

1. OUTLINE

1.1 Currency: These terms and conditions of sale (**Terms**) apply to the supply of all Goods and Services by us to you from the date that you accept these Terms.

1.2 Acceptance: You accept these Terms when:

- 1.2.1 you submit an Order;
- 1.2.2 you accept delivery of, or any part of, the Goods and Services of an Order; or
- 1.2.3 you make Payment, or partial Payment, for any Goods and Services supplied by us, whichever occurs first.

2. QUOTES + ORDERS

We will provide you with a Quote for non-standard goods.

2.1 Requesting a Quote: You may request a Quote from us relating to the potential supply of Goods and Services. Before doing so, we may require you to complete a specification sheet in a form acceptable to us.

2.2 Providing a Quote: if we provide you a Quote, it will be based upon the specifications you provide to us. The Quote may include the price and quantity of the Goods and Services proposed to be supplied by us and other relevant details.

2.3 Specifications. You acknowledge and agree that:

- 2.3.1 you are responsible for ensuring the accuracy and relevance of details provided to us on the specification sheet;
- 2.3.2 we are not liable for any error, omission or inaccuracy in drawings or specifications you provide to us; and
- 2.3.3 we are not responsible for checking the accuracy or adequacy of any drawings or specifications you provide to us.

2.4 Validity of Quote: A Quote is valid for up to 30 days, but may be withdrawn at any time before you place an Order.

2.5 Placing an Order: You may place an Order in accordance with our Quote. We may accept or decline any Order in our discretion. An Order is not binding until we notify you of acceptance of the Order in writing. Orders for less than \$100 will incur an additional \$20 handling fee.

2.6 Additional conditions: Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any terms or conditions sought by you, unless otherwise agreed in writing.

3. PRICE

3.1 Price: Unless we otherwise agree in writing and subject to clause 3.3, the price for the Goods and Services

shall be the price in Australian dollars set out in our price list or in our Quote.

3.2 Fees and taxes. You agree to pay all taxes, charges and delivery costs in relation to the Goods and Services in addition to the price. Additional charges may apply for deliveries

depending on the delivery location as applicable from time to time. We will endeavour to provide you with a non-binding estimate of those costs when you place an Order.

3.3 Variation of price. Prices in any Quote for the supply of Goods or Services are based on the costs prevailing and the specifications supplied at the time of the Quote.

We may recalculate the price if you request a variation to the Order which would increase costs for parts or all of the Goods,

3.3.1 Prices quoted for imported Goods are based on the rate of duty and primage for the appropriate tariff classification of Goods prevailing at the date of acceptance of an Order (the initial duty and primage rates).

3.3.2 Should there be any material variation for whatever reason, in the classification of the Goods or the method of assessment or rate of the duty or primage subsequent to the date of acceptance, then the price for the Goods shall be adjusted in accordance with the increase or decrease as the case may be, between the initial duty and primage rates and the applicable rates existing at the date of payment.

We will provide you with written notice of our intention to vary the price and you will have 7 days to cancel your Order if you do not accept the varied price.

4. PAYMENT + CREDIT

4.1 Invoice on delivery: Unless otherwise agreed, we will issue an Invoice on delivery of the Goods or Services.

4.2 Payment terms: You must make Payment in full within 30 days from the End of the Month in which the invoice is issued.

We may assess your credit worthiness in considering payment requests.

4.3 Payment method: You must make all Payments in clear funds to the bank account nominated by us.

4.4 Credit: We may, at our discretion, grant you a credit limit in accordance with our credit management policy and our determination of your creditworthiness.

4.5 Information We may request you to provide us with information required to establish your credit worthiness, including any relevant financial information.

4.6 Credit limit: You must not exceed the credit limit granted to you in accordance with these Terms.

4.7 Changes: The provision of credit is at our discretion and we may extend, withdraw or reduce the amount of credit available to you at any time..

5. PAYMENT DEFAULT

5.1 Consequences: If you fail to make a Payment when due then, in addition to our

other rights, we may in our absolute discretion:

- 5.1.1 charge Default Interest on any Outstanding Payment at the Default Interest Rate
 - 5.1.2 modify any credit limit or payment terms applicable to you;
 - 5.1.3 cease supply of any and all relevant Goods and Services until all Outstanding Payments have been made in full; and/or
 - 5.1.4 terminate any Order.
- 5.2 Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall:
- 5.2.1 form part of the Outstanding Payment;
 - 5.2.2 be payable on demand; and
 - 5.2.3 be calculated on a daily basis from the due date to the actual date the Payment is made in full.

5.3 Costs of enforcement: We may recover from you any reasonable costs we incur as a result of collecting any Outstanding Payment from you.

5.4 No set off: You may not set off against any Payment any claims which you may have against us.

5.5 Default Interest amount credited first: Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause, to the actual date of Payment.

6. DELIVERY, RISK + INSURANCE

6.1 Delivery: Delivery of Goods occurs when you pick up or we deliver the Goods to you, your agent or nominee or to a carrier commissioned on your behalf, or as otherwise agreed.

6.2 Cost of delivery: We may charge the cost of delivering the Goods to you, where set out in an Order or Quote. .

6.3 Instalments: We reserve the right to make deliveries in instalments. These Terms shall apply to each instalment. Payment for each instalment is a condition precedent to the delivery of subsequent instalments.

6.4 Risk passes on delivery: The risk in the Goods shall pass from us to you upon the delivery of the Goods in accordance with clause 6.1.

6.5 Site safety: You must ensure the delivery location is suitable, ready and safe for the Delivery of the Goods and/or the provision of the Services.

6.6 Insurance over Goods: Upon our request, you must ensure that from the delivery date until we have received Payment for all Goods in full, the Goods are insured for their full replacement value and provide to us upon our request evidence of such insurance.

6.7 Delay in delivery or commencement of Services:

- 6.7.1 We will use reasonable efforts to deliver the Goods to you and commence the Services (as applicable) by the date and to the place specified

by you, but time is not of the essence of such delivery.

6.7.2 we shall not be liable for any costs you incur or for any claims you may receive as a result of late delivery or delay in delivery; and

6.7.3 You may cancel an Order in the event that a delay in delivery extends for more than 60 days beyond the due date, unless we have, prior to cancellation, ordered Goods or parts for those Goods from one or more of our suppliers.

7. SUSPENSION + CANCELLATION

7.1 Cancellation by you: You may not cancel an Order, or any part of it, unless:

7.1.1 we have committed a Default Event; or

7.1.2 we give our written consent; and

7.1.3 you pay to us (if required by us in our absolute discretion) a restocking fee equal to 15% of the value of the cancelled Order and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation. The parties agree that such fees are a reasonable pre-estimate of loss we incur due to your cancellation.

7.2 Suspension of Order: If you request us to delay or suspend (but not cancel) an Order or any part of an Order (including through change of instructions) for a period of 20 working days or more, we may:

7.2.1 request payment in full for all work in progress relating to the relevant Order at the time of suspension;

7.2.2 adjust the price for the uncompleted portion of the relevant Order where an increase is caused by such delay, commensurate with the increased cost; and/or

7.2.3 cancel your Order.

7.3 Cancellation by us: We may at our discretion but acting reasonably, cancel an Order or delivery of an Order without liability to you if:

7.3.1 we determine your credit worthiness has changed and is unsatisfactory or that you would not be able to make a Payment on time; or

7.3.2 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or on our commercial reputation or image.

8. DEFECTS + RETURN OF GOODS

8.1 Inspection: You agree to inspect the Goods within 14 days of receipt and to notify us promptly of any defects.

8.2 Deemed acceptance: You will be deemed to have accepted the Goods if:

8.2.1 you do not notify us within a reasonable time of receipt. You must also notify us promptly on

becoming aware of any defects;

8.2.2 you put the Goods to commercial use; and/or

8.2.3 you fail to co-mingle the Goods with other products

8.3 Notification: If you wish to return any Goods delivered to you, you must give us:

8.3.1 notice within a reasonable time of your receipt of the Goods;

8.3.2 the original Invoice details; and

8.3.3 a TMAC RMA reference number (to be issued on request).

8.3.4 You agree to notify us within 7 days of receipt of the Goods if you consider them not to comply with these Terms.

8.4 Replacement or credit: If we accept the return of Goods from you, we will at our option either:

8.4.1 replace the returned Goods; or

8.4.2 give a credit or a refund for such Goods.

8.5 Costs to return Goods You must pay for any transportation costs to return the Goods to us, unless we agree (in writing prior to their return) that will result in significant cost due to the nature of the Goods.

8.6 Payment for other Goods: You may not withhold any payment due to us in respect of any other Goods pending the resolution of a return.

9. YOUR WARRANTIES + INDEMNITIES

9.1 You warrant and represent to us that you have:

9.1.1 full power and authority to enter into and do all things required by these Terms; and

9.1.2 obtained all consents, permissions and licences necessary to perform your obligations under these Terms.

9.2 Indemnity: You indemnify and must keep us indemnified against all and any liability (including for injury or death to our personnel) arising in connection with any of the following:

9.2.1 any breach of these Terms by you or your personnel;

9.2.2 injury or death of any person in connection with the Goods or Services as a result of your (or your personnel's) actions;

9.2.3 damage to property resulting from your actions, omissions, negligence or misconduct in connection with these Terms.

10. EXCLUSIONS + LIMITATIONS

10.1 Excluded rights: All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.

10.2 Limitations: No warranty is given and we will not be liable for:

In the case of Goods

10.2.1 alterations to Goods for which we are not responsible;

10.2.2 defects or depreciation caused by wear and tear, accidents, corrosion, dampness or other abnormal conditions or effects;

10.2.3 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods, including use that is contrary to any warnings, instructions or operating manuals provided by us or otherwise accompanying the Goods;

10.2.4 any loss caused by any factors beyond our control; and

In the case of Services

10.2.5 interference with our Services for which we are not responsible;

10.2.6 damage or loss caused by unusual or non-recommended use of our Services; or

11.2.7 loss caused by any factors beyond our control.

11.3 Total liability: You agree that our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

In the case of Goods used for personal, domestic or household services:

11.3.1 the replacement of the Goods or the supply of equivalent goods;

11.3.2 the repair or rectification of the Goods;

11.3.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

11.3.4 the payment of the cost of the repair or rectification of the Goods; and

In the case of Services

11.3.5 the supply of the Services again; or

11.3.6 the payment of the cost of having the Services supplied again.

11.4 Third party work: If we obtain goods or services from a third party in order to carry out your instructions or complete an Order.

11.4.1 we will not be liable for any breach of these Terms if that breach is as a result of or is connected with the supply by a third party of such goods or services; we acquire such goods or services as agent for you not as principal and will have no liability to you in relation to the supply of these goods or services;

11.4.1 any claim by you in relation to the supply of such goods or services must be made directly against that third party; and

11.4.2 you must pay for such goods or services from the third party plus the cost of or relevant fee for us performing such services as agent for you (whether separately identified or not).

We give no warranty in respect of any goods or services that are supplied or carried out or provided to you by a third party even where forming part of an Order.

Any warranties or other rights will be governed by the terms of supply by that provider to you and relevant laws.

the Security Interest on the PPSR. This clause does not prevent us from perfecting this Security Interest by any other means in accordance with the PPSA.

16.1 Termination: If a Default Event occurs:
 16.1.1 we may, without limiting any other right we have under these Terms, terminate any outstanding Order for the supply of Goods and Services to you; and
 16.1.2 all Payments and any other monies due under these Terms become immediately due and payable.
16.2 Effect: Termination under this clause does not affect our rights or remedies that may have accrued prior to termination.
16.3 Survival: Clauses 9, 10, 14 and any indemnity, obligation of confidence or any other term by its nature intended to survive termination of our Agreement is independent and survives that termination

11. STATUTORY RIGHTS & WARRANTY STATEMENT

11.1 Statutory rights: Certain statutory guarantees and rights may apply to your purchase of Goods and Services from us as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.

11.2 No restriction: Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

14.5 Information: You must provide us with any information required for us to register a financing statement or a financing change statement for this Security Interest on the PPSR.

14.6 Identification: Until this Security Interest has been extinguished, you must ensure that, as far as is reasonably practicable:

- 14.6.1 any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and
- 14.6.2 the Collateral is identifiable and distinguishable from any other goods or products in your possession and as to each particular Invoice of Goods comprising the Collateral.

14.7 Retention of rights: we retain any rights which we have at law or in equity to retake possession of the Goods.

14.8 Costs: You must pay all costs incurred by us (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

- 14.8.1 seizure, retention, redemption or any other remedy exercised pursuant to this Security Agreement; and
- 14.8.2 the enforcement of our rights under this Security Agreement (including matters incidental to it).

14.9 Extinguishment: The Security Interest is extinguished only if all obligations under this Security Agreement have been satisfied.

15.10 Waiver: Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on us.

17. GST

17.1 Prices exclusive of GST: Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.
17.2 GST payable in addition: You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services.
17.3 Issue of tax invoice: We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

12. WARRANTY

The warranty which we provide in relation to our Goods and Services is set out in the Warranty Statement annexed to these Terms. No additional warranty will be provided by us. The terms of the Warranty Statement will form part of these Terms and you agree to be bound by them as though they were set out in full in these Terms.

13. TITLE

13.1 Subject to the PPSA: This clause 12 is subject to the provisions of the PPSA and clause 13.

13.2 Possession as bailee: After delivery of the Goods, until full Payment has been made:

13.3 you shall possess the Goods as bailee on our behalf.

13.4 Title: We will retain absolute title over the Goods; and

- 13.4.1 You must ensure that the Goods are identifiable and distinguishable from any other goods that may be in your possession and that no identifying plates or markers are removed or made illegible.

15. INTELLECTUAL PROPERTY

15.1 Our intellectual property: All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to drawings, illustrations, specifications, samples, firmware and other literature remains our property.

15.2 Limited licence: We grant to you a non-transferrable, non-exclusive, revocable limited licence to use our Intellectual Property Rights in respect of the Goods and Services for the sole purpose of your use of the Goods and Services in accordance with this Agreement.

15.3 Infringement: You must inform us immediately if you become aware of any third-party intellectual property infringement claim in relation to our Intellectual Property Rights.

15.4 Confidentiality: You must keep confidential and shall not use any of our confidential information without our prior written consent.

18. DISPUTE RESOLUTION

18.1 The parties will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement or any breach of it (**Dispute**).

18.2 If a Dispute cannot be settled amicably through ordinary negotiations between representatives of the parties, the Dispute shall be referred to the management of each party who will meet in good faith to try and resolve the dispute.

18.3 All negotiations connected with the Dispute will be conducted in complete confidence and on a without prejudice basis.

18.4 If the Dispute remains unresolved after thirty (30) days from the commencement of such negotiations referred to in clause 17.1, either party may take any further action they see fit,

including to commence legal proceedings to resolve the Dispute.

18.5 Nothing in this clause 17 prevents a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief.

14. SECURITY INTEREST

14.1 Security Agreement: This clause 13 sets out the Security Agreement between you (as grantor) and us (as secured party).

14.2 Creation of Security Interest: You grant to us a security interest (**Security Interest**) in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest in the Collateral.

14.3 Ranking: Subject to the priority rules set out in the PPSA, this Security Interest ranks in priority ahead of all other security interests in the Collateral.

14.4 Perfection: You irrevocably give us authority to register a financing statement for

16. TERMINATION

19. GENERAL

19.1 Lawful purpose: You must ensure the Goods and Services are used only for lawful purposes and in accordance with applicable laws.

19.2 Binding: These Terms bind our successors, administrators and permitted assigns and your executors and permitted assigns or your successors, administrators and permitted assigns (as applicable).

19.3 Assignment: We may without notice to

you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.

19.4 Time of the essence: Time is of the essence for any obligation which you must meet under these Terms.

19.5 Variation: We may vary these Terms by providing you 14 days' written notice of our intention to do so. You may terminate our Agreement within 14 days of receipt of notice, if you do not accept the variation

19.6 Force Majeure: If a Force Majeure Event occurs, we may:

19.6.1 totally or partially suspend any Order or any deliveries relating to an Order during any period in which we may be hindered due to that Force Majeure Event; and

19.6.2 elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

19.7 Severability: Any clause in these Terms which is invalid in a jurisdiction is to be read down to the minimum extent necessary as to achieve its validity or otherwise void and severed from these Terms, then the remaining clauses will remain in full force and effect.

19.8 Waiver: No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

19.9 Governing law: These Terms shall be governed by the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Queensland.

20. INTERPRETATION + DEFINITIONS

20.1 Personal pronouns: Except where the context otherwise provides or requires:

20.1.1 the terms **we**, **us** or **our** refers to **Thew & McCann Pty Ltd** (ABN 47 009 910 758); and

20.1.2 the terms **you** or **your** refers to any person or entity that places an Order with us and agrees (by conduct, notice or otherwise) to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

20.2 Defined terms: In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Charges means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods and Services.

Default Event means any one of the

following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) if you are a person – you become an *insolvent under administration*;
- (c) if you are a body corporate – you become an *externally administered body corporate*;
- (d) proceedings or applications are commenced or made for the appointment of any persons listed in items (b) or (c) above;
- (e) a mortgagee or their agent enters into possession of your assets;
- (f) you cease or threaten to cease carrying on business; or
- (g) you experience a change in control or a material change in financial position which in our reasonable opinion adversely affects your ability to meet your obligations under this Agreement.

Default Interest means as defined in clause 4.4.

Default Interest Rate means 4% above the Reserve Bank of Australia official cash rate (as varied).

Delivery means the delivery of the Goods and Services in accordance with clause 6.1.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

Goods mean goods we sell from time to time, including those set out in our Quote or any Order.

GST and GST Law mean as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trademarks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

Order means an order for Goods and/or Services received by us in accordance with these Terms.

Outstanding Payment means any Payment due under an Order that remains outstanding at the date that it is due for

payment.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Security Agreement means the security agreement set out in clause 13.

Services mean services we provide from time to time, including those set out in our Quote or any Order.