

TERMS OF TRADE

1. Definitions

Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

Credit Account Conditions means the Credit Account Terms and Conditions and any Agreement to Guarantee and Indemnify;

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage whether or not the possibility or potential extent of the loss or damage was known or foreseeable and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise;

Customer means the party making this application for credit;

Goods means any goods supplied by the Supplier to the Customer;

Insolvency Event means any of the following:

- a. being in liquidation, provisional liquidation, bankruptcy or under administration;
- b. being unable to pay debts as they fall due and payable;
- c. dying;
- d. ceasing to be of full legal capacity;
- e. taking any step that may cause the Company to become an insolvent under administration;
- f. entering into any compromise, scheme of arrangement, or assignment for the benefit of any of the Customer's members or creditors.

Loss means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority;

K Drive Means K Drive PTY Ltd (ACN 656 200 163);

PPSA means the Personal Property Security Act 2009 (Cth);

Purchase Price means the price of the Goods or Services set out in the relevant Quotation or Sales Invoice;

Quotation means a written quotation submitted by the Supplier to the Customer;

Real Property means all real property interests (present and future) held by the Customer;

Related Bodies Corporate has the same meaning as in the Corporations Act 2001 (Cth);

Sales Invoice means an invoice of the Supplier issued to the Customer;

Services means any services provided by the Supplier to the Customer;

Special Goods means Goods which are at the Customer's request embellished, embroidered, printed, machined, cut to size, made to specification or specifically ordered for the Customer;

Supplier means K Drive or any Related Bodies Corporate;

Terms of Trade means these Terms of Trade as amended from time to time.

2. General

- 2.1 The Terms of Trade regulate the key trading terms in connection with the supply of Goods or Services by the Supplier to the Customer.
- 2.2 All quotations are made and all orders for Goods or Services are accepted by the Supplier on and subject to the Terms of Trade and any special terms or conditions which are agreed to by the Supplier in writing.
- 2.3 In the Terms of Trade words in the singular shall be construed so as to include the plural.

3. Quotations

- 3.1 Unless withdrawn by the Supplier, a Quotation is valid for 30 days.
- 3.2 A Quotation does not create an obligation for the Supplier to sell. The Quotation is to be construed as an invitation to treat and a contractual relationship only arises between the Supplier and the Customer when the Customer's order has been accepted by the Supplier.
- 3.3 The Supplier is not bound by any conditions that have been attached by the Customer to any order or acceptance of a Quotation unless the Supplier has expressly agreed to them in writing. The Customer acknowledges that these conditions will be expressly negated.
- 3.4 The Supplier may withdraw, revoke or amend a written Quotation at any time prior to the Customer submitting an order which accepts the written Quotation.

4. Price

- 4.1 The price of the Goods or Services will be the price indicated on the Quotation or Sales Invoice.
- 4.2 Unless otherwise indicated all prices are exclusive of all applicable taxes and charges and the Customer is liable for all excise, sales, GST or any other charge, tax or government impost (domestic or foreign) upon the Goods or Services in addition to the purchase price.
- 4.3 Unless otherwise agreed in writing the price does not include the cost of delivery of the Goods which will be charged in addition to the price.

5. Payment

- 5.1 Unless the Supplier has granted credit to the Customer, payment for the Goods or Services must be made by the Customer in immediately available funds on or immediately prior to delivery of the Goods or provision of the Services.

- 5.2 Where the Supplier has granted the Customer credit, the Customer shall ensure that payment for the Goods or Services is made in accordance with the Credit Account Conditions and within 30 Days Nett from when the goods or services were supplied to the Customer.

- 5.3 Payments made by credit card may be subject to a surcharge.

6. Overdue Accounts and Security

- 6.1 Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly. In no circumstances will the interest exceed 20% per annum.
- 6.2 The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts.
- 6.3 As security for any amounts owing to the Supplier by the Customer, the Customer charges all of its legal and equitable interest (both present and future) in any and all Real Property to the Supplier.
- 6.4 The Customer agrees (if requested by the Supplier) to execute any documents and to do all things reasonably required by the Supplier to register a mortgage security over any Real Property to give effect to the charge in clause 6.3.
- 6.5 The Customer consents to the Supplier lodging a caveat noting its interest in any Real Property.
- 6.6 A statement in writing signed by an officer of the Supplier setting out the moneys due or owing to the Supplier as at the date of the statement shall be sufficient evidence of the amount due or owing until the contrary is proven.

7. Retention of Title

- 7.1 The Supplier retains the legal and equitable title to any Goods supplied to the Customer until payment in full or in connection with the supply of the relevant Goods has been received by the Supplier.
- 7.2 Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such Goods or use the Goods in the ordinary course of the Customer's business. In these circumstances if the Customer sells any of the Goods to a purchaser:
 - (1) the Customer sells as principal and not as agent of the Supplier; and
 - (2) the proceeds of the sale of any Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer must account to the Supplier for such proceeds.
- 7.3 The failure to create a separate fund under clause 7.2(2) shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- 7.4 Until Goods are sold or used in the ordinary course of the Customer's business, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm.
- 7.5 The Customer must clearly designate the Goods as the property of the Supplier and keep full and complete records of the physical location of the Goods and the ownership of the Goods by the Supplier.
- 7.6 The Supplier may at any time and from time to time before the sale of any item of Goods by the Customer inspect, recover or retake possession of such Goods.
- 7.7 The retention of title and ownership of the Goods is effective whether or not the Goods have been altered from their supplied form or mixed with other goods.

8. Security Interest

- 8.1 The retention of title arrangement in clause 7 is the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- 8.2 The Customer must immediately (if requested by the Supplier) sign any documents, provide all necessary information and do anything else that may be required by the Supplier to perfect the Supplier's purchase money security interest.
- 8.3 The Customer agrees not to enter into any other security agreement that permits another person or entity to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods prior to the Supplier perfecting its purchase money security interest.
- 8.4 If the Goods are not goods that are used predominantly for personal, domestic or household purposes then the parties agree that the Supplier need not comply with sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA in relation to the Goods.
- 8.5 The Customer waives any right it has to:
 - (1) receive any notice it may have been entitled to receive under sections 95, 118, 121, 130, 132 or 135 of the PPSA;
 - (2) apply to a court for an order concerning the removal of an accession under section 97;
 - (3) object to a proposal to purchase or retain any collateral under section 130 or 135; or
 - (4) receive a copy of a verification statement confirming registration of a financing statement or a financing change statement relating to any security interest the Supplier may have in goods supplied to the Customer.
- 8.6 In clause 8.5 the following words "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them in the PPSA.

9. Delivery & Risk

- 9.1 Risk in relation to any Goods passes to the Customer on delivery.
- 9.2 Delivery of the Goods occurs:
- (1) when the Customer collects the Goods from the Supplier's premises; or
 - (2) if the Supplier has agreed to deliver the Goods to the Customer then delivery is when the Supplier or its agent delivers the Goods to the Customer's designated place.
- 9.3 Where the Customer requests the Supplier to leave Goods at an unattended location the Goods shall be left at the Customer's risk.

10. Cancellations

- 10.1 The Supplier may, prior to delivery of the Goods or provision of the Services, cancel any order by written notice to the Customer.
- 10.2 If the Supplier cancels any order then it shall repay to the Customer any amounts that have already been paid by the Customer in respect of the cancelled order and the Supplier will have no further liability to the Customer in respect of the cancelled order.
- 10.3 Unless otherwise agreed in writing, the Customer has no right to cancel any order which has been accepted by the Supplier. If the Supplier does allow the Customer to cancel an order then any deposit paid by the Customer for the cancelled order will be forfeited to the Supplier.

11. Claims and Warranties

- 11.1 After taking delivery of the Goods the Customer shall inspect the Goods within 48 hours of receipts to determine whether:
- (1) the Goods have been damaged or are defective; and
 - (2) all of the Goods have been delivered.
- 11.2 The Customer shall immediately notify the Supplier of any issue resulting from their inspection of the Goods and if no notice has been received within 48 hours of the Goods being delivered they shall be deemed to have been accepted and delivered to the Customer.
- 11.3 The Customer acknowledges that the Supplier, to the fullest extent permitted by law, does not provide any warranties with the Goods other than the manufacturers warranties (if any).

12. Returns

- 12.1 Unless otherwise agreed, returns other than those required under the Australian Consumer Law must be approved by the Supplier.
- 12.2 The Supplier will only accept a return if:
- (1) the Customer has notified the Supplier and completed the credit return form;
 - (2) the Goods are returned to the Supplier in saleable condition (at the discretion of the Supplier) with all packaging material and instructions; and
 - (3) the relevant Sales Invoice is produced for the Goods.
- 12.3 The Supplier will not permit returns on Special Goods.
- 12.4 If the Supplier grants a return under this clause it may at its sole discretion charge the Customer:
- (1) a 10% restocking fee on Goods returned within 21 days of the Sales Invoice;
 - or
 - (2) a 30% restocking fee on Goods returned after 21 days of the Sales Invoice.
- 12.5 The Supplier may charge the Customer any freight costs incurred by the Supplier as a result of processing a return.

13. Product descriptions

- 13.1 All descriptions, photographs, drawings, illustrations, weights, dimensions, performance data and all other particulars relating to Goods or Services that are provided in any Quotation, catalogue, price list or other advertising material is only an approximation for information purposes and are subject to alteration without notice.
- 13.2 Goods will be supplied by the Supplier within the tolerances in regard to weight and dimensions consistent with industry practices.
- 13.3 Unless otherwise agreed, the Supplier may at its discretion supply an alternative brand or substitute product when necessary.

14. Special Goods

- 14.1 Where the Customer has requested the supply of Special Goods it must ensure that it has provided the Supplier with accurate and detailed information and specifications for the Special Goods at the time of the order.
- 14.2 Any changes or alterations to the Special Goods requested by the Customer after the order date will result in the Customer incurring additional costs.
- 14.3 The Supplier accepts no liability for Special Goods which are not fit for purpose because of an error made by the Customer when ordering.
- 14.4 Special Goods orders cannot be cancelled and the Supplier will not accept returns of Special Goods.

15. Installation

- 15.1 Unless otherwise specified in the Quotation or Sales Invoice the sale of the Goods is for supply only and does not include installation which will be at the expense of the Customer.

16. Operation and maintenance of Goods

- 16.1 The Customer acknowledges and agrees that the Goods must be maintained and operated by the Customer in accordance with any guidelines, operating manual or instructions provided by the Supplier
- 16.2 The Customer acknowledges that a failure to properly maintain or operate the Goods may lead to decreased performance and other adverse consequences.

17. Customer obligations and default

- 17.1 The Customer agrees that each order it places is a representation to the Supplier that it is solvent and able to pay its debts as and when they fall due and payable.
- 17.2 If the Customer:
- (1) fails to comply with the Terms of Trade or in respect of any obligation to pay money to the Supplier;
 - (2) suffers an Insolvency Event; or
 - (3) makes any misrepresentation to the Supplier,

17.3 the balance of the Customer's account to the Supplier will become immediately due and payable.

17.4 The Customer agrees that it must:

- (1) pay, without deduction or set-off, the price charged by the Supplier for the Goods or Services supplied to the Customer on delivery or performance, or if credit terms have been provided, within 30 days of the last day of the month in which the Goods or Services were supplied to the Customer;
- (2) pay any transfer duty assessed on this document or any fee to register or maintain any security interest held by the Supplier in respect of the Goods and Services supplied to the Customer;
- (3) advise the Supplier in writing as soon as practicable and no later than 2 days of:
 - (a) any Insolvency Event occurring in respect of the Customer; or
 - (b) any sale or disposition of any assets or part of the business (separately or together having a value greater than 20% of the gross assets) of the Customer;
 - or
 - (c) any change in the management or structure of the Customer including changes of directors, shareholders, partners or trustees (as the case may be);
 - or
 - (d) any new charge, mortgage or security being granted to any other supplier or financier.

17.5 The Customer acknowledges that despite any of the occurrences in clause 17.3(3) it will remain liable to pay the price for the Goods and Services supplied.

17.6 The Customer warrants that it has full power and authority to enter into this arrangement.

18. Exclusion of Implied Terms

18.1 To the fullest extent permitted by law all terms, conditions, or warranties that would be implied into the Terms of Trade under the Australian Consumer Law are excluded.

19. Australian Consumer Law Guarantees - Limitation of Liability

- 19.1 If the Goods supplied to the Customer are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a Consumer for the purposes of section 64A of the Australian Consumer Law then the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit to is limited to, at the option of the Supplier, one or more of the following:
- (1) replacement of the Goods or the supply of equivalent goods;
 - (2) the repair of the Goods;
 - (3) the payment of the cost of replacing the Goods or of acquiring equivalent goods;
 - (4) equivalent goods; or
 - (5) the payment of the cost of having the Goods repaired.
- 19.2 If Services supplied to the Customer are not services of a kind ordinarily acquired for personal, domestic or household use or consumption then the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit to is limited to, at the option of the Supplier:
- (1) the Supply of the Services again; or
 - (2) the payment of the cost of having the Services supplied again.

20. Limitation of Liability

- 20.1 To the fullest extent permitted by law (subject to clauses 18 and 19), the Supplier's liability arising out of or in connection with its performance of its obligations under these Terms of Trade, the Credit Account Conditions or any other supply of specific Goods or Services to the Customer is limited as follows:
- (1) the Supplier shall have no liability to the Customer for any Consequential Loss; or
 - (2) to the extent that the liability for Loss is not as a result of fraud by the Supplier or personal injury or death caused by the Supplier's default, breach or negligence the Supplier's total liability for Loss, however arising, shall not exceed the GST price paid by the Customer to the Supplier for the particular Goods or Services that gave rise to the Loss.

20.2 The parties agree to take all reasonable steps to mitigate any Loss it suffers or incurs.

21. Currency

21.1 Where Goods are imported into Australia any adverse variation in the price arising from fluctuations in exchange rates between the date of the Customer's order and the date of payment by the Supplier will be borne by the Customer.

22. Goods and Services Tax (GST)

22.1 If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods and Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

23. Variation

23.1 The Supplier may, at any time and from time to time, vary these Terms of Trade and if the Supplier does vary the Terms of Trade it will provide notice in writing to the Customer of any material changes.

24. Disputes

- 24.1 In the event of a dispute between the Customer and the Supplier, the Customer agrees to pay into an interest bearing account held in the joint names of the Supplier and the Customer any amount claimed by the Supplier as a condition precedent to any dispute by the Customer of any such claim.
- 24.2 Clause 24.1 shall act as a bar to any defence or claim by the Customer until it has been complied with.
- 24.3 Once the dispute is resolved the money shall be paid out of the interest bearing account in accordance with the resolution.

25. Costs

25.1 The Customer is liable for any legal costs or other expenses incurred by the Supplier in respect of entering into this arrangement.

26. Governing Law

26.1 The Terms of Trade are governed by the laws of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts operating in Western Australia.