



ABN: 48 154 810 858  
**MMTB Pty Ltd**  
PO Box 3274  
Loganholme Queensland 4129  
AUSTRALIA  
tel: +61 7 3290 9000  
fax: +61 7 3290 9099

## Background

- A. MMTB Pty Ltd (MMTB) carries on the business of selling the Goods and/or Services.
- B. The Purchaser wishes to obtain supplies of the Goods and/or Services.
- C. MMTB has agreed to supply the Goods and/or Services to the Purchaser in accordance with the terms outlined below.

## 1. Definitions and Interpretation

Terms defined in Schedule 1 shall have the same meaning in the body.

## 2. Supply of Goods and/or Services

MMTB agrees to supply the Purchaser with Goods and/or Services ordered by the Purchaser from time to time in accordance with the terms and conditions set out in Schedule 1.

## Schedule 1

### 1. General

- (a) Any order placed by a Purchaser (Purchase Order) for the purchase of Goods and/or Services supplied by MMTB will incorporate these conditions.
- (b) MMTB reserves the right to vary these Conditions at any time by written notice. The carried Conditions are effective for any Purchase Order placed.
- (c) In these Conditions:
  - (i) Australian Consumer Law means Schedule 2 of the Competition and Consumer Act 2010 (Cth);
  - (ii) Consumer has the meaning given to it in section 3 of the Australian Consumer Law;
  - (i) Consumer Guarantee has the meaning given to it in section 3 of the Australian Consumer Law;
  - (ii) Goods means any goods supplied by MMTB to the Purchaser;
  - (iii) GST means goods and services tax;
  - (iv) GST Act means A New Tax System (Goods and Services Tax) Act 1999;
  - (v) PPSA means the Personal Property Securities Act 2009 (Cth); and
  - (vi) PPS Law means:
    - a) the PPSA;
    - b) any regulations made at any time under the PPSA;
    - c) any provision of the PPSA or regulations referred to in (B) above;

- d) any amendment to any of the above made at any time; or
- e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to in (a) to (d) above

(vii) Price means the price of the Goods and Services as determined under Clause 3;

(viii) Purchaser means the person buying Goods or Services from MMTB;

(ix) Services means any services supplied by MMTB to the Purchaser;

(xiii) Supply Agreement means this supply agreement entered into between the Purchaser and MMTB which comprises these Conditions and all accepted Purchase Orders for Goods and or Services placed by the Purchaser with MMTB; and

(d) Sub-clauses (e) and (f) shall not apply to a Consumer.

(e) These Conditions:

(i) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods and/or Services including, but not limited to, those relating to the performance of the Goods and/or Services or the results that ought to be expected from using the Goods and/or Services; and

(ii) override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these terms.

(f) Unless MMTB otherwise agrees in writing, the Supply Agreement contains the only terms which shall apply to the Goods and Services supplied by MMTB.

The Purchaser agrees that these Conditions will in all circumstances prevail over the Purchaser's terms and conditions of purchase (if any).

## 2. Orders

(a) MMTB reserves the right to accept or reject in its absolute discretion any Purchase Order, or part of a Purchase Order, placed by the Purchaser without giving reasons. Acceptance of a Purchase Order by MMTB may be by supply of all or part of the Goods and/or Services ordered.

(b) MMTB may cancel the supply of Goods and/or Services at any time before the delivery of any instalment of the Goods or the provision of the Services by written notice to the Purchaser.

(c) The Purchaser may not, without MMTB's prior written consent, cancel a Purchase Order after MMTB has accepted the Purchase Order. If MMTB consents to the cancellation of a Purchase Order, the Purchaser will be liable for any costs incurred by MMTB up to the time of cancellation.

(d) It is the Purchaser's responsibility to provide MMTB with the correct specification prior to production. Subject to Section 15, MMTB will not be liable for any costs incurred or reprints if the Purchaser has supplied MMTB with incorrect specifications. If MMTB supply goods that are not as per the Purchaser's supplied specifications, MMTB will reprint at no cost to the Purchaser.

(e) MMTB may use external 3<sup>rd</sup> parties at its discretion to produce the goods and services from time to time.

## 3. Prices and Quotations

Unless MMTB otherwise agreed in writing:

(a) All Goods and Services will be charged in accordance with MMTB's current price list (plus any applicable GST, tax, excise or levy imposed by any government body in the sale, delivery or manufacture of goods) that are applicable at the relevant date, which must be paid to MMTB by the Purchaser when payment for the Goods and/or Services is due.

(b) Prices will be rounded to the next whole cent in MMTB's invoices.

#### **4. Payment**

(a) The Purchaser must pay the Price of the Goods and Services supplied under these Conditions. As per the MMTB's credit terms.

(b) MMTB reserves the right to vary the terms of payment and to require payment in full prior to delivery if, at any time, the credit worthiness of the Purchaser is, in MMTB's opinion, unsatisfactory.

(c) In addition to any right of lien to which MMTB may be entitled under the common law, MMTB shall be entitled to exercise a general lien over all terms in its possession belonging to the Purchaser until the Purchaser has paid in full for all Goods supplied by MMTB to the Purchaser. If the Purchaser has not paid MMTB in full by the due date, MMTB may, at its option, sell any item that is subject to the said lien, provided that MMTB shall pay to the Purchaser any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to MMTB in respect of Goods that have been delivered by it to the Purchaser and all reasonable costs of sale acknowledges that MMTB has a security interest (for the purposes of the PPSA) in these items, and the proceeds of these items, until the Purchaser has paid in full for all Goods supplied by MMTB will do anything required by MMTB to enable MMTB to register this security interest, with the priority MMTB requires and to maintain that registration. Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, MMTB may perfect this security interest by possession of the relevant items.

(d) Unless prices quoted by MMTB include any sales tax, GST or other taxes which may apply, these taxes are payable by the Purchaser in addition to the quoted prices.

(e) If the account is not paid within the terms, the account reverts to "Stop" and will be reviewed and may revert to a "Cash Only" basis.

#### **5. Delivery**

(a) Any date for delivery of the Goods or completion of the services shown on any other part of this document or otherwise indicated by MMTB whether before or after or at the same time as the order is place, is an estimated date for delivery only. Except where MMTB's obligations is a Consumer Guarantee, MMTB will not be liable for any loss or damage, however it arises, if the Goods are not delivered by that date or at all.

#### **6. Instalments**

MMTB reserves the right to deliver the Goods by instalments and each instalment will be taken to be sold under a separate Purchase Order. Failure of MMTB to deliver any instalment will not entitle the Purchaser to cancel the balance of the order. If the Purchaser defaults in payment for any instalment, MMTB may elect to treat the default as a breach of contract relating to each other instalment.

#### **7. Claims for wrongful delivery**

Any claim by the Purchaser for short or wrongful delivery of the Goods must be notified to MMTB in writing within 3 days of delivery of the Goods. Any claim which the Purchaser does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

#### **8. Acceptance**

Products and Services delivered by MMTB shall be considered accepted by the Purchaser upon completion of the installation. Products and/or Services will be deemed accepted unless the Purchaser has provided MMTB written notice of rejection detailing the reasons why they do not meet specifications. MMTB shall promptly correct any such deficiencies.

## 9. Risk & Property

(a) Unless otherwise agreed in writing by MMTB, the risk of loss of, or damage to, the Goods will pass to the Purchaser on delivery to the Purchaser. If the Purchaser collects the Goods or arranges for their collection from MMTB then delivery will be deemed to occur on collection of the Goods from MMTB.

(b) Title to the Goods passes to the Purchaser on payment in full of the Price for the Goods.

(c) MMTB's right under this clause 8 secure:

(i) MMTB's right to receive the Price of the Goods; and

(ii) all other amounts owing to MMTB under any other contract.

(d) All the payments received from the Purchaser must be applied in accordance with Section 24(6)(c) of the PPSA.

(e) Until full payment in cleared funds is received by MMTB for all Goods supplied by it to the Purchaser, as well as the other amount owing to MMTB by the Purchaser under any other contract.

(i) legal title and property in all Goods supplied under this Supply Agreement remain vested in MMTB and do not pass to the Purchaser;

(ii) subject to (iii), the Purchaser must keep the Goods separate from other Goods and maintain the labelling and packaging of MMTB so that they are readily identifiable as the property of MMTB;

(iii) the Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business;

(iv) the Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing of the Goods for MMTB in a separate bank account with a bank to which the Purchaser has not given any security;

(v) in addition to any rights MMTB may have under Chapter 4 of the PPSA, MMTB may, without notice, enter any premises where it suspects the Goods may be located and remove them without committing a trespass, even though they may have been attached to other Goods or land not the property of MMTB,

and for the purpose the Purchaser irrevocably licenses MMTB to enter such premises and also indemnifies MMTB from and against all Loss suffered or incurred by MMTB as a result of exercising its rights under this clause. If there is any inconsistency between MMTB's rights under this clause 8(e)(v) and its rights under Chapter 4 of the PPSA, this clause 8(e)(v) prevails;

(vi) the Purchaser acknowledges and warrants that MMTB has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in sub-clause 8(e)(vi) until title passes to the Purchaser in accordance with this clause 8. The Purchaser must do anything reasonably required by MMTB to enable MMTB to register its security interest, with the priority MMTB requires and to maintain that registration;

(vii) the security interest arising under this clause 8 attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 8 attaches at any later time;

(viii) The Purchaser warrants that it does not intend to use the Goods predominately for personal domestic or household purposes.

(ix) The Purchaser warrants that it will insure the Goods until it pays the full price of the goods to MMTB.

(f) If the Purchaser fails to pay all or any part of the Purchaser's total indebtedness to MMTB under these Conditions, MMTB may without notice and without prejudice to any of its other rights and remedies;

(i) recover and/or sell the Goods or any of them and may enter upon the Purchaser's premises for that purpose; and

(ii) recover any difference between the sale or scrap value of the Goods and the price payable by the Purchaser for the Goods.

## 10. Intellectual Property

The sale and purchase of the Goods does not confer on the Purchaser and licence or rights or title in any intellectual property right which is the property of MMTB.

## 11. Implied terms

Except as detailed in this Supply Agreement, all conditions and warranties expressed or implied by statute, the common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.

## 12. Defective Goods

(a) The Purchaser must, as soon as possible after delivery, check whether the Goods were damaged or defective when delivered.

(b) The Goods will be considered to have been delivered in good condition unless the Purchaser gives MMTB notice of the damage or defect within 3 Business Days after installation.

(c) If the Purchaser gives MMTB notice under clause 11(b), it must:

(i) preserve the Goods in the state in which they are delivered for 10 Business Days after it gives MMTB the notice; and

(ii) during that period, allow MMTB access to the Purchaser's premises to inspect the Goods; or

(iii) at MMTB's request return the Goods, within 10 Business Days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.

(d) MMTB will investigate and determine, in its discretion, whether the Goods and their components are defective.

(e) The liability of MMTB under this Condition is limited as detailed in clause 13 below. All other costs, including cartage and installation, must be paid by the purchaser.

(f) While the Goods are in the custody of MMTB for investigation or repair they will be at the risk of the Purchaser and MMTB will not be liable for any damage to the Goods.

## 13. Liability

(a) Subject to clause 12(c) MMTB's liability in respect of defective Goods or for breach of a condition, warranty or Consumer Guarantee in relation to the provision of Goods is limited to any one of the following options as determined by MMTB:

(i) replacement of the Goods or the supply of equivalent Goods;

(ii) repair of the Goods;

(iii) payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

(iv) payment of the cost of repairing the Goods.

(b) Subject to clause 12(c), MMTB's liability in respect of defective Services or for a breach of a condition, warranty or Consumer Guarantee in relation to the Services is limited to any one of the following options as determined by MMTB:

(i) provide the Services again; or

(ii) pay the cost of having the Services provided again.

(c) Clause 12(a) and (b) do not apply if:

(i) it is not "fair and reasonable" for MMTB to rely on them in accordance with section 64A(3) and (4) of the Australian Consumer Law;

(ii) the Goods are "goods of a kind ordinarily acquired for personal, domestic or household use or consumption", as that expression is used in section 3 of the Australian Consumer Law.

(iii) the Services are "services of a kind ordinarily acquired for personal, domestic or household use or consumption", as that expression is used in section 3 of the Australian Consumer Law; or

(iv) in relation to any guarantee pursuant to any section sections 51, 52 or 53 of the Australian Consumer Law.

(d) Except only for those rights and remedies that the Purchaser has in respect of the Goods and Services under the Australian Consumer Law and similar state and territory laws applicable to Consumers and which cannot be lawfully excluded, restricted or modified.

(e) All conditions, warranties and consumer guarantees, whether statutory or otherwise, are excluded in relation to the Goods and Services; and

(f) MMTB is not liable to the Purchaser for any loss or damage which the Purchaser suffers, incurs or is liable for in connection with supply of the Goods and Services under this Supply Agreement, except in accordance with clauses 13(a) and 13(b).

(g) For Handling Instructions please refer to Schedule 3.

## **14. Indemnity**

(a) The Purchaser indemnifies MMTB against any Loss which MMTB suffers, incurs or is liable for in connection with this Supply Agreement or any Purchase Order made under it, but not limited to:

(i) any act or omission of the Purchaser;

(ii) any breach of this agreement the Purchaser; and

(iii) enforcing any security interest arising under this agreement.

## **15. Force Majeure**

(a) For the purposes of this clause 13, Force Majeure Event means:

(i) an act of God, lightning, fire, flood, explosion;

(ii) strike, lock-out or other labour difficulty;

(iii) breakage, accident or other damage to or failure of machinery or equipment'

(iv) unavailability or shortage of raw materials, labour, power supplies or transport facilities;  
or

(v) failure or inability to obtain licences or the effect of any applicable laws, Orders, rules or regulations of any government or competent authority;

(vi) and any other event which is not within the reasonable control of MMTB

(b) Where a Force Majeure Event prevents or delays MMTB from performing any obligation under this agreement, that obligation is suspended as long as the Force Majeure Event continues.

## **16. Goods and Services Tax**

(a) Any reference to this clause 16 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) To the extent that any supply made under or in connection with this Supply Agreement is a taxable supply, the recipient must pay, in addition to the consideration to be provided under a Purchase Order for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that MMTB has first issued to the recipient a Tax Invoice in respect of that taxable supply.

## **17. Waiver**

Failure by MMTB to insist on strict performance of any term, warranty or condition of this Supply Agreement will not be taken as a waiver of it or any rights MMTB may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or Condition.

## **18. Notices**

Any notice to be given under a contract must be sent by, email, facsimile or prepaid mail to the other party's number of address (as notified by that party from time to time).

## **19. Governing law and jurisdiction**

This Supply Agreement is governed by and will be construed in accordance with the laws of Queensland and the Purchaser submits to the non-exclusive jurisdiction of the courts of that State.

## **20. Confidentiality**

(a) In this clause 20, Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or MMTB's business.

(b) The Purchaser is authorised to use the Confidential Information for the sole purpose of using or selling the Goods and utilizing the Services supplied under this agreement and must not otherwise use or disclose any Confidential Information.

## **21. Indemnities**

(a) Any indemnities given by the Purchaser under this Supply Agreement:

(i) is enforceable on demand;

(ii) is provided on the basis that MMTB need not make any payment or incur any loss before it can enforce its right of indemnity.

## **22. PPSA**

(a) Defined terms used in this clause 19 have the same meaning as given to them in the PPSA.

(b) For Commercial & Trade Customers:



MMTB and Purchaser acknowledge that this agreement constitutes Security Agreement and gives right to a Purchase Money Security Interest (PMSI) in favour of MMTB over the Goods supplied to the Purchaser, as Grantor, pursuant to a contract, and over the supplied to the Purchaser, as Grantor, pursuant to a contract, and over the proceeds (including any sale monies or an account for such monies and insurance monies). For Domestic Customers where the Goods are valued at \$5000 or more and they use them for a domestic, household or consumer purpose:

MMTB and Purchaser acknowledge that this agreement constitutes a Security Agreement and gives right to a security interest in favour of MMTB over the Goods supplied to the Purchaser, as Grantor, pursuant to a contract, and over the supplied to the Purchaser, as Grantor, pursuant to a contract, and over the proceeds (including any sale monies or an account for such monies and insurance monies).

(c) the Goods to be supplied under a contract fall within the PPSA classification of "other Goods" acquired by the Purchaser pursuant to these Conditions;

(d) The Purchaser acknowledges that MMTB, as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Purchaser, as Grantor, under a Contract on the PPSA Register as Collateral.

(e) The Purchaser waives its right to any of the following under the PPSA:

(i) receive notification of a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Purchaser, as Grantor, to MMTB;

(ii) receive notice of removal of Accession under section 95;

(iii) receive notice of an intention to seize Collateral under section 123;

(iv) receive notice of disposal of Collateral under section 130;

(v) receive a Statement of Account if there is no disposal under section 132(4);

(vi) receive notice of retention of Collateral under section 135;

(vii) the right to redeem the Collateral under section 142;

(viii) the right to reinstate the Security Agreement under section 143;

(ix) receive a Statement of Account under section 132(3)(d) following a disposal showing the amount paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

(f) The Purchaser agrees that, to the extent permitted by law, nothing in section 95, 121(4) 130, 132(3)(d), 132(4)(d), 135, 142 or 143 of the PPSA will apply to the enforcement of the Security Interest created under these Conditions.

(g) Subject to section 275(7) of the PPSA, neither MMTB nor the Purchaser will disclose information of the kind mentioned in section 275(1) of the PPSA.

(h) The Purchaser will, at MMTB's request, pay any or all of MMTB's costs and expenses, on an indemnity basis, related to the enforcement of any security interest related to these terms.