

General Terms and Conditions of Sale

In consideration of Hafele Australia Pty Ltd, A.B.N. 51 006 021 432 and its associated and related entities, ("**Company**") providing commercial credit facilities to the party completing the application ("**Customer**") annexed to these conditions, Customer acknowledges and agrees that these general terms and conditions ("**Terms**") apply to and form part of any contract for the supply of Goods and/or Services by Company and that these Terms take precedence over any terms and conditions which may be contained in any document provided by Customer. Any request from Customer to Company for the supply of Goods and/or Services constitutes acceptance of the Terms ("**Acceptance**").

TERMS

These Terms, together with any credit limits set by Company, are effective from the date of Acceptance by Customer and may be amended or superseded from time to time (as reasonably necessary) by notice given by Company by any means.

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

Goods and/or **Collateral** means all goods and/or services supplied by Company to Customer, or ordered by Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which Company may intend to register a security interest.

Price means the cost of the Goods as referred to in Company's price lists, prepared quotes and/or specific arrangements with Customer and are subject to change from time to time without notice.

Consumer has the meaning given to that term in the ACL.

1. Jurisdiction

These Terms shall be construed in accordance with laws of the **State of Victoria** and, where applicable the Commonwealth of Australia and Customer submits to the non-exclusive jurisdiction of the courts of **Victoria**, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.

2. Personal Property Securities Act (2009)

(a) Customer consents to Company affecting a registration on the Personal Property Securities Register in relation to any security interest arising under or in connection with or contemplated by these Terms.

(b) Customer waives its right to receive notice of a verification statement in relation to any registration by Company on the register.

(c) Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with Company and do anything Company requires to ensure that Company has a perfected security interest in, and priority over any other security interests in, the Goods or otherwise.

(d) Customer agrees that, until all monies owing to Company are paid in full in respect of any Goods, it may not sell or grant any other security interest in those Goods.

(e) Customer will not register a financing change statement in respect of the security interest without Company's prior written consent.

(f) Customer agrees that Company may, at its absolute discretion, apply any amounts received from Customer toward amounts owing to Company in such order as Company may determine.

(g) If Chapter 4 (enforcement of security interests) of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, Customer agrees that the following sections of the PPSA will not apply to the enforcement of these terms: s 95 (secured party must give notice of removal of accession), to the extent that it requires Company to give a notice to Customer; s 96 (retention of accession when person has interest in the whole); s 121(4) (notice to the grantor in enforcement of security interests in liquid assets); s 125 (obligation to dispose of or retain collateral); s 130 (notice of disposal of collateral), to the extent that it requires Company to give a notice to Customer; s 132(3)(d) (statements of account following disposal); s 132(4) (statements of account if no disposal); s 134(1) (proposal of secured party to retain collateral); s 135 (notice of retention of collateral); s 142 (entitled person may redeem collateral); and s 143 (entitled person may reinstate security agreement).

(h) Notices/documents given to Company under the PPSA must be given in accordance with the PPSA.

(i) Company agrees with Customer not to disclose information of the kind mentioned in subsection 275(1) (secured party to provide certain information relating to security

interest) of the PPSA except in circumstances required by sections 275(7)(b)-(e) (secured party to provide certain information relating to security interest).

(j) Customer agrees to reimburse, upon demand, Company for all costs and/or expenses incurred or payable by Company in relation to registering or maintaining any financing statement, releasing in whole or in part Company's security interest or preparing any other document in respect of any security interest;

(k) In these terms the following words have the meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

3. Retention of Title

(a) Property in all the Goods supplied remains vested in Company and does not pass to Customer until all monies owing to Company by Customer together with all collection, repossession and/or legal costs incurred, have been paid in full. Company may demand at any time until title has passed to Customer that Customer returns the Goods or any part of them. The fixing of the Goods by Customer to any other asset or premises will not affect Company's ownership under this clause, and Company reserves the right to detach any such Goods.

(b) The Goods, whether as separate chattels or as components, must be stored in such a manner as to be clearly identifiable as the property of Company until title has passed to Customer.

(c) In the event that Customer defaults in payment of any monies owing to Company, Company and its employees/agents have the right to enter without notice upon Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose Customer must grant reasonable access rights and Company, its employees or agents are entitled to do all things required to secure repossession.

(d) Company agrees that it will exercise its right of entry (including the use and extent of force) in accordance with applicable laws.

- (e) Company reserves the right to waive or enforce any provision of clause 3 at its discretion.

4. Orders

- (a) All orders to Company must be in writing.
- (b) Company will not accept orders that do not meet standard pack quantities.

5. Payment Terms

- (a) At Company's sole discretion, a deposit may be required prior to any supply.
- (b) Company may require up-front payment from Customer. If so, net cash payment must be received prior to dispatch of the Goods.
- (c) Customers are required to pay all invoiced amounts for purchases, in full and with no deduction or set-off, no more than 30 days from the end of the month during which any given purchase is made.
- (d) In the event of a dispute, the entire undisputed portion of the account must be paid in accordance with these Terms.
- (e) The Customer is liable for all out-of-pocket expenses and all other reasonable expenses including debt collection commission (as if the account had been collected) and any other contingent expenses and legal costs on a solicitor/own basis incurred by the Company for enforcement of obligations and recovery of monies due from the Customer to the Company.
- (f) Amounts received from Customer may be applied by Company first against interest, charges and expenses.
- (g) Interest on overdue amounts may be charged at a rate of 9.81% per annum per calendar month or part thereof and Customer is liable for, and expressly undertakes to pay, all such interest.
- (h) Any payment made by or on behalf of Customer which is later avoided by the application of any statutory provision is deemed not to discharge Customer's indebtedness to Company and, in such event; the parties are to be restored to rights which each would have had if the payment had not been made.
- (i) Customer is liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonoured for any reason.

6. Delivery

- (a) Company is not liable for any loss/damage, including consequential loss/damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.
- (b) Company is under no obligation to deliver Goods if their full price has not been paid and Company has reasonable doubts as to the solvency of Customer.
- (c) Company will use reasonable endeavours to deliver Goods to Customer in accordance with the times stated in any contract between Company and Customer. However, time will not be of the essence and, subject to the ACL, Company will not be liable to Customer if delivery is not on time.
- (d) If Customer does not take delivery of the Goods on the date specified in a contract between Company and Customer or any other date as notified by Company to Customer (other than as a result of any act or omission by Company), payment for the Goods (if not already paid in full) will be due on the date specified by the Company.
- (e) Company will deliver to States & Territories within mainland Australia and Tasmania, using its standard transport carrier. Customer must pay a freight charge and/or other applicable charges per order. All deliveries outside these areas are ex works, and risk shall pass to Customer when the Goods leave Company's premises. Otherwise, risk passes to Customer on delivery. Customer is liable for all:
 - (i) charges relating to hand unloading, crane or tail-lift charges;
 - (ii) charges for specific equipment or specialised services;
 - (iii) charges arising from failed delivery or re-delivery (including storage charges);
 - (iv) charges for waiting time; and
 - (v) charges arising from specific carrier services or timeframes requested by Customer.

7. Inspection of Deliveries

- (a) Customer must:
 - (i) inspect the Goods upon delivery and will, within 7 days of delivery in the case of defects or short deliveries, and within 14 days of despatch in the case of non-delivery, notify Company of any transit damage, short deliveries

or any failure to fulfil any quotation or order;

- (ii) Customer will, within a reasonable time following the giving of a notice under clause 6(a), grant Company access to the Goods in order to inspect for any alleged damage or failure;
- (iii) should Customer fail to notify Company within the specified period then the Goods are deemed to be in compliance with the order and free from any damage whatsoever;
- (iv) any drawings or written or verbal descriptions of the Goods are general in nature, and actual Goods may vary slightly from such descriptions. These descriptions are not warranties in relation to the Goods or their condition and Customer may not rely on these descriptions or claim against Company if Goods do not meet descriptions.

8. Warranty & Returns

- (a) Company does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated, warranties relating to title, defects or conformity are expressly excluded.
- (b) Subject to any rights of Customer under the ACL:
 - (i) returns of the Goods will be accepted only if prior arrangements have been made with Company and charges, including but not limited to re-stocking fees, may apply;
 - (ii) Customer is liable for any costs associated with the return of Goods for the purpose of a warranty claim.

9. Risk

Notwithstanding clause 3, the risk in Goods purchased passes to Customer upon delivery to Customer or its agent, or in the case of Ex Works, when the Goods leave Company's premises. If any of the Goods are damaged or destroyed prior to the title passing to Customer, Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

10. Cancellation

- (a) Where Company is unable to effect delivery or provide the Goods, Company may amend an order or cancel the delivery of Goods at any time before delivery by giving notice

to Customer by any means. If Company amends an order, Customer may without penalty cancel the order by written notice to Company within seven days of such amendment.

- (b) Company is not liable for any loss or damage, including consequential loss or damage, arising from such cancellation, except to the extent that Company causes or contributes to such loss or damage.
- (c) In the event that Customer cancels delivery of Goods (except where such cancellation follows an amendment by Company pursuant to clause 10(a)), Customer is liable for any costs incurred by Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by Company.

11. Limitation of Liability

- (a) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods, this Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- (b) If Customer is a Consumer, nothing in these Terms restricts limits or modifies Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.
- (c) If the Customer on-supplies the Goods to a Consumer and:
 - (i) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Company's liability to Customer;
 - (ii) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Company's liability to Customer;

Howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by Customer or any third party.

- (d) If clause 11(c)(i) or (ii) do not apply, then other than as stated in these

Terms or any written warranty statement, Company is not liable to Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party, except to the extent of any resulting loss or damage caused by Company.

- (e) Company is not liable for any indirect or consequential losses or expenses suffered by Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- (f) Customer acknowledges that:
 - (i) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Company in relation to the Goods or their use or application;
 - (ii) it has not made known, either expressly or by implication, to Company, any purpose for which it requires the Goods and it has the sole responsibility of satisfying itself that the Goods are suitable for the use of Customer.
- (g) Nothing in these Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods which cannot be excluded, restricted or modified.

12. Indemnity

Customer indemnifies Company in respect of any loss, injury, expense or claim arising out of the supply by Company of the Goods, or their storage, installation, use, operation or maintenance, except to the extent that such loss, injury, expense or claim is caused by the negligence of Company or its servants/agents/subcontractors.

13. General

- (a) Company accepts no responsibility for changes in any law which may affect supply, but will take all necessary steps to ensure compliance with all applicable laws.
- (b) Neither party will be liable for any breach of these Terms or any provision of any contract between Customer and Company if such breach arises from an act of God,

natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.

- (c) The invalidity or unenforceability of any provision of these Terms will not affect the validity or enforceability of the remaining provisions.
- (d) Customer acknowledges that all purchases of Goods are made relying solely upon Customer's own skill and judgment.

14. Privacy

The Company is committed to protecting personal privacy. We will comply with the **Privacy Act 1988 (Cth)**. In accordance with the Australian Privacy Principles as contained in the Act, and as reflected in the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected to enable it to supply Customers with its products and services. Customers who have any concerns about, or would like a copy of, the full Privacy Policy are requested to direct them to:

Privacy Officer, PO Box 1066, DANDENONG VIC 3175.

**Hafele Australia Pty Ltd
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