

CONDITIONS OF SALE (12/2013)

To the maximum extent permitted by law, all Australian dealings between Orora Limited ABN 55 004 275 165 and/or any of its related bodies corporate ("Orora") and any customer ("Customer") relating to the supply by Orora of any product or services are subject to the following Conditions of Sale ("these Terms") unless otherwise agreed in writing.

- 1. Payment:** Cash Purchases will be paid for with order or at or prior to delivery as required by Orora. Credit Purchases will be paid for by cash, cheque, bank cheque or EFT without deduction, on or before the last business day of the month following the month the invoice was raised by Orora.
- 2. Interest:** Interest may be charged by Orora at its election on overdue accounts at the prevailing 90 day bank bill rate nominated by the National Australia Bank from time to time, plus an additional 2%.
- 3. Set Off:** Orora can set off any amount which the Customer or any of its related entities owe to Orora under these Terms or any related order or contract against any amount which Orora owes to the Customer or any of its related entities (whether under these Terms, related order, contract or otherwise).
- 4. Property:** Risk in any products or other equipment supplied to the Customer under these Terms passes to the Customer immediately upon the earlier of Orora's notification that the products are ready for collection or upon delivery of the products to the agreed delivery location. Legal and equitable title in the products or equipment is retained by Orora until Orora receives payment in full. Until title passes, the Customer is authorised to sell the products in the ordinary course of its business.
- 5. Personal Property Securities Act 2009(Cth) (PPSA) Registration:** The Customer agrees that Orora will have a Purchase Money Security Interest (as defined in the PPSA) in any products or other equipment supplied to the Customer under these Terms or any related order or contract. Orora may register any security interest contemplated by these Terms and/or any related order or contract on the PPS Register (as defined in the PPSA). The Customer must supply Orora with any information and take any steps Orora requires for the purposes of effecting and enforcing such registration. The Customer irrevocably and unconditionally waives its right to receive any notice from Orora in connection with the registration. The Customer will not allow a security interest to be created or registered over the products in priority to the security interest held by Orora. The Customer agrees that any action taken by Orora in relation to the Customer's security interest in the products is at the cost of the Customer. The parties agree that for the purposes of section 115 of the PPSA, nothing in sections 95, 121(4), 125, 130 (to the extent that it requires Orora to give any notice to the Customer), 132(3)(d), 132(4) and 135 of the PPSA will apply to any collateral arising from or in connection with these Terms and/or any related order or contract. Notwithstanding section 275 of the PPSA, the parties further agree to keep confidential the contents of these Terms and related material.
- 6. Limitations of liability:** To the maximum extent permitted by law, Orora's liability: i) for breach of any of these Terms and/or any related order or contract; ii) in tort (including for negligence) is limited, at Orora's option, to: A) the replacement or repair of the goods; B) the supply of equivalent goods or services; or C) the cost of replacing or repairing the goods or of acquiring equivalent goods or services. Any claim by the Customer for short or wrongful delivery of products must be notified to Orora in writing within 14 days of delivery or will be taken to have been absolutely waived. To the maximum extent permitted by law, neither party will be liable for any loss of profit, loss of goodwill, loss of opportunity or any, special, exemplary, punitive, indirect or consequential loss or damage incurred by the other party either directly or indirectly in connection with these Terms and/or any related order or contract.
- 7. Excluded terms:** To the maximum extent permitted by law, all terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded.
- 8. Suitability of products etc:** These Terms and any order or contract between Orora and the Customer shall not be or not be deemed to be a sale by sample. Any description of the products is given by way of identification only and does not constitute a sale by description. Neither Orora nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.
- 9. Placement of Orders:** If a dispute arises in connection with any order (including any question of identity or authority or any telephone, facsimile email, e-commerce or computer generated order), the internal records of Orora will be conclusive evidence of what was ordered. Each order placed shall be deemed to be a representation by the Customer, that it is and will remain in the future solvent and able to pay all of its debts as and when they fall due.
- 10. Purchase Price:** Unless stated in the purchase order or otherwise agreed in writing, prices will be as determined by Orora at the date of delivery based on the Orora price lists. Duty, Government charges etc. including GST ("imposts") will be to the Customer's account. Orora price lists may be varied by Orora without notice and exclude imposts unless expressly noted. Any volume rebate or settlement discount agreed by Orora will be calculated on base price exclusive of imposts.
- 11. Delivery:** Unless otherwise agreed in writing, all products will be Delivered Duty Paid (DDP) as defined in Incoterms 2010.
- 12. Pallets.** Pallets remain the property of Orora or its nominee at all times and the Customer must promptly return all pallets and reusable packaging provide by Orora. The Customer indemnifies Orora for the cost of hire and/or replacement of any pallets not returned within 14 days of Orora's request.
- 13. Products and Services:** Orora is not responsible or liable for any products or services to the extent that; i) they are made or performed to designs, drawings, specifications and/or procedures etc or with any materials which are provided or approved by or on behalf of the Customer and; ii) are used, stored, handled or maintained incorrectly or inappropriately after delivery to the Customer. The Customer must ensure that all products and services comply with all applicable legal requirements and regulatory standards before use or on-sale. Orora may update, modify, alter or make substitution for any of its products or any component in or used in forming any part of any products. It is the Customer's sole responsibility to ensure that materials, designs, drawings, specifications, procedures etc provided by or on behalf of the Customer, to be used by Orora in meeting any orders, are correct, appropriate and comply with all applicable laws, regulations and standards.
- 14. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer (ie Customer conditions of purchase) shall apply to Orora.
- 15. Recovery Costs:** The Customer will pay any costs and expenses incurred by Orora or its solicitors, legal advisers, mercantile agents and others acting on Orora's behalf in respect of anything arising from these Terms or any dealings with Orora.
- 16. Default:** Upon the Customer's breach or default of any of these Terms, related order or contract with Orora, Orora may, without prejudice to its other rights; i) retain all monies paid by the Customer; ii) cease further deliveries of products and services, iii) seek to recover from the Customer all direct loss and costs incurred; iv) take possession of any products not fully paid for and; v) otherwise suspend its obligations under or terminate these Terms and/or any related order or contract.
- 17. Insolvency:** If the Customer is involved in any act of insolvency, then Orora may deem this to be a default under these Terms and may suspend its obligations under or terminate these Terms and/or any related order or contract without prejudice to any rights it may have. An act of insolvency includes bankruptcy, liquidation, receivership, administration, failure to comply with a statutory demand, a suspension of payment of debts or the bringing of a winding up application which is not dismissed within 7 days.
- 18. Indemnity:** The Customer indemnifies Orora against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by Orora arising from or in connection with any breach or default of the Customer of these Terms, any related order or contract or the *Competition and Consumer Act 2010* (Cth).
- 19. Force Majeure:** Orora will not be in default or breach of these Terms or any related order or contract, or will not otherwise be liable to the Customer, for any delay or failure to perform arising from an event of Force Majeure. An event of Force Majeure means an event or cause beyond the reasonable control of Orora and includes any strike, lock out or industrial action; acts of God, lightning, storm, explosion, flood, fire, landslide, bush fire or earthquake; act of public enemy, war, terrorism or sabotage; the effect of any applicable laws, orders, rules or regulations of any government or other competent authority; and embargo, inability to obtain any essential equipment or materials, power or water shortage or lack of transportation.
- 20. Tooling:** The Customer agrees that all tooling, materials, industrial or intellectual property or the like used in the preparation for or production of any products or provision of any services will be and remain the property of Orora or its nominee despite any contribution by the Customer.
- 21. Warranties and acknowledgement:** The Customer represents and warrants to Orora that at all times: i) the Customer is duly authorised to permit Orora to use the trade marks, copyright material and any material the Customer specifically requests Orora to use on or in connection with the products; and ii) Orora's use of the trade marks, copyright material and any material the Customer specifically requests Orora to use on or in connection with the products will not infringe the trade mark, copyright or other intellectual property rights of any party and will not breach any statute, regulation or rule.
- 22. Artwork and Experimental Orders etc:** The Customer agrees to pay for: i) any artwork, designs, stereos, blocks engravings etc or modifications thereto etc involved in any order, in addition to the agreed prices; and ii) any experimental or preliminary work or product agreed to be provided by Orora. The Customer agrees that all intellectual property rights in these items will be held by Orora or its nominee.
- 23. Contracts and Quotations:** Any contract, order or quotation between the parties in relation to Orora's supply of any products or services will be deemed to incorporate these Terms by reference, unless Orora otherwise agrees in writing.
- 24. Deposits:** The Customer agrees to pay Orora any deposit required by Orora as a condition of acceptance by Orora of a purchase order.
- 25. Notice:** The Customer agrees that it will be deemed to have notice of and be bound by any change to these Terms immediately once opted by Orora and either notified to the Customer directly or displayed by Orora on its website.
- 26. Waiver:** Failure by Orora to insist on strict performance of any term, warranty or condition of these Terms or any related order or contract will not be taken as a waiver of it or of any rights Orora may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- 27. Variation:** Any variation of these Terms will not bind Orora unless approved in writing by an authorised representative of Orora.
- 28. Severability:** Any part of these Terms being a whole or part of a clause, shall be capable of severance without effecting any other part of these Terms.
- 29. Jurisdiction:** These Terms shall be governed and construed in accordance with the laws of Victoria. Each party submits to the jurisdiction of courts exercising jurisdiction there.