

# TERMS & CONDITIONS OF SALE - HAZELWOOD & HILL PTY. LTD. , ABN 61 004 197 059, hereby known as the Company

All contracts and dealings between the Company and the Customer relating to any products (“products”) or services (“services”) are subject to these Terms & Conditions of Sale (“Terms”) unless otherwise expressly agreed in writing.

1. Purchase Price: All products are sold by the Company at its current price at the time of delivery. Prices may be subject to change without notice. Official quotations made by the Company are valid for thirty (30) days from quotation date, after which they may be subject to change without notice.
2. Payments: Unless otherwise specified in writing by the Company, all payments are without deduction unless otherwise agreed and all payments are due within 30 days after the end of the month in which delivery was made.
3. GST: Each amount payable by the Customer under these Terms in respect of a Taxable Supply by the Company is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST due in respect of that supply.
4. Interest: The Company will charge interest on overdue Monies owed at the annual rate of 4 percentage points above the annual rate of interest set out in the Penalty Interest Rates Act 1983 (Vic) from time to time. Interest will be calculated from the due date of the money owing to the date the Company receives payment in full.
5. Security Interest and Charge:
  - (a) The risk in the products passes to the Customer when the products are collected by the Customer or are delivered to a carrier nominated to take delivery of the products.
  - (b) Property and ownership in any products whensoever delivered does not pass to the Customer until payment in full of all Monies Owed to the Company on any account.
  - (c) Until property and ownership passes to the Customer, the Customer acknowledges and agrees that it grants the Company a Security Interest in the products and that:
    - (i) The Customer will not grant or seek to grant any Security Interest in the goods adverse to the interest of the Company;
    - (ii) The Company's Security Interest secures all Monies owing by the Customer to the Company on any account;
    - (iii) The Company's Security Interest in the products (and the proceeds) is a Purchase Money Security Interest (“PMSI”) to the extent that it secures payment of the amounts owing in relation to the products;
    - (iv) The Company may apply any Monies received by the Customer first to satisfy any portion of debt that is unsecured, second to satisfy any portion of debt that is secured but not by a PMSI and third to satisfy any portion of debt that is secured by a PMSI, or in any other manner the Company sees fit; and
    - (v) The Company's Security Interest Attaches to the products when the Customer attains possession of the products and to the proceeds of sale of the products.
  - (d) The Customer will hold the products as fiduciary bailee and agent for the Company and must store the products separately from products not supplied by the Company and in a manner to enable them to be cross-referenced to particular invoices.
  - (e) The Company is and will be entitled at any time to demand the return of the goods, to retake possession of the goods and to recover the deficiency on resale plus cost of repossession from the Customer and the Customer must do all things necessary to immediately permit the Company without notice and without liability to the Company, to enter and access any premises occupied by the Customer in order to search for, locate, identify, retrieve and remove those goods to which the Company has title.
  - (f) The Customer agrees to provide all information and execute all documents necessary for the Company to register and perfect its Security Interest in the products under the PPSA and agrees that all fees in relation to registration including amendments to any registration are to be borne by the Customer.
  - (g) The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
  - (h) The Customer agrees that a certificate signed by an officer of the Company identifying products as unpaid shall be conclusive evidence that the goods have not been paid for.
    - (i) As further security for payment of all Monies Owed to the Company, the Customer as Secured Party charges the Customer's Other Property by way of fixed charge, in favour of the Company as continuing security for the payment to the Company of all Monies Owed to the Company.
  - (j) To the extent that the Security Interest relates to the Customer's after acquired Personal Property, the Security Interest Attaches on the date that the Customer has the power to transfer rights in the Customer's Personal Property to the Company.
  - (k) The Security Interest in favour of the Company is a continuing security and remains in force until the Company gives a final release and where required a Financing Change Statement, to the Customer.
6. Warranty:
  - (i) The Company is under no obligation to provide a final release until:
    - (i) the Monies Owed have been repaid in full and the Company is satisfied that no money will subsequently become owing to the Company within the definition of Monies Owed; and
    - (ii) the Company is satisfied that any payment to the Company in reduction of the Monies Owed is not repayable, void or voidable under a law relating to insolvency or protection of creditors.
7. Limitation of liability:
  - (a) The Company will not be liable for any contingent, consequential, direct, indirect, special or punitive damage or loss whatsoever suffered by the Customer, as a result of any act, omission or statement made by the Company, its employees, contractors or agents whether due to negligence or otherwise, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that is lawful to do so.
  - (b) No other term, condition, agreement, warranty, representation or understanding whether express or implied, in any way extending to, otherwise relating to or binding upon the Company, other than these Terms, is made or given by or on behalf of the Company and the Customer acknowledges that it will rely on its own knowledge and expertise in selecting any products for any purpose and any advice or assistance given for or on behalf of the Company shall be accepted at the Customer's risk.
  - (c) Where the Company is not permitted to exclude, restrict, or modify its liability for a breach of a condition or warranty that is implied by any statute or applicable laws but is permitted to limit its liability for the breach of such condition or warranty, the Company's liability is limited to any one of the following as determined by the Company in its absolute discretion:
    - (i) in the case of products supplied, the replacement of the products or the supply of equivalent products, the repair of the products, the payment of the cost of replacement of the products or of acquiring equivalent products, or for the payment of the cost of having the products repaired; and
    - (ii) in the case of services provided, the supply of the services again, or the payment of the cost of having the services supplied again.
  - (d) The Customer acknowledges that all products are sold subject to the manufacturer's trading terms and conditions and any warranty of the manufacturer.
8. Defaults:

Upon the occurrence of an Event of Default, the Company may (inter alia) retain all Monies paid and/or cease further deliveries and/or at the Company's discretion take immediate possession of any product not paid for, without prejudice to any other of its rights and without being liable in any way to any party. If an Event of Default occurs, the Customer (without reservation) grants a right of entry to the Company to any or all properties under the Customer's control, where products are reasonably expected to be stored. The Customer indemnifies and keeps indemnified the Company, its servants and agents in relation to loss or damage as a result of the Company retaking possession of the products. In the event the Company exercises its rights under this clause, the Customer grants power of sale to the Company to resell the said products and any shortfall owing after the products are resold is the responsibility of the Customer. If an Event of Default occurs, then all Monies which the Customer owes the Company (including amounts which would not otherwise be payable until a later date) become immediately due and payable by the Customer.
9. Cancellation & Returns: No order may be cancelled except with the Company's consent in writing. The Customer agrees that:
  - (a) the Company may elect to take back products in saleable condition on terms agreed;
  - (b) any product which the Company has elected to accept back must be returned at the Customer's cost;
  - (c) the Company is under no obligation to provide a refund for products returned;
  - (d) custom made, custom processed or custom acquired products will not be returnable at all; and
  - (e) in the event that the Company agrees to the return of the products by the Customer, the products are at the Customer's risk until such time as the products reach the Company's place of business.
10. Orders and Delivery: The Customer agrees that:
  - (a) The Company may, without incurring any liability, refuse to accept any order for products made by the Customer in whole or in part in its absolute discretion;
  - (b) Each order it places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due;
  - (c) When any order is placed, the Customer shall inform the Company of any facts which might reasonably affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of the Company and to be unconscionable, misleading and deceptive;
  - (d) From the time of placing an order (including forward orders), the Customer is obliged to accept and pay for the products in accordance with these Terms and a cancellation or alteration of the order by the Customer for any reason shall not discharge this obligation to accept the products and make payment;
  - (e) The Company shall use its best endeavours to ensure that the product is available and that the services are provided to the Customer within the time frame required by the Customer, but shall not be liable for any loss or damage caused by any delay. The Customer shall not be entitled to reject the products or services by reason of any delay;
  - (f) The Company may at any time alter specifications in respect of products without giving notice to the Customer, in the interest of continued product improvement. An alteration does not entitle the Customer to return products, cancel an order or otherwise avoid its obligations and liabilities pursuant to these Terms;
  - (g) The Company has no responsibility or duty to deliver but may elect to arrange delivery at its discretion and without liability for delay, failure or inability to deliver, and at the Customer's sole cost and risk;
  - (h) The Company is not responsible for any loss or damage to products in transit;
    - (i) The Company has the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure by the Company to deliver any instalment will automatically be deemed to be a back order and will not entitle the Customer to cancel the balance of the order. In the event of the Customer failing to take delivery of any instalment, the Company may elect to cancel the balance of the order;
    - (j) Products are deemed delivered as soon as they are ready for delivery to, or collection by, the Customer; and
    - (k) The Company is entitled to charge and the Customer must pay the Company's costs and expenses associated with handling and/or holding any products once ready for delivery and the Company's costs and expenses of any frustrated delivery.
11. Termination: The Company is entitled in its absolute discretion to immediately cancel any order of the Customer if the Customer suffers an Event of Default without any liability attaching to the Company.
12. Notification of Change of Details: Where any change takes place in the Customer's trading structure or management, including any change of director, shareholder or any change in partnership or trusteeship notwithstanding any advice by the Customer to the Company, the Customer shall not continue to operate its credit account without the Company's prior written consent, and the Customer shall remain liable for all amounts owed to the Company until the whole amount (including interest and charges) has been paid in full to the Company.
13. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon the Company shall apply. These Terms supersede all previous terms and conditions and may only be varied if authorised in writing on behalf of the Company.
14. Variation of Terms: The Company has the right to vary these Terms, in its complete discretion and without incurring any liability to the Customer, at any time by notice to the Customer and thereafter the varied Terms are binding on the Customer.
15. Expenses: The Customer must pay to the Company all costs, charges and expenses (including all stamp duty and legal fees on an indemnity basis) incurred by the Company, its legal advisers, mercantile agents and others in connection with entry into these Terms, the exercise or attempted exercise of any power, right or remedy under these Terms, the failure of the Customer to comply with these Terms; recovery of Monies Owed, possession of any products or otherwise.
16. Set off: The Company is entitled in its absolute discretion to set off any credits that may appear in the Customer's account with the Company against any other amounts owed by or debts of the Customer to the Company (and to give effect to this, the Customer irrevocably appoints the Company as the Customer's attorney).
17. Credit Limit: The grant of any credit facility and/or the nomination of any credit limit is an indication only of the Company's intention at that time and the Company may vary, reduce or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other person or entity. The Customer agrees to pay on demand all sums owing in connection with this credit facility in the event the credit facility is withdrawn. The Customer acknowledges that the Company may make additional periodic credit checks to ensure the Customer remains credit worthy.
18. Force Majeure: The Company will not be deemed to be in default or breach of any contract as a result of the effects of force majeure. Force majeure will include any cause beyond the reasonable control of the Company. The Company will not be liable for any loss incurred as a result of delay or failure to meet an acceptable order or to observe these Terms due to the effects of force majeure.
19. Disputes: Any claims as to quality or quantity of products supplied must be made within 14 days of delivery of the products to the Customer. In the event of a dispute between the Customer and the Company, the Customer agrees to pay the Company all such amounts owing to the Company by the Customer until such time as the dispute is resolved.
20. Statement by the Company: A statement by any officer of the Company is conclusive evidence of any fact, matter or thing.
21. General:
  - (a) These Terms are governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Victorian Courts and the courts of appeal therefrom.
  - (b) These Terms bind the Customer both personally and as trustee of any trust which the Customer is trustee.
  - (c) Each clause and subclause of these Terms are separate and independent. If any clause or subclause is found to be invalid or ineffective, the other clauses or subclauses will not be adversely affected.
  - (d) The Company can transfer its rights under these terms to a third party. If the Company does, these Terms will apply to the transferee as if it were the Company. If the Company wants to transfer its rights it can give the proposed transferee all information that privacy legislation allows it to give.
  - (e) The Customer cannot assign its rights or obligations under these Terms to any third party without the prior written consent of the Company, which may be withheld in the Company's absolute discretion.
22. Definitions: In these Terms:

“Attaches” has the same meaning as defined in the PPSA.

“Australian Consumer Law” means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Customer” means the party to whom the Company has supplied its products, including but not limited to its subsidiaries, affiliates, associated companies, related company successors or assigns.

“Customer's Other Property” means all of the Customer's present and after acquired legal and beneficial rights and interests in land and any other property, which is not the Customer's Personal Property.

“Customer's Personal Property” means all of the Customer's present and after acquired Personal Property and all present and after acquired Personal Property in which the Customer has rights.

“Event of Default” means any of the following events:
  - (a) the Customer is in breach of these Terms;
  - (b) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint an administrator, or a receiver or provisional liquidator or an administrator is appointed; the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer is deemed unable to pay its debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person, an order is made for the Customer's bankruptcy or the Customer is bankrupt, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration;
  - (c) the Customer ceases or threatens to cease carrying on business.

“Financing Change Statement” has the same meaning as defined in the PPSA.

“GST” means any tax or imposition on the supply of goods and services covered by the GST Act as amended from time to time.

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Monies Owed” means all Monies which are owing or payable to the Company by the Customer for any reason whatsoever.

“Personal Property” has the same meaning as defined in the PPSA.

“PPSA” means the Personal Property Securities Act 2009 (Cth).

“Purchase Money Security Interest” has the same meaning as defined in the PPSA.

“Secured Party” has the same meaning as defined in the PPSA.

“Security Interest” has the same meaning as defined in the PPSA.

“Taxable Supply” has the same meaning as defined in the GST Act.