

# GENERAL TERMS AND CONDITIONS

In respect of the purchase of goods and/or services from Waringa Distribution Pty Ltd and/or Waringa Aviation Pty Ltd (Supplier), the purchaser (Buyer) acknowledges and agrees that:

- (a) the terms and conditions set out herein, or as varied in accordance with clause 21 located at <https://www.waringa.com.au> apply and form part of any contract for supply of goods by the Supplier;
- (b) any requests for the Supplier to supply goods shall constitute acceptance of these terms and conditions;
- (c) these terms and conditions are effective from the date of acceptance by the Buyer.

## Payment terms

1. The price payable in respect of the goods will be the Supplier's price notified to the Buyer from time to time and included in an invoice. All prices quoted are subject to change without notice, and exclude Goods and Services Tax (GST) unless otherwise stated.
2. The Supplier's payment terms will be determined at the Supplier's sole and unfettered discretion and advised to the Buyer. The payment terms may be confirmed in each invoice or otherwise in writing. Such payment terms will remain in force unless and until varied by the Supplier and advised to the Buyer in writing.
3. The Supplier and their related bodies corporate (as that term is defined in the Corporations Act 2001) may, at any time, upon the provision of 48 hours' written notice to the Buyer, vary the terms and conditions of trade.
4. If the Buyer does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Buyer will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. In the absence of notice from the Buyer, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
5. The Buyer must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Buyer that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
6. Should the Buyer not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier and Buyer from time to time, after issuing a written demand to the Buyer demanding payment within seven (7) days, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
7. The Supplier reserves the right at all times, without prior notice to:
  - (a) refuse to grant credit;
  - (b) amend a credit limit or withdraw credit;
  - (c) stop supply of goods, whether paid for or not, if the Buyer's credit account is overdue;
  - (d) require a new credit application and/or a new guarantee;
  - (e) charge a nominal fee on payments for goods via credit card.

## Jurisdiction

8. The Buyer acknowledges and agrees that this agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
9. The Buyer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Buyer is formed at the address of the Supplier.
10. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

11. The Buyer charges in favour of the Supplier all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Buyer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
12. The Buyer charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Buyer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
13. The Buyer appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Buyer's name and as the Buyer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Buyer may own in any Land Titles Office in any state or territory of Australia, even though the Buyer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Buyer (in the event that there is no default by the Buyer in carrying out its obligations hereunder).
14. Where the Buyer has previously entered into an agreement with the Supplier by which the Buyer has granted a charge, mortgage or other security interest (including a security interest as defined in the Personal Property Securities Act 2009 (PPSA)) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Buyer under this agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

15. The Buyer acknowledges and agrees that the credit to be provided to the Buyer by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Credit Limits

16. Credit limits will be established by the Supplier at the Supplier's sole discretion and will be confirmed to the Buyer in writing prior to the commencement date of any trade.
17. Credit limits may be adjusted from time to time or credit withdrawn by the Supplier at the Supplier's sole discretion to reflect changing requirements of the Buyer and or to reduce the Supplier's risk.

## Risk

18. If it is the responsibility of the Supplier to deliver the goods to the premises of the Buyer or such other premises as specified by the Buyer in its purchase order, risk or loss and/or damage to the goods passes to the Buyer when the goods are delivered to such premises.
19. If it is the responsibility of the Buyer to take delivery of the goods from the Supplier's premises or such other premises at which the goods may be located, risk or loss and/or damage to the goods passes to the Buyer when the goods are loaded for dispatch from the Supplier's premises or such other premises at which the goods may be located for delivery to the Buyer even if the Supplier arranges or agrees to pay for the carriage or insurance of the goods in transit.

## Formation of contract

20. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Buyer. Only written acceptance by the Supplier of the Buyer's offer will complete a contract.
21. Except as otherwise agreed in writing, the Supplier may amend these terms and conditions at any time with notice in relation to future orders placed by the Buyer or with notice prior to acceptance of orders which have already been placed on the Supplier, in which latter case the Buyer may decide to withdraw its order if it considers such variation would cause detriment to it. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions, as amended from time to time.
22. These terms and conditions supplemented by each invoice, and (if relevant) any Product Sales Agreement(s), together constitute the entire agreement between the Supplier and the Buyer.
23. These terms and conditions apply to all sales of goods by the Supplier to the Buyer and override any other terms and conditions express or implied that would otherwise apply including:
  - (a) any terms or conditions set out or referred to in any purchase order, delivery receipt or other documents of the Buyer;
  - (b) any quotations provided by the Supplier to the Buyer; or
  - (c) any inconsistent terms in an invoice unless approved in writing by an officer of the Supplier.

## Retention of title

24. Title in the goods does not pass to the Buyer until the Buyer has made payment in full for the goods and, further, until the Buyer has made payment in full of all the other money owing by the Buyer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
25. Whilst the Buyer has not paid for the goods supplied in full at any time, the Buyer agrees that property and title to the goods will not pass to the Buyer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
26. Until payment in full has been made to the Supplier, the Buyer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
27. The Buyer will be entitled to use or sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Buyer will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Buyer on trust for the Supplier absolutely.
28. The Buyer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 22 hereof unless and until the funds held on trust are remitted to the Supplier.
29. The Buyer agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Buyer, to enter upon any premises occupied by the Buyer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Buyer) to inspect the goods of the Supplier, and to repossess the goods which may be in the Buyer's possession, custody or control when payment is overdue.
30. The Buyer will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 28 and 29. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Buyer against the Supplier, its employees, servants or agents.
31. The Buyer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Buyer of those goods, and the Buyer hereby grants an irrevocable license to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Buyer.
32. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## Cancellation of terms of credit

33. The Supplier reserves the right to withdraw credit at any time and will provide written notice of any such cancellation.
34. Upon cancellation with notice, all liabilities incurred by the Buyer become due and payable to the Supplier within seven (7) days.

## Indemnity

35. The Buyer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and services supplied under this agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## Provision of further information

36. The Buyer undertakes to comply with any reasonable written requests by the Supplier to provide further information for the purpose of assessing the Buyer's creditworthiness, including an updated credit application.
37. If the Buyer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## Corporations

38. If the Buyer is a corporation, the Buyer warrants that all of its directors agree to these Terms & Conditions and that all of its directors may be required to enter into a guarantee and indemnity with the Supplier in relation to the Buyer's obligations to the Supplier.

#### Trustee capacity

39. If the Buyer is the trustee of a trust (whether disclosed to the Supplier or not), the Buyer warrants to the Supplier that:
  - (a) the Buyer enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Buyer has the right to be reasonably indemnified out of trust assets;
  - (c) the Buyer has the power under the trust deed to sign this agreement; and
  - (d) the Buyer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
40. The Buyer must give the Supplier a copy of the trust deed upon request.

#### Partnership

41. If the Buyer enters into this agreement as partners, the Buyer warrants that all of the partners agree to these Terms & Conditions and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier in relation to the Buyer's obligations to the Supplier.
42. If the Buyer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

#### Insolvency

43. If the Buyer becomes insolvent, the Buyer remains liable under this agreement for payment of all liabilities incurred hereunder. The Buyer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Buyer being insolvent.

#### Waiver

44. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Buyer must be made by the Buyer's authorised officer in writing.
45. Until ownership of the goods passes, the Buyer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and the Buyer:
  - (a) under section 95 to receive notice of intention to remove an accession;
  - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
  - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
  - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
  - (e) under section 130 to receive a notice to dispose of goods;
  - (f) under section 132(2) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
  - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
  - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
  - (j) under section 142 to redeem the goods;
  - (k) under section 143 to reinstate the security agreement; and
  - (l) under section 157(1) and 157(3) to receive a notice of any verification statement

#### Costs

46. The Buyer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Buyer under this agreement. The Buyer must also pay for all stamp duty and other taxes payable on this agreement (if any).
47. The Buyer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Buyer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
48. Subject to clauses 49 and 50, payments by, or on behalf of, the Buyer will be applied by the Supplier as follows:
  - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 30 and 47.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 54.
  - (c) Thirdly, in payment of the outstanding invoice(s).
49. In circumstances where the Supplier seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Buyer will be allocated in a manner at the Supplier's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which the Supplier seeks to enforce its purchase money security interest.
50. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 48 herein.
51. Payments allocated (and/or reallocated) under clause 48 and/or 49 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

#### Taxes and duty

52. The Buyer must pay GST on any taxable supply made by the Supplier to the Buyer under this agreement. The payment of GST is in addition to any other consideration payable by the Buyer for a taxable supply.
53. If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Buyer, then the Buyer must pay the Supplier these additional amounts on 48 hours' written demand.

#### Interest rates

54. The interest rate on any outstanding debts is a fixed rate of 12 per cent per annum.

#### Set-off

55. All payments required to be made by the Buyer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Buyer in writing.
56. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Buyer by the Supplier.

#### Delivery

57. The Buyer is not relieved of any obligation to accept or pay for goods because of a delay in a delivery or any part of a delivery.
58. If any event occurs beyond the control of the Supplier that affects the manufacture or delivery of the goods, the Supplier is entitled to deliver part only of a purchase order, suspend delivery, extend the time for delivery or cancel the purchase order.
59. Any suspension, extension or cancellation of delivery under clause 58 will not release the Buyer from unpaid Invoices.
60. Purchase Orders cannot be cancelled by the Buyer following delivery of the goods or services to the Buyer but before payment of the Invoice.

#### Warranty

61. All goods supplied by the Supplier are covered by a period of warranty (in addition to the provisions in the Australian Consumer Law), the details of which are disclosed with each individual product supplied.

#### Miscellaneous

62. The Supplier is not liable for any loss caused to the Buyer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
63. In relation to the supply of goods, the Supplier's liability is limited to:
  - (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
64. In relation to the supply of services, the Supplier's liability is limited to:
  - (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
65. The Supplier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Buyer as a result of the goods and/or services supplied under this agreement.
66. The Buyer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Buyer under the PPSA.
67. The Buyer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Buyer or the Buyer's authorised representative.
68. The Buyer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
69. The Buyer irrevocably grants to the Supplier the right to enter upon the Buyer's property or premises, with notice, and without being in any way liable to the Buyer or to any third party, if the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Buyer shall reasonably indemnify the Supplier from any claims made by any third party as a result of such exercise.
70. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

#### Severance

71. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
72. If any part of this agreement is or becomes invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

#### Variation

73. The Buyer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Buyer. The Buyer will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier.
74. Any proposed variation to these terms and conditions by the Buyer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
75. Variations requested by the Buyer will only be binding upon the Supplier if they are accepted in writing.

#### Consent to register

76. The Buyer hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
77. The Buyer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

#### Entire agreement

78. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Buyer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
79. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (Original Agreement) between the Buyer and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

#### Privacy Act

80. The Buyer acknowledges and agrees to the terms of the Privacy Statement pursuant to the Privacy Act 1988 contained in this document.