

GENERAL TERMS & CONDITIONS OF SALE - FORM

EFLARE CORPORATION PTY LTD ABN 12 064 469361

1. Interpretation

1.1 In these conditions "Seller" means Eflare Corporation Pty Ltd or any of its associated companies and "Buyers" means the person, body, firm or company with whom the Seller enters into a contract for the sale of goods.

1.2 These terms and conditions apply to all contracts of sale entered into by the Seller and are implied into all purchase orders placed by the Buyer. No other terms and conditions contained in the Buyer's purchase order or in any other communication from the Buyer will have any effect or change these terms and conditions unless expressly agreed in writing by the Seller.

1.3 These conditions bind the Seller, the Buyer and their respective successors and assigns.

1.4 Words implying persons shall include corporations; words implying the singular shall include the plural and vice versa; and words implying the masculine gender shall include all genders as the case may require.

2. Quotation and Purchase Order

2.1 Subject to clause 2.5, no binding contract for the sale of goods comes into existence until: (a) the Buyer gives the Seller a purchase order; and (b) the Seller gives the Buyer a written confirmation of the order; and (c) the Buyer has accepted the Seller's written confirmation of the order. The Buyer will be taken to have accepted the Seller's written confirmation of the order and these terms and conditions if no objection is received by the Seller from the Buyer by the earlier of: (i) 5.00pm on the 5th Business Day after the issue of the Seller's written confirmation of the order; and (ii) the date of dispatch of the goods.

2.2 Subject to clause 2.5, any confirmation of the order which is taken to be accepted by the Buyer gives rise to a contract for sale of the goods described in the confirmation of the order on these terms and conditions.

2.3 Once the Seller has sent to the Buyer the Seller's written confirmation of the order or (if earlier) has dispatched the goods to the Buyer, the Buyer may not cancel or modify the purchase order without the written consent of an authorised employee of the Seller. If approved, the Buyer must indemnify the Seller against all costs and losses which arise as a result of such cancellation or modification.

2.4 The Seller is not liable for orders placed fraudulently or without authority if the order received from the Buyer is received by: (a) telephone from a person who identifies themselves as being an employee or authorised representative of the Buyer; or (b) email from an email address which appears to have originated from an employee or authorised representative of the Buyer; or (c) fax signed by a person who appears to be an employee or authorised representative of the Buyer, unless expressly agreed otherwise with the Buyer.

2.5 If the Buyer requests immediate dispatch of the goods and the details about the price and description of the goods contained in the Buyer's purchase order are correct, the Seller is not required to give the Buyer written confirmation of the order and may immediately dispatch the goods to the Buyer. In this case, the Buyer, in accepting delivery of the goods, is taken to have purchased the goods on these terms and conditions.

3. Product Details

Any information about the goods contained in catalogues, brochures or other written material shall be treated as approximate indications and shall not be binding on the Seller, unless expressly agreed in writing.

4. Price of Payment

4.1 Unless specifically stated otherwise all prices are quoted exclusive of any freight and insurance charges, sales tax, customs duty and GST which shall be added to the amount to be paid by the Buyer.

4.2 All prices of imported goods quoted are based on the FOB price of the Seller's supplier and the rates of exchange, freight, insurance and customs duty ruling at the date of quotation. The quoted prices may be varied by the same amount by which the Seller's actual costs have been varied as a result of any change in the said rates.

4.3 Subject to clause 4.4 and any statement to the contrary contained in the Seller's quotation, all accounts are on a COD basis and all goods must be paid for in cash or by bank cheque before they are delivered. If the Buyer fails to pay the full purchase price on delivery, the Seller retains the right to refuse to complete delivery.

4.4 If the Buyer has an approved credit account with the Seller the goods supplied must be paid for in cash or by bank cheque within thirty (30) days from the date of invoice or thirty (30) days from the date of shipment whichever occurs first. Where the Buyer is overdue with any payment, the Seller reserves the right to change the Buyer to a COD account.

4.5 Each consignment shall be considered a separate and independent transaction and payment shall be made accordingly.

4.6 All Seller's invoices must be paid in full by the Buyer without set-off.

4.7 Without prejudice to any other right or remedy of the Seller, the Buyer will indemnify the Seller against any costs, fees, charges and disbursements charged by any party engaged by the Seller for the purpose of the collection or recovery of moneys due and payable by the Buyer to the Seller.

4.8 Without prejudice to any other remedy the Seller has, the Seller reserves the right to charge interest on any overdue payment at an annual rate equal to 2% above the rate notified by the National Australia Bank from time to time as being that Bank's indicator lending rate. If the Buyer disputes the whole or any portion of the amount invoiced by the Seller, the Buyer must pay the portion of the invoiced amount not in dispute and must notify the Seller in writing of the reasons for disputing the remainder of the invoice. If it is resolved that some or all of the disputed amount ought properly to have been paid at the time it was invoiced, then the Buyer will pay the unpaid amount in accordance with these terms and conditions.

5. Passing of Risk and Property

5.1 Risk in the goods passes to the Buyer when the goods are loaded at the Seller's premises for delivery to the Buyer. Risk of loss in transit is the responsibility of the Buyer.

5.2 The Seller shall retain title to the goods until it has received payment in full for them. Goods belonging to the Seller which have not been paid for in full are held by the Buyer solely as bailee for the Seller and must be: (a) stored separately by the Buyer so that they are identifiable as such; (b) kept in good and serviceable condition; (c) secured from risk, damage and theft; and (d) kept fully insured against risks that are usual or common to insure against in a business of a similar nature to the Buyer's business.

5.3 The fact that the Seller retains title to the goods until they have been paid for shall not affect its right as an unpaid Seller or the passing of the risk of the goods to the Buyer pursuant to clause 5.1. Furthermore if payment is overdue, or the Buyer enters into bankruptcy, liquidation, a composition with its creditor, has a receiver or manager appointed over all or any of its assets or becomes insolvent the Seller shall be entitled without prejudice to any other remedy, to repossess and re-sell goods belonging to it and to enter any premises of the Buyer without notice for the purpose of re-possession. The act of supplying and or delivering the goods to a sub-buyer shall be deemed to be an assignment of the proceeds received by the Buyer in respect of the goods from the Buyer to the Seller absolutely and not by way of security.

6. Intellectual Property

The Buyer shall acquire no intellectual property rights in any computer software or drawings, designs, technical solutions, etc. included in or relating to the goods even if the goods have been customized for the Buyer at the Buyer's cost. Such intellectual property rights are retained by the Seller or its supplier (as the case may be).

7. Infringement of Patents and other Intellectual Property

If the goods are claimed to infringe on any patent or other intellectual property rights of a third party, or where a risk of such infringement arises, the Buyer accepts that the Seller at his discretion may either: (a) obtain the right from the legitimate holder of the patent or intellectual property right to continue the use; or (b) modify or replace the goods so as to bring an end to the infringement. Should none of these options be available on terms considered fair by the Seller, the Seller may demand that the Buyer refrain from using the goods.

8. Transport

Buyer shall make his own transport arrangement. Where the Buyer fails to make transport arrangements the Seller shall (a) for deliveries WITHIN the metropolitan area of mainland state capital cities, use a freight service of its own choosing and add a standard freight charge to the invoice; and (b) for deliveries OUTSIDE these areas, the goods will be dispatched freight on, or charged to the Buyer on the Seller's invoice. The goods will be delivered to the address specified in the purchase order.

9. Delivery Time

9.1 Delivery dates are estimated in good faith by the Seller and are not of the essence of the contract.

9.2 If delivery of the goods by the Seller is delayed for a cause other than the Seller's negligence, the Buyer will be liable for any extra charges, losses or expenses incurred by the Seller. The Buyer will not be entitled to cancel the purchase order by reason of that event.

10. Minimum Order

10.1 The minimum order value and this minimum order quantity per line item that the Seller will accept are indicated in the Seller's quotation, where less than minimum quantities are ordered the Seller may automatically increase the quantity to meet minimum levels.

10.2 Where quantities are ordered which constitute broken pack sizes, those quantities may be increased to the next highest unbroken pack size.

11. Claims

11.1 The Buyer shall inspect all goods supplied upon delivery. The Seller shall not be liable for shortages and other errors in delivery unless the Buyer submits a claim in writing to the Seller within seven (7) days of the delivery to which the claim relates.

11.2 Goods cannot in any circumstances be returned to the Seller (a) without the prior written consent of an authorised employee of the Seller: and (b) unless accompanied by a delivery document showing the Seller's Return Authorisation number.

12. Warranty

12.1 All goods are supplied by the Seller to the Buyer on an "as is" basis without any warranty of any kind. However the Seller shall assign to the Buyer in so far as it is able to do so the benefit of any condition, warranty or guarantee express or implied in the Seller's contract with its own supplier.

12.2 Subject to clause 12.3, clause 12.1 sets out the full extent of the Seller's obligation and liability to the Buyer with respect to the goods supplied and all terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise are excluded to the fullest extent permitted by law.

12.3 Where the law implies warranties or conditions which cannot be excluded, the Seller's liability is limited at its option to:- (a) The replacement of goods or supply of equivalent goods (b) The payment of the cost of replacing goods or acquiring equivalent goods (c) The payment of the cost of having the goods repaired; or (d) The repair of the goods.

13. Limitation of Liability

To the extent permitted by law and subject only to any exceptions contained in these conditions: (a) the Seller is not liable to the Buyer for any form of indirect loss, damage or expense (including consequential loss) sustained or incurred by the Buyer or any other party resulting out of the supply of the goods by the Seller, the use or performance of the goods, any breach by the Seller of these terms and conditions or the negligence of the Seller; and (b) the Seller's liability for direct losses is limited to an amount equal to the actual amount paid by the Buyer to the Seller (less all discounts and refunds) in respect of the goods in relation to which the liability arose.

14. Governing Laws

The construction validity and performance of any contract incorporating these terms and conditions shall be governed by the laws of the State of Victoria and the Buyer shall submit to the jurisdiction of the Courts of the State of Victoria.

15. Force Majeure

The Seller's obligations shall be suspended in the event of non-performance attributable to circumstances beyond the Seller's control. In this case, the Seller may cancel the purchase order and will not be liable for damages as a result of the suspension or cancellation.

16. Privacy

Information collected by the Seller from the Buyer which contains any personal information (as defined in the Privacy Act 1988 (Cth)) about the Buyer, its employees or contractors may be used by the Seller in any manner permitted by the Privacy Act 1988 (Cth) and the Seller's privacy policy

17. General

17.1 If any provision or paragraph of this document is determined to be illegal and unenforceable it shall not affect the enforceability of any other provision or paragraph of this document.

17.2 Headings are included for ease of reference and do not form part of or affect interpretation of these conditions. The benefit of a purchase order or contract must not be assigned by the Buyer without the Seller's prior written consent. The Seller may consent to the assignment of a contract by the Buyer subject to such conditions as the Seller may in its absolute discretion choose to impose.

17.3 A variation or waiver of a provision or any amendment of these terms and conditions is effective only if in writing and signed by the Seller.

17.4 A failure, delay, relaxation or indulgence on the part of Seller in exercising any right conferred on it by these terms and conditions does not operate as a waiver of that right.

17.5 Any notice given in respect of these terms and conditions must be in writing and given personally or delivered to the recipient's address last known to the person giving the notice. In the case of service by post, the notice will be deemed to have been served two days following the date of posting.