

# TERMS OF SALE

## 1. DEFINITIONS.

- 1.1 **'AMPAC'** means AMPAC Pty Limited.
- 1.2 **'Anti-Slavery Laws'** means any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015.
- 1.3 **'Applicable Laws'** means any: (a) law including any statute, statutory instrument, bye law, order, regulation, directive, treaty, decree, decision (as referred to in Article 288 of the Treaty on the Functioning of the European Union); (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (c) legally binding industry code of conduct or guideline, in each case in force from time to time which relates to the contract and/or the Goods and/or the Services.
- 1.4 **'Charged Property'** means all or any interest held by the Trader and Borrower in any real property and any after acquired real property.
- 1.5 **'Credit Application Form'** means AMPAC's credit application form by which a Trader and Borrower can apply for a credit account with AMPAC in respect of the sale of goods.
- 1.6 **'Data Protection Laws'** means any laws in force from time to time that relate to data protection, the processing of personal data and privacy applicable to the parties to this contract and/or the subject matter or performance of this contract.
- 1.7 **'Force Majeure Event'** means (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability to obtain essential supplies or materials; (h) change in Applicable Law; (i) any failure or default of a supplier or sub-contractor of AMPAC; or (j) any event or circumstance to the extent it is beyond the reasonable control of AMPAC.
- 1.8 **'Data Processing Agreement'** means AMPAC's data processing agreement which can be found at AMPAC's website from time to time.
- 1.9 **'Goods'** means the goods, equipment, material and/or chattels supplied by AMPAC to the Trader as indicated overleaf.
- 1.10 **'Order'** means an order placed with AMPAC for the sale and delivery of the goods.
- 1.11 **'Trader'** means the person or company to whom AMPAC sells goods and/or services.
- 1.12 **'Trader and Borrower'** means the person or company to whom AMPAC sells goods and/or services pursuant to a Credit Application Form.

## 2. INTERPRETATION.

2.1 In this Agreement unless the contrary intention appears:

- i. an obligation or a liability assumed by, or a right conferred on, two or more parties binds or benefits each of them severally
- ii. the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- iii. a reference to any party includes that party's executors, administrator, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- iv. a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- v. a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments

(however described) issued under it;

- vi. words importing the singular include the plural (and vice versa);
- vii. words importing gender include every other gender;
- viii. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- ix. the word 'includes' in any form is not a word of limitation; and
- x. a reference to '\$' or 'dollar' is to Australian currency.

2.2 **HEADINGS:** The headings in this Agreement are not part of it and do not affect its meaning.

## 3. STATUTORY PROVISIONS.

3.1 **THE TRADER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT.** Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to or in respect of any contract arising between AMPAC and the Trader under or by virtue of the *Competition and Consumer Act 2010* (Cth) (the 'Act'), or any other enactment of Australia or of any State or Territory there of affecting such contract and which cannot be excluded from such contract are deemed to apply to such contract, notwithstanding any inconsistency with these terms

3.2 Subject to 3.1; no conditions or warranties expressed or implied, by law and no representations of statements are binding on AMPAC unless set out in these terms or expressly incorporated into these terms by reference in writing.

## 4. QUOTATIONS.

4.1 Every quotation of AMPAC is by way of invitation to treat only and shall not be deemed to be an offer by AMPAC. There shall be no contract between AMPAC and the Trader until a Trader's order is accepted by AMPAC in writing and such contract shall only be on the terms contained therein.

4.2 All quotations are open for acceptance for the number of days specified in the quotation or if not specified then not more than 30 days from the date of the quotation.

4.3 AMPAC's quotation relates only to such Goods as are specified therein and is given subject to such Goods being available at the time of receipt of the Trader's order.

4.4 Prices included in AMPAC's quotation are based upon the quantities of Goods referred to in the quotation. Should the Trader offer to purchase a quantity of Goods which is at variance to the quantity referred to in the quotation, AMPAC reserves the right to amend the price quoted for such Goods.

4.5 The prices quoted in a published price list are for the stipulated quantities only and must not be taken to apply to an order for any lesser quantity. Changes in quantities may result in increases in unit prices and possible delays in delivery.

## 5. SPECIFICATIONS.

5.1 The Trader shall be responsible for and bear the cost of any alteration to Goods supplied by AMPAC arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Trader.

5.2 Unless AMPAC has specifically been advised in writing it has no knowledge of the use to which the Trader proposes to put any Goods supplied by AMPAC to the Trader.

5.3 Unless otherwise stated all descriptive and shipping specifications, drawings, dimensions and weights submitted by AMPAC in relation to any quotation are approximate only and any descriptions, illustrations and data contained in any catalogues, price lists and/or other advertising or promotional material are intended by AMPAC only to present a general view of goods described therein and none of such specifications, drawings, dimensions, weights, descriptions, illustrations of data shall form part of any contract arising between AMPAC and the Trader.

## 6. PRICES.

6.1 Prices quoted by AMPAC are those stated at the date of quotation and shall be subject to variation without notice.

6.2 Unless otherwise stated in writing in any quotation, any sales tax, stamp duty, impost goods and services tax or value added tax or any other taxes, levy or the like, imposed now or in the future

on either the sale, manufacture, dealing with distribution, import or use of Goods or measured by the selling price of Goods or otherwise how so ever shall not be included in the price of the goods. The Trader shall pay such sales tax, stamp duty, impost goods and services tax or value added tax to AMPAC in addition to the price of the Goods at the same time as it pays the price.

## 7. PAYMENT.

7.1 Unless otherwise agreed in writing by AMPAC and the Trader, payment shall be due in cash on delivery ('the Payment Date').

7.2 Should the Trader make default in respect on any payment due to AMPAC then AMPAC shall have the right, in addition to all other payments to which it is entitled at law, to charge interest on the overdue amount, such interest (unless otherwise specified by AMPAC) to be charged at a rate calculated on a daily basis, from the Payment Date.

7.3 If payment is not made by the Payment Date AMPAC shall, without prejudice to any other right to damages or other remedies be entitled to withhold further deliveries until payment of such account is made and/or to cancel the contract in respect of the whole or any part of the Goods remaining undelivered.

7.4 AMPAC shall be entitled to claim all costs of the collection, of any unpaid monies including legal fees whether incurred in or out of court, on appeal, in arbitration in the bankruptcy court or in any insolvency proceedings.

7.5 If AMPAC agrees to extend credit to the Trader and Borrower, the Trader and Borrower agree to the terms stated in the Credit Application Form.

## 8. CONSEQUENTIAL LOSS.

8.1 AMPAC hereby expressly excludes to the extent permitted by Law any liability (arising either in contract or in tort or however otherwise arising) for:-

8.2 Consequential loss or damage caused by or arising out of the use of the Goods or occurring in respect of the Goods.

8.3 Loss or damage due to fair wear and tear and negligence or improper use, operation, storage or handling or (without prejudice to the generality of the foregoing) the use or operation of the Goods other than strictly in accordance with AMPAC's written instructions as supplied with the goods

## 9. JOINT AND SEVERAL LIABILITY.

Every covenant, agreement, warranty or obligation expressed or implied in this agreement by which two or more persons covenant, agree or are bound shall bind such person jointly and each of them severally and every covenant, agreement, warranty or obligation expressed or implied in this Agreement which applies to two or more persons shall apply to such persons jointly and each of them severally

## 10. NON-WAIVER.

Any failure or omission by a party either wholly or in part to enforce strict compliance with any provision of this agreement or any act, omission, delay, forbearance or indulgence granted by a party to the other shall not operate as a waiver and shall not affect or impair that provision in any way of the rights of the party to avail itself of the remedies it may have in respect of any breach of any such provision.

- i. No waiver by a party of any breach of any provision of this Supply Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision.

## 11. REMEDIES CUMULATIVE.

The rights, powers or remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

## 12. SEVERABILITY.

If one or more of the provisions of this agreement is held to be void, unenforceable or invalid, the remaining provisions of this agreement shall not be affected and shall continue in full force and effect.

## 13. ASSIGNMENT.

Unless otherwise agreed in writing by AMPAC the Trader and Borrower must not assign either the benefit or the burden of these terms of sale.

## 14. CONFIDENTIALITY.

The parties agree to treat as confidential and keep secret the contents of these terms of sale and not to disclose them to any other person not a party hereto, unless:-

- i. with the prior written consent of the other party;
- ii. to legal representatives or other professional advisers under a duty of confidentiality; or
- iii. for the purpose of performance or enforcing performance of these terms of sale

## 15. CREDIT.

If in AMPAC's opinion the Trader's credit is unsatisfactory or satisfactory security for payment is not given on request, AMPAC may require payment of the whole or part of the Purchase price from the Trader in advance and pending such payment delivery may be suspended. In the event of such advance payment not being made within a reasonable period stipulated by AMPAC, AMPAC may cancel the Trader's order without liability.

## 16. DELIVERY.

16.1 The period given for delivery starts from the date the order is accepted by AMPAC.

16.2 Delivery in Australia, unless otherwise specified in the quotation, shall be completed when the vehicle carrying the goods arrives at the destination specified in the order.

16.3 Carriage is by any method of transport at AMPAC's option and is subject to the conditions of carriage agreed with the carrier.

16.4 Where AMPAC is responsible for transport, AMPAC will replace or repair free of charge goods lost or damaged in such transit provided both the carrier and AMPAC are advised (otherwise and upon the carry of documents) within twenty one days of issue of advice note or invoice in case of non-delivery and within three days of delivery in case of damaged goods.

16.5 The Trader shall ensure that the goods supplied hereunder are inspected as soon as reasonably practicable after receipt by the Trader but in no event later than fourteen days after receipt. Inspection expenses should be borne by the Trader failure to notify AMPAC prior to the expiration of such period of any matter making the goods non-conforming shall constitute unqualified and irrevocable acceptance and a waiver by the Trader or any claim with respect to the delivery.

16.6 If at the date specified for delivery acceptance of the goods is delayed for reasons outside AMPAC's control the goods will be stored by AMPAC and the Trader shall be liable to pay reasonable storage charges for the period of delay plus the cost of any additional handling and transporting incurred. AMPAC further reserves the right to give the Trader notice in writing to accept delivery of the goods within the period (not less than fourteen days) specified in the notice and to cancel the contract if delivery is not effected within such period. This cancellation shall entitle AMPAC to dispose of the goods and to obtain from the Trader compensation of the loss of profit in addition to any other sums due from the Trader under these conditions.

16.7 Deliveries which are delayed at the Trader's request may be invoiced and dated the date AMPAC is prepared to deliver. Additional charges for warehousing, trucking and other incidental expenses created by the delay may be imposed by AMPAC on the Trader.

16.8 AMPAC reserves the right to make partial deliveries of any Goods the subject of any contracts between AMPAC and the Trader and to invoice such deliveries separately.

16.9 If AMPAC is prevented (directly or indirectly) from making delivery of the Goods or any part thereof by reason of acts of God, war, strikes, lockouts, trade disputes, fire, breakdowns, suspension of production, accidents, interruption of transport, government action or any other cause what so ever (whether or not of a like nature of those specified above) outside its reasonable control AMPAC shall be under no liability whatsoever to the Trader and shall be entitled as its option either to cancel this contract or to extend the time of its performance and the Trader shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or despatch.

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16.10 AMPAC can accept no liability for exceeding the period given for delivery or any agreed extension of it, but AMPAC shall use all reasonable endeavours to avoid delay.

### 17. FREIGHT.

In the event that any agreements, arrangements or understandings between the Trader and AMPAC in relation to supply of Goods is terminated by agreement between the Trader and AMPAC, the Trader shall at the cost of the Trader be obligated to arrange the return of any relevant Goods to AMPAC using the same method of freight as that used to transport the relevant Goods to the Trader and the risk in the Goods shall remain with the Trader until the same are re-delivered to AMPAC.

### 18. RISK AND PRIORITY.

18.1 All goods supplied hereunder shall be at the Trader's risk from the moment of delivery by AMPAC as set out in clause 16.2 herein.

18.2 Notwithstanding any delivery of the goods or any part thereof or any other provision of this contract the goods shall remain at the sole and absolute property of AMPAC as full legal and equitable owner until such time as the Trader shall have paid AMPAC the purchase price in full together with the full price of any other goods and subject of any other contract with AMPAC. AMPAC is entitled to register a security interest by any method permitted by the laws of Australia including the *Personal Property Securities Act 2009* (Cth).

18.3 The Trader acknowledges that the Trader is in possession of the goods delivered by AMPAC solely as Bailee for AMPAC until such time as the full price thereof is paid to AMPAC together with the full price of any other goods the subject of any other contract with AMPAC.

18.4 Until such time as the Trader becomes owner of the goods:

- i. it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of AMPAC;
- ii. the Trader is licensed by AMPAC to, in the ordinary course of the Trader's business, process the goods in such fashion as it may wish and/or incorporate them in or with any product or products subject to the express condition that the new product or products or any chattel whatsoever containing any part of the goods shall be separately stored and marked so as to be identifiable as being made from or with the goods of the property of AMPAC;
- iii. if goods which are the property of AMPAC are mixed with goods which are the property of a person other than the Trader or are processed with or incorporated therein, the product thereof shall be owned in common with that other person;
- iv. the Trader shall be at liberty to agree to sell AMPAC's goods or any product produced from or with AMPAC's goods on the express condition that such an agreement to sell shall take place as agent and bailee for AMPAC and that the entire proceeds of sale and moneys therefore are held in trust for AMPAC and are not mingled with any other moneys and shall at all times be identifiable as AMPAC moneys;
- v. if the Trader has not received the proceeds of any such sale, he will if called upon to do so by AMPAC, within seven (7) days thereof assign and sell all rights against the person or persons to whom he has supplied any product or chattel made from or with AMPAC's goods.

18.5 Each of the above sub-clauses shall be deemed to be distinct and separate conditions and the validity or invalidity of any particular sub-clause shall not affect the validity or invalidity of the remaining sub-clauses.

18.6 AMPAC shall retain a general lien on the Trader's goods still in the Trader's possession for any unpaid balance the Trader may owe AMPAC. The Trader shall indemnify AMPAC against all

claims, demands, damages, penalties, costs, expenses and liabilities arising out of or in connection with AMPAC's continued ownership as aforesaid (including without limitation arising out of the use or operation of all goods supplied hereunder by the Trader or on the Trader's behalf).

### 19. DESIGN RIGHTS.

19.1 AMPAC's offer or quotation and any subsequent contract may contain information for the Trader's secret and confidential use based on AMPAC's own design and development work and that of AMPAC's technical collaborators. The Trader is hereby bound not to disclose this information to any third party without AMPAC's consent in writing. The Trader is further bound not to make or have made by any third party any goods described in the offer or quotation and in any drawings, designs, proposals, photographs, plans, reports, recommendations, specifications or any other visible data accompanying or relating to the offer and any subsequent contract.

19.2 The Trader undertakes to indemnify AMPAC against all costs should any design or instruction by the Trader to AMPAC involve AMPAC in actual or threatened litigation or arbitration as a result of alleged infringement of any letters patent, registered designs, trade marks, copyrights or any other form of industrial property.

### 20. WARRANTY.

20.1 AMPAC hereby warrants to the Trader that Goods manufactured by AMPAC, or its related companies, shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Trader's attention, before any contract is formed between AMPAC and the Trader, or, if the Trader examines the Goods, the subject of such contract before such contract is formed then except as regards defects which that examination ought to reveal).

If it is proven to AMPAC's reasonable satisfaction that Goods manufactured by AMPAC or its related companies are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in Clause 20.1 of these Terms) then AMPAC shall, at its cost and its option and (to the full extent permitted by law) as the Trader's sole remedy, either:

- i. repair such Goods;
- ii. replace such Goods with the same or equivalent goods at the point of delivery applicable to the contract under which such Goods are supplied to the Trader by AMPAC; or
- iii. refund to the Trader the contract price of such Goods.

20.2 This warranty does not apply in respect of defects due to or arising from:

- i. incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by AMPAC), acts of God caused beyond AMPAC's control or whilst unauthorised repairs or alterations have been carried out; or
- ii. the use of Goods of consumable nature;
- iii. defects occurring outside thirty-six (36) calendar months after the Goods have been delivered to the Trader. If delivery was delayed for reasons beyond AMPAC's control, then thirty-six (36) calendar months from delivery or forty-two (42) calendar months after AMPAC first notified the Trader that AMPAC was ready to deliver the Goods (whichever period expires earlier);
- iv. AMPAC is notified in writing within seven (7) days of the alleged defect first coming to the notice of the Trader and the Trader returns the defective Goods to AMPAC, or if necessary, at the sole discretion of AMPAC, to the works where such Goods were manufactured or assembled, free of charge; and
- v. the Trader has fulfilled all its contractual obligations.

20.3 This warranty will only apply if the Goods, the subject of warranty, are returned to the original point of delivery. It is the responsibility of, and at

the risk of, the purchaser to return the Goods to the original point of delivery.

20.4 The benefit of this warranty is personal to the Trader and is non-assignable without the prior written consent of AMPAC.

### 21. LIMITATION OF LIABILITY.

21.1 Subject to clauses 3.1, 16.4 and 19 of these terms, but notwithstanding anything else express or implied in these terms, AMPAC shall not be liable for any injury to persons, damage to property or for any special indirect or consequential loss or damage whatsoever or (without limiting the generality thereof) loss of profits arising in any way whether directly or indirectly and whether as a result of negligence on the part of AMPAC or its servants, agents and contractors or otherwise arising out of or resulting from whether directly or indirectly the use of or installation of the Goods except in the case where the Trader is a 'consumer' for the purpose of the Act.

21.2 If the Trader is a 'consumer' as defined in section 4B of the Act then:

- i. If the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, AMPAC acknowledge that the Trader has certain rights, in addition to its rights under this warranty, under Part V of the Act, which are not capable of being excluded, restricted or modified and which AMPAC does not purport to exclude, restrict or modify;
- ii. If the Goods are not of a kind ordinarily required for personal, domestic or household use, the liability of AMPAC shall be limited to and may be fully discharged at AMPAC's sole discretion:
  - a) the replacement of the Goods or the supply of equivalent Goods;
  - b) the repair of Goods;
  - c) the payment of the cost or the replacement of the Goods or of acquiring the equivalent Goods;
  - d) the payment of the cost or repair of the Goods.

### 22. DATA PROTECTION

22.1 Each party will comply with the Data Protection Laws applicable to it.

22.2 In the event that the supply of Goods and/or Services requires AMPAC to process personal data on the Trader's and Borrower's behalf as data processor, this will be set out in the Order, the Data Processing Agreement will be applicable to the contract, and the parties will comply with the Data Processing Agreement.

### 23. ANTI-SLAVERY

Both parties will comply with all applicable Anti-Slavery Laws.

### 24. ANTI-CORRUPTION

24.1 Each party will comply with all Applicable Laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including, but not limited to:

- i. local and national laws in the territories in which it operates;
- ii. the UK Bribery Act 2010;
- iii. the US Foreign Corrupt Practices Act 1977;
- iv. the UN Convention Against Corruption; and
- vi. in relation to AMPAC only, comply with AMPAC Group's code of conduct relating to bribery and corruption.

### 25. FORCE MAJEURE

25.1 AMPAC will not be in breach of the contract or otherwise liable to the Trader and Borrower for any failure to perform or delay in performing its obligations under the contract to the extent that such failure or delay is due to a Force Majeure Event.

25.2 If a Force Majeure Event occurs AMPAC will as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the Trader and Borrower that the Force Majeure Event has occurred and, subject to clause 0, the Trader and Borrower will not be in breach of the contract or otherwise liable to AMPAC for any failure to perform or delay in performing its obligations under the contract to the

extent that this is due to a Force Majeure Event affecting AMPAC.

25.4 If AMPAC is affected by a Force Majeure Event the Trader and Borrower will continue to pay AMPAC's invoices in accordance with clause 7.1 in respect of any Goods and Services which AMPAC continues to supply notwithstanding the occurrence of the Force Majeure Event.

25.6 If a Force Majeure Event which gives rise to relief from liability under clause 25.1 continues for a period of more than 60 days, either party will be entitled to terminate the contract immediately by giving written notice to that effect to the other party.

### 26. LAW.

Except as may be otherwise agreed in writing between AMPAC and the Trader, any contract arising between AMPAC and the Trader shall be construed and operated as an Australian contract and in conformity with the laws of and applicable in the State of Western Australia and AMPAC and the Trader agree to submit to courts that have jurisdiction in that State.

### 27. SITE PREPARATION.

The Trader shall at the Trader's expense prepare the site for installation of the goods/services sold so as to satisfy the goods electrical environment and any special physical requirements as specified by AMPAC or the manufacturer.

### 28. APPLICABLE BY LAW.

These conditions shall be governed by the laws of the State of Western Australia.

### 29. GENERAL.

Unless otherwise agreed to in writing by AMPAC, any Goods or materials supplied or to be supplied by AMPAC are supplied only on these terms. Previous dealings between AMPAC and the Trader shall not vary or replace these terms or be deemed in any circumstances whatsoever so to do. The giving by the Trader of any delivery instructions for the Goods or any part thereof or the acceptance by the Trader of delivery of the Goods or any part of or any conduct by the Trader in confirmation of the transaction after receipt by the Trader of AMPAC's acceptance of the Trader's order shall constitute unqualified acceptance by the Trader of these terms unless otherwise agreed to by specifically in writing signed by AMPAC and notwithstanding any terms appearing in any order or other documentation provided by the Trader.