



Terms and Conditions of Trade – ICP Group Australasia Pty Ltd

The Supplier: ICP GROUP AUSTRALASIA PTY LTD (ABN 53 164 522 338)(“ICP”)

The Customer agrees the Customer will be bound by the provisions of this Credit Agreement, including these Terms and an Event of Default or breach of any of the Terms shall result in the immediate termination of any credit arrangements with ICP.

The Customer warrants that all the information set out in the Customer’s Credit Application and/or any representations made in connection with the extension of credit is true and correct and the Customer has disclosed to ICP all information relevant to the Customer’s credit worthiness, including but not limited to, any existing or threatened legal proceedings against the Customer and/or defaults under any other existing credit arrangement by the Customer with any other supplier of goods. The Customer and Guarantors acknowledge that ICP relies on the truth and accuracy of the disclosure in the granting of the Terms under this Credit Agreement.

1) Definitions:

- a) “Credit Application” means the Credit Application and any and all statements made by the Customer relative to the request for credit from ICP;
- b) “Customer” means the Customer or any person acting on behalf of and with the authority of the Customer.
- c) “Event of Default” means any of the following events:
 - i) the Customer fails to pay for the Goods;
 - ii) the Customer is in breach of the terms of this Credit Agreement;
 - iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer; the Customer resolves to appoint a receiver or provisional liquidator or an administrator, the Customer goes into liquidation or makes an assignment or an arrangement or composition with its creditors; the Customer stops payment or is deemed unable to pay its debts within the meaning of the *Corporations Act 2001*;
 - iv) if the Customer is a natural person, an order is made for the Customer’s bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs or an order is applied for or made to place the assets and affairs of the Customer under administration
 - v) the Customer ceases or threatens to cease carrying on business;
 - vi) ICP forms an opinion, on a reasonable basis, that any of the foregoing are likely to occur.
- d) “Goods” mean Goods supplied by ICP to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- e) “Guarantee” means the guarantee and indemnity referred to in this Credit Agreement.



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- f) “Guarantor” means:
 - i) If the Customer consists of more than one person/entity, each person/entity will be jointly and severally bound by the terms of this Credit Agreement and such person shall be a “Guarantor;”
 - ii) If the Customer is a Company, the Directors and Company each agrees to be jointly and severally bound by the terms of this Credit Agreement and each Director shall be a “Guarantor;”
 - iii) If the Customer is a Trust (acting through its Trustee(s)), the Trustee(s) each agree to be jointly and severally bound by the terms of this Credit Agreement and each shall be a “Guarantor;” and
- g) “PPSA” means the *Personal Property Securities Act 2009* (Cth);
- h) “PPSR” means the Personal Property Security Register;
- i) “Services” mean all services supplied by ICP to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- j) “Terms” mean the terms and conditions referred to in this Credit Agreement, including but not limited to, these Terms of Trade.
- k) “Terms of Trade” refers to these terms of trade.

2) Acceptance

- a) Any instructions received by ICP from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by ICP shall constitute acceptance of the terms and conditions contained herein.
- b) Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price, as calculated in accordance with clause 4 below.
- c) Upon acceptance of these terms and conditions by the Customer, the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the senior manager of ICP.
- d) None of ICP’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the senior manager of ICP in writing nor is ICP bound by any such unauthorised statements.
- e) The Customer undertakes to give ICP not less than five (5) days prior written notice of any proposed change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice).

3) Goods

- a) The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by ICP to the Customer, from time to time.

4) Price and Payment

- a) At ICP’s sole discretion the Price shall be either:
 - i) as indicated on invoices provided by ICP to the Customer in respect of Goods supplied; or
 - ii) ICP’s quoted Price (subject to clause 4(b)) which shall be binding upon ICP provided that the Customer shall accept in writing ICP’s quotation within thirty (30) days of the date of the quotation.



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- b) Time for payment for Goods shall be of the essence, and due in accordance with the Terms between ICP and the Customer as agreed from time to time. ICP shall, at its sole discretion, offer terms of credit to the Customer and shall be at liberty to withdraw such facility at any time without notice to the Customer.
- c) The Customer must pay for all Goods and/or Services supplied by ICP within 30 days of the end of the month in which the invoice in relation to the supply is issued. The Customer may not withhold, set-off or otherwise resist payment on any basis.
- d) Any variation from the plan of scheduled works or specifications will be charged for on the basis of ICP's quotation and will be shown as variations on the invoice.
- e) Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and ICP and pursuant to any Terms between ICP and the Customer as further particularised at clause 4(b).
- f) The Price shall be increased by the amount of any GST and other taxes and duties, which may be applicable, except to the extent that such taxes are expressly included in any quotation given by ICP.
- g) ICP may charge monthly compound interest on any amounts outstanding and owed by the Customer at a rate of 16% per annum.

5) **Delivery of Goods / Services**

- a) Delivery of the Goods shall be made to the Customer within the agreed metropolitan area of the Capital Cities of each State (but does not include Tasmania and the Northern Territory) ("the Delivery Areas") by ICP.
- b) Deliveries outside the Delivery Areas may be arranged from time to time between ICP and the Customer.
- c) Delivery shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Customer fails to take Delivery of the Goods when they are tendered for Delivery, then Delivery shall be deemed to take place at ICP's address.
- d) Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of ICP for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- e) The costs of any insurance which the Customer reasonably directs ICP to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the invoice. The carrier shall be deemed to be the Customer's agent.
- f) Where there is no agreement that ICP shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.
- g) If ICP does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Customer that they are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges payable monthly on demand.



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- h) ICP may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the Terms in this Credit Agreement. Each instalment shall be treated as a separate contract, and any failure of ICP to deliver any instalment within the prescribed time frame shall not entitle the Customer to repudiate the contracts for delivery of the remainder of the Goods.
- i) The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
 - i) such discrepancy in quantity shall not exceed 5% (except non-standard and made to order products); and
 - ii) the Price shall be adjusted pro rata to the discrepancy.
- j) The failure of ICP to deliver shall not entitle either party to treat this contract as repudiated.
- k) If delivery of the Goods or any part thereof cannot be effected by reason of any strike, lock out, industrial action, fire, flood, drought, storm, unavailability of raw materials or other event beyond the reasonable control of either party, then time for delivery shall be extended until the operation of the causes preventing delivery has ceased.
- l) ICP shall not be liable for any loss or damage whatever due to failure by ICP to deliver the Goods (or any of them) promptly or at all.

6) Risk

- a) All risk for the Goods passes to the Customer on the earlier of delivery of the Goods to:
 - i) the Customer; or
 - ii) a carrier delivering the Goods to the Customer;
 - iii) regardless of whether ICP retains title to the Goods.
- b) If any of the Goods are damaged or destroyed prior to the Customer taking delivery for the Goods, ICP is entitled, without prejudice to any of its other rights or remedies under these Terms of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Credit Agreement. The production of these Terms by ICP is sufficient evidence of ICP's rights to receive the insurance proceeds without the need for any person dealing with ICP to make further enquiries.
- c) Without in any way limiting the operation of the Customer, upon delivery of the Goods to the Customer, or its agent, or to a carrier commissioned by the Customer, the Customer covenants and warrants to ICP that, in the storage and handling of the Goods, the Customer and his agents and carriers shall comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Customer shall ensure that the Customer and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

7) Representations

- a) The Customer hereby acknowledges that no representation has been made by any servant or agent of ICP as to the use or suitability of the Goods or otherwise, and that the Customer has had the opportunity to inspect the Goods and has made an independent decision to purchase the Goods and buys the Goods relying solely upon its own skill and judgement.
- b) Neither ICP, nor its agents or servants, makes any representation as to the suitability of the Goods for any particular purpose.



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8) Defects / Returns

- a) The Customer shall inspect the Goods on delivery and shall within twenty one (21) days of delivery notify ICP of any shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford ICP an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the Terms and free from any defect or damage.
- b) Non-standard and Made to Order products are non-returnable.
- c) Returns will only be accepted if:
 - i) the Customer has complied with the provisions of clause 8(a);
 - ii) the Goods are returned at the Customer's cost;
 - iii) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances;
 - iv) the Goods are accompanied by a completed ICP's Goods Returned to Factory form; and
 - v) ICP will not be liable for Goods which have not been stored or used in a proper manner.
- d) ICP reserves the right to charge a restocking fee of 15% of the invoiced value for Goods returned for any reason other than that the Goods were damaged or defective, or were in breach of any express or statutory warranty.
- e) ICP is not responsible for any defect, damage or loss caused because:
 - i) the Goods are incorrectly installed;
 - ii) the Goods are misused or used incorrectly; or
 - iii) the Goods are damaged or destroyed due to abuse or misuse.
- f) ICP's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have Goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- g) In the event of a breach of a term or condition implied by the Act or similar state or territorial law which amounts to a major failure of the Goods, the Customer may choose:
 - i) to reject the Goods and obtain a refund of the purchase price;
 - ii) to reject the Goods and obtain an identical replacement, or, if no identical is available, similar Goods; or
 - iii) keep the Goods and receive compensation for the loss or value as a result of the failure.
- h) A 'major failure' is when:
 - i) the problem is of such a nature that a reasonable person would not have purchased the Goods if they had known about it;
 - ii) the Goods are significantly different from the description, sample or demonstration of the Goods;
 - iii) the problem results in the Goods being substantially unfit for the prescribed purpose, and this cannot be remedied easily by repair of the Goods; or
 - iv) the Goods are unsafe.



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- i) If the Goods can be repaired within a reasonable time, and the problem with the Goods does not amount to a 'major failure', ICP may elect to:
 - i) provide a refund;
 - ii) replace the Goods;
 - iii) if relevant, fix any issues relating to title in the Goods; or
 - iv) repair the Goods; and
 - v) the Customer is not entitled to reject the Goods or obtain a refund.

9) Goods damaged in Transit

- a) Where the Goods are covered under an insurance policy of ICP at the request of the Customer and in accordance with Clause 5(e), any claim relative to damage incurred in transit must be notified to the carrier and ICP immediately, and within three (3) days of receipt of the Goods.
- b) ICP will not accept any liability for Goods damaged or loss in transit unless covered by an insurance policy as particularised in 9(a). Any claims resulting from damage occurring in transit shall be made direct to the carrier.

10) Manufacturer's Warranty

- a) For Goods not manufactured by ICP, the warranty shall be the current warranty provided by the manufacturer of the Goods.
- b) ICP shall not be bound by, nor responsible for, any term, condition, representation or warranty given by the manufacturer of the Goods, except where expressly provided in writing between ICP and Customer.

11) Containers

- a) ICP will not offer any credit in any circumstance for the return of empty containers.

12) Competition and Consumer Act 2010 (Cth)

- a) Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth)

13) Title

- a) It is the intention of the parties, in accordance with the Credit Agreement and these Terms of Trade that title to and ownership of the Goods do not pass until the Customer has paid all moneys owing to ICP on any account in full.
- b) Until payment of all such moneys, the Customer holds the Goods as fiduciary bailee and agent for ICP and must keep the Goods physically separate from all other goods of the Customer, and clearly identified as owned by ICP.
- c) If an Event of Default occurs or upon ICP's discretion, then without prejudice to ICP's other rights, ICP may on providing reasonable notice to the Customer, enter any premises occupied by the Customer or any other place where the Goods may be, and recover possession of them. If the Goods are on a third party site, the Customer must procure access rights for ICP from the controller of the third party site such that ICP may enter onto the site and recover and retake possession of them on reasonable notice.
- d) If the Customer sells any of the Goods while money is owed to ICP, the Customer holds the proceeds on trust for ICP. Such proceeds shall be deemed to be equal in dollar terms to such corresponding part of the amount owed by the Customer to ICP at the time of receipt.



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- e) If the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Goods in trust for ICP. Such proceeds shall be deemed to be equal in dollar terms to the corresponding amount owing by the Customer to ICP at the time of receipt.
- f) Until payment of all moneys owing on any account to ICP, any proceeds referred to above received by the Customer must be held in a separate account and not mixed with any other funds.
- g) The rights of ICP under this clause 13 do not limit or exclude any other rights of ICP against the Customer.
- h) The Customer shall not deal with the money of ICP in any way which may be adverse to ICP.
- i) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of ICP.
- j) ICP may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to ICP arising out of these Terms, and ICP may take any lawful steps to require payment of the amounts due and the Price.
- k) ICP can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
- l) Until such time that ownership in the Goods passes to the Customer, if the Goods are so converted, the parties agree that ICP will be the owner of the end products.

14) Security Interests and PPSA: Terms that are defined in the PPSA have the same meaning in this clause.

- a) Receipt by ICP 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 and until then ICP's ownership of rights in respect of the Goods shall continue. It is agreed by the parties that ICP has all rights to register, as a purchase money security, its interests over any Goods sold and delivered, or expected to be sold and delivered and such security shall continue until all monies have been paid and terms of credit are extinguished between the parties.
- b) The Customer agrees and acknowledges that, for the purposes of the PPSA, ICP has a security interest in the Goods and in any right in relation to or derived from the Goods and such other undertaking, property and assets of the Customer.
- c) ICP may register its security interests under this Credit Agreement and Terms of Trade.
- d) The Customer waives the right to receive a verification statement under the PPSA.
- e) The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of ICP's security interests, the following provisions of the PPSA will not apply to that enforcement: section 95 to the extent that it requires ICP to give a notice to the Customer; section 96; section 130, to the extent that it requires ICP to give a notice to the Company; subsection 132(3)(d); subsection 132(4); section 135; section 142 and section 143. (f) Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.



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- 15) Purchase Money Security Interest:** As a condition of the Credit Agreement and Terms of Trade, the Customer (Grantor) consents to the grant of a Purchase Money Security Interest over the stock and supply (collateral) provided by ICP to the Customer (or its assign) and such Security Interest shall be continuing until all credit obligations relative to the supply are discharged in full. The Customer consents to the registration of a Financing Statement on the PPSR to reflect the Purchase Money Security Interest prior to the delivery of the collateral, and concedes to the ongoing nature of such right during the term of credit tendered by ICP. The Customer acknowledges and agrees that any subordinate credit relative to the security must be consented to by ICP in writing.
- 16) Further Security Interest:** As a further condition of this Credit Agreement, the Customer (Grantor) consents to the grant of a further Security Interest over the accounts of the Customer to the extent of any amount not otherwise secured by the Purchase Money Security Interest and such Security Interest shall be continuing until all credit obligations relative to the supply are discharged in full. The Customer consents to the registration of a Financing Statement on the PPSR to reflect the accounts registration prior to the delivery of the collateral, and concedes to the ongoing nature of such right during the term of credit tendered by ICP.
- 17) Cancellation and Variation**
- a) ICP may cancel these Terms or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. ICP shall not be liable for any loss or damage whatever arising from such cancellation.
 - b) These Terms can only be varied by express agreement between the Customer and ICP in writing, and any variations or contradictions contained in any order form or purchase order submitted by the Customer will be treated as invalid and acceptance of such order shall not be deemed to be acceptance of any variation in these terms.
- 18) Intellectual Property:** These Terms do not give the Customer any intellectual property rights in the Products. ICP is not liable to the Customer for any infringement or unauthorised use of intellectual property rights.
- 19) General**
- a) If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - b) All Goods supplied by ICP are subject to the laws of Victoria and ICP takes no responsibility for changes in the law which affect the Goods so supplied.
 - c) ICP shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ICP of these terms and conditions.
 - d) In the event of any breach of this contract by ICP the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of ICP exceed the Price of the Goods.
 - e) The Customer shall not set off against the Price amounts due from ICP.
 - f) ICP may license or sub-contract all or any part of its rights and obligations without the Customer's consent
 - g) ICP reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which ICP notifies the Customer of such change.
 - h) Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 20) Effect of Other Terms:** These Terms supersede all previous terms and conditions between ICP and the Customer. No terms of the Customer apply to any agreement between the Customer and ICP.



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- 21) Provision of Financial Information:** The Customer will supply, promptly on request of ICP and, in any event no later than 5 days after such a request is made, certified copies of its most recent financial statements (including management accounts, if required), tax returns and any other financial information of the Customer requested by ICP.
- 22) Trusts:** These Terms bind the Customer both personally and as trustee of any trusts of which the Customer is trustee.
- 23) Severance:** Each clause and sub-clause of these Terms is separate and independent. If any clause or sub-clause is found to be invalid or ineffective, the other clauses or sub-clauses or parts will not be adversely affected.
- 24) Application of Laws:** The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the law applying to Victoria is the proper law governing the Credit Agreement and Terms of Trade.