

Selkirk Group

Conditions of Sale

1. INTERPRETATION

In these Conditions of Sale:

- (a) **ACL** means the Australian Consumer Law set out in a Schedule to the *Competition and Consumer Act 2010 (Cth)*;
- (b) **Approved Credit Limit** has the meaning given to that term in clause 4(d);
- (c) **Consumer Guarantee** has the meaning given to that term in the *Competition and Consumer Act 2010 (Cth)*;
- (d) **Credit Application** means any form accepted by the Supplier as an application for credit;
- (e) **Buyer** means the person or entity ordering the Goods, as shown on the invoice, purchase order or other document evidencing an order for Goods;
- (f) **Goods** means those products shown on an invoice sold by the Supplier to the Buyer from time to time;
- (g) **GST** means the goods and services tax levied under the GST Act;
- (h) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended;
- (i) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*; and
- (j) **Supplier** means the Selkirk Group entity named on the delivery docket issued for each supply of goods.

2. APPLICATION

- (a) These Conditions of Sale apply to all sales of Goods by the Supplier to the Buyer unless expressly waived or varied by the Supplier in writing.
- (b) These Conditions of Sale prevail over any conditions on the Buyer's order to the extent of any inconsistency.

3. PRICE

- (a) Subject to clause 5(d) the order of precedence for determining the price of the Goods shall be:
 - (i) the Supplier's current ruling price at the date of delivery;
 - (ii) the price shown on the Supplier's invoice;
 - (iii) any quotation given by the Supplier; and
 - (iv) the price shown on the Buyer's order.
- (b) The Supplier makes no warranty that the price of Goods at the date of delivery shall be the same as at the date of order or quotation.
- (c) Prices include delivery unless collection is arranged by the Buyer and it has been agreed that 'ex-yard' prices apply.
- (d) Unless specifically stated on the Supplier's invoice, prices include GST.

4. CREDIT

- (a) The Supplier may, but is not obliged to, supply the Buyer with the Goods on terms that do not require payment in full at the time of delivery. If it does so, this clause applies.
- (b) The Supplier will require the Buyer to complete a Credit Application as a condition of extending credit.
- (c) The Supplier may withdraw, suspend or vary the conditions of credit at any time.
- (d) The Supplier may set and vary credit limits for the Buyer from time to time (*Approved Credit Limit*).
- (e) The Supplier may:
 - (i) vary the Buyer's Approved Credit Limit at any time; and/or
 - (ii) require the Buyer to make a payment on or prior to delivery at any time.
- (f) The Buyer warrants and acknowledges that:
 - (i) the Buyer has read and understood the Credit Application and these Conditions of Sale;
 - (ii) all of the information provided by the Buyer to the Supplier is true and correct in every particular;
 - (iii) the Buyer can pay its debts as and when they fall due;
 - (iv) each person who submits a Credit Application and makes orders on behalf of the Buyer is (or at the time of making each order will be) authorised to do each of those things on behalf of the Buyer, and the Buyer promises not to make any claim or seek to withhold any payment or avoid its obligations, in respect of any of the above matters.
- (g) The Supplier may require one or more persons to provide a guarantee as security for obligations and payments due by the Buyer to the Supplier under these Conditions of Sale, as a condition of extending credit and/or making supplies to the Buyer.
- (h) If required, the Buyer must immediately procure and deliver executed guarantee/s to the Supplier.
- (i) The Buyer authorises and consents to the release to the Supplier of any information sought by the Supplier from any bank, financial institution, credit provider, credit reporting agency or register. If requested by the Supplier, the Buyer must sign any document needed to enable the Supplier to obtain such information.
- (j) The Supplier may obtain, and the Buyer must provide, further information from time to time.
- (k) The Supplier's rights under paragraphs (i) and (j) above extend to any person who has or is required to give a guarantee under this clause.
- (l) The Supplier may, at any time and in its absolute discretion (subject to the ACL) do any one or more of the following:
 - (i) reduce the time for payment;
 - (ii) terminate any credit accommodation granted to the Buyer;
 - (iii) demand immediate repayment from the Buyer of all amounts owing (whether or not a due date for payment has arrived or passed);
 - (iv) impose interest and other charges in accordance with clause 6; and/or
 - (v) continue to supply the Buyer on a cash on delivery basis.

5. PAYMENT

- (a) Notwithstanding any prior grant of credit to the Buyer, the Supplier reserves the right to demand payment prior to delivery in respect of any delivery of Goods.
- (b) Payment for the Goods is due on the last day of the month immediately following the month in which the Goods are delivered.
- (c) All payments must be made in full without set off.
- (d) The Supplier may accept pre-payments provided that delivery of the Goods must be taken within 12 months of the pre-payment. The price for Goods pre-paid shall be The Supplier's ruling price as at the date of the pre-payment. Should delivery of the Goods not be taken within the stipulated time frame, The Supplier may, in its absolute discretion:
 - (i) refund the pre-payment; or
 - (ii) continue to hold the pre-payment but the price of the Goods shall become the Supplier's current ruling price at the date of delivery, and the Buyer shall pay any balance due in accordance with paragraphs (a), (b) and (c) above.

6. INTEREST & CHARGES

The Supplier may charge and the Buyer must pay:

- (a) interest at the Reserve Bank of Australia Cash Target Rate plus 1000 basis points, on all amounts not paid by the due date for payment, with such interest calculated from the due date until the date that payment in full is received as clear funds by the Supplier; and
- (b) The Buyer 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 Supplier for enforcement of obligations and recovery of monies due from the Buyer to the Seller.

7. DELIVERY

- (a) For the purpose of these Conditions of Sale, Goods will be deemed to have been delivered at the earliest of any of the following:

- (i) when delivered at or in the near vicinity of an address specified by the Buyer;
 - (ii) when delivered into the possession of the Buyer or a carrier engaged by the Buyer, at the premises of the Supplier;
 - (iii) when delivered into the possession of a carrier engaged by the Supplier to deliver the Goods to the Buyer, at the premises of the Supplier; or
 - (iv) when delivered to any station, wharf, rail yard or loading point specified by the Buyer.
- (b) If the Supplier agrees to deliver the Goods to a place other than the Supplier's premises then:
 - (i) the Buyer shall ensure reasonable and proper access at the site specified for delivery, and without limitation must remove temporary fencing and other obstacles and ensure that there are council approved crossing facilities;
 - (ii) if access difficulties or other delays cause the time spent at the site by the carrier to exceed the standard delivery time, the price of the Goods shall be increased by any additional cost or charge incurred by the Supplier;
 - (iii) if, by reason of obstruction or poor identification of the site, the Goods are returned to the Supplier, the price of the Goods shall be increased by any cost or charge incurred by the Supplier; and
 - (iv) where any damage is caused to any roads, footpaths or other property in effecting delivery the Buyer shall indemnify and keep indemnified the Supplier for any costs, loss, damage, expense or other claim made against the Supplier arising directly or indirectly from the Supplier attempting to effect or actually effecting delivery.

8. ACCEPTANCE

- (a) The Buyer shall inspect all Goods immediately upon delivery.
- (b) The Buyer shall be deemed to have accepted the Goods and shall not make any claim in respect of the Goods or that the Goods do not comply with the order or Conditions of Sale unless the Buyer:
 - (i) provides written notice of any alleged defect or non-compliance in respect of the Goods to The Supplier ("defect notice");
 - (ii) prior to affixing, laying or otherwise using the Goods (and in any event not later than 3 days after delivery); and only if the defects amount to more than 5% of the total quantity of "first quality" Goods delivered.
- (c) If the Buyer fails to give a defect notice in accordance with this clause, then subject to any non-excludable condition implied by law (including the ACL), the Goods shall be deemed to have been accepted by the Buyer.
- (d) The Supplier makes no warranty of quality or fitness in respect of Goods sold as "seconds" or "commons".
- (e) In no circumstances may the Buyer cancel an order for Goods, however if the Supplier accepts a cancellation, the Supplier reserves the right to claim and the Buyer agrees to pay a cancellation fee equal to 10% of the price of the Goods for which the order is cancelled.

9. RETURN

- (a) Except as required under the ACL, the Supplier is not obliged to accept return of any Goods.
- (b) If the Supplier accepts a defect notice, the Supplier may in its absolute discretion:
 - (i) accept the Goods for return and either:
 - (A) credit the Buyer's account for the price of the Goods less any cartage and handling costs in returning the Goods (provided that the Supplier may not deduct the cartage and handling costs where the Supplier admits that through the Supplier's act or omission that incorrect or defective Goods were delivered); or
 - (B) replace the Goods or supply equivalent Goods; or
 - (ii) refund any part of the price paid for the Goods.
 - (c) If the Supplier does not accept a defect notice, it shall not be obliged to accept return of the Goods and clause 18(j) shall apply.

10. TITLE

- (a) Title to Goods does not pass to the Buyer until payment in full is received by the Supplier from the Buyer, and until the price is paid in full the Buyer must:
 - (i) store Goods which have not been paid for separately;
 - (ii) keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, hold the proceeds of any such sale upon trust for and immediately remit such funds to the credit of the Supplier; and
 - (iii) if any Goods are used in a manufacturing process or mixed with other materials, the Buyer must record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Supplier.
- (b) If the Buyer does not pay for any Goods on the due date specified in each invoice, the Supplier is irrevocably authorised by the Buyer to enter the Buyer's premises (or any premises under the control of the Buyer or as agent of the Buyer if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer or anyone claiming through the Buyer whatsoever.
- (c) Even after delivery, the Goods shall remain the property of the Supplier until all outstanding debts owed by the Buyer to the Supplier, including part paid debts and secured debts, are paid.

11. SECURITY INTEREST

- (a) In this clause 11, terms which are defined in the PPSA have the meaning given to them in the PPSA.
- (b) The Buyer agrees to grant the Supplier a security interest in all present and after-acquired Goods and their proceeds.
- (c) At the request of the Supplier, the Buyer agrees to promptly execute any documentation necessary, or to do anything else required by the Supplier, to ensure that the security interest created under these Conditions of Sale shall constitute a first ranking, perfected security interest over the Goods and their proceeds. This includes providing any information necessary for the Supplier to complete a financing statement or financing change statement.
- (d) The Buyer waives the Buyer's right to receive a copy of a verification statement under the PPSA.
- (e) The Buyer agrees to reimburse the Supplier for all costs and charges incurred, expended or payable by the Supplier in relation to the filing of a financing statement or financing change statement in accordance with these Conditions of Sale.

12. RISK

Risk in the Goods passes to the Buyer upon delivery.

13. WARRANTIES AND ACKNOWLEDGEMENTS

- (a) The Supplier warrants that Goods sold under the description 'first quality' shall comply with the Supplier's quality standards as applying from time to time.
- (b) The Buyer acknowledges Goods sold under any description other than 'first quality' (including, without limitation, Goods sold as 'seconds' or 'commons') may:
 - (i) be imperfect or damaged; and
 - (ii) vary in color and texture; and
 - (iii) the Supplier makes no warranty that such Goods:
 - (A) will meet a certain quality or standard;
 - (B) will comply with any description or sample or display; or
 - (C) will be fit for any particular purpose.

The Buyer shall make no claim and (subject to clause 14) the Supplier shall not be liable for any loss, damage, expense or claim arising directly or indirectly from any imperfections, damage, variations in color or texture or other defects in respect of such Goods.

- (c) The Buyer also acknowledges that, if the Supplier has estimated quantities of Goods for purchase by the Buyer, the Supplier will exercise due skill and care but shall not be liable for (and the Buyer shall make no claims in respect of) any incorrect estimate.

14. CONSUMER GUARANTEES

- (a) Nothing in these Conditions of Sale purports to modify or exclude the Consumer Guarantees, or any other right available to the Buyer under the *Competition and Consumer Act 2010 (Cth)* (including the ACL).
- (b) Except as expressly set out, the Supplier makes no express warranties or other representations under these Conditions of Sale.

15. LIMITATION

- (a) The Supplier's liability in respect of the Consumer Guarantees and any other warranties is limited to the fullest extent permitted by law.
- (b) To the extent permitted by statute, the Consumer Guarantees and any other warranties or representations are void if the Buyer or any other person:
 - (i) attempts to modify, reverse engineer, decompile, create other works or products from, or disassemble any part of the information contained in or extrapolated or executed from the Goods;
 - (ii) interferes with, alters or removes any packaging or labelling of any of the Goods;
 - (iii) causes or permits any contamination of the Goods; or
 - (iv) fails to comply with the Supplier's reasonable directions in relation to the use, application, storage and integrity of the Goods (including specifications and installation guidelines set out in any product manual).
- (c) To the extent permitted by law, the liability of the Supplier from the failure of any Goods to comply with the Consumer Guarantees or any other warranty or condition implied by law shall be limited to (at the Supplier's option):
 - (i) the replacement or resupply of the Goods;
 - (ii) the cost of replacement or resupply of the Goods;
 - (iii) the repair of the Goods; or
 - (iv) the cost of the repair of the Goods.

16. TERMINATION

The Supplier may in its absolute discretion (at any time and regardless of whether or not the Buyer has complied with these Conditions of Sale):

- (a) terminate any credit accommodation granted to the Buyer; and/or
- (b) demand immediate payment from the Buyer of all amounts due (notwithstanding that a due date for payment may not have arrived), and the Supplier may impose interest and other charges in accordance with clause 6 from a date which is 2 days after the Supplier demands payment; and/or
- (c) continue to supply the Buyer on a payment on delivery basis.

17. REFUNDS

Any amount refunded by the Supplier shall be refunded without interest and after deducting any amounts which the Supplier may be entitled to charge and the Buyer expressly agrees that it will make no claim for interest on moneys refunded.

18. GENERAL

- (a) **Time:** Time is of the essence of these Conditions of Sale.
- (b) **Force Majeure:** The Buyer releases the Supplier from any claim, liability or responsibility concerning late delivery or failure to deliver Goods if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, government law or regulation or requirement or any other cause beyond the control of the Supplier and no such failure shall entitle the Buyer to cancel an order or withhold payment.
- (c) **Entire Agreement:**
 - (i) These Conditions of Sale contain the entire agreement between the parties and supersede all previous agreements concluded between the parties. Each order and invoice (or delivery slip) shall constitute a binding and enforceable contract between the Supplier and the Buyer on the terms set out in these Conditions of Sale.
 - (ii) Any attempt by the Buyer to impose any variation or additional terms inconsistent with these Conditions of Sale shall not bind the Supplier.
- (d) **Severability:** If any term agreement or condition of these Conditions of Sale or the application thereof to any person or any circumstance shall be or become illegal, invalid or unenforceable, the same shall be read down, if such reading down is possible, and if found to be impossible, shall be severed and the remaining terms and agreements and conditions shall not be affected.
- (e) **Proper law:** These Conditions of Sale are to be interpreted in accordance with the Acts of the State of Victoria Australia, and the parties submit to the jurisdiction of the Courts of that State.
- (f) **Non Merger:** A provision of these Conditions of Sale which can, and is intended to, operate after the effective date remains effective.
- (g) **Confidentiality:**
 - (i) The Buyer acknowledges the confidential nature of its dealings with the Supplier and the Supplier's intellectual and industrial property rights in and to the Goods.
 - (ii) The Buyer shall not, without the Supplier's prior consent in writing, copy or disclose or cause to be copied or disclosed any details of its dealings with the Supplier to a third party except with the prior written consent of the Supplier.
- (h) **Privacy:** Any personal information collected by the Supplier will be dealt with in accordance with the Supplier's privacy policy.
- (i) **Evidence:** The quantity, description and place and date of delivery of the Goods as indicated on the Supplier's invoice, delivery docket or copies thereof shall be conclusive evidence of the quantity, description and place and date of delivery of the Goods.
- (j) **Dispute Resolution:**
 - (i) If a dispute:
 - (i) arises out of, or in any way in connection with, or otherwise relates to the supply of Goods, these Conditions of Sale or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, and
 - (ii) cannot be resolved between the parties within a reasonable time, the parties agree to refer their dispute to Arbitration administered by the Australian Commercial Disputes Centre (ACDC). The Arbitration shall be conducted in Ballarat (unless otherwise agreed) in accordance with the ACDC Rules for Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into these Conditions of Sale.
- (k) **Variation**

The Supplier may vary these Conditions of Sale from time to time, by notice in writing to the Buyer.
- (l) **License**

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