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## **LAVENDER CE PTY LTD**

### **TERMS OF TRADE**

#### **1. Definitions**

- 1.1** "Seller" shall mean Lavender CE Pty Ltd and its successors and assigns.
- 1.2** "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
- 1.3** "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4** "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.5** "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.

#### **2. Goods/Services**

- 2.1** The Goods/Services shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

#### **3. Price and Payment**

- 3.1** At the Seller's sole discretion:

- (a)** The price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
- (b)** The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list.
- (c)** The price of the goods shall be the seller's quoted price which shall be binding upon the seller provided that the buyer shall accept in writing the seller's quotation within thirty (30) days.

- 3.2** Time for payment for the goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery of the Goods.

- 3.3** Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller.

- 3.4** 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 the Seller.

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## 4. The Competition and Consumer Act 2010 and Fair-Trading Acts

**4.1** Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the State and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 5. Default and Consequences of Default

**5.1** In the event that:

- (a)** any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- (b)** the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c)** a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer,  
then:
  - (i)** the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (ii)** all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

## 6. Privacy Act 1988

**6.1** The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller and agrees to the Seller's Privacy Policy attached.

## 7. Warranty

**7.1** The Seller warrants that its Goods will meet specification. NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT OR OTHERWISE, IS MADE AS TO THE GOODS SOLD OR ANY INSTRUCTIONS OR TECHNICAL ADVICE PROVIDED. In case of defects for which claims are submitted in a timely fashion, the Seller will at its own option either redeliver conforming Goods to Buyer at no cost, or, credit the Buyer as far as reasonable in whole or in part for the invoice value of the Goods in question.

**7.2** Warranty period is twelve (12) months from date of invoice.

**7.3** With respect to immediately noticeable defects, the Buyer must submit a claim no later than (14) days after delivery of the Goods, on penalty of loss of any warranty entitlement towards the Seller.

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**7.4** Claims with respect to other defects must be made within (14) days after their appearance and while still within the warranty period, on penalty of loss of any warranty entitlement towards the Seller.

**7.5** Any right to a warranty lapses if:

- (a)** Directions given by the Seller for storage are not followed exactly;
- (b)** Goods are used improperly or not in conformity with the agreed to or usual purpose;
- (c)** The Buyer has not fulfilled any of its obligations towards the Seller arising from the underlying purchase of the Goods, or has not fulfilled them adequately or on time.

**7.6** The Seller's warranty liability in connection with any defects in Goods it delivers is limited to its obligations under the warranty described in the previous paragraphs.

## **8. Liability**

**8.1** The Seller is never obliged to pay damages except if and insofar as the damage suffered was inflicted intentionally or by the gross negligence of the Seller. The Seller's liability for loss of profits, consequential or indirect damage is, however, at all times excluded.

**8.2** In all cases in which the Seller is obliged to pay damages, damages will never be higher than, at its option, either the invoice value of the Goods or Services delivered whereby or in connection with which the damage was caused, or, if the damage is covered by an insurance policy of the Seller's, the amount that is actually paid out by the insurer with respect thereto.

**8.3** Any claim against the Seller, except those recognised by the Seller, lapses after a period of twelve (12) months from the time the claim arose.

## **9. General**

**9.1** If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**9.2** All Goods supplied by the Seller are subject to the laws of Queensland and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

**9.3** The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

**9.4** The Seller 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 the seller notifies the buyer in writing of such change.

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- 10** These general agreed terms apply to all transactions between us. Other documents relating to our transactions will include any specific terms and conditions.
- 11** If you are a company, we may require a guarantor of your obligations.
- 12** Price means our fixed and published price or the amount agreed between us or the amount established by a course of dealing between us. The price unless otherwise agreed does not include delivery costs.
- 13** The observation of agreed time frames is of primary importance.
- 14** If you must make a payment or do any other thing on or by a day that is not a business day you must make the payment or do the thing on or by the next business day.
- 15** Unless otherwise agreed normally payment is a condition precedent to delivery of the goods.
- 16** By accepting payment of any sum after its due date we do not waive our right either to require payments as they fall due or to suspend or end our arrangements.
- 17** You and any guarantor will be in default if you do not pay us when money is due for payment or fail to comply with any other obligation under our business arrangements.
- 18** If you are in default under our agreement, we may send you a default notice. The notice will tell you what the default is and what you are required to do to correct the default. You will have 14 business days to rectify the default.
- 19** If you do not comply with the default notice you become immediately liable to pay us all money owing with interest on that amount from the due date until payment at the rate of 15% per annum. In these circumstances, as title to the goods do not pass to you until we have been paid, we may repossess and sell the goods and apply the proceeds of the sale towards repayment of the money owed under the agreement.
- 20** You also agree to pay on default all costs and expenses incurred on a Solicitor/Client basis in exercising our rights of recovery from you and the guarantor if any and indemnify us against any losses resulting from the default.
- 21** Title in the goods does not pass to you until we have received payment in full.
- 22** To protect our security interest in the goods until payment we may choose to register the agreement between us under the Personal Properties Securities Act 2009. You agree to do all things necessary to facilitate such registration.
- 23** On default in payment you irrevocably permit us or any person authorised by us in writing to indemnify and hold us harmless for all reasonable costs and expenses of recovery of the goods and losses if any on their resale.

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- 24** You agree to sign documents or do all things necessary to perfect our rights under the agreement and appoint us as your attorney to sign any document or do anything that may reasonably be required to enforce our rights on default.
- 25** Unless otherwise agreed risk passes to you at the time we ship FOB our ordinary place of business to your specified location. You assume all responsibility for filing claims for damage against the carriers and other agents. You must insure the goods against loss or damage until payment has been made to us.
- 26** If any of the goods are damaged or destroyed after shipment you must direct the insurer to make payment to us of all insurance money payable in respect of the insurance claim made on the damaged or destroyed goods.
- 27** Insurance money received by us will be applied firstly against the outstanding price of the goods that are damaged or destroyed, secondly against the outstanding price of all goods supplied under the agreement, thirdly against the outstanding balance payable to us by you on any account under our agreements and fourthly in payment of any balance to you.
- 28** You represent and warrant to us that all information and representations that you, or any person acting on your behalf has given in connection with our transactions are true and correct and that you have not failed to disclose to us anything relevant to our decision to have dealings with you and that no court proceedings or dispute is current that may have an adverse effect on performing your obligations under this agreement.
- 29** Acceptance of the goods must take place immediately following delivery and is established if you signify by words or conduct that the goods are conforming or that you retain them in spite of their nonconformity or deal with them in a way inconsistent with our ownership. You may reject them on good grounds after a reasonable opportunity to inspect them. The rejection must immediately be communicated to us with full particulars of the nonconformity. On acceptance if payment arrangements are in place then they must be honoured. If payment has been made then it will either be refunded by us or credited towards payment of replacement goods for the nonconforming goods.
- 30** Your right, as against us to retain or dispose of the goods or services delivered or supplied is conditional upon you honouring our payment arrangements.
- 31** When a dispute arises between us you agree to comply with our dispute resolution process. To this end a party with a complaint against the other is first required to notify the other of the dispute by giving written notice specifying the nature of the dispute, the outcome required and the action believed necessary under the circumstances that will assist both in settling the dispute.
- 32** Each party will then in good faith attempt to resolve the dispute by negotiation, and if the dispute in some aspect involves payment of money, the party withholding payment is required immediately upon receipt of the notice to deposit the disputed amount into an escrow account with instructions pertaining to the release of funds. Undisputed amounts must be paid forthwith.
- 33** Notices must be in writing and be given personally by Express or Registered Post with delivery confirmation or by facsimile transmission or email with receipt confirmation.

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**34** All principals of a company trust or partnership are required to sign a personal guarantee.

**35** All guarantors shall be jointly and severally liable for performance of all of the terms, covenants, and conditions of our agreements.

**36** You and the guarantors jointly and severally authorise us to exchange information about the creditworthiness of either yourself or the guarantors with any credit reporting agency at any time during the term of the agreement.

**37. Termination –**

- (a) this agreement may be terminated by either party in the event of the other party breaching a term of this agreement and failing to remedy the breach within 14 days after having received notice in writing of the breach.
- (b) Either party may terminate this agreement by written notice to the other party if the other party becomes subject to insolvency proceedings or events.
- (c) The principal may terminate this agreement upon written notice to the service provider if the service provider commits a fundamental breach of this agreement within the meaning of this agreement.
- (d) If such termination is disputed, it shall be dealt with in accordance with the dispute resolution provisions of this agreement.

**38. Personal Property Securities Act: Release of security interest –**

- (a) This clause applies if any part of the sale property is subject to a security interest to which the PPSA applies.
- (b) The seller consents to the buyer searching the PPSR and must promptly provide the buyer with any information within the seller's possession or control, necessary to search the PPSR (including serial numbers, full names, former names, dates of birth and applicable Australian Business Numbers).
- (c) The seller must ensure that at or before settlement, the buyer receives:
  - (i) A release from the secured party releasing the security interest in respect of the property; or
  - (ii) A statement in writing in accordance with section 275(1)(b) of the PPSA setting out that the amount or obligation that is secured is nil at the due date for settlement; or
  - (iii) A written approval or correction in accordance with section 275(1)(c) of the PPSA indicating that, on the due date for settlement, the personal property included in this sale contract is not or will not be property in which the security interest is granted, if the security interest is registered in the PPSR.

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- (d) A release or statement for the purposes of this clause must be in writing and in a form acceptable to the buyer.
- (e) If the buyer receives a release or statement under this clause the buyer must provide the seller with a copy of the document at or as soon as practicable after settlement.
- (f) In addition to ensuring a release is received under this clause, the seller must ensure that at or before settlement, the buyer receives a written undertaking from a secured party to register a financing change statement to reflect that release if the property being released includes property of a kind that may be described by a serial number in the PPSR.
- (g) The seller must notify the buyer of all security interests that are to be released at least 28 days before the due date for settlement.
- (h) The buyer may within seven days of receiving notification pursuant to this clause advise the seller of any additional security interests that must be released on or before settlement.
- (i) If the seller does not provide an advice under this clause, the buyer may delay settlement until 21 days after the seller advises the buyer of the security interests to be released.