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## Primary Sales Australia Pty Ltd - Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Primary Sales" or "PSAPL" means **Primary Sales Australia Pty Ltd (ACN 608 575 051; ABN 90 608 575 051)**, its successors and assigns or any person acting on behalf of and with the authority of Primary Sales Australia Pty Ltd.
- 1.3 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Primary Sales to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by Primary Sales to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Services as agreed between Primary Sales and the Customer in accordance with clause 7 below and shall be in Australian Dollars (\$AUD), unless otherwise specified.
- 1.8 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods and/or Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Primary Sales and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, Primary Sales reserves the right to refuse Delivery.
- 2.6 The Customer acknowledges and accepts that the supply of Goods and/or Services for accepted orders may be subject to availability and if, for any reason, Goods and/or Services are not or cease to be available, Primary Sales reserves the right to vary the Price with alternative Goods and/or Services as per clause 7.2.
- 2.7 The Customer acknowledges and agrees that:
- (a) the Customer shall inspect the Goods prior to use to determine the suitability of the Goods for the Customers intended use, unless Primary Sales has expressly set out in a quote and/or in a document signed by Primary Sales that the Goods will be suitable for the intended use; and
  - (b) where the Customer requests and legislation so requires, Primary Sales shall supply to the Customer the results of testing conducted by an accredited independent third party on the proposed Goods to be supplied. If the Customer requires additional independent testing Primary Sales shall only be obliged to provide a single sample of each product proposed to be purchased by the Customer. However, any additional independent testing shall be at the expense of the Customer; and
  - (c) where any inspection or testing reveals the Goods do not comply with the product specification, Primary Sales shall, at their discretion, rectify or replace the defective Goods, so as to ensure that the Goods comply with the product specification previously supplied to the Customer.

### 3. Brochures, Promotional Material and Specifications

- 3.1 The Customer acknowledges and accepts that unless expressly included in the Contract, all descriptions and illustrations in Primary Sales brochures, promotional material and advertising are not to be taken as an exact representation of the articles described, and are intended to present a general idea of the Goods. All drawings, brochures and electronic information supplied are informative only and do not form part of the Contract. Primary Sales accepts no responsibility for the accuracy of illustrations, designs, samples, weights, dimensions, capacities and other particulars of the Goods, and will not be responsible for the cost of additional work or consequential loss or damage caused by any defect or otherwise in brochures, promotional material and specifications.
- 3.2 All samples, illustrations, designs and specifications supplied to the Customer remain the property of Primary Sales and may not be copied, reproduced or used in part or whole without the prior written consent from Primary Sales.

### 4. Electronic Transactions Act

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW & SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the

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Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 5. Errors and Omissions

- 5.1 The Customer acknowledges and accepts that Primary Sales shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Primary Sales in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Primary Sales in respect of the Goods and/or Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of Primary Sales; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 6. Change in Control

- 6.1 The Customer shall give Primary Sales not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Primary Sales as a result of the Customer's failure to comply with this clause.

### 7. Price and Payment

- 7.1 At Primary Sales sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Primary Sales to the Customer; or
  - (b) Primary Sales quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Primary Sales reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) if during the course of the Services, the Goods cease to be available from Primary Sales third party suppliers, then Primary Sales reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
  - (d) in the event of increases to Primary Sales in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Primary Sales control.
- 7.3 Variations will be charged for on the basis of Primary Sales quotation, and will be detailed in writing, and shown as variations on Primary Sales invoice. The Customer shall be required to respond to any variation submitted by Primary Sales within ten (10) working days. Failure to do so will entitle Primary Sales to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At Primary Sales sole discretion, a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods and/or Services being of the essence, the Price will be payable by the Customer on the date/s determined by Primary Sales, which may be:
- (a) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (b) the date specified on any invoice or other form as being the date for payment; or
  - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Primary Sales.
- 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Primary Sales.
- 7.7 Primary Sales may in its discretion allocate any payment received from the Customer towards any invoice that Primary Sales determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Primary Sales may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Primary Sales, payment will be deemed to be allocated in such manner as preserves the maximum value of Primary Sales Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Primary Sales nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Primary Sales an amount equal to any GST Primary Sales must pay for any supply by Primary Sales under this or any other Contract for the sale of the Goods and/or Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 8. Delivery of Goods and/or Services

- 8.1 Delivery ("**Delivery**") of the Goods and/or Services is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Primary Sales address; or
  - (b) Primary Sales (or Primary Sales nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At Primary Sales sole discretion, the cost of delivery is in addition to the Price.
- 8.3 Primary Sales may deliver the Goods and/or Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 Any time specified by Primary Sales for delivery of the Goods and/or Services is an estimate only. The Customer must take delivery by receipt or collection of the Goods and/or Services whenever they are tendered for delivery. Primary Sales will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then Primary Sales shall be entitled to charge a reasonable fee for redelivery and/or storage.

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8.5 Where Goods are supplied as a full container load (FCL) delivery, Primary Sales retains the right, at its absolute discretion, to pass on any demurrage charges (any delay over thirty (30) minutes from when Primary Sales or Primary Sales agent arrives onsite) incurred as a result of the Customer's failure to make the container available for return within seven (7) calendar days of delivery, either to the Customer's premises or storage facility, or to any other agreed storage facility.

### 9. On-Line Ordering

9.1 The Customer acknowledges and agrees that:

- (a) Primary Sales does not guarantee the website's performance;
- (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Primary Sales;
- (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
- (d) there are inherent hazards in electronic distribution, and as such Primary Sales cannot warrant against delays or errors in transmitting data between the Customer and Primary Sales including orders, and you agree that to the maximum extent permitted by law, Primary Sales will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
- (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
- (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Primary Sales shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.

9.2 Primary Sales reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Primary Sales business, or violated these terms and conditions.

### 10. Risk

10.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

10.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Primary Sales is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Primary Sales is sufficient evidence of Primary Sales rights to receive the insurance proceeds without the need for any person dealing with Primary Sales to make further enquiries.

10.3 If the Customer requests Primary Sales to leave Goods outside Primary Sales premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

10.4 The Customer acknowledges and agrees that where Primary Sales has performed temporary repairs on the Customer's equipment that:

- (a) Primary Sales offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) Primary Sales will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the damaged equipment.

10.5 The Customer acknowledges that Primary Sales is only responsible for Goods that are replaced by Primary Sales and that in the event that other components subsequently fail, the Customer agrees to indemnify Primary Sales against any loss or damage to the equipment, Goods, or caused by the components or any part thereof howsoever arising.

10.6 Primary Sales shall not be liable for the loss of or damage to the equipment or its accessories while being serviced in connection with the authorised Services, unless caused by the negligence of Primary Sales or Primary Sales employees.

10.7 It is the Customer's responsibility to ensure that the equipment is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Primary Sales' premises. The equipment is at all times stored and repaired at the Customer's sole risk.

### 11. Access

11.1 The Customer shall ensure that Primary Sales has clear and free access to effect delivery of the Goods and/or Services. Primary Sales shall not be liable for any loss or damage to the delivery site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Primary Sales.

11.2 Notwithstanding clause 11.1, it shall be the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Primary Sales against all costs incurred by Primary Sales in recovering such vehicles in the event they become bogged or otherwise immovable.

### 12. Title

12.1 Primary Sales and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Primary Sales all amounts owing to Primary Sales; and
- (b) the Customer has met all of its other obligations to Primary Sales.

12.2 Receipt by Primary Sales of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:

- (a) the Customer is only a bailee of the Goods and must return the Goods to Primary Sales on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Primary Sales and must pay to Primary Sales the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Primary Sales and must pay or deliver the proceeds to Primary Sales on demand.

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- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Primary Sales and must sell, dispose of or return the resulting product to Primary Sales as it so directs.
- (e) the Customer irrevocably authorises Primary Sales to enter any premises where Primary Sales believes the Goods are kept and recover possession of the Goods and/or Services.
- (f) Primary Sales may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Primary Sales.
- (h) Primary Sales may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Primary Sales for Goods – that have previously been supplied and that will be supplied in the future by Primary Sales to the Customer.
- 13.3 The Customer undertakes to:
  - (a) promptly sign any further information and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Primary Sales may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Primary Sales for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods and/or Services charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Primary Sales;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Primary Sales;
  - (e) immediately advise Primary Sales of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 Primary Sales and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Primary Sales, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by Primary Sales under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 14. Security and Charge

- 14.1 In consideration of Primary Sales agreeing to supply the Goods and/or Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies Primary Sales from and against, all Primary Sales costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Primary Sales rights under this clause.
- 14.3 The Customer irrevocably appoints Primary Sales and each director of Primary Sales as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.

### 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 15.1 The Customer must inspect the Goods and/or Services on completion or at the time of delivery and must within fourteen (14) days of delivery notify Primary Sales in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods and/or Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Primary Sales the first right of refusal to remedy any issues at the end of the completion of the Services, prior to the Customer engaging a third party.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 Primary Sales acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Primary Sales makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Primary Sales liability in respect of these warranties is limited to the fullest extent permitted by law.

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- 15.5 If the Customer is a consumer within the meaning of the CCA, Primary Sales liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 Where it is agreed by both parties that the Goods supplied are defective or faulty any claim shall be limited to either the cost of repairing or replacing the Goods or, where relevant, upon agreement with the Customer, the difference between the original Price of the Goods and the value of the Goods, after they have been assessed by Primary Sales and downgraded for a use by the Customer other than for their original purposes.
- 15.7 Notwithstanding clause 15.6, if Primary Sales is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, Primary Sales may refund any money the Customer has paid for the Goods and/or Services.
- 15.8 If the Customer is not a consumer within the meaning of the CCA, Primary Sales liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty documentation provided to the Customer by Primary Sales at Primary Sales sole discretion;
  - (b) any warranty offered in respect of repairs to Goods that met the guidelines under clause 15, shall be void after the expiry date of either sixty (60) or (90) days respectively;
  - (c) limited to any warranty to which Primary Sales is entitled, if Primary Sales did not manufacture the Goods;
  - (d) otherwise negated absolutely.
- 15.9 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
  - (b) Primary Sales has agreed that the Goods and/or Services are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant). In the event that the Goods and/or Services are found not to be defective, the costs associated with testing shall be borne by the Customer; and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.10 Notwithstanding clauses 15.1 to 15.9 but subject to the CCA, Primary Sales shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Primary Sales;
  - (e) fair wear and tear, any accident, or act of God.
- 15.11 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Primary Sales as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Primary Sales has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15.11.
- 15.12 Primary Sales may in its absolute discretion accept non-defective Goods for return in which case Primary Sales may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 15.13 Unless required by the CCA, cancellation of orders for Goods and/or Services made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed, unless specifically agreed to in writing and any restocking fee varied at the absolute discretion of Primary Sales.
- 15.14 Notwithstanding anything contained in this clause if Primary Sales is required by a law to accept a return then Primary Sales will only accept a return on the conditions imposed by that law.
- 16. Defects and Return Claims**
- 16.1 In accordance with clause 15.1 the Customer must inspect their Goods on delivery and must immediately notify Primary Sales of any alleged damage to their Goods. The Customer must then (within fourteen (14) days of the date of delivery of the Goods) lodge a written notice of claim together with photographic evidence for consideration and determination by Primary Sales.
- 16.2 The Customer agrees to undertake and maintain strict quality control procedures, so as to minimise potential loss or damage resulting from the Customer's use of the Goods supplied. Where in accordance with clause 15.10, it is established that the Goods were faulty any and all liability of Primary Sales as a result of such a fault shall be strictly limited to the cost of the replacement of the Goods.
- 16.3 At Primary Sales sole discretion, any claims lodged will be honoured subject to clause 15.6 provided it can be proven that the Goods were at fault and that sufficient quality control procedures were in place as per clause 16.2, so as to ensure the quantity of Goods that are to be downgraded and/or written off has been kept to an absolute minimum.
- 16.4 The failure to notify a claim within the time limit specified in clause 16.1 is evidence of satisfactory performance by Primary Sales of its obligations.
- 16.5 Furthermore, a manufacturer or importer (in accordance with the Australian Consumer Guide) does not have to meet the guarantee on repairs and spare parts if they advised the consumer in writing, at or before the time of purchase, that repair facilities and spare parts would not be available at all or after a specified time.
- 17. Intellectual Property And Confidentiality**
- 17.1 For the sake of clarity "Intellectual Property Rights" or "IPR" means patents, utility models, copyrights, industrial design rights, logos trade mark rights and rights on other commercial signs, statutory trade secret protection and any similar intellectual property rights, including applications for the same and as such anything that is deemed to be "IPR" furnished Primary Sales remain the exclusive property of Primary Sales, and shall not be used for any purpose other than that nominated by Primary Sales, unless otherwise agreed upon in writing.
- 17.2 Where any designs, logos or specifications have been supplied by the Customer for manufacture, by or to the order of Primary Sales then the Customer warrants that the use of those designs, logos or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

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- 17.3 The Customer warrants that all designs, logos or instructions to Primary Sales will not cause Primary Sales to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Primary Sales against any action taken by a third party against Primary Sales in respect of any such infringement.
- 17.4 Unless expressly otherwise stated in Primary Sales quote Primary Sales will grant the Customer a non-exclusive and non-transferable licence for its use any intellectual property in the final Goods (solely in relation to the operation of the Customer's own business). The Customer may only transfer the licence on the same terms and upon giving Primary Sales prior written notice.
- 17.5 Subject to clause 20, Primary Sales agrees to keep confidential all information relating to the Customer's Personal Information, unless written release is given to Primary Sales by the Customer. Similarly, the Customer agrees to keep confidential all of its dealings with Primary Sales unless written release is given by Primary Sales.

### 18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Primary Sales sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes Primary Sales any money the Customer shall indemnify Primary Sales from and against all costs and disbursements incurred by Primary Sales in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Primary Sales contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Primary Sales may have under this Contract, if a Customer has made payment to Primary Sales, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Primary Sales under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 18.4 Without prejudice to Primary Sales other remedies at law Primary Sales shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Primary Sales shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Primary Sales becomes overdue, or in Primary Sales opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Primary Sales;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### 19. Cancellation

- 19.1 Without prejudice to any other remedies Primary Sales may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Primary Sales may suspend or terminate the supply of Goods and/or Services to the Customer. Primary Sales will not be liable to the Customer for any loss or damage the Customer suffers because Primary Sales has exercised its rights under this clause.
- 19.2 Primary Sales may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice Primary Sales shall repay to the Customer any money paid by the Customer for the Goods and/or Services. Primary Sales shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Primary Sales as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods and/or Services made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by Primary Sales is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Primary Sales acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Primary Sales acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Primary Sales that may result in serious harm to the Customer, Primary Sales will notify the Customer in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Primary Sales in respect of Cookies where transactions for purchases/orders transpire directly from Primary Sales website. Primary Sales agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Primary Sales when Primary Sales sends an email to the Customer, so Primary Sales may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Primary Sales website.

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- 20.3 The Customer agrees for Primary Sales to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Primary Sales.
- 20.4 The Customer agrees that Primary Sales may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 20.5 The Customer consents to Primary Sales being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Customer agrees that personal credit information provided may be used and retained by Primary Sales for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods and/or Services; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods and/or Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods and/or Services.
- 20.7 Primary Sales may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.1 above;
  - (b) name of the credit provider and that Primary Sales is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Primary Sales has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Primary Sales, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Customer shall have the right to request (by e-mail) from Primary Sales:
- (a) a copy of the Personal Information about the Customer retained by Primary Sales and the right to request that Primary Sales correct any incorrect Personal Information; and
  - (b) that Primary Sales does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 20.10 Primary Sales will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

### 21. Unpaid Sellers Rights

- 21.1 Where the Customer has left any item with Primary Sales for repair, modification, exchange or for Primary Sales to perform any other service in relation to the item and Primary Sales has not received or been tendered the whole of any monies owing to it by the Customer, Primary Sales shall have, until all monies owing to Primary Sales are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of Primary Sales shall continue despite the commencement of proceedings, or judgment for any monies owing to Primary Sales having been obtained against the Customer.

### 22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 23. Trusts

- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Primary Sales may have notice of the Trust, the Customer covenants with Primary Sales as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

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- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Customer will not without consent in writing of Primary Sales (Primary Sales will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### 24. Force Majeure

- 24.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action/riot/civil commotion, robbery, fire, flood, storm, or other event beyond the reasonable control of either party, and the Company:
- (a) shall not be liable for any claims for non-fulfilment or late Delivery should actual Delivery (or any parts) be delayed in consequence of unforeseen events under this clause 24.1 and unforeseen breakdown of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply adverse non-foreseeable weather conditions, action of government or port authority, delay of vessel, railroad embargoes, inability to obtain transportation facilities or due to failure of an original equipment manufacturer to supply components by the due date; and
  - (b) shall be entitled (at its option) after a period of thirty (30) days to terminate this Contract or extend the time for performance.

### 25. General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2010 or its replacement(s).
- 25.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of the state in which the sale the Goods and/or Services were provided by Primary Sales to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Perth Court in the State of Western Australia in which Primary Sales has its principal place of business.
- 25.4 Subject to clause 15, Primary Sales (including Primary Sales employees, representative and/or agents) shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Primary Sales of these terms and conditions (alternatively Primary Sales liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services). Furthermore, Primary Sales shall not be liable for any personal injury or damages and claims arising from personal injury made by the Customer (including the Customer's employees, representative and/or agents) as a result of any act or omission by Primary Sales or failure of the Customer to follow Primary Sales instructions or recommendations.
- 25.5 Primary Sales may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.6 The Customer cannot licence or assign without the written approval of Primary Sales.
- 25.7 Primary Sales may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Primary Sales sub-contractors without the authority of Primary Sales.
- 25.8 The Customer agrees that Primary Sales may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Primary Sales to provide Goods and/or Services to the Customer.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.