

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In these conditions:

"Agreement" means any agreement or contract entered into for the provision of goods and/or services by DEPS to the Customer;

"DEPS" means DEPS Pty Ltd (ACN 061 659 112) of 15 Embrey Court, Pakenham, Victoria 3810;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from DEPS;

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

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

"Price List" means the price list issued by DEPS from time to time;

"services" means services supplied by DEPS to the Customer; and

"Terms" means these Terms and Conditions of Sale.

2. BASIS OF AGREEMENT

2.1 Unless otherwise agreed by DEPS in writing, the Terms apply exclusively to every contract for the sale of goods or services by DEPS to the Customer and cannot be varied or supplanted by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 Any written quotation provided by DEPS to the Customer concerning the proposed supply of goods or services is:

(a) valid for 30 days;

(b) an invitation to treat only;

(c) subject to the Customer offering to enter into an Agreement and accepting these Terms.

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

2.4 The Agreement is accepted by DEPS when DEPS confirms its acceptance of an offer from the Customer in writing or by electronic means or provides the Customer with the goods or services.

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

2.6 It is the Customer's responsibility to provide DEPS with its specific requirements in relation to the goods and services.

2.7 DEPS may vary these Terms by notice in writing to the Customer at any time. Any variations will apply to orders made by the Customer after the date of notice.

3. PRICING

3.1 Prices quoted, whether in a Price List or brochure, by written quotation, on DEPS's website or verbally, 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. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 If the Customer requests any variation to the Agreement, including but not limited to changes in the method of packaging, DEPS may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by DEPS in relation to the goods or services, DEPS may vary its price for the goods or services in order to take account of any such change, by notifying the Customer.

4. PAYMENT

4.1 Unless otherwise agreed in writing:

(a) terms of payment are strictly cash on delivery, except for account customers, where credit is provided;

(b) where credit is provided, payment for the goods and/or services must be made within 30 days of the end of month in which DEPS's invoice is raised; and

(c) notwithstanding clause 4.1(b), DEPS reserves the right to require payment in full on delivery of the goods or completion of the services.

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

4.3 Payment terms may be revoked or amended at the sole discretion of DEPS immediately upon giving written notice to the Customer.

5. PAYMENT DEFAULT

5.1 If the Customer defaults in payment by the due date of any amount payable to DEPS, then all money which would become payable by the Customer to DEPS at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and DEPS may, without prejudice to any other remedy available to it:

(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 the DEPS from, all costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;

(c) cease or suspend for such period as DEPS thinks fit, supply of any further goods or services to the Customer; and

(d) by notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by DEPS;

without effect on the accrued rights of DEPS under any agreement.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of DEPS:

(a) where the Customer is an individual 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, provisional liquidator, administrator, receiver or receiver and manager appointed, 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 full payment in cleared funds is received by DEPS for all goods and services supplied by it to the Customer, as well as all other amounts owing to DEPS by the Customer:

(a) title and property in all goods remain vested in DEPS and do not pass to the Customer;

(b) the Customer must hold the goods as fiduciary bailee and agent for DEPS;

(c) the Customer must keep the goods separate from its goods and maintain the labelling of DEPS;

(d) the Customer is required to hold the proceeds of any sale of the goods on trust for DEPS in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;

(e) DEPS 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 DEPS, and for this purpose the Customer irrevocably licences DEPS to enter such

premises and also indemnifies DEPS from and against all costs, claims, demands or actions by any party arising from such action.

7. RISK AND INSURANCE

7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Customer immediately on the goods being despatched or collected from DEPS's premises.

7.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

7.3 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 or possession of any of the goods sold by DEPS, whether such goods are used singularly, or in combination with other substances, or any process.

8. ACKNOWLEDGMENTS

8.1 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 DEPS in relation to the goods or services or their use or application;

(b) it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by DEPS; and

(c) any description of the goods provided on DEPS's website, in any brochure or catalogue or other marketing brochure, or in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

9. PERFORMANCE OF AGREEMENT

9.1 Any period or date for delivery of goods or provision of services stated by DEPS is intended as an estimate only and is not a contractual commitment. DEPS will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services but will, in no circumstances whatsoever, be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.2 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

10. Delivery

10.1 If goods are to be delivered to the customer, DEPS will arrange the carrier.

10.2 If goods are to be collected by the Customer from DEPS premises, the Customer must arrange for collection of the goods within 7 days of notification that the goods are ready

10.3 The Customer will inform DEPS of all necessary details so that DEPS can effect the delivery of the goods.

10.4 The Customer will be responsible for all costs associated with delivery, including any special packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer to the point of delivery.

10.5 The Customer must provide reasonable and proper access to the location specified for delivery.

10.6 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 to Customer at cost plus a 10% service fee plus GST charged by DEPS.

10.7 If DEPS does not receive forwarding instructions sufficient to enable it to dispatch the goods within 14 days of notification that the goods are ready, the Customer shall be deemed to have taken delivery of the goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

10.8 Where it is necessary for DEPS to deliver the goods in other than a fully assembled condition (which facts will be stated in the quotation), the cost and responsibility of assembly and installation will fall to the Customer.

10.9 The Customer must advise DEPS in writing within 3 days of receipt:

(a) of the non arrival of any or all of the goods;

(b) if there is damage to the goods;

(c) that the wrong goods have been received;

(d) that the quantity of the goods is incorrect; or

(e) the goods do not meet specifications.

11. RETURNS

11.1 Goods may only be returned to DEPS:

(a) if the request to return is made in writing to DEPS, stating reason for the requested return;

(b) if the goods are not customised in any way or produced to a Customer specification;

(c) with the prior written consent of DEPS;

(d) if the Customer pays for all transport and handling costs to DEPS's warehouse;

(e) if the goods are accompanied by a copy of the original delivery docket or copy of invoice;

(f) following the acceptance of the return by DEPS, the payment by the Customer of a restocking and handling charge of between 10% and 20% of the invoice value, except where the wrong goods were delivered by DEPS, in which case there will be no restocking or handling charge; and

(g) if the goods are in an undamaged or unsoiled condition and in the original packaging, unless with the prior written consent of DEPS.

12. LIABILITY

12.1 Except as specifically set out herein, or contained in any warranty statement provided with the goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

12.2 Replacement or repair of the goods or resupply of the services is the absolute limit of DEPS's liability howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.

12.3 DEPS 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.

12.4 DEPS will not be liable for any loss or damage suffered by the Customer where DEPS has failed to deliver goods or services or fails to meet any delivery date or cancels or suspends the supply of goods or services.

12.5 Nothing in the 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 supply of services which cannot be excluded, restricted or modified.

13. CANCELLATION

13.1 If, through circumstances beyond the control of DEPS, DEPS is unable to effect delivery or provision of goods or services, then DEPS may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

13.2 No purported cancellation or suspension of an order for special order items or any part thereof by the Customer is binding on DEPS after that order has been accepted.

13.3 DEPS, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

13.4 DEPS will accept cancellation of orders, other than for special order goods, if the Customer provides written notice of the

cancellation prior to dispatch of the goods. A cancellation fee of 10% of the value of the cancelled order may be charged by DEPS.

14. SPECIFICATIONS

14.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in DEPS's catalogues, website and marketing or other documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

14.2 All specifications, drawings, illustrations, descriptive matter and particulars supplied, remain DEPS's property and are to be returned to DEPS on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without DEPS's prior consent in writing.

15. WARRANTY

15.1 Subject to clause 15.3:

- (a) DEPS, in its sole discretion if it deems necessary, may repair or replace any goods or the parts of any goods, or re-provide the services to remedy any failure due to faulty workmanship or materials, provided that the goods and services may have acceptable variance;
- (b) nothing in this clause will serve to extend a manufacturer's warranty;
- (c) DEPS, in its sole discretion if it deems necessary, may repair or replace any goods to remedy any failure due to faulty workmanship or materials, provided that the goods may have acceptable variance; and
- (d) any replacement or repaired goods will only be warranted for the unexpired portion of the warranty period attached to the original goods, and will be subject to the original manufacturer agreeing to a warranty claim by the Customer.

15.2 Provision of the Warranty is subject to:

- (a) the Customer not being in breach of this or any Agreement;
- (b) no longer than 12 months having elapsed from the date of dispatch of the goods from DEPS's premises;
- (c) DEPS or its representative, at its option, having access to the goods for the purposes of inspection, testing and verification of any claim;
- (d) the Customer returning the goods at its cost to DEPS for testing and confirmation of the claim;
- (e) the Customer has not repaired the goods in an unauthorised manner or altered the goods in any way;
- (f) the Customer uses and maintains the goods in accordance with DEPS's instructions and in accordance with commonly accepted operating practices; and

15.3 correct storage, siting and installation of the goods in accordance with DEPS's instructions. The Warranty excludes:

- (a) fair wear and tear;
- (b) damage or alteration to the goods arising from circumstances outside the control of DEPS, including, without limitation, power surges, where the goods are not used for their intended purpose, or where goods or any part of them have been changed in any manner;
- (c) the failure of goods that have been manufactured to a Customer's specification or design and that failure was caused by a Customer specification or design fault;
- (d) any problem that might arise due to poor installation or siting of the goods, including but not limited to, leaks at connection points to third party equipment such as remote compressors, and rewiring of controllers or lack of sufficient fresh air circulation;
- (e) any problem that has arisen as a result of the goods being subject to abnormal conditions, whether of temperature, water, humidity, pressure, stress or similar;
- (f) damage due to, or failure of, the goods resulting from ground pressure, soil/ground movement or settling, changes to the moisture content of the soil, or other stresses or forces of nature;
- (g) damage due to, or failure of, the goods resulting from low or high voltage, the use of an incorrectly sized extension lead or a coiled electrical extension lead;
- (h) damage caused by impurities in the water supply to the goods and/or debris contaminating the pump or motor, if applicable;
- (i) damage caused by the use of chemicals and detergents not approved by DEPS or the manufacturer of the goods;
- (j) any third party equipment that the Customer might have specified; and
- (k) the failure of gaskets, hinges, valves or batteries.

16. MISCELLANEOUS

16.1 The law of Victoria from time to time governs the Terms and 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.

16.2 Failure by DEPS to enforce any of these Terms shall not be construed as a waiver of any of DEPS's rights.

16.3 If any of the Terms are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.

16.4 A notice must be in writing and handed personally or sent by facsimile 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 are deemed received on the facsimile machine confirming transmission.