

TERMS AND CONDITIONS

1. Formation and Scope of Contract

- 1.1 A contract for the sale by the Seller to the Buyer of the Goods shall be formed upon the Seller receiving an order for the Goods from the Buyer and the acceptance of that order by the Buyer either verbally or in writing or at the option of the Seller by commencing the preparation and delivery of the Goods to the Buyer.
- 1.2 Upon the formation of a Contract in the manner referred to in condition 1.1 hereof, these terms and conditions shall constitute the entire agreement between the Seller and the Buyer for the sale of the Goods & Services.

2. Price

- 2.1 The Goods are sold by the Seller to the Buyer at the Seller's prices applicable as at the date the Goods are prepared for delivery to the Buyer being the prices specified in the invoice.
- 2.2 The prices at which the Goods are invoiced to the Buyer may include a service charge for delivery of the Goods to the Buyer. Such a charge will be at the rate of \$4.75 (inclusive of GST) per delivery.
- 2.3 The Seller shall be entitled to adjust any price to take account of any correction of errors or omissions on its part and the Buyer agrees to pay such adjusted purchase price.

3. Payment

- 3.1 If prior credit facilities have not been arranged between the Seller and the Buyer, payment for the Goods must be made to the carrier upon delivery of the Goods to the Buyer.
- 3.2 If credit facilities have been arranged between the Seller and the Buyer, payment for the Goods must be made on or before the date of payment specified in the invoice.
- 3.3 Receipts for payment shall not be recognised unless issued on the Seller's printed stationery.
- 3.4 If the Buyer has applied for and the Seller has approved for payment for the Goods & Services by use of one of the nominated credit cards being MasterCard and/or Visa, the price at which the Goods & Services are invoiced to the Buyer will include a separate itemised "*credit card processing fee / surcharge*" at the rate of 1.75% (inclusive of GST) of the total invoiced value.

4. Returns

- 4.1 The Goods are not sold by the Buyer to the Seller on a sale or return basis.

5. Goods & Services Tax (GST)

- 5.1 Goods & Services Tax is calculated on all goods subject to tax at the prescribed value which is in addition to the nett price of the goods.

6. Delivery

- 6.1 The Seller may at its discretion refuse to deliver the Goods to the Buyer if the terms of payment in respect of any preceding order are not observed by the Buyer.
- 6.2 Unless otherwise advised by the Buyer, the Seller will arrange for the delivery of the Goods to the delivery address specified in the invoice.

7. Claims

- 7.1 The Buyer shall notify the Seller in writing of any discrepancy between the quantity of goods delivered and the quantity of goods invoiced, within 48 hours of the date of the invoice.
- 7.2 The Buyer shall notify the Seller in writing of any damage to the goods delivered, within 48 hours of the date of the invoice.
- 7.3 The Seller shall not be required to compensate the Buyer for any discrepancy or damage if the Buyer has not given written notice to the Seller within the specified time stated in conditions 7.1 and 7.2.

8. Risk

- 8.1 The Buyer shall be responsible for the condition of the Goods as and from the date that the Goods are despatched to the Buyer or in the case of the Seller not providing delivery of the Goods, the date that the Buyer collects the Goods and thereafter the Goods shall in all respects be at the risk of the Buyer.
- 8.2 Without limiting the provisions of conditions 7.1 hereof, the Seller shall not be responsible for damage to the Goods arising from climatic conditions after the date that the Goods are delivered to the Buyer.

9. Retention of Title

- 9.1 Property and ownership in the Goods supplied by the Seller to the Buyer will not pass to the Buyer until the purchase price or the Current Account Goods has been paid in full.
- 9.2 Until property and ownership in the Current Account Goods passes from the Seller to the Buyer, the Buyer shall keep the Current Account Goods separately identified and stored in such manner as to show clearly that they are the property of the Seller.
- 9.3 In the event that the Buyer defaults in the payment of the purchase price of the Current Account Goods or in the event that this Contract is terminated in accordance with these terms and conditions, the Seller and its employees or agents shall have the right to enter upon the Buyer's premises or any other premises where the Goods are known to be stored in order to repossess the Goods and for that purpose the Buyer hereby grants to the Seller all reasonable access rights to such premises and the Seller shall be entitled to do all things required to secure repossession of the Goods.

- 9.4 The Retention of Title clause includes the provision that the Goods are paid for, if the Buyer on-sells the Goods, any proceeds of the sale and any funds received by the Buyer for those Goods of the Seller, are to be kept separate and held on trust for the Seller.

10. Delay

- 10.1 Any times given for the delivery of the Goods by the Seller are approximate times only and are for guidance only. The Seller shall not be under any liability nor shall the Buyer be entitled to terminate this Contract in the event of reasonable delay in the supply and delivery of the Goods to the Buyer.

11. Buyer's Liability and Default

- 11.1 If the Buyer:
- (a) fails to make any payments due under this contract;
 - (b) breaches any of the Buyer's obligations contained in this Contract;
 - (c) is unable or is deemed to be unable to pay its debts as and when they fall due;
 - (d) has any of its assets seized in execution of any judgment or a mortgagee or agent of a mortgagee enters into possession of all or any part of its property;
 - (e) commits an act of bankruptcy;
 - (f) makes any composition or arrangement with its creditors or calls a meeting for the purpose of so doing;
 - (g) passes any resolution or takes any step or any step is taken by a chargee of all or any part of its property in connection with the appointment of an Administrator; or
 - (h) being a company, passes a resolution for its winding up or has a receiver and manager appointed over any of its property or has a winding up petition presented against it, then the Seller, in addition to any other remedies hereby or by any law conferred upon it, may at its option treat this Contract as terminated and any part of the purchase price then unpaid whether or not payable under the terms of this Contract shall forthwith become due and payable and such termination shall be without prejudice to any claim or rights the Seller may possess.
- 11.2 Should any cheque provided by the Buyer to the Seller not be paid upon presentment to the Seller's bank, the Buyer shall pay to the Seller an amount of \$20.00 or such other amount that the company may from time to time determine to cover bank charges and administrative costs.
- 11.3 Should the Buyer fail to pay the purchase price on the due date for payment the purchaser shall pay to the vendor interest on the purchase price or so much thereof as shall remain unpaid at the rate of 2.50% per month calculated on a daily basis.

12. No Waiver

- 12.1 The failure by the Seller to insist upon strict performance of any terms of this Contract shall not be deemed to be a waiver thereof or any rights the Seller may have arising there from and no express waiver shall be deemed to be a waiver of any subsequent breach of any term of this Contract:

13. Severability

- 13.1 Should any terms of this Contract be prohibited or unenforceable in any jurisdiction, the same shall be ineffective to the extent of such prohibition or in enforceability only without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability of such provision in any other jurisdiction.

14. Governing Law

- 14.1 These terms and conditions shall be governed and interpreted according to the laws of the State of Victoria and the laws of the Commonwealth of Australia as shall apply and the Buyer and the Seller hereby consent and submit themselves to the jurisdiction of the Courts of that State or Commonwealth.

15. Interpretation

- 15.1 In these terms and conditions:
- "**ABN**" means the Australian Business Number which is an identifier for dealings with the Australian Taxation Office and other government departments or agencies.
 - "**The Seller**" means James Dickson & Co Pty Ltd (ABN 33 004 085 974), trading as National Distribution (VIC)
 - "**The Buyer**" means the person or business to whom the Goods are sold and whose name, address &/or ABN and description appears on this tax invoice:
 - "**The Tax Invoice**" means the GST compliant invoice for the sale of the Goods and Services printed on the reverse side of these terms and conditions:
 - "**The Contract**" means the contract for the sale of the Goods by the Seller to the Buyer:
 - "**The Goods & Services**" means the Goods and Services sold by Seller to the Buyer as described in the tax invoice:
 - "**The Current Account Goods**" means the Goods sold by the Seller to the Buyer pursuant to this Contract and all other Goods previously sold by the Seller to the Buyer in respect of which the purchase price has not been paid by the Buyer to the Seller.
 - "**The Credit Card Processing Fee / Surcharge**" means the fee expressed or applied (from time to time) by the Seller either as a fixed fee or as a percentage fee of the price of the sale of Goods & Services for Credit Card Transactions.