Notwithstanding anything contained in these terms, the parties agree that for the purposes of PPSA 2009 this agreement constitutes a security agreement to secure payment of the purchase price and all your outstanding debts and obligations to DMA. This Security interest continues until all your debts and obligations to DMA are discharged.
- 13.2 DMA has a Purchase Money Security Interest (a PMSI) in Goods supplied by DMA under this contract from time to time and its Security Interest extends to the Proceeds (including any Accounts) and Accession.
- 13.3 You agree to execute any documents, provide all relevant information and full cooperation to DMA to ensure that it has a Security Interest in your personal property, and, if applicable, a Purchase Money Security Interest.
- 13.4 Whenever DMA asks you to do anything to better secure any Collateral which secures or is intended to secure the supply of Goods and/or services to you under this contract you must do it immediately at your own cost. This may include signing and delivering documents (including new security documents) and anything else that DMA requires, ensuring that DMA has perfected its Security Interests giving DMA priority in the Collateral under PPSA 2009.
- 13.5 You must pay DMA's costs of any discharge or amendment of any Financing Statement or Financing Change Statement.
- 13.6 You agree that DMA may take whatever action it thinks is appropriate to ensure that it has first ranking priority in the Collateral and you agree to indemnify DMA for any costs it incurs in doing this (for example by registering a Financing Statement or a Financing Change Statement at your cost).
- 13.7 You agree that where DMA has any rights in addition to those conferred by Ch 4 of PPSA 2009 those rights continue to apply.
- 13.8 You must immediately upon DMA's request procure from any person DMA considers to be relevant to DMA's security position such agreements and waivers as DMA may at any time require.

- 13.9 You must provide DMA within two business days' of DMA's written request copies of all documents granting Security Interests registered over your personal property and any Security Interests perfected by Possession or Control within the meaning of PPSA 2009. You authorise DMA as your agent to request any information under s 275 of PPSA 2009 from any Secured Party relating to any Security Interest which is held in any of your personal property or any personal property which is or has been in your Possession or Control.
- 13.10 You must immediately notify DMA in writing of any change in your name or ACN, ARSN or ABN or other identifying characteristics of yourself or the Goods purchased.
- 13.11 You must not file, lodge or serve a Financing Change Statement or an Amendment Demand without DMA's prior written consent.
- 13.12 You must give DMA not less than ten business days prior written notice of any proposed change in your name and/or any other change in your details (including your address, email address, facsimile number, or business practice).
- 13.13 You must immediately advise DMA of any material change in your business practices of selling the Goods or the Collateral which would result in a change in the nature of Proceeds derived from such sales.
- 13.14 If you process the Goods supplied by DMA and commingle them with other property DMA will have a Security Interest in any Processed and Commingled Goods including the Goods.
- 13.15 If any amounts due and owing under this agreement remain unpaid or if you are in breach of any of your obligations under this agreement, then you authorise DMA or DMA's agent or other authorised representative to enter your premises as invitee to recover and resell any or all of the Goods.
- 13.16 You must not move the Goods outside Australia without DMA's prior written consent.
- 13.17 Nothing in ss 117(3), 130(1)(a) and 143 of PPSA 2009 will apply to this contract, or the Security Interest created or arising under this contract.
- 13.18 You waive your right to do any of the following:
- (a) request a statement of account under s 132(4) of PPSA 2009 if there is not disposal of the Goods;
 - (b) give notice objecting to DMA's proposal to retain any of the Goods under s 137 of PPSA 2009;
 - (c) give a notice objecting to DMA's proposal to dispose of the Goods under s 137 of PPSA 2009;
 - (d) receive notice of removal of an Accession under s 95 of PPSA 2009;
 - (e) refuse permission to remove an Accession until DMA has given adequate security for reimbursement for any damage caused by the removal under s 95 of PPSA 2009;
 - (f) object to, or seek redress for, any damage or inconvenience caused by DMA's removal of an Accession;
 - (g) apply to a court under s 97 of PPSA 2009 for an order postponing the removal of an Accession or determining the amount payable to DMA under s 97 for the retention of the Accession;
 - (h) receive a verification statement or notice in relation to Registration Events from DMA under s 157(3)(b) of PPSA 2009;
 - (i) receive a notice from DMA under s 118(1)(b)(i) of PPSA 2009
 - (j) receive a notice from DMA under s 121(4) of PPSA 2009;
 - (k) receive a notice from DMA of seizure of the Goods under s 123(2) of PPSA 2009;
 - (l) complain of, or seek redress for, any damage, cost or inconvenience caused by DMA in taking apparent Possession of the Goods under s 126 of PPSA 2009;
 - (m) receive a notice from DMA of DMA's intention to purchase the Goods under s 129(1)(a) of PPSA 2009;

- (n) object to DMA's proposal to purchase the Goods under s 129(2)(b) of PPSA 2009;
- (o) receive a notice of disposal of the Goods under s 130 of PPSA 2009; 2.
- (p) receive a statement of account showing the amounts paid to other secured parties after disposal of the Goods under s 132(3) (d) of PPSA 2009;
- (q) receive a statement of account if there is no disposal of the Goods under s 132(4) of PPSA 2009;
- (r) receive a notice from DMA of retention of the Goods under ss 134 and 135 of PPSA 2009;
- (s) redeem the Goods under s 142 of PPSA 2009; 2.19.20
- (t) reinstate this contract under s 143 of PPSA 2009.

14 Guarantee

- 14.1 DMA's liability for goods manufactured by it is limited to making good any defects by repairing the defects or at DMA's option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched so long as:
- (a) defects have arisen solely from faulty materials or workmanship;
 - (b) the goods have not received maltreatment, inattention or interference;
 - (c) accessories of any kind used by You are manufactured by or approved by seller;
 - (d) the seals of any kind on the goods remain unbroken; and
 - (e) the defective parts are promptly returned free of cost to DMA.
- 14.2 If the goods are not manufactured by DMA the guarantee of the manufacturer of those goods is accepted by You and is the only guarantee given to You in respect of the goods. DMA agrees to assign to You on your request the benefit of any warranty or entitlement to the goods that the manufacturer has granted to DMA under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- 14.3 DMA is not liable for and You release DMA from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by DMA and the responsibility for any claim has been specifically accepted by DMA in writing. In any event DMA's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with 15.1 of these conditions.
- 14.4 Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. DMA is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of DMA's negligence or in any way whatsoever.²
- 14.5 DMA's liability for a breach of a condition or warranty implied by Pt 3–2 Div 1 of the Australian Consumer Law is limited to:
- (1) in the case of goods, any one or more of the following:
 - (a) the replacement of the goods or the supply of equivalent goods;
 - (b) the repair of the goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (d) the payment of the cost of having the goods repaired; or
 - (2) in the case of services:
 - (e) the supplying of the services again; or
 - (f) the payment of the cost of having the services supplied again.

14.6 DMA's liability under s 274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:

- (1) the cost of replacing the goods;
- (2) the cost of obtaining equivalent goods; or
- (3) the cost of having the goods repaired, whichever is the lowest amount.

15 YOUR PROPERTY

Your property under DMA's custody or control is entirely at the your risk as regards loss or damage caused to the property or by it.

16 STORAGE

DMA reserves the right to make a reasonable charge for storage if sufficient delivery instructions are not provided by the You, *within 14 days of a request by the DMA for such instructions. You agree that DMA may charge for storage from the first day after DMA requests You to provide delivery instruction.*

17 GOODS SOLD

All Goods to be supplied by DMA are as described on the purchase order agreed by DMA and You. That description prevails over all other descriptions including your specification or inquiry not stated on the purchase order.

18 CONSIGNMENT

18.1 When the Goods are shipped to the You as consignment Goods, such Goods remains property of DMA.

1.1 The You must keep such consignment Goods separate from their own Goods and shall be responsible for their usual duties under the law.

18.2 The You must return consignment Goods to DMA within 7 days of request by DMA.

19 LIABILITY

19.1 DMA will not be liable for any lost revenue, profit or data caused by the use of the Goods. It is the Your responsibility to ensure that data stored in or associated with the Goods is adequately protected or backed up.

19.2 Except insofar as they cannot be excluded or limited, all warranties terms and conditions whether express or implied by statute, common law or trade custom or usage or otherwise, are hereby expressly excluded.

19.3 To the extent that any term, warranty or condition cannot be excluded, such term, warranty or condition is, to the extent permitted by law, limited to the:

- (a) repair of Goods;
- (b) replacement of Goods or the supply of equivalent Goods; or
- (c) payment of the cost of either (a) or (b).

20 CANCELLATION

20.1 All orders must be collected within 7 days of invoice. Uncollected orders may be cancelled without notification to You.

20.2 You may not cancel any special orders as these are Goods generally not part of DMA's standard inventory.

20.3 You must indemnify DMA against all losses caused by any cancellation.

21 WAIVER

The failure by DMA to enforce any of these terms and conditions does not constitute a waiver of DMA's rights to enforce them.

22 SEVERABILITY

To the extent that any one or more of the provisions contained in these conditions is prohibited by any applicable law, such provisions is ineffective without invalidating or modifying the remaining provisions which shall continue in full force and effect as if the provisions so prohibited had not been included.

23 GOVERNING LAW

These terms and conditions are governed by the laws of Western Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.

I/We agree to the terms and conditions set forth:

Signature: _____

Print Name:

Date: