

## DEFINITIONS

The "Company" means James Richardson Corporation (ACN 004 449 594). The "Customer" means the company/partnership/sole trader who is applying for the credit line facility and includes the Applicant. "I", "We", "Us" means the Company. "You", "Your" means the Customer.

"Contract;" means the contract for the provision of Goods comprising of these terms and conditions and the Invoice.

"Australian Consumer Law" means schedule 2 of the *Competition & Consumer Act 2010* (Commonwealth) "Goods" means the goods specified in the Invoice and includes any proceeds of sale or other disposal relating to the Goods and any parts and materials which may subsequently be supplied under any warranty given in relation to the Goods.

"Insolvency Event" means failing or being unable to pay debts as they become due; becoming bankrupt or insolvent; being subject to liquidation or winding up; suffering the appointment of a manager, receiver, receiver and manager, administrative receiver or administrator (or any person carrying out an equivalent function); making any arrangement with or seeking protection from creditors; or being subject to any application or process giving rise to the above.

"IPR" means patents, rights and inventions, copyright and related rights, trade marks, trade and domain names, rights in get-up, rights in goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual or industrial property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which now or in the future, subsist anywhere in the world.

"Invoice" means the invoice for the Goods.

## 1. TRADING TERMS

The Customer agrees to comply with these terms and conditions.

## 2. PAYMENT TERMS

Payments for Goods shall be made by the Customer to the Company within 30 days from month end of the date of invoice or as specified by invoice in which the Goods were purchased. Time shall be of the essence of the arrangements specified in these terms. In the event of non payment of all or part of an Invoice by the due date the Company may charge Interest on any overdue amounts at the rate of 0.06% per day to any amount outstanding for more than thirty (30) days from due date.

## 3. CREDIT POLICY CONDITIONS

3.1 Credit account facilities may be withdrawn at any time at the discretion of the Company without prior notice being given.

3.2 Credit account facilities will automatically lapse when non use of such facility extends beyond a continuous period of six (6) months.

## 4. PRODUCT AVAILABILITY

Reasonable endeavors will be made by the Company to complete orders in accordance with the product range presented and by the delivery date as requested by the Customer but without the Company incurring any obligation or liability to do so without further subjecting itself to any liability to meet requested delivery dates or to deliver Goods ordered. In the event such delays become unreasonable or the Company cannot fulfill your order at all, for whatever reason, you may elect to terminate this Contract by written notice to the Company and we will fully refund any money you have paid for the Goods.

## 5. TITLE & RISK

5.1 Risk in the Goods shall pass to Customer upon delivery to the Customer's nominated delivery point. However, title to the Goods (whether or not attached, fixed or incorporated into any other property) shall remain with Company until the:

- Company has received in full all sums due in respect of the Goods and/or any other liabilities Customer has to the Company now or in the future;
- Customer sells the Goods to a customer in accordance with Condition 5.3; or
- Company, by written notice, passes title in the Goods to Customer.

5.2 Until title to the Goods has passed to Customer in accordance with Condition 5.1, Company will have a security interest in all the Goods and Customer shall:

- hold the Goods on trust for Company;
- store the Goods separately from all other goods of Customer or any third party;
- not remove any batch number or other identification, or any notice that the Goods are Company's property;
- maintain the Goods in satisfactory condition; and
- keep the Goods insured on Company's behalf for their full replacement value against all risks to the reasonable satisfaction of Company (on request Customer shall produce the policy of insurance to Company).

5.3 Customer shall be entitled to sell the Goods provided that the sale is in the ordinary course of its business and that it is carried out on an arm's length basis at full market value. The proceeds of any such sale will be the property of Company and must be held by Customer on a fiduciary basis in a separate bank account for the benefit of Company and will be payable to Company immediately without demand. However, failure to do so will not affect the Customer's obligations as trustee.

5.4 If payment for the Goods is overdue in whole or in part, or if Customer suffers any Insolvency Event, then Customer shall not be entitled to resell or part with possession of any Goods still owned by Company until Customer has paid in full all sums owed by it to the Company. Furthermore, upon notice Company shall also be entitled to immediately terminate Customer's right to possession of the Goods and without prejudice to any other rights it has under the Contract:

- enter, or instruct agents to enter on its behalf, on 5 days notice or such shorter period as may be reasonable in the circumstances, including for the purposes of Sections 130 and 135 of the *Personal Property Securities Act 2009* ((Cth) (PPSA) and any statutory modifications or re-enactment of it for the time being in force, any premises where the Goods may be, and to repossess and dispose of any or all Goods owned by Company; and
- withhold delivery of any other undeliverable Goods.

5.5 Customer shall promptly do all things requested by Company, acting reasonably to:

- Ensure Company's rights in relation to the Goods are enforceable, perfected and effective; and
- Enable Company to apply for any registration, or give any notification, in connection with the Contract to preserve Company's rights in relation to the Goods.

5.6 The Customer acknowledges that this Contract constitutes a security agreement for the purposes of the PPSA and establishes a security interest in the charged property for the purposes of the PPSA which will be registrable upon the Personal Securities Register.

5.7 The Customer will execute all documents and do such further acts and things as may be required by the Company to enable registration of the security interest granted to the Company under this Deed on the Personal Property Security Register established under the PPSA.

5.8 To the extent permitted by the PPSA the Customer:

- contracts out of the provisions of the PPSA which, under section 115(1) and section 157 of the PPSA, it is permitted to contract out of;
- waives its right to receive from the Company each notice or document which it is permitted to waive under Section 144 of the PPSA; and

(c) waives its right to receive anything from the Company under section 175 of the PPSA and agrees not to make any request of another Company under that section.

5.9 Nothing in this clause affects the right of a Company to receive a notice, documents or amount which it is entitled to receive under another provision of this Deed or any other agreement to which it is a party.

5.10 The Customer shall not create or cause to be created a security interest over or in respect of its rights in the Goods, other than the security interest arising under this Contract. The Customer agrees that it irrevocably waives any rights it may have to receive a verification statement as defined in the PPSA.

## 6. GUARANTEE

6.1 Save for any terms, conditions, guarantees, warranties, indemnities or other rights which may arise under the Australian Consumer Law or other legislation and which cannot be excluded, all warranties, whether express or implied including warranties as to fitness for any purpose and merchantability are expressly excluded.

6.2 To the extent legally possible any liability that we may have to the Customer in relation to the Goods which cannot be excluded shall be limited to, at our discretion, either the replacement of the goods or supply of equivalent goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment in cash of having the Goods repaired.

6.3 For the sake of clarity, clause 6.2 does not operate where contrary to the Australian Consumer Law

## 7. CANCELLATION POLICY

Cancellations must be approved by the Company. The Company is not obliged to agree to any cancellation request and any such request will only be considered when requested in writing and a minimum of 30 days prior to the requested shipment date. This clause does not affect any right that the Customer may have to reject the Goods under the Australian Consumer Law.

## 8. CLAIMS

8.1 Subject to any rights that the Consumer may have to reject the Goods under the Australian Consumer Law:

- the Customer will be deemed to have accepted the Goods as being in accordance with its order unless it notifies the Company in writing of its claim within 7 days of receipt of the goods.
- No return of allegedly defective or faulty Goods will be accepted by the Company unless the Company has given prior written authorisation for the return.

8.2 No refunds will be given if you have simply changed your mind.

## 9. INTELLECTUAL PROPERTY RIGHTS

All confidential information, materials and IPR supplied by Company belong to the Company. Customer shall not use or have any rights in them other than to perform the Contract.

## 10. PRICES

All prices quoted in the Company's price lists are subject to change without notice. The Company reserves the right to amend prices.

## 11. GST

The Customer must pay the GST which apply to the supply of any Goods by the Company to the Customer.

## 12. SIGNATORY LIABLE

The signatory warrants it has authority to enter into this Contract and further agrees that it is personally liable and guarantees all obligations of the company under these terms and conditions. The guarantee is in addition to and does not derogate from any other guarantee provided.

## 13. COSTS

Should payment remain outstanding beyond the Company's payment terms, the Customer shall pay to the Company on demand all costs relating to their default including without limitation all cost of letters of demand and all legal costs (assessed on a solicitor/own client basis) and all mercantile agent fees incurred by the Company in recovering any sums owed under these terms and conditions and any bank or dishonour fees incurred by the Company arising from any payments or default by the Customer.

## 14. CERTIFICATE

A Certificate signed by an officer of the Company as to the amount due to the Company will in the absence of manifest error be conclusive evidence of the Customer's liability to the Company at the date of the Certificate.

## 15. JURISDICTION

The parties shall be bound by the laws of the state of Victoria in relation to all matters arising from all Contracts between the parties and the parties agree to submit to the non-exclusive jurisdiction of the court of Victoria and the federal courts of Australia and that any legal proceedings may be heard in these Courts.

## 16. DISCLOSURE OF INFORMATION

We may disclose the information in this application and any default in payment in excess of 60 days to a credit reporting agency in accordance with the Privacy Act 1988 and may obtain a report regarding the Applicant's credit worthiness from a credit reporting agency or any credit provider named on this Application or disclosed by a credit reporting agency of which we regularly deal with.

## 17. EXCHANGING INFORMATION WITH OTHER CREDIT PROVIDERS (SECTION 18N PRIVACY ACT, 1988)

You agree to us obtaining credit information about You from other credit providers or credit reporting bodies of which we regularly deal with, for the purposes of assessing Your credit application.

## 18. AGREEMENT TO A CREDIT PROVIDER BEING GIVEN A CONSUMER CREDIT REPORT TO COLLECT OVERDUE PAYMENTS ON COMMERCIAL CREDIT (SECTION 18k) PRIVACY ACT 1988)

If applicable You agree that We may obtain a consumer credit report about You from a credit provider or credit-reporting agency of which we regularly deal with for the purpose of assessing your credit worthiness and for collecting overdue payments relating to commercial credit owed by You.

## 19. BUSINESS PURPOSES

You acknowledge that the credit provided to the Company under these terms and conditions shall be provided wholly or predominantly for business purposes.

## 20. SEVERABILITY

Any of the terms or conditions in this Contract which in any way contravene or infringe any law of the Commonwealth of Australia or the State of Victoria shall, to the extent of any such contravention or infringement and without affecting the remainder of this Contract be severable and severed from this Contract.

## 21. CAVEAT CLAUSE

In consideration of the Company providing credit facilities to the Customer and for better securing the Customer's obligation to pay the Company, the Customer hereby charges to the Company all of its right title, and interest in all and any real estate which it owns or at any time may own with a payment of monies due to the Company under this agreement or for any other matter present or in the future and the Customer agrees that the Company shall be at liberty and is hereby authorised to lodge a caveat upon the certificate of title for all or any such land and if requested by the Company, the Customer will do all things requested by the Company to grant a mortgage over any interest in real estate it owns at any time.

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