

TERMS AND CONDITIONS OF SALE**1. DEFINITIONS**

In these conditions:

"ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth);

"Agreement" means any agreement for the provision of goods or services by WEG to the Customer;

"consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"Customer" means the person, jointly and severally if more than one, acquiring goods or services from WEG;

"goods" means goods supplied by WEG to the Customer;

"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

"PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;

"services" means services supplied by WEG to the Customer;

"Terms" means these Terms and Conditions of Sale;

"Specified Distributor Account" means the bank account held in the name of WEG, for the sole purpose of receiving payments on behalf of Customers and WEG, as notified to the Customer from time to time; and

"WEG" means WEG Australia Pty Ltd (ACN 070 943 663).

2. BASIS OF AGREEMENT

2.1 Unless otherwise agreed by WEG in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by WEG to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in WEG's quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by WEG when WEG accepts, in writing or electronic means, an offer from the Customer, or provides the Customer with the goods or services.

2.5 WEG in its absolute discretion may refuse to accept any offer.

2.6 The Customer must provide WEG with its specific requirements, if any, in relation to the goods and services.

2.7 WEG may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed by the Customer after the notice date.

3. PRICING

3.1 Prices quoted for the supply of goods and services, exclude GST and any other taxes or duties imposed on or in relation to the goods and services.

3.2 If the Customer requests any variation to the Agreement, WEG may change the price of the goods or services to account for the variation.

3.3 Where there is any change in the costs incurred by WEG in relation to the goods or services, WEG may vary its price for the goods or services in order to take account of any such change, by notifying the Customer. This includes any variation due to exchange rate variation, change in labour rates and conditions and costs of production, materials and transport.

4. PAYMENT

4.1 Subject to clauses 4.2 and 4.3, payment for all goods and services must be made in full within 30 days from the end of the month in which the goods or services are delivered.

4.2 Notwithstanding clause 4.1, if specified in WEG's quotation, the Customer must pay a deposit upon placing an order with WEG and any progress payments on the dates specified in the quotation.

4.3 Notwithstanding clauses 4.1 and 4.2, WEG reserves the right to require payment in full on delivery of the goods or commencement of the services.

4.4 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.5 If the Customer orders goods or services in excess of the credit limit provided by WEG, or if WEG otherwise directs, WEG may require:

- (a) that the Customer directs its customer to make payment of the Customer's invoice which includes the goods or services by way of direct deposit into the Specified Distributor Account;
- (b) the direction is to be in writing and provided by the Customer, in the form specified by WEG; and
- (c) payment is to be for the full amount invoiced by the Customer to its customer.

4.6 Payments to the Specified Distributor Account will be received, held and paid on the following basis:

- (a) as to the amount invoiced by WEG to the Customer, held as and for the benefit of WEG as proceeds of sale;
- (b) the difference between the amount invoiced by WEG and the amount invoiced by the Customer, held on trust as to and for the benefit of the Customer ("Customer's Payment"); and
- (c) the Customer's Payment must be electronically transferred to the Customer within 2 working days of receipt in the Specified Distributor Account of the full amount or each installment of the amount invoiced.

4.7 If any payment is received directly by the Customer which should have been made into the Specified Distributor Account, the Customer receives it on trust for WEG and must immediately pay the full amount of the payment to the Specified Distributor Account and notify WEG in writing.

4.8 Payment terms may be revoked or amended at WEG's sole discretion immediately upon giving the Customer written notice.

4.9 The time for payment is of the essence.

5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to WEG, then all money which would become payable by the Customer to WEG at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and WEG may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2 per cent, calculated daily, for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify WEG from, all costs and

- expenses (including without limitation all legal costs, collection agency costs and expenses on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods, or to recover any sum due;
- (c) cease or suspend supply of any further goods or services to the Customer;
 - (d) by written notice to the Customer, terminate any uncompleted contract with the Customer;
 - (e) set-off the Customer's Payment held in the Specified Distributor Account against the amount owing to WEG.
- 5.2 Clauses 5.1(c), (d) and (e) may also be relied upon, at WEG's option:
- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 6. PASSING OF PROPERTY**
- 6.1 Until WEG receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to WEG by the Customer:
- (a) title and property in all goods remain vested in WEG and do not pass to the Customer;
 - (b) the Customer must hold the goods as fiduciary bailee and agent for WEG;
 - (c) to the extent that it is possible to do so, the Customer must keep the goods separate from its goods and maintain WEG's labeling and packaging;
 - (d) the Customer must hold the proceeds of sale of the goods on trust for WEG in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee;
 - (e) in additions to rights under the PPSA, WEG may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of WEG, and for this purpose the Customer irrevocably licences WEG to enter such premises and also indemnifies WEG from and against all costs, claims, demands or actions by any party arising from such action.
- 7. PERSONAL PROPERTY SECURITIES ACT**
- 7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- (a) terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and WEG has a Purchase Money Security Interest
- in all present and future goods supplied by WEG to the Customer and the proceeds of the goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by WEG on the Personal Property Securities Register
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from WEG's premises and not at any later time and continues notwithstanding the goods may be commingled or become accessions.
- 7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.5 WEG and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 7.6 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on WEG will apply only to the extent that they are mandatory or WEG agrees to their application in writing; and
 - (b) where WEG has rights in addition to those in Chapter 4 of the PPSA, those rights will continue and apply.
- 7.7 The Customer must immediately upon WEG's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by WEG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as WEG may at any time require.
- 7.8 WEG may allocate amounts received from the Customer in any manner WEG determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by WEG.
- 8. RISK AND INSURANCE**
- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from WEG's premises.
- 8.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws, codes and regulations in relation to the goods.
- 8.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by WEG, unless recoverable from WEG on the failure of any statutory guarantee under the ACL.
- 9. ACKNOWLEDGMENTS**
- 9.1 The Customer acknowledges that:

- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by WEG in relation to the goods or services or their use or application;
 - (b) it has not made known, either expressly or by implication to WEG any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the Customer's use.
- 10. PERFORMANCE OF AGREEMENT**
- 10.1 Any period or date for delivery of the goods or provision of the services stated by WEG is an estimate only and not a contractual commitment.
- 10.2 WEG will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.
- 10.3 If WEG cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 11. DELIVERY**
- 11.1 Unless otherwise specified by WEG in writing, all goods will be delivered FOT (Free on Truck) (Melbourne, Sydney, Brisbane, Adelaide or Perth metropolitan areas) and excludes unloading. If goods are supplied FOT, the goods will be at the Customer's risk as soon as they are supplied to the carrier WEG engages on behalf of the Customer. Delivery will be deemed to have been effected by WEG upon supply to the carrier.
- 11.2 The Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from uploading the goods to the Customer's point of delivery.
- 11.3 WEG may make part delivery of goods or provision of services. WEG may invoice the Customer for the goods or services provided.
- 11.4 The Customer will inform WEG of all necessary details so that WEG can effect delivery and installation (where applicable) of the goods.
- 11.5 The Customer must provide reasonable and proper access to the location specified for delivery and installation.
- 11.6 Any extra carrier charges due to difficult access, wrong instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged by WEG to the Customer at cost plus a 10% service fee plus GST.
- 11.7 Where it is necessary for WEG to deliver the goods unassembled (which facts will be stated in the quotation), the quotation does not include the costs of assembly. The Customer will be responsible for any additional cost for assembly and installation of the goods.
- 11.8 The Customer indemnifies WEG against any loss or damage suffered by WEG, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and WEG has not used due care and skill.
- 11.9 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.
- 11.10 If it is agreed that the Customer will collect the goods:
- (a) the Customer must collect the goods within 7 days of being advised they are ready;
 - (b) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 12. PACKING**
- If the Customer requires packing or crating which differs from that used in the normal course of WEG's business, the Customer will be charged for any extra cost incurred to WEG.
- 13. SPECIFICATIONS**
- 13.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in WEG's quotations, price lists, catalogues, website and marketing or other documents are indicative only, do not form part of this Agreement, and are not contractual representations or warranties of any kind.
- 13.2 All specifications, drawings, illustrations, descriptive matter and particulars supplied remain WEG's property and must be returned to WEG on demand. The Customer must not publish or permit them to be copied or communicate them to any other person without WEG's prior written consent.
- 14. SHORTAGES AND EXCHANGES**
- 14.1 Subject to clause 14.2 and 14.5, WEG will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies WEG in writing with full details within 2 days of delivery of the goods or provision of the services, otherwise the Customer is deemed to have accepted the goods and services.
- 14.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by WEG, WEG may, at its option, replace the goods or re-provide the services, or refund the price of the goods or services.
- 14.3 Subject to clause 14.5, WEG will not under any circumstances accept goods for return that:
- (a) have been altered in any way;
 - (b) have been used; or
 - (c) have been specifically produced, imported or acquired to fulfill the Agreement.
- 14.4 The Customer must obtain WEG's prior written approval for the return of goods and pay all service, material and freight charges associated with the return of the goods unless WEG accepts that the reasons stated for the return are due to its fault.
- 14.5 If the Customer is a consumer, nothing in this clause 14 limits any remedy available for a failure of the statutory guarantees under the ACL
- 15. CANCELLATION**
- 15.1 If WEG is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 15.2 No purported cancellation or suspension of any order by the Customer is binding on WEG once the order has been accepted.
- 15.3 If the Customer purports to cancel an order and WEG agrees to the cancellation, any deposit paid and any progress payments made will be forfeited.
- 16. LIABILITY**
- 16.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the 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.
- 16.2 If the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against WEG for failure of a statutory guarantee under the ACL.
- 16.3 If the Customer on-supplies the goods to a person who is a consumer:
- (a) If the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) is the absolute limit of WEG's liability to the Customer;
- (b) Otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of WEG's liability to the Customer, howsoever 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.
- 16.4 If clause 16.2 or 16.3 does not apply, then other than as stated in the Terms or any written warranty statement, WEG is not liable to the 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.
- 16.5 WEG is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of perishables, loss of turnover, profits, business or goodwill or any liability to any other party, other than if the Customer is a consumer, then to the extent the loss was reasonably foreseeable.
- 16.6 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 or the supply of services which cannot be excluded, restricted or modified.
- 17. FORCE MAJEURE**
- 17.1 WEG is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control, including without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism, or acts of war. If an event of Force Majeure occurs, WEG may suspend or terminate the Agreement by written notice to the Customer.
- 18. CHARGE**
- 18.1 In consideration of WEG entering into the Agreement, the Customer agrees to charge in favour of WEG all their estate and interest in any land and in any other assets, whether tangible or intangible, in which they now have any legal or beneficial interest or in which they later acquire any such interest. The Customer consents to the lodgement by WEG of a caveat or caveats which note their interest in that real property.
- 19. CHANGE IN COMPANY STRUCTURE**
- 19.1 The Agreement is made in respect of the owners and/or directors of the Customer as at the date of Credit Application. The Customer agrees to notify WEG in writing within seven (7) days of any change whatsoever in ownership structure and further indemnify WEG against any loss or damage that may result from the Customer's failure to notify WEG of any such change.
- 19.2 If there is a change in the Customer's ownership of which WEG in its discretion deems to be material, WEG may suspend or withdraw all credit facilities and require the Customer to submit a new Credit Application.
- 20. MISCELLANEOUS**
- 20.1 The law of Victoria from time to time governs the Terms. The parties agree 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.
- 20.2 WEG's failure to enforce any of these Terms shall not be construed as a waiver of any of WEG's rights.
- 20.3 If any Term is unenforceable it shall be read down so as to be enforceable or, if it cannot be read down, the condition shall be severed from the Terms without affecting the enforceability of the remaining terms.
- 20.4 A notice must be in writing and sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 20.5 The Customer must comply with the National Privacy Principles in connection with any personal information supplied to it under the Agreement.