

## **TERMS AND CONDITIONS**

### **1. Interpretation**

#### 1.1 In these conditions:

- (a) `Company' means **PURPLE LINE PTY LTD** ACN 147 825 250 of 12 Capital Court, Braeside, Victoria (including its successors, assigns, subsidiaries, affiliates and associates) which is the seller of the goods.
- (b) `Customer' means the Customer of the goods as nominated on a purchaser order for purchase of the goods which is made out to the Company at any given time.
- (c) `Goods' means the goods and/or services as nominated on a purchaser order made out to the Company at any given time.
- (d) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

### **2. General**

- 2.1 These conditions (which shall only be waived or modified in writing signed by the Company) prevail over all conditions of the Customer's order to the extent of any inconsistency. If the Customer has a trading account, the terms of their credit account application are intended to be read together with these conditions however the terms of their credit account application shall prevail over these conditions to the extent of any inconsistency.

### **3. Terms of sale**

- 3.1 The goods and all other products sold by the Company are sold on these terms and conditions.
- 3.2 Any orders received by the Company from the Customer for the supply of goods and/or the acceptance of goods supplied by the Company shall constitute an irrevocable acceptance of these terms and conditions by the Customer to the extent permissible by law.

### **4. Company's quotations**

- 4.1 Unless previously withdrawn, Company's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The Company reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.
- 4.2 Prices quoted refer to the entire quotation and are subject to change by the Company if only part of quotation is then ordered.

### **5. Packing**

- 5.1 The cost of any special packing and/or packing materials used in relation to the goods are at the Customer's expense notwithstanding that such cost may have been omitted from any quotation.

### **6. Shortage**

- 6.1 The Customer waives any claim for shortage of any goods delivered if a claim in respect for short delivery has not been lodged with Company within 24 hours of delivery and then confirmed in writing within 7 days from the date of receipt of goods by the Customer.

## **7. Descriptions**

7.1 The descriptions, illustrations and performances contained in catalogues, price lists, packaging and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods.

## **8. Performance**

8.1 Any storage, installation, maintenance or other guidelines given by the Company are estimates only. The Company is under no liability for damages for failure of the goods notwithstanding adherence to said guidelines unless specifically guaranteed in writing. Any such written guarantees are subject to recognised tolerances.

## **9. Delivery**

9.1 The delivery times made known to the Customer are estimates only and the Company is not liable for late delivery or non-delivery.

9.2 The Company is not liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery of the goods.

9.3 The Company may at its option deliver the goods to the Customer in any number of instalments unless there is an endorsement on the purchase order to the effect that the Customer will not take delivery by instalments.

9.4 If the Company delivers any of the goods by instalments, and any one of those instalments is defective for any reason:

- (a) it is not a repudiation of the contract of sale formed by these conditions; and
- (b) the defective instalment is a severable breach that gives rise only to a claim for compensation.

9.5 Delivery is from the Company's premises unless otherwise specified.

## **10. Loss or damage in transit**

10.1 The Company is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to that loss or damage).

10.2 The Company must provide the Customer with such assistance as may be necessary to press claims on carriers so long as the Customer:

- (a) has notified the Company and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
- (b) lodges a claim for compensation on the carrier within 7 days of the date of receipt of the goods.

10.3 The goods are at the Customer's risk upon the earliest to occur of them being delivered to carrier, delivered to the Customer's premises or collected from the Company by the Customer or their authorised representative.

## **11. Warranty Against Defects**

11.1 The Company does not provide any warranty against defects whether express or implied. To the extent that any of these conditions purport to provide a warranty against defects (except as provided in provision 11.2) it shall be read down. If it cannot be so read down the provision

(or where possible the offending word) shall be severed from these conditions without effecting the validity, legality or enforceability of the remaining provisions (or part of those provisions) of these conditions which shall continue in full force and effect.

11.2 If the goods are not manufactured by the Company, any warranty against defects of the manufacturer of those goods is accepted by the Customer and is the warranty against defects given to the Customer in respect of the goods. The Company agrees to assign to the Customer on request made by the Customer the benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Company under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

11.3 Except as provided in these conditions, all express and implied warranties under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Company is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the Company's negligence or in any way whatsoever.

## **12. Consumer Guarantees**

12.1 The Company's liability for a breach of a guarantee under Div I of Part 3-2 of Schedule 2 of the Competition and Consumer Act 2010 (other than section 51, 52 or 53) for the supply of goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption is limited to:

(a) in the case of goods, any one or more of the following:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (iv) the payment of the cost of having the goods repaired; or

(b) in the case of services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

12.2 The Company's liability under s 274 of Schedule 2 of the Competition and Consumer Act 2010 for the supply of goods not of a kind ordinarily acquired for personal, domestic or household use or consumption is expressly limited to a liability to pay to the consumer an amount equal to:

- (a) the cost of replacing the goods;
- (b) the cost of obtaining equivalent goods; or
- (c) the cost of having the goods repaired, whichever is the lowest amount.

12.3 To the extent permissible by law, the Customer will indemnify the Company against any unauthorised express or implied warranty or representation under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise made by any agent, employee or representative of the Customer to a third party. For the avoidance of doubt, a warranty or representation will be unauthorised unless the warranty or representation has previously been made by the Company or authorised by it.

### **13. Prices**

- 13.1 Unless otherwise stated all prices quoted by the Company are net, exclusive of Goods and Services Tax (GST). Prices are quoted in Australian dollars.
- 13.2 Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of wates, cost of materials and other charges affecting the cost of production ruling on the date is made. Subject to Clause 4.1, prices are subject to change without notice.
- 13.3 If the Company makes any alterations to the price of the goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Customer's account.
- 13.4 At the Company's sole discretion, a deposit may be required at the time of order.
- 13.5 Any claim or dispute gives no right to the Customer to suspend or delay payment of the invoice.

### **14. Payment**

- 14.1 The purchase price in relation to goods unless otherwise stated is payable net and payment of the price of the goods must be made -
- (a) In accordance with the terms of their Credit Application for customers with a trading account; or
  - (b) cash on delivery without an account.
- 14.2 Notwithstanding clause 14.1, the Company may require payment of the full price of the goods prior to delivery of the goods as a condition of accepting an order. All orders made through the website are payable in full upon order.
- 14.3 Payment must be made by cheque, VISA, Mastercard, Electronic Funds Transfer or such other method as approved by the Company.
- 14.4 If any payment is not made by the Customer to the Company on the due date thereof:
- (a) The Company will charge interest at the rate of 2% higher than the rate specified in the Penalty Interest Rate Act 1983 (Victoria) per month calculated on daily rests on all overdue accounts until such time as payment is made in full;
  - (b) The Company reserves the right, and without prejudice to its other rights hereunder and at law, to cancel orders or to suspend deliveries of other goods until such payment has been made; and
  - (c) All monies owing to the Company including all monies owing to the Company for goods sold shall become immediately due and payable and the Customer shall indemnify the Company against all costs (including Solicitor and own client costs, commercial agents, commissions, freight, surcharges, fees, insurances, accounting costs, loss of profit and all interest) incurred by the Company as a result of such default in the action taken by the Company in respect of the same.

### **15. Customer's property**

- 15.1 Any property of the Customer under the Company's possession, custody or control is completely at the Customer's risk as regards to loss or damage caused to the property or by it.

## **16. Storage**

- 16.1 The Company reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Company for such instructions. The parties agree that the Company may charge for storage from the first day after the Company requests the Customer to provide delivery instructions.
- 16.2 In regards to a claim for a charge for storage under clause 16.1, the Customer acknowledges that fulfilment of the terms of payment are established and that the Company shall be entitled to issue the relevant invoice on those terms.

## **17. Returned goods**

- 17.1 The Company is not under any duty to accept goods returned by the Customer and will do so only on terms to be agreed in writing in each individual case.
- 17.2 If the Company agrees to accept returned goods from the Customer in accordance with this clause, the Customer must return the goods to the Company at the Company's place of business referred to at the head of these conditions.
- 17.3 Goods which are damaged or which were specially manufactured or prepared for the particular order are only acceptable for return to the extent required by law.
- 17.4 The Company may charge the Customer a re-stocking fee for any returned goods. The fee will be 10% of the contract price.

## **18. Goods sold**

- 18.1 All goods to be supplied by the Company to the Customer are as described on the purchase order agreed by the Company and the Customer and the description on such purchase order as modified as so agreed prevails over all other descriptions including any specification or enquiry of the Customer.

## **19. Cancellation**

- 19.1 No order may be cancelled by the Customer except with consent of the Company in writing and on terms which will indemnify the Company against all losses.
- 19.2 Orders for specifically manufactured or prepared goods cannot be cancelled by the Customer to the extent permissible at law.
- 19.3 The Company may cancel these terms and conditions or cancel delivery of goods pursuant to any order at any time before the Goods are delivered by giving notice in writing. The company shall not be liable for any loss or damage whatsoever arising from such cancellation.

## **20. Place of contract**

- 20.1 The contract for sale of the goods is made in the State of Victoria.
- 20.2 The parties submit all disputes arising between them to the courts of the State of Victoria and any court competent to hear appeals from those courts of first instance.

## **21. Force Majeure**

- 21.1 The Company will not reasonably be held responsible for act of GOD or by any Act or omission by a third party which the Company cannot reasonably be held responsible for including but not limited to storm, tempest, cyclone, flood, water damage, earthquake, tsunami, act of war or terrorism, electrical black out or cyber act of whatsoever nature.

## **22. Customer's Disclaimer**

- 22.1 The Customer agrees to disclaim any right to rescind or cancel the Contract or to claim for damages or restitution arising out of any alleged misrepresentation by any employee, agent or representative of the Company.
- 22.2 The Customer agrees and acknowledges that the Customer buys the Goods relying solely upon the Customer's own skill, judgment and evaluation of the Goods.
- 22.3 The Company is not responsible and accepts no liability for obtaining any permits or licences required under the relevant laws and regulations for the usage of the goods supplied by the Company to the Customer.
- 22.4 The Customer agrees that the Company shall not be liable to the extent permissible at law for technical advice or assistance given in good faith for which it is not contractually bound to provide.

## **23. Intellectual Property**

- 23.1 The copyright and all other intellectual property in the goods, including labelling and packaging, vested in the Company shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 23.2 Where the Company has designed, specified, or created product design drawings for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 23.3 Where the Customer has supplied drawings, the Customer shall indemnify the Company for the specifications and design of the Goods (including the copyright, design right or other intellectual property in them). Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

## **24. Privacy Act 1988**

- 24.1 The Customer agrees for the Company to obtain from a credit reporting body credit eligibility information, credit information, credit reporting information, and/or credit worthiness of the Customer if the Customer requires a trading account.
- 24.2 The Customer agrees that all personal information including any credit eligibility information, credit information, credit reporting information, and/or credit worthiness provided to the Company may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company in accordance with the Company's Privacy Policy:
- (a) provision of Services and Goods;
  - (b) marketing of services and/or Goods by the Company, its agents or distributors in relation to the services and Goods subject to the Company's Privacy Policy (direct marketing);
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of services/Goods;
  - (d) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and
  - (e) enabling the daily operation of the Customer's account and/or collection of amounts outstanding in the Customer's account in relation to the services and Goods.
- 24.3 If the Customer requires a trading account, the Company may provide information about the

Customer to a credit reporting body for the following purposes:

- (a) to obtain credit eligibility information, credit information, credit reporting information, and/or credit worthiness of the Customer; and/or
- (b) allow the credit reporting body to create or maintain a credit information file containing information about the Customer.

**25. Confidentiality and secrecy obligation.**

25.1 The Customer is obliged to observe the utmost confidentiality as regards all technical and commercial information received from the Company in execution of this Contract.

25.2 In relation to such information, even after the execution of this Contract, the Customer is obliged to:

- (a) keep it with the utmost diligence and confidentiality and return it to the Company when requested to do so;
- (b) refrain from reproducing, copying, transmitting or revealing it to third parties, unless within the limits explicitly authorised in writing by the Company;
- (c) refrain from applying for patents;
- (d) refrain from producing or having third parties produce, or providing third parties with, for any reason, directly or indirectly, products using the above technical information;
- (e) to impose and guarantee observance of the obligations deriving from this clause on all officers, employees or contractors of the Customer.

25.3 In the event of violation of the confidentiality and secrecy obligation set out in this Clause, the Customer shall be obliged to pay the Company, as a penalty, the amount equal to 30% of the Goods purchased in a calendar year as a pre-estimate of the damages. This shall, naturally, not affect the Company's right to obtain compensation for any further damage suffered.