

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;

Agreement means any agreement for the provision of goods or services by the Seller to the Buyer;

Business Days means any day that banks are generally open for business but not a Saturday, Sunday or a public holiday.

Buyer means the person, jointly and severally if more than one, acquiring goods or services from the Seller and includes the Applicant named in section 1 of Part 1 Credit Application

consumer is as defined in the ACL and in determining if the Buyer is a consumer, the determination is made if the Buyer is a consumer under the Agreement;

Days means calendar days;

goods means goods supplied by the Seller to the Buyer;

GST means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

Intellectual Property means all copyright, patents, trademarks, designs, names, formulae, Specifications, confidential information and all modifications, improvements and enhancements (whether registrable or not) owned by or licensed to the Seller in respect of the goods or services;

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended;

Seller means TGT Pty Ltd ABN 75 009 854 120 and each of its subsidiaries, divisions, affiliates, associated companies and related entities, successors, transferees or assigns;

services means the services supplied by the Seller to the Buyer;

Site means any site at which services are to be performed;

Specifications means all drawings, illustrations, descriptive matter and particulars contained in the Seller's catalogues, price lists and marketing documents; and

Terms means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by the Seller in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Buyer's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Seller to the Buyer for the proposed supply of goods or services is:

- (a) valid for 30 Days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in the Seller's quotation, which are not inconsistent with these Terms.

2.4 An Agreement is accepted by the Seller when the Seller accepts, in writing or electronic means, an offer from the Buyer or provides the Buyer with the goods or services.

2.5 The Seller has absolute discretion to refuse to accept any offer.

2.6 The Buyer must provide the Seller with its specific requirements, if any, in relation to the goods and services.

2.7 The Seller may vary or amend these Terms by written notice to the Buyer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Buyer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 Prices for goods and services are set in accordance with the Seller's price list as amended from time to time.

3.3 If the Buyer requests any variation to the Agreement, the Seller may increase the price to account for the variation.

3.4 Where there is any change in the costs incurred by the Seller in relation to goods or services, the Seller may vary its price to take account of any such change, by notifying the Buyer.

4. Payment

SECTIONS 4.1 – 4.4 ARE APPLICABLE TO CREDIT ACCOUNT HOLDERS ONLY

4.1 Unless otherwise agreed in writing:

- (a) subject to 4.1(b), full payment for the goods or services must be made by within 30 Days of the date of the Seller's invoice.
- (b) the Seller reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the Seller's sole discretion immediately upon giving the Buyer written notice.

4.4 The time for payment is of the essence.

SECTION 4.5 IS APPLICABLE TO CUSTOMERS WITHOUT A CREDIT ACCOUNT, OR COD ACCOUNT HOLDERS

4.5 Payment for goods or services must be received in full prior to the release of the goods or services.



5. Set off

- 5.1 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 5.2 Any amount due to the Buyer from time to time, may be deducted from any monies which may or may become payable to the Buyer by the Seller.

6. Payment Default

- 6.1 If the Buyer defaults in payment by the due date of any amount payable to the Seller, then all money which would become payable by the Buyer to the Seller later any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and the Seller may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Buyer interest on any sum overdue calculated at a rate of 18% per annum from the due date until the date of payment in full;
 - (b) charge the Buyer for, and the Buyer must indemnify the Seller from, all costs and expenses on a full indemnity basis (including without limitation all mercantile agency costs, legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - (c) cease or suspend supply of any further goods or services to the Buyer;
 - (d) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.
- 6.2 Clauses 6.1(c) and (d) may also be relied upon, at the Seller's option:
- (a) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Buyer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

7. Passing of Property

- 7.1 Until the Seller receives full payment in cleared funds for all goods and services supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer:
- (a) title and property in all goods remains vested in the Seller and does not pass to the Buyer;
 - (b) the Buyer must hold the goods as fiduciary bailee and agent for the Seller;
 - (c) the Buyer must keep the goods separate from its own goods and maintain the Seller's labeling and packaging;
 - (d) the Buyer must hold the proceeds of any sale of the goods on trust for the Seller in a separate account with a bank to whom the Buyer has not given security however failure to do so will not affect the Buyer's obligation to deal with the proceeds as trustee;
 - (e) in addition to its rights under the PPSA, the Seller may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Seller, and for this purpose the Buyer irrevocably licenses the Seller to enter such premises and also indemnifies the Seller from and against all costs, claims, demands or actions by any party arising from such action.

8. Personal Property Securities Act

- 8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 8.2 For the purposes of the PPSA:
- (a) terms used in this clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and the Seller has a Purchase Money Security Interest in all present and future goods supplied by the Seller to the Buyer and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time;
 - (d) the Seller has, where applicable, an agricultural PMSI in relation to the goods supplied by the Seller to the Buyer; and
 - (e) the Buyer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Seller on the Personal Property Securities Register.
- 8.3 The security interest arising under this clause 8 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.
- 8.4 Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.



- 8.5 The Seller and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 8.6 To the extent permitted by the PPSA, the Buyer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and
 - (b) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 8.7 The Buyer must immediately upon the Seller's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Seller to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Seller may at any time require.
- 8.8 The Seller may allocate amounts received from the Buyer in any manner the Seller determines, including in any manner required to preserve any Purchase Money Security Interest or any Agricultural PMSI it has in goods supplied by the Seller.

9. Security/Charge

- 9.1 The Buyer charges in favour of the Seller all of its estate and interest in any real or personal property that the Buyer owns at present and in the future with the amount of its indebtedness in this Agreement until discharged.
- 9.2 The Buyer appoints as its duly constituted attorney the Seller's secretary from time to time to execute in the Buyer's name and deed, real property mortgage, bill of sale or consent to any caveat the Seller may choose to lodge against real property that the Buyer may own in any Land Titles Office in any state or territory in Australia, even though the Buyer may not have defaulted in carrying out its obligations in this Agreement.
- 9.3 Where the Buyer has previously entered into an agreement with the Seller by which the Buyer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Buyer under this Agreement. The Seller may, at its election, vary the terms of such previous charges, mortgage or other securities to reflect the terms in this Agreement.
- 9.4 The Buyer hereby undertakes to execute and to procure the execution by the intended guarantor(s) (if any) at its own cost (whenever called upon so to do) a proper legal form of security including but not limited to a legal mortgage to the Seller of any real property owned by the Buyer or the intended guarantors, a registerable charge over the Buyer's assets, a goods and chattel mortgage, banker's guarantee, credit insurance policy or other security acceptable to the Seller to secure all monies for the time being due or to become due to the Seller in relation to the supply of Goods. The said security shall be in a form and contain such powers and provisions as the Seller shall reasonably require.

10. Risk and Insurance

- 10.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Buyer immediately on the goods being delivered to the Buyer or taken from the Seller's premises.
- 10.2 The goods are sold to the Buyer on the basis that the Buyer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 10.3 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation, storage or possession of any of the goods sold by the Seller, unless recoverable from the Seller on the failure of any statutory guarantee under the ACL.

11. Warranties

- 11.1 Any warranties given by the Seller with respect to the goods are set out on the packaging in which the goods are supplied or in enclosures supplied with the goods.

12. Performance of Agreement

- 12.1 Any period or date for delivery of goods or provision of services stated by the Seller is an estimate only and not a contractual commitment.
- 12.2 The Seller will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Buyer or any third party for failure to meet any estimated date.
- 12.3 If the Seller cannot complete the services by any estimated date, it will do so within a reasonable time.



13. Delivery

- 13.1 Subject to clause 13.6, the Seller will arrange for the delivery of the goods to the Buyer.
- 13.2 Unless otherwise agreed, the Buyer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Buyer to the point of delivery.
- 13.3 The Seller may make part delivery of goods and services and may invoice the Buyer for the goods or services so delivered or completed.
- 13.4 The Buyer indemnifies the Seller against any loss or damage suffered by the Seller, its sub-contractors or employees as a result of delivery, except where the Buyer is a consumer and the Seller has not used due care and skill.
- 13.5 If delivery is attempted and is unable to be completed, the Buyer is deemed to have taken delivery of the goods. The Buyer is liable for storage charges payable monthly on demand.
- 13.6 If agreed that the Buyer will collect the goods:
- (a) the Buyer must collect the goods within 7 Days of being advised that they are ready;
 - (b) if the Buyer does not collect the goods within this time, the Buyer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

14. Site Requirements

- 14.1 The Buyer must provide suitable and practical means of access to the Site and ensure that the Site is suitably prepared for the provision of the Services.
- 14.2 The Buyer indemnifies the Seller against any loss or damage suffered by the Seller, its sub-contractors or employees as a result of providing the services, except where the Buyer is a consumer and the Seller has not used due care and skill.
- 14.3 Where the Seller provides the services at the Site, the Buyer warrants that it is the owner of the Site or is authorised to request the services be conducted at the Site, and that it has all of the required permissions, permits, approvals and authorisations for this to occur.
- 14.4 At no time does the Seller take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Buyer at all times.

15. Liability

- 15.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 15.2 If the Buyer is a consumer, nothing in these Terms restricts, limits or modifies the Buyer's rights or remedies against the Seller for failure of a statutory guarantee under the ACL.
- 15.3 If the Buyer on-supplies the goods to a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Seller's liability to the Buyer;
 - (b) if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of the Seller's liability to the Buyer, howsoever arising under or in connection with the sale, installation, use of, possession of, storage of, or any other dealings with the goods or services by the Buyer or any third party.
- 15.4 If clause 15.2 or 15.3 does not apply, then other than as stated in the Terms or any written warranty statement, the Seller is not liable to the Buyer in any way howsoever arising under or in connection with the sale, installation, use of, possession of, storage of, or any other dealings with the goods or services by the Buyer or any third party.
- 15.5 The Seller is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 15.6 The Buyer acknowledges that:
- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by the Seller in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication, to the Seller any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for its use.
- 15.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

16. Cancellation

- 16.1 If the Seller is unable to deliver or provide the goods or services, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.
- 16.2 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on the Seller once the order has been accepted.



17. Shortages and Exchanges

- 17.1 Subject to clause 17.2 and 17.4, the Seller will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Buyer notifies the Seller with full details and description within 10 Days of delivery. Otherwise, the Buyer is deemed to have accepted the goods.
- 17.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Seller, the Seller may, at its option, repair the goods, replace the goods, or refund the price of the goods.
- 17.3 Subject to clause 17.4, the Seller will not under any circumstances accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued goods or no longer stocked by the Seller;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 17.4 If the Buyer is a consumer, nothing in this clause 17 limits any remedy available for a failure of the statutory guarantees in sections 56 and 57 of the ACL.

18. Specifications

- 18.1 All Specifications are indicative only may not be current nor accurate. The Buyer acknowledges that it has not relied on the Specifications in making its purchasing decision.

19. Intellectual Property

- 19.1 The Buyer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 19.2 The Buyer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof nor any patents, inventions, trademarks or designs derived from or similar to it, nor aid or abet anyone else in doing so.
- 19.3 The Buyer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 19.4 Any Intellectual Property provided to the Buyer by the Seller in connection with the goods or services remains the exclusive property of the Seller and must be returned to the Seller on demand. The Buyer must not copy nor communicate the Intellectual Property to any third party without the Seller's express prior written consent.

20. Force Majeure

- 20.1 The Seller is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control, including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism, or acts of war. If an event of force majeure occurs, the Seller may suspend or terminate the Agreement by written notice to the Buyer.

21. Miscellaneous

- 21.1 The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 21.2 The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.
- 21.3 If a clause is unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, it must be severed from these Terms without affecting the enforceability of the remaining terms.
- 21.4 A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received 3 Business Days after posting. Notices sent by facsimile or email are deemed received upon confirmation of successful transmission.

22. Privacy Statement

- 22.1 A full copy of the Seller's privacy policy may be obtained from the Seller's website or by making a request in writing directed to the Seller. The Seller's privacy policy has more information on how the Seller and the above Credit Reporting Bodies manage Personal Information and how the Applicant may access, correct and make complaints about its Personal Information.

