

GENERAL TERMS AND CONDITIONS OF TRADE (04/12)

To the fullest extent legally permissible all dealings between the customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) [jointly "the Customer"] and Timstock Trading House Pty Limited ACN 007 298 571 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Timstock" and/or otherwise ["Timstock"] relating to any goods and/or services [the "goods" and/or the "services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

1. Payment: a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. If no credit period is stipulated, payment shall be made on the 21st day of the month following the date of invoice. b) The Customer agrees to pay an administration fee of 2% as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement.

2. Interest: Interest shall be charged on overdue accounts at the *Penalty Interest Rates Act 1983* (Vic) Interest rate plus 2%.

3. Property: a) The Customer agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) ["PPSA"], that Timstock has and/or will have a "security interest" in respect of all goods and/or services whether present or after acquired for the purposes of the PPSA and that PPSA Sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 134, 135, 137 & 157 shall not apply to any such security interest. b) Property in goods shall not pass until payment in full of all monies owed by the Customer. c) Timstock reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to Timstock to enter any property where any goods are stored with force if necessary. d) Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies Timstock for any related losses. e) On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to Timstock notwithstanding that Timstock may have granted any credit facility and/or time to pay. f) Until payment in full the Customer agrees: (i) to keep all goods unpaid for as fiduciary for Timstock and store all goods in a manner which shows Timstock as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for Timstock; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". g) Without derogating from any rights of Timstock as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by Timstock UPON TRUST for Timstock until payment in full for those goods and all monies owed to Timstock. h) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. i) The Customer agrees a certificate signed by an officer of Timstock and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated. j) Timstock is not obliged to accept the return of goods.

4. Consumer Guarantees & ACL: The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ["ACL"] provides consumers with certain consumer guarantees and rights in relation to certain transactions concerning goods and/or services (see www.consumerlaw.gov.au). Any rights the Customer may have under the ACL shall apply notwithstanding any inconsistent provisions in these Terms which shall be read down to the extent necessary to comply with the ACL and which shall otherwise apply to the fullest extent legally permissible.

5. Limitation of Liability: To the extent permitted by the ACL: a) The Customer agrees to limit any claim to the replacement/repair of the goods (or cost thereof) and/or re-supply of services (or cost thereof); b) Timstock shall not be liable for: (i) any claim, loss or expense which is made after 7 days from the date of delivery of goods and/or services – after which there shall be deemed to have been unqualified acceptance; (ii) any consequential loss and/or any special and/or punitive damages through any fault of Timstock or otherwise; and/or (iii) any claim in any way caused and/or contributed to by the Customer and/or any third party.

6. Cancellations and Returns: The Customer agrees: a) not to cancel any order without Timstock's prior approval; b) not to return goods without Timstock's prior approval, which are post "used by" or "best before" date, if goods are not in brand new and unused condition with undamaged packaging and/or if 2 days or more have passed since delivery; c) that Timstock may take back goods in saleable condition on such terms as Timstock considers to be reasonable; d) to pay Timstock on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing Timstock an original invoice as proof of purchase; and f) not to return any goods which have been custom made, custom processed or custom acquired.

7. Quotations: The Customer agrees that: a) quotations must be in writing; b) Timstock shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation; c) Timstock may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; d) Timstock shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if Timstock also forms the view that those circumstances have substantially and/or materially changed; e) the Customer shall pay any additional charges Timstock levies for holding any goods referred to in any quotation pending placement of an order.

8. Placement of Orders: The Customer agrees that: a) if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of Timstock shall be conclusive evidence of what was ordered; b) each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) when placing any order the Customer shall inform Timstock of any facts which might reasonably affect acceptance of the order by Timstock and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of Timstock and to be unconscionable, misleading and deceptive.

9. Supply and Delivery: a) Timstock will deliver goods as per its standard delivery schedule (available upon request). Any delivery outside the standard delivery schedule will be charged to the Customer at rates deemed acceptable by Timstock. b) Timstock may supply by instalments and/or withhold or cancel supply without ramification where: (i) Timstock has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; (iv) Timstock has any safety concerns; and/or (v) Timstock considers it appropriate whether because of any minimum invoice policy or otherwise. c) The Customer agrees that: (i) Timstock may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for goods on being notified by Timstock that goods are ready for

collection and/or on goods being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of Timstock confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) Timstock shall not be liable for delay, failure or inability to deliver any goods. d) The Customer agrees: (i) to pay for so much of any forward order as Timstock invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; (iii) to pay Timstock for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection; and (iv) Timstock may supply an excess or deficiency of goods up to 5% of the volume or weight of the amount ordered and the Customer shall pay for the amount so supplied and shall not make any claim against Timstock for the amount over or under supplied.

10. Purchase Price: a) In the absence of a binding quotation all sales are made at the price nominated by Timstock at the time of delivery. b) All government imposts, levies and duties (including any GST or equivalent) shall be to the Customer's account. c) Prices exclude all government imposts, levies and duties (including any GST or equivalent).

11. Variations: To be binding any variation or cancellation of these Terms or any order must be approved by Timstock in writing.

12. Exclusions: To the extent permitted by the ACL: a) no dealing between Timstock and the Customer shall be or be deemed to be a sale by sample; b) the Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for Timstock shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer; c) all goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer; d) Timstock shall not be responsible nor liable for paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; e) Timstock shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party; and f) the Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before storage, use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by Timstock and/or by any manufacturer (including in relation to storage, handling and/or use of the goods); and (iii) act in accordance with good practice at all times.

13. Default: a) On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that Timstock expressly directs otherwise in writing) and Timstock may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against Timstock while the Customer is in default under any part of these Terms or in any of its dealings with Timstock. c) The Customer agrees to indemnify Timstock for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of Timstock in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). d) Timstock may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as Timstock in its discretion deems appropriate. e) The Customer irrevocably authorises the payment directly to Timstock of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to Timstock under these Terms or otherwise.

14. Indemnity: The Customer fully indemnifies Timstock against any claim or loss arising from or related in any way to any dealing between Timstock and the Customer and/or arising under these Terms.

15. Intellectual Property: The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of Timstock notwithstanding any contribution by the Customer.

16. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon Timstock shall apply.

17. Jurisdiction: The Customer agrees that these Terms and any claim or dispute between Timstock and the Customer shall be governed by the law applicable in the State nominated by Timstock and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Timstock in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.

18. Credit Limit: Any credit facility or credit limit is an indication only of the intention of Timstock at the time. Timstock may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party. Upon breach of any of these Terms all monies owing by the Customer shall become immediately due and payable.

19. Waiver: An election by Timstock not to exercise any rights on any breach of these Terms shall not constitute a waiver of any rights relating to any other breach.

20. Notice: The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Timstock and whether or not the Customer has actual notice.

21. Security For Payment: The Customer hereby grants to Timstock a general lien over all property of the Customer until payment in full of all monies owing to Timstock.

22. Force Majeure: Timstock shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any strike or lock-out.

23. Insolvency: The Customer shall be in default of these Terms if it commits an act of insolvency, appoints an insolvency practitioner and/or calls a formal meeting of creditors.

24. Containers, Pallets and Stands: The Customer agrees on request to return all containers, pallets, stands, reusable packaging and/or display equipment ["Equipment"] provided by Timstock and to indemnify Timstock for the full replacement cost of any Equipment not returned or damaged.

25. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.