

MITSUMARU (AU) PTY LTD ACN 627 117 042 TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 "Mitsumaru" means any legal entity of Mitsumaru (AU) Pty Ltd ACN 627 117 042 and any current or future holding company, subsidiary, related company or successors and assigns of these companies or any person acting on behalf of and with the authority of the Mitsumaru (AU) Pty Ltd ACN 627 117 042.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally, and includes Credit Customer.
- 1.3 "Goods" means all Goods or Services supplied by Mitsumaru to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Services" means anything required to be done by Mitsumaru in connection with the provision of Goods to the Customer.
- 1.5 "Price" means the Price payable for the Goods as agreed between Mitsumaru and the Customer in accordance with clause 4 below.
- 1.6 "Website" means www.mitsumaru.com.au including any subdomains therefore any other websites through which Mitsumaru makes its services available.
- 1.7 "Terms" means these Terms and Conditions for Credit which constitute the legally binding agreement between Mitsumaru and the Customer for the provision of Mitsumaru's Goods and/or Services.
- 1.8 "Confidential Information" means any information exchanged between Mitsumaru and the Customer for the purposes of the Customer buying the Goods from Mitsumaru, including but not limited to, the prices and payment terms offered to the Customer by Mitsumaru.
- 1.9 "Permitted Purpose" means the purchase of the Goods from Mitsumaru.

2. Acceptance

- 2.1 The Customer is taken to have accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for or accepts delivery of the Goods from Mitsumaru.
- 2.2 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions Act 2000* (Vic) or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Mitsumaru and it has been approved, in writing, with a credit limit established for the account. At this point, the Customer will be deemed a "Credit Customer".
- 2.4 In the event that the supply of Goods request exceeds the Customer credit limit and/or the account exceeds the payment terms, Mitsumaru reserves the right to refuse delivery.

3. Change in Control

- 3.1 The Customer shall give Mitsumaru fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Mitsumaru as a result of the Customer's failure to comply with this clause.

4. Price

- 4.1 At Mitsumaru's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Mitsumaru to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to Mitsumaru's current price list.
- 4.2 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Mitsumaru an amount equal to any GST Mitsumaru must pay for any supply by Mitsumaru under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Payment

- 5.1 Mitsumaru may, in its absolute discretion, regardless of whether credit has been granted to a Customer in relation to an account:
 - (a) ask for payment of Goods prior to delivery where the Customer places orders sporadically;
 - (b) ask for payment of Goods prior to delivery where Mitsumaru, at their absolute discretion, deem the total of an order to be of minimal value;
 - (c) ask for a deposit for payment of Goods upon an order being placed; or
 - (d) cancel a credit facility where the Customer has not placed an order for 6 months or more.
- 5.2 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Mitsumaru, which may be:
 - (a) on delivery of the Goods;
 - (b) before delivery of the Goods;

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- (c) thirty (30) days from the date specified on any invoice for Credit Customers, subject to clause 5.1; or
(d) other form or agreement which has been agreed, in writing, between the parties as being the date for payment.
- 5.3 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking or by any other method as agreed to between the Customer and Mitsumaru from time to time.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Mitsumaru is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Mitsumaru is sufficient evidence of Mitsumaru's rights to receive the insurance proceeds without the need for any person dealing with Mitsumaru to make further enquiries.
- 6.3 If the Customer requests Mitsumaru to deliver the Goods and leave the Goods outside Mitsumaru's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7. Delivery of Goods**
- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Goods at Mitsumaru's address; or
(b) Mitsumaru (or Mitsumaru's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 At Mitsumaru's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Mitsumaru shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Mitsumaru may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time or date given by Mitsumaru to the Customer is an estimate only, and Mitsumaru will not be liable for any disruptions to delivery due to unavoidable circumstances, including but not limited to, transport breakdowns, employee strikes and natural disasters. The Customer must still accept delivery of the Goods even if late and Mitsumaru will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 8. Title**
- 8.1 Mitsumaru and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid Mitsumaru all amounts owing to Mitsumaru; and
(b) the Customer has met all of its other obligations to Mitsumaru.
- 8.2 Receipt by Mitsumaru of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
(a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Mitsumaru on request;
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Mitsumaru and must pay to Mitsumaru the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Mitsumaru and must pay or deliver the proceeds to Mitsumaru on demand;
(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Mitsumaru and must sell, dispose of or return the resulting product to Mitsumaru as it so directs;
(e) the Customer irrevocably authorises Mitsumaru to enter any premises where Mitsumaru believes the Goods are kept and recover possession of the Goods;
(f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Mitsumaru;
(g) Mitsumaru may recover possession of any Goods in transit whether or not delivery has occurred; and
(h) Mitsumaru may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 9. Security and Charge**
- 9.1 In consideration of Mitsumaru agreeing to supply the Goods to the Customer, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer indemnifies Mitsumaru from and against all Mitsumaru's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Mitsumaru's rights under this clause.

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9.3 The Customer irrevocably appoints Mitsumaru and each director of Mitsumaru as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.

10. Personal Property Securities Act 2009 ("PPSA")

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these Terms in writing the Customer acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods, and their proceeds, that have previously been supplied and that will be supplied in the future by Mitsumaru to the Customer.

10.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Mitsumaru may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);

(b) indemnify, and upon demand reimburse, Mitsumaru for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of Mitsumaru;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Mitsumaru;

(e) immediately advise Mitsumaru of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 Mitsumaru and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.

10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by Mitsumaru, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Customer must unconditionally ratify any actions taken by Mitsumaru pursuant to this clause 10.

10.9 Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions the PPSA.

11. Intellectual Property

11.1 Where Mitsumaru has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Mitsumaru.

11.2 The Customer warrants that all designs, specifications or instructions given to Mitsumaru will not cause Mitsumaru to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Mitsumaru against any action taken by a third party against Mitsumaru in respect of any such infringement.

11.3 The Customer agrees that Mitsumaru may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Mitsumaru has created for the Customer.

12. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

12.1 The Customer must inspect the Goods on delivery and must within five (5) days of delivery notify Mitsumaru in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Mitsumaru to inspect the Goods.

12.2 Mitsumaru's Goods and/or Services come with guarantees that cannot be excluded under the CCA. For major failures with the Services, the Customer is entitled:

(a) to cancel your Services contract with us; and

(b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods and/or Services does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods and/or Services (**Non-Excluded Guarantees**).

12.3 Mitsumaru acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.

12.4 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, Mitsumaru makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. Mitsumaru's liability in respect of these warranties is limited to the fullest extent permitted by law.

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- 12.5 If the Customer is a consumer within the meaning of the CCA, Mitsumaru's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Mitsumaru is required to replace the Goods under this clause or the CCA, but is unable to do so, Mitsumaru may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, Mitsumaru's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Mitsumaru at Mitsumaru's sole discretion;
 - (b) limited to any warranty to which the Mitsumaru is entitled, if Mitsumaru did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
 - (b) Mitsumaru has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible, including in their original packaging, unopened and are otherwise in a good and saleable condition.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Mitsumaru shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Mitsumaru;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 Mitsumaru may in its absolute discretion accept non-defective Goods for return in which case Mitsumaru may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Mitsumaru is required by a law to accept a return then Mitsumaru will only accept a return on the conditions imposed by that law.
- 12.12 Subject to clause 12.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 10% per annum after as well as before any judgment.
- 13.2 If the Customer owes Mitsumaru any money the Customer shall indemnify Mitsumaru from and against all costs and disbursements incurred by Mitsumaru in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Mitsumaru's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Mitsumaru may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Mitsumaru may suspend or terminate the supply of Goods to the Customer. Mitsumaru will not be liable to the Customer for any loss or damage the Customer suffers because Mitsumaru has exercised its rights under this clause.
- 13.4 Without prejudice to Mitsumaru's other remedies at law Mitsumaru shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Mitsumaru shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Mitsumaru becomes overdue, or in Mitsumaru's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Credit Customer has exceeded any applicable credit limit provided by Mitsumaru;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Cancellation

- 14.1 Mitsumaru may cancel any contract to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Mitsumaru shall repay to the Customer any money paid by the Customer for the Goods. Mitsumaru shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 If the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Mitsumaru as a direct result of the cancellation.
- 14.3 Cancellation of orders for Goods made to the Customer's specifications, or for items not contained on the stock list, will not be accepted once production has commenced, or an order has been placed.

15. Privacy Policy

- 15.1 A copy of Mitsumaru's Privacy Policy can be found at www.mitsumaru.com.au or alternatively, a hard copy can be provided upon written request.

Customer's Initials:

16. Unpaid Mitsumaru's Rights

- 16.1 Where the Customer has left any item with Mitsumaru for repair, modification, exchange or for Mitsumaru to perform any other service in relation to the item and Mitsumaru has not received or been tendered the whole of any moneys owing to it by the Customer, Mitsumaru shall have, until all moneys owing to Mitsumaru are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of Mitsumaru shall continue despite the commencement of proceedings, or judgment for any moneys owing to Mitsumaru having been obtained against the Customer.

17. Service of Notices

- 17.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 17.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

18. Trusts

- 18.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Customer may have notice of the Trust, the Customer covenants with Mitsumaru as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of Mitsumaru (Mitsumaru will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

19. Confidentiality

- 19.1 The Customer agrees that it will keep the Confidential Information confidential:
- (a) use its best endeavours to prevent disclosure of the Confidential Information to any third parties unless the prior written consent of Mitsumaru has been obtained;
 - (b) not claim any legal, equitable or beneficial interest in the Confidential Information and warrants that any Confidential Information it receives will be used solely for the Permitted Purpose; and
 - (c) not use the Confidential Information in any manner which may be directly or indirectly detrimental or cause loss to Mitsumaru.
- 19.2 On written request of Mitsumaru:
- (a) return to Mitsumaru all documents, disks and other computer media and all other material in the possession or control of the Customer which may contain or be derived from ideas, concepts, creations which are related to the Confidential Information or which are related to the Permitted Purpose;
 - (b) delete/destroy all copies of Confidential Information which cannot for practical considerations be returned to the Mitsumaru; and
 - (c) take steps to identify the Confidential Information and separate it from other documents stored by the Customer.
- in the event that the Confidential Information is disclosed and such disclosure is not in accordance with these Terms, the Customer will provide written notice to the recipients (or potential recipients) that the information is of a confidential nature and must not be utilised by those third parties in any manner without the Disclosing Party's prior written consent.
- 19.3 The Customer agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any breach of these Terms pursuant to clause 19.1, by the Customer would cause irreparable injury or damage to Mitsumaru which may not be capable of remedy by monetary damages alone.
- 19.4 If Mitsumaru becomes aware of a breach or anticipated breach of clause 19.1 (or has reasonable grounds to suspect that such breach will occur) the Customer agrees that in addition to all other rights available to Mitsumaru pursuant to these Terms, at law and/or in equity to make a claim for loss and/or damage suffered.

20. General

Customer's Initials:

- 20.1 These terms and conditions and any contract to which they apply shall be governed by the laws of the State Victoria, Australia and each party submits to the non-exclusive jurisdiction of the courts in the State of Victoria, Australia.
- 20.2 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.3 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 20.4 The Customer agrees that Mitsumaru may amend these Terms at any time. If Mitsumaru makes a change to these Terms, then that change will take effect from the date on which Mitsumaru notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Mitsumaru to provide Goods to the Customer.
- 20.5 The failure by Mitsumaru to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect Mitsumaru's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.6 Subject to clause 12, Mitsumaru shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Mitsumaru of these terms and conditions (alternatively Mitsumaru's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Mitsumaru nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.8 Mitsumaru may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.9 These Terms shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Mitsumaru.

Customer's Initials: