

# Terms and Conditions

## 1. DEFINITIONS

“Agreement” means the agreement for supply of Goods between PLASSON and the Customer of which these “Conditions of Sale” form part.

“Charges” includes all monies payable by the Customer to PLASSON in relation to the supply of goods.

“Confirmation of Order” means a written document which sets out a description of the Goods, the Charges and other necessary terms and which may include details of the Customer’s offer to purchase the Goods.

“Customer” means the entity which orders Goods from PLASSON or to which Goods are delivered by PLASSON and includes the Customer’s agents and permitted assigns.

“Ex Works” has the same meaning as is ascribed to that term in Incoterms 1990.

“Goods” includes parts and supplies which may subsequently be supplied under any warranty given in relation the Goods.

“GST” means goods and services tax imposed in Australia by the GST law.

“PLASSON” means Plasson Australia Pty Ltd ACN 053 788 891, its agents and assigns.

“Permitted Security Interest” means any security interest which PLASSON consents to or otherwise agrees in writing with the Customer will be a Permitted Security Interest for the purposes of these terms and conditions. “Persons” includes corporations, partnerships and unincorporated associations.

Words importing the singular number shall include the plural and vice versa.

“PPSA” means the Personal Property Securities Act 2009 (Cth) as amended. “PPSR” means the Personal Property Security Register. “Purchase Money Security Interest” that has the meaning prescribed to it in the PPSA. “Security Interest” includes any security interest under the PPS Act.

## 2. CONDITIONS

2.1. These Conditions of Sale apply to all agreements for the supply of Goods by PLASSON and are varied or excluded only where such variation or exclusion is in writing and signed by a director of PLASSON and either is expressed to be a variation of these Conditions or is so inconsistent with them as to allow no other interpretation than that there has been an intentional variation of them.

2.2. Where a Customer has agreed to purchase goods from PLASSON upon the basis of these Conditions of Sale, these Conditions of Sale shall be incorporated into every subsequent agreement for purchase of Goods by that Customer from PLASSON unless specifically varied or excluded in the manner prescribed by clause 2.1.

## 3. QUOTATIONS AND ENTRY INTO AGREEMENT

3.1. No brochure, catalogue, price list, quotation or other communication published or forwarded by PLASSON to the Customer, whether in writing or not, shall constitute anything other than an invitation by PLASSON to the Customer to do business and shall not represent that the Goods or Charges referred to in them shall be available to the Customer. Any purchase order placed by the Customer with PLASSON constitutes only an offer to purchase Goods. Notwithstanding any prior communication between PLASSON and the Customer, there shall be no obligation by PLASSON to accept an offer to purchase Goods made by a Customer. The Customer’s offer is only accepted by PLASSON issuing a Confirmation of Order to the Customer.

3.2. In the event of any inconsistency between the Customer’s purchase order or other request and PLASSON’s Confirmation of Order (which includes these Conditions), the terms of the Confirmation of Order shall prevail.

3.3. Unless otherwise stated in the Confirmation of Order prices quoted are exclusive of GST and the Customer is required to pay any GST payable by PLASSON.

## 4. FUNCTIONALITY AND PERFORMANCE

4.1. All information, specifications or other data provided by PLASSON in relation to the Goods represent approximations only and small deviations or slight variations from them which do not substantially diminish the functionality or performance of the Goods will not entitle the Customer to either reject the Goods or make any claim in respect of them.

4.2. Information provided by PLASSON in relation to the performance of Goods represents only a guide as to the performance of the Goods under optimum operating conditions.

4.3. Without limiting the operation of Clause 4.2, PLASSON may at its sole discretion provide the Customer with training manuals and other materials in relation to the Goods. PLASSON gives no representation or warranty as to the accuracy of such materials or the use of them by the Customer.



## 5. CHARGES

5.1. The Customer shall pay to PLASSON all Charges within thirty (30) days from end of the month without reduction or deferment on account of any claim, counterclaim or setoff.

5.2. The Customer acknowledges that the cost of transportation and freight for the Goods is not included in the Charges and the Customer shall pay a reasonable additional fee for such costs. All other charges such as duty, insurance and taxes and other related expenses shall unless otherwise agreed in writing) be paid by the Customer.

5.3. Should the Customer fail to pay any amount when due to PLASSON, the Customer shall be liable to pay to PLASSON without demand interest thereon at the rate of 1% above the rate charged on commercial overdraft accounts in excess of \$100,000.00 applicable from time to time and charged by PLASSON's bankers as nominated by Plasson at the relevant time. Interest payable hereunder shall be compounded monthly and calculated from the due date for payment to the date upon which payment is actually made.

5.4. Notwithstanding anything else appearing in the Agreement, all Charges shall immediately become due if the Customer shall fail to make any payment when due or shall become subject to the bankruptcy laws or enter into any composition with its creditors or enter into any liquidation or suffer a receiver or receiver and manager to be appointed for all or part of its assets.

5.5. Where payment of the Charges or part of the Charges is due prior to delivery of the Goods and where the Customer fails to make such payment, PLASSON may withhold delivery and give the customer a notice requiring payment to be made within seven days. Should the Customer fail to make the payment which is due within the time required by the notice, PLASSON may terminate the Agreement.

## 6. PROPERTY OF GOODS PURCHASED

6.1. No legal or equitable title to the Goods shall pass to the Customer until payment in full has been made by the Customer not only of all Charges for all Goods the subject of the Agreement (unless waived in writing by PLASSON) but also until payment has been made of all Charges for all goods previously supplied by PLASSON to the Customer.

6.2. Subject to Clause 6.5, until the legal and equitable title to the Goods passes to the Customer, the Customer shall

- (a) Hold the Goods as bailee of PLASSON returnable at will and without prior demand by PLASSON;
- (b) Store the Goods in such a manner as enables them to be readily identified and distinguished from all other goods held by the Customer and, where such other goods include goods previously supplied by PLASSON to the Customer and in respect of which title has passed to the Customer, then the Customer shall attach to the Goods in respect of which title has not passed a notice indication that the Goods are held as bailee for PLASSON.
- (c) Upon demand by PLASSON immediately deliver up the goods to PLASSON; and
- (d) Authorise and the Customer does here by authorise PLASSON to enter upon the premises upon which the Goods are stored for the purpose of taking possession of them.

## 7. SERVICE

Some Goods may require recalibration annually or at other periods nominated by PLASSON. The Customer may at its own cost transport and deliver the Goods to and from PLASSON's nominated premises from time to time. On receipt of the Goods, PLASSON agrees to recalibrate the Goods (if necessary) provided that the Customer pays PLASSON its then current service charges in respect of such recalibration.

## 8. INTELLECTUALPROPERTY LICENCE

PLASSON hereby grants to the Customer a nonexclusive licence to use any software or firmware used in connection with the Goods and supplied by PLASSON. The licence shall be subject to any terms and conditions imposed by PLASSON or the owner of copyright in the software or firmware.

## 9. FINANCIER

9.1. If Plasson sells the Goods to a third party financier (the "Financier") at the request of the Customer, then PLASSON agrees to grant the licence referred to in Clause 10 to the Customer.

9.2. The Customer represents and warrants to PLASSON that if PLASSON sells the Goods to a Financier at the request of the Customer, the Customer shall continue to be bound by all of the terms of the Agreement in relation to the use of the Goods as if the Customer continued to be the legal and equitable owner of the Goods.

## 10. DELIVERY AND RISK

10.1. The Goods are sold on an Ex Works basis: delivery of the Goods will occur when the Goods are placed at the disposal of the Customer at PLASSON's premises and risk of loss or damage to the Goods then passes to the Customer. In these circumstances, PLASSON may agree to arrange carriage of the Goods for the Customer, but will do so as the agent for the Customer and delivery will occur and risk will pass when the Goods are placed at the disposal of the carrier. The Customer shall pay to PLASSON its Charges for carriage incurred upon the Customer's behalf.

10.2. Delivery dates represent only an estimation of the date of delivery of the Goods and are not binding on PLASSON. Nothing in the Confirmation of Order shall be construed as making time of the essence in the Agreement unless it is expressly stated to be so.

10.3. PLASSON reserves the right to deliver the Goods by installments and to invoice the Customer for each installment of Goods delivered where, in the opinion of PLASSON, it is reasonable to do so.

10.4. Failure by the Customer to pay for any installments, or any other amounts when due, shall entitle PLASSON to withhold or delay delivery of any remaining Goods.

10.5. If PLASSON determines that it is or may be unable to deliver the Goods within a reasonable time or at all, PLASSON may at its sole discretion terminate the Agreement. In the event of termination the Customer shall have no claim against PLASSON for any damage, loss or expense whatsoever.

10.6. If PLASSON is unable to effect delivery, PLASSON may store the Goods and charge the Customer for all costs and expenses associated with such storage and delayed delivery.

10.7. Subject to any express warranty provided in writing by PLASSON to the Customer, failure by the Customer to notify PLASSON within seven days of delivery that the Goods are not in accordance with their description in the Confirmation of Order shall constitute an unqualified acceptance of the Goods and a waiver by the Customer of all claims with respect to the Goods.

10.8. In arranging carriage, storage, insurance and forwarding of the Goods PLASSON shall at all times be acting as the Customer's agent and all Charges in relation to same shall be reimbursed by the Customer. This clause shall also apply to any partial delivery of the Goods.

## 11. IMPLIED TERMS AND LIMITATION OF LIABILITY

11.1. Where conditions, warranties or other rights for the benefit of the Customer are implied or given in respect of the Agreement by Competition and Consumer Act, 2010 and / or the Sales of Goods Act 1896 (as amended) or other laws and it is not lawful or possible to exclude the same, then such conditions, warranties or other rights shall (but only to the extent required by law) apply to the Agreement. Save as aforesaid all such implied conditions, warranties and rights are hereby excluded. 11.2. To the extent permitted by law, liability of PLASSON for breach of this contract by PLASSON or negligence of PLASSON or for breach of any conditions or warranty implied by the Competition and Consumer Act, 2010 and / or the Sales of Goods Act 1896 (as amended) shall be limited to one of the following at PLASSON's option:

- (a) the replacement of the Goods or the supply of equivalent Goods; or
- (b) the repair of the Goods; or
- (c) the payment of the costs of replacing the Goods or of acquiring equivalent Goods;
- (d) the payment of the cost of having the Goods repaired; and in the case of services supplied, to one of the following (as PLASSON may determine):
  - (1) the supplying of the services again, or
  - (2) the payment of the costs of having the services supplied again.

11.3. Save as expressly provided in any written warranty provided in writing by PLASSON to the Customer and in Clauses 11.1 and 11.2 and notwithstanding any implication arising from any other clauses in the Agreement, PLASSON shall not be liable to the Customer or any person claiming under it in contract or in tort for, or in respect of, any direct, indirect or consequential loss, damage, expense or injury suffered by the Customer or any other person whatsoever, arising out of, in connection with or relating to the performance, nonperformance or any breach of the Agreement (including, by way of illustration and not in limitation, liability due to the negligence or wilful default of PLASSON) or any matter relating to the Agreement or any error (whether negligent or not) in information supplied to the Customer before or after the date of the Agreement in connection with its subject matter.

"Consequential loss" shall include but not be limited to loss of profit, use or good will (or similar financial loss), payment made or due to any other person and any loss or damage caused by delay in the performance of any obligation, together with any expenses incurred by the Customer in connection therewith, arising therefrom or incurred in mitigation or attempted mitigation of such loss or damage.



11.4. Clause 11.3 shall apply to all express warranties provided in writing by PLASSON except to the extent that those warranties specifically provide otherwise.

11.5. Where any law implies into the Agreement a condition that the Goods are of merchantable quality, and the Goods are purchased by the Customer for particular purpose, the Goods will not be considered by the Customer as being fit for any other purpose, whether or not that other purpose is one for which goods of that kind are commonly bought.

## **12. DEPOSIT**

12.1. Where PLASSON agrees to supply Goods upon the condition that a deposit of part or all of the charges is paid prior to delivery ("the Deposit"), in the event that the Customer terminates the Agreement or fails to take delivery of the Goods or is otherwise in breach of its obligations to PLASSON so that PLASSON is entitled to terminate the Agreement, the Customer shall forfeit ten per cent of the Deposit to PLASSON for PLASSON's benefit and PLASSON shall refund the balance to the Customer.

12.2. The forfeiture of the Deposit shall not be deemed any limitation, in damages or otherwise including damages for loss of profits, of the liability of the Customer to PLASSON.

## **13. TERMINATION**

In addition to the rights of termination provided in the above conditions, PLASSON may terminate the Agreement upon the occurrence of any of the following events.

(a) Failure by the Customer to perform any obligation of this Agreement where such failure is not rectified within 30 days of notice from PLASSON requesting rectification.

(b) The Customer becomes bankrupt or an order is made or a resolution is passed for the winding up of the Customer or a ground arises on which a court may order its winding up or upon which a meeting may rely for the purposes of placing the Customer under official management or an inspector is appointed to investigate its affairs or it proposes to or enters into any arrangement, scheme, reconstruction or composition with creditors.

(c) A receiver of receiver and manager of the Customer's assets, income or business or any part thereof is appointed or a mortgagee goes into possession thereof and such appointment is not terminated or such possession does not cease within fourteen days.

(d) The Customer shall fail to pay its debts as they shall fall due or cease or threaten to cease to carry on business or sell, assign, transfer the whole or any part of its undertaking or assets otherwise than in the ordinary course of business.

(e) The Customer purports to assign its rights under the Agreement.

(f) Any event occurs outside the reasonable control of PLASSON which in PLASSON's estimate makes it impracticable or impossible to for it to fulfil its obligation under the Agreement.

## **14. FORCE MAJEURE**

14.1. PLASSON will not be liable for any loss or damage suffered by the Customer due to any delay or any breach or default under the Agreement in circumstances where such delay, breach or default results from causes beyond PLASSON's reasonable control including but not limited to any breach or default under the Agreement by the Customer, compliance with any laws, regulations, orders, acts, instructions or priority requests of governments, acts of God, fires, floods, weather, strikes, lockouts, factory shutdown or alterations, embargoes, wares, riots, delay or shortage in transportation or inability to obtain labour, manufacturing facilities, electricity, oil or other materials from PLASSON's or the Manufacturer's usual sources.

14.2. Any delay resulting from such cause shall immediately extend the delivery date by the period of delay in which event the Customer shall take, if necessary, steps to secure payment for the Goods.

## **15. MISCELLANEOUS**

15.1 Any indulgence, latitude or extension of time which PLASSON may show towards the Customer in relation to any of the provisions of the Agreement or any matter or thing relating thereto or arising therefrom shall not in any way prejudice or interfere with PLASSON's rights under the Agreement and shall not be claimed to constitute a waiver thereof.

15.2 The Customer acknowledges that no oral terms or representations form part of the Agreement unless they have been reduced to writing and signed by PLASSON prior to entering into the Agreement.

15.3 Any notice to be given to a party shall be in writing and shall be sent by post, email or facsimile to the address of that party as shown in the Confirmation of Order or as subsequently notified by that party to the party giving the notice and shall be deemed to have been given at the time it would have been received in the normal course of post if forwarded by post and if otherwise given at the time it was actually received.

15.4 The Agreement shall be governed by the laws of New South Wales and the parties agree to submit to the jurisdiction of the Courts for that State.

15.5 In the event of PLASSON seeking to recover any amount due from the Customer or to enforce any of its other rights under the Agreement, the Customer undertakes to pay to PLASSON any costs incurred by PLASSON in so doing, including any legal costs incurred on the solicitor and own client basis.

## 16. SECURITY INTEREST

(a) The Customer hereby acknowledges that these terms and conditions of sale constitute a security agreement which creates a Security Interest in favour of PLASSON and in all Goods supplied by PLASSON to the Customer and all after acquired Goods supplied to the Customer by PLASSON (or for the Customer's account) to secure the payment from time to time for Goods, including future advances. The Customer agrees to grant to PLASSON a Purchase Money Security Interest.

(b) The Customer gives PLASSON a Security Interest in all of its present and after acquired property in which Goods supplied or financed by PLASSON have been attached or incorporated, including any Commingled Goods and in any proceeds of sale of Goods.

## 17. GENERAL COVENANTS

(a) Until such time as payment in full has been received by PLASSON from the Customer in respect to an Order, the Customer covenants to PLASSON not to create, cause or permit to exist any other Security Interest over any Goods the subject of the applicable Order, other than a Permitted Security Interest and covenants that it shall comply with the terms of each Permitted Security Interest binding on it in respect of the relevant Goods from time to time and shall ensure that: (i) there is no increase in the amount secured under a Permitted Security Interest (excluding any part of a Permitted Security Interest which is a purchase money security interest); and (ii) there is no variation to a Permitted Security Interest that increases the collateral the subject of the Permitted Security Interest, other than in the case of a purchase money security interest, without obtaining the prior written consent of PLASSON. (b) The Customer covenants to PLASSON that it shall sign anything and do anything PLASSON requires to further or more effectively secure PLASSON's rights over the applicable Goods or under these terms and conditions. This includes anything PLASSON requires in order for it to: (i) register and maintain (including renew before expiry) one or more financing statements in relation to any Security Interest in the relevant Goods created by these terms and conditions and/or any Order; (ii) remove any financing statement which is registered against the Customer or in relation to a Security Interest which is not a Permitted Security Interest; and (iii) obtain possession or control of any Goods for the purposes of perfecting any Security Interest in that property by possession or control for the purposes of the PPSA. (c) The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by or on behalf of PLASSON under the PPSA to the extent permitted by the PPSA and agrees to that as between PLASSON and the Customer, to the extent permitted by the PPSA, the Customer will have no rights under (or by reference to) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.