

## 1. Interpretation

In these conditions:

- (a) "Seller" means Hales Australia Pty Ltd ACN 107 200 322 which is the Seller of the Goods.
- (b) "Buyer" means the purchaser of the Goods specified overleaf.
- (c) "Goods" means the products and, if any, services specified overleaf.
- (d) PPS Register means the Personal Property Securities Register established under s 147 of the PPSA.
- (e) PPSA means the Personal Property Securities Act 2009 (Cth).
- (f) PMSI means a Purchase Money Security Interest as defined in the PPSA.
- (g) Security Interest means a security interest as defined in the PPSA.
- (h) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Fair Trading Act 1999 or the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

## 2. General

- (a) These conditions (which shall only be waived in writing signed by the Seller) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

## 3. Terms of sale

- (a) The Goods and all other products sold by Seller are sold on these terms and conditions and the Buyer adopts and accepts these terms and conditions by accepting and retaining the Goods.

## 4. Seller's quotations

- (a) Neither the price list of the Seller nor any quotation issued by the Seller to the Buyer is an offer to sell but is an invitation to treat.
- (b) The Seller reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
- (c) The price shown on any price list provided by the Seller is subject to alteration without notice.
- (d) The price shown in the quotation issued by the Seller to the Buyer applies only to orders placed within 7 days after the date of the relevant quotation and thereafter the price is subject to alteration with notice.
- (e) If the Seller accepts an order it must supply the goods at the price shown in the price list current when the seller accepts the order, unless otherwise agreed in writing by the Seller and the Buyer.
- (f) The price shown includes GST which must be paid by the Buyer as part of the price.
- (g) The Seller reserves the right to refuse any order based on a quotation within 7 days after the receipt of the order.
- (h) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date is made.
- (i) If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

## 5. Delivery and Packing

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not be liable for late delivery or non-delivery.
- (b) The Seller is not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- (c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - i) it is not a repudiation of the contract of sale formed by these conditions; and
  - ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.
- (e) The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

## 6. Shortage

- (a) The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer.

## 7. Loss or damage in transit

- (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage).
- (b) The Seller must provide the Buyer with such assistance as may be necessary to press claims on carriers so long as the Buyer:
  - i) has notified the Seller and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
  - ii) lodges a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

## 8. Warranty

- (a) Except as provided in these conditions and to the full extent allowed by law all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.
- (b) The Seller's liability for a breach of a condition or warranty implied by Pt3-2 Div1 of the Australian Consumer Law is limited to:
  - i) in the case of Goods, any one or more of the following:
    - (1) the replacement of the Goods or the supply of equivalent Goods;
    - (2) the repair of the Goods;
    - (3) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

ii) in the case of services:

- (1) the supplying of the services again; or
- (2) the payment of the cost of having the services supplied again.

- (c) The Seller's liability under s274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:
  - i) the cost of replacing the Goods;
  - ii) the cost of obtaining equivalent Goods; or
  - iii) the cost of having the Goods repaired, whichever is the lowest amount.

## 9. Retention of Title and Personal Properties Securities Act

- (a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:
  - i) ownership of the Goods;
  - ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
  - iii) to keep or resell any Goods repossessed pursuant to (ii) above.
- (b) If the Goods are resold, or products manufactured using the Goods ("the Manufactured Goods") are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale of the Manufactured Goods as represents the invoice price of the Goods sold or used in the manufacture of the Manufactured Goods sold in a separate identifiable account on trust as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.
- (c) The Buyer acknowledges and confirms that:
  - i) the Seller has given value for the Seller's Security Interest in the Goods by agreeing to sell the Goods to the Buyer on these terms and conditions.
  - ii) nothing in this agreement or any other agreement between the Buyer and the Seller is intended as an agreement that a Security Interest under this document attaches at a later time than the time specified in s19(2) of the PPSA; and
  - iii) it has not made any other agreement with the Seller to vary the time of attachment of a Security Interest except in any express written agreement between the Buyer and the Seller.
  - iv) the Buyer is the grantor and the Seller is the holder of a PMSI by virtue of this Agreement and/or the PPSA; it will reimburse the Seller for any costs or expenses incurred or payable by the Seller in relation to registering, maintaining or releasing any financing statement or financing change statement pursuant to these terms and conditions or in relation to the Goods.
- (d) Subject to any applicable law to the contrary including s140 of the PPSA:
  - i) the Seller may determine the order of application of the proceeds arising from the exercise of any right, including enforcement, against the Goods in its absolute discretion; and if the Seller does not make a determination under this clause the proceeds are to be applied in the following order:
    - (1) Payment of unsecured amounts owing to the Seller from the Buyer; then
    - (2) Payment of Secured Amounts owing to the Seller from the Buyer; then
    - (3) Payment of costs or expenses incurred by the Seller in the exercise of any right, including enforcement, against the Goods.
  - ii) The Buyer agrees to do anything that the Seller may reasonably require to ensure that the Seller has at all times a continuously perfected Security Interest over all of the Seller's Goods and any future goods that may be supplied by the Seller to the Buyer.
  - iii) The Buyer will not allow any Security Interest in favour of any person to be or be liable to become perfected or attached to any money owed and payable to the Seller or the Seller's Goods.
  - iv) To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Seller of any Security Interest in the Goods, the parties agree that the following provisions of the PPSA are excluded:
    - i) to the extent permitted by s 115(1) of the PPSA: s 95, 96, 121(4), 125, 130, 132(3) (d), 132(4), 142 and 143 of the PPSA; and
    - ii) to the extent permitted by s115(7) of the PPSA: s132 and 137.
    - iii) The Grantor consents to the waiver of the requirement for notice under any other provision of the PPSA that the Secured Party may notify to the Grantor after the date of this document and waives any rights it has to receive that notice.

## 10. Buyer's property

- (a) Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

## 11. Storage

- (a) The Seller reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within 14 days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

## 12. Returned Goods

- (a) The Seller is not be under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing by return authorisation in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under para (a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

## 13. Goods sold

- (a) All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the Buyer.

## 14. Cancellation

- (a) No order may be cancelled except with consent in writing and on terms which will indemnify the Seller against all losses.

## 15. Place of contract

- (a) The contract for sale of the Goods is made in the state or territory of Australia from which this document is issued.
- (b) The parties submit all disputes arising between them to the courts of such state or territory and any court competent to hear appeals from those courts of first instance.