

TERMS AND CONDITIONS

1. GENERAL

In these terms and conditions (unless the context requires otherwise):

- **"Company"** means Chicago Blower Oceania Pty Ltd ABN: 29 635 632 843
- **"Consignment Address"** means the delivery address of the Customer stated in an Order or otherwise agreed by the Company;
- **"Customer"** means a person, firm or corporation seeking to acquire Goods or services from the Supplier and where applicable includes the Applicant in the Commercial Credit Application and, if the Customer consists of more than one person, each of them jointly and severally;
- **"Goods"** means any goods or materials supplied or to be supplied by the Company to the Customer.
- **"GST"** means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended) ("GST Act")
- **"Order"** means a Customer order placed with the Company for the supply of Goods;
- **"Other Property"** means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant;
- **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended;
- **"Related Body Corporate"** has the same meaning as in the Corporations Act; **and**
- **"Security Agreement"** and **"Security Interest"** have the meaning ascribed to them in the PPSA;

2. QUOTATIONS

- 2.1 A quotation by the Company shall be an invitation to treat and shall not constitute an offer. Any modification to a quotation will be effective only if it is expressed in writing and signed by a duly authorised officer of the Company.
- 2.2 Quotations are valid for a maximum of 30 days from date of quotation unless otherwise stated in writing.
- 2.3 All quotations are subject to rise and fall of any applicable raw material indices.

3. CONTRACT FOR SALE OF GOODS

- 3.1 Each Order constitutes an offer by the Customer to acquire the Goods subject strictly to these terms and conditions and to the exclusion of any other terms and conditions asserted by the Customer. A contract will be made between the Company and the Customer for the supply of Goods only when an Order is accepted by the Company in writing, orally or by conduct.
- 3.2 The Company may at any time refuse to extend credit to the Customer and need not give any reason for its refusal.
- 3.3 These terms and conditions supersede all previous terms and conditions and may only be varied if authorised in writing on behalf of the Company. Any order placed, or Goods or services supplied at the request of the Customer, will be deemed to be the Customer's acceptance of these terms and conditions.

4. PAYMENT

- 4.1 The price for the Goods must be paid immediately upon notification to the Customer that goods are ready for despatch, unless other terms of payment are expressly stated in writing and signed by the Company.
- 4.2 Selected orders (e.g. initial orders, one offs, and large orders) may require a deposit prior to work commencing, and/or progress payments. This will be decided by the Company at its sole discretion, and advised to the customer at time of order acceptance.
- 4.3 In the event the Customer fails to make payment to the Company when payment falls due, the Company shall have the right, without prejudice to any other right or remedy the Company may be entitled, to charge interest on any overdue invoice at a rate of 2% per annum in excess of the rate of penalty interest current at the date of default pursuant to the Penalty Interest Rate Act 1983 (Vic) calculated and payable daily and compounded from the due date until the invoice is paid in full. The Customer also must pay all costs and expenses (including legal costs), which may be incurred by the Company in the recovery of the overdue amounts. Any payment by the Customer shall be credited first against any interest so accrued and the balance, if any, shall be applied in reduction of the outstanding balance of the price.
- 4.4 The extension of credit facilities and the terms upon which such credit is provided are, in all cases at the sole discretion of the Company and are subject to confirmation on the receipt of an Order. In any event the Company retains the right to withdraw credit facilities at any time prior to delivery of Goods.

5. PRICES & GST

- 5.1 All prices must be as quoted or be in accordance with the Company's current price at the time of the Order whichever is the higher. Verbal quotations are subject to written confirmation.
- 5.2 All listed, published or quoted prices (unless otherwise expressly indicated) are exclusive of any applicable GST or any other applicable taxes, duties, costs and charges associated with the delivery of the Goods, and all such taxes, duties, costs and charges shall be included as an additional item to the invoiced price.
- 5.3 The Customer and Company agree to keep confidential these terms and conditions, including the price of the Goods, except as required by law.

6. DELIVERY OF GOODS

- 6.1 The Company will use reasonable endeavours to meet all quoted delivery or consignment dates, but the Company will not be liable to the Customer for any delay in delivery caused by any reason whatsoever.
- 6.2 If the Customer wishes to use its own carrier, delivery of the Goods shall be ex-Company's store and the Customer shall pay all freight and insurance costs ex-Company's store and shall indemnify the Company against all actions, suits, proceedings, claims demands and all losses, expenses and liabilities, howsoever arising, for the transportation of the Goods delivered ex-Company's store.
- 6.3 The Company, at its option, may extend the quoted delivery or consignment dates or consign part of an Order or suspend consignment or may cancel any Order and the Customer shall not be relieved of the obligation to accept and pay for an Order, or any part of an Order, in accordance with clause 4, as a result

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of any such extensions, partial consignments or suspensions.

- 6.4 Delivery times and dates made known to the Customer will be estimates only and the Company will not be liable for late delivery or non-delivery and under no circumstances will the Company be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery of the Goods.
- 6.5 The Company will be conclusively presumed to have delivered the Goods in accordance with these terms and conditions if the Goods are delivered to the Consignment Address, whether or not the Company obtains a receipt or signed delivery docket for the Goods from any person.
- 6.6 If delivery cannot be affected, the Company may store the Goods or redeliver the Goods to the Customer and the Customer must pay or indemnify the Company for all costs and expenses incurred.
- 6.7 The Company will not be responsible for any loss or damage to Goods in transit.
- 6.8 The Company will render to the Customer such assistance as may be necessary to press claims on the carriers provided the Customer must have notified the Company and the carrier in writing immediately of any loss or damage is discovered on receipt of Goods and must lodge a claim on the carrier within 3 days of the date of receipt of the Goods.
- 6.9 In the event of the Company agreeing to the return of the Goods or any part thereof by the Customer, the Goods will be at the Customer's risk until such time as the Goods reach the Company's premises. Made to order Goods or Goods that are not a stock item will not be accepted for return. All expenses of return will be borne by the Customer and a 20% handling charge will be applied to any Goods accepted for return. Any Goods accepted for return must be returned to the place of manufacture or distribution. Where an Order is cancelled after production of the Goods, a 20% cancellation fee may be charged.

7. STORAGE OF GOODS

In the event that, after notification to the Customer that the Goods are ready for delivery, delay in delivery is caused by the Customer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Company, the Company shall be entitled, at its option, to arrange suitable storage, whether at its premises or elsewhere, and shall take reasonable steps to protect the Customer's interest in the Goods. The Customer shall pay all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

8. RISK AND SUPPLY

- 8.1 All Goods sold to the Customer shall be at the Customer's risk immediately upon delivery to or collection by the Customer, the Customer's nominee, the Customer's carrier, except where Goods are held for the Customer in accordance with clause 7, in which case risk shall pass to the Customer on the date being seven (7) days from the date of notification to the Customer that the Goods are ready for delivery.
- 8.2 The Company reserves the right to:
- (a) Withhold supply to the Customer where:
- (i) the Company has insufficient Goods to fulfil the Order,
- (ii) the Goods and/or services ordered have been discontinued,

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(iii) the Customer is in breach of any contract with the Company, or

(iv) the Company otherwise considers it appropriate for any other reason;

(b) Supply by instalments. The exercise of these rights by the Company or delay in supply for any other reason does not entitle the Customer to terminate any contract with the Company or claim any loss or damage.

8.3 The Customer shall provide at the delivery place free of charge all hoisting facilities of adequate size and capacity to lift the Goods without disassembling. Unless the Company otherwise agrees all Goods to be hoisted will not be disassembled in any way to suit the hoisting facilities provided. The Customer agrees to pay any additional costs thereby incurred which will be added to the contract price.

9. PASSING OF PROPERTY IN GOODS

9.1 The Customer agrees:

- a) that these terms and conditions constitute a Security Agreement for the purposes of the PPSA;
- b) that these terms and conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Company to secure the purchase price for the Goods;
- c) that the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Company elects in writing to retain Part 4.3 (which the Company may elect to do either in whole or in part); and
- d) to waive its right to receive notice of a verification statement in relation to registration of a Security Interest.

9.2 The Customer:

- a) further agrees that these terms and conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and
- b) separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant, in favour of the Company to secure payment and performance of all the Customer's obligations under these terms and conditions.

9.3 The Customer agrees:

- a) title and property in all Goods remain vested in the Company and do not pass to the Customer;
- b) the Customer must hold the Goods as fiduciary bailee and agent for the Company;
- c) the Customer must keep the Goods separate from its own goods and maintain the labelling and packaging of the Company;
- d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Company in a separate account;
- e) the Customer must deliver up all Goods to the Company immediately upon service of a written demand; and

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- f) the Company may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Company, and for this purpose the Customer irrevocably licences the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action, until full payment in cleared funds is received by the Company for all Goods supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer.
- 9.4 The Customer may resell the Goods in the ordinary course of its business (but may not otherwise sell or encumber the Goods) and if it does so shall receive the proceeds of resale as trustee of the Company, to be held on trust for the Company. The Company shall be entitled to trace the proceeds of resale.
- 9.5 To assure performance of its obligations under these terms and conditions, the Customer hereby grants the Company an irrevocable power of attorney to do anything the Company considers should be done by the Customer pursuant to these terms and conditions. The Company may recover from the Customer the cost of doing anything under this clause 9, including registration fees.

10. WARRANTY/LIABILITY

- 10.1 Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 10.2 The Company warrants that all Goods manufactured or supplied by it will be free of defects in workmanship and materials for a period of 12 months from the date of commissioning but not exceeding eighteen (18) months from the date of invoice to the Customer provided that the Goods are installed according to the requirements of AS/NZS3000:2007 Australian/New Zealand wiring rules.
- 10.3 The Company is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused arising from the supply of the Goods, including but not limited to loss of turnover, profits, business or goodwill.
- 10.4 The Company will not be liable for any loss, damage or claim suffered by the Customer where the Company has failed to meet any delivery date or cancels or suspends the supply of Goods or for any Goods that display a "use-by" date that are sold or distributed by the Customer after that date.
- 10.5 Nothing in these terms and conditions 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 which cannot be excluded, restricted or modified. If any of these terms and conditions is inconsistent with State or Federal legislation, such terms and conditions must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.
- 10.6 If the Customer is a "consumer" within the meaning of Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Company's liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to any one of the following as determined by the Company:

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- a) the replacement of the Goods or the supply of equivalent Goods or in the case of services, supply the services again or pay the costs of having the services supplied again; or
- b) the payment of the cost or replacement of the Goods or of acquiring equivalent Goods.

10.7 The Customer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in the Order or these terms and conditions whether as to the fitness of the Goods for any particular purpose or any other matter.

11. SPECIFICATIONS AND INFORMATION

Where the Company is not the manufacturer, the Company relies on the specifications and warranties supplied by the manufacturer.

12. INTELLECTUAL PROPERTY

12.1 The Customer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Goods shall not pass to the Customer. The Customer shall indemnify the Company against any and all liabilities, claims and costs incurred by or made against the Company as a direct or indirect result of carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.

12.2 If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the Goods infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of third parties, the Customer shall forthwith notify the Company thereof and give every assistance to the Company in connection therewith as the Company may reasonably require and shall not itself handle, deal with or compromise any such action, suit, proceedings, claim or demand except with the prior written consent of the Company.

13. CANCELLATION

No Order may be cancelled except with the Company's consent in writing and on terms which will indemnify the Company against all losses.

14. TERMINATION

14.1 The Company will be entitled to terminate any Order with the Customer or revoke any credit terms granted if the Customer fails to punctually pay moneys due to the Company, has any security enforced against it, commits an act of bankruptcy or, being a company, passes a resolution for winding up (except for the purposes of reconstruction) or a court makes an order winding up the Customer or if the Company notifies the Customer that it is of the view that the Customer or any Related Body Corporate of the Customer is in financial difficulties.

14.2 Upon the occurrence of a termination event referred to in Clause 14.1, the Company reserves the right to cancel an Order with the Customer (to the extent that the Order remains unperformed) in whole or in part

without any liability attaching to the Company, stop any Goods in transit and dispose of the Goods produced for or supplied to the Customer, to a third party and all moneys owing to the Company in respect of any Order will be immediately payable by the Customer.

14.3 Termination is without prejudice to any right or obligation, which may have accrued prior to termination.

15. CLAIMS AND DISPUTES

Any claims as to quality or quantity of Goods supplied must be made within 7 days of delivery of the Goods to the Customer. In the event of a dispute between the Customer and the Company relating to either the quality, quantity or delivery of the Goods, the Customer agrees to pay the Company all such amounts owing to the Company by the Customer until such time as the dispute is resolved.

16. FORCE MAJEURE

- 16.1 The Company will not be liable for any loss incurred as a result of delay or failure to meet an accepted Order or to observe any of these terms and conditions (other than an obligation to pay money) due to an event of force majeure, being any cause or circumstance beyond the Company's control, including but not limited to any failure or delay in performance caused by any strikes, lockouts, labour disputes, fires, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any or any semi-government authorities or embargoes.
- 16.2 During the continuance of an event of force majeure affecting the Company, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

17. SEVERABILITY

If any of these terms or conditions infringes any law in Australia they must be read down so that they do not infringe that law, otherwise such parts will be deemed void and severable.

18. GOVERNING LAW

These terms and conditions are governed by and must be construed in accordance with the laws of Victoria and the Customer hereby agrees to submit to the exclusive jurisdiction of the courts of Victoria and any court of appeal there from.

19. MISTAKE OR OMISSION

Any mistake on any quotation, Order, invoice, delivery document or other document issued by the Company in relation to the Goods shall not be binding on the Company and the Company may in its discretion issue such amended document as is required to rectify such mistake. The Customer shall comply with the Company's amended document.