

Terms and Conditions

Nitro Marine ABN 96 166 258 804

1. Definitions and Interpretations

- 1.1. "Contract" means a relevant Tax Invoice or any other document referring to these Terms and Conditions and these Terms and Conditions.
- 1.2. "Tax Invoice" means any Tax Invoice for Goods supplied by the Vendor.
- 1.3. "Customer" means the customer specified in a Tax Invoice.
- 1.4. "Deposit" means the deposit (if any) stated in a Tax Invoice.
- 1.5. "Goods" means the goods and/or services described in a Tax Invoice.
- 1.6. "GST" means the Goods and Services Tax as imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.7. "Insolvency Event" means insolvency, bankruptcy, winding up, the appointment of a liquidator, administrator and/or receiver, dissolution, entering into a composition for the benefit of creditors, or any other similar procedure or arrangement.
- 1.8. "PPSA" means the *Personal Properties and Securities Act 2009* (Cth).
- 1.9. "PPSR" means the Personal Properties and Securities Register as maintained pursuant to the PPSA.
- 1.10. "Security Interest" means a security interest as defined in the PPSA.
- 1.11. "Statements" means the information inserted into the box headed Statements.
- 1.12. "Vendor" means Nitro Marine ABN 96 166 258 804.

2. Application

These Terms and Conditions apply to all Goods supplied to a Customer by the Vendor. By accepting the Goods or agreeing to purchase the Goods, the Customer agrees to be bound to these Terms and Conditions and any additional terms provided by the Vendor for the purchase of the Goods. This includes but is not limited to any additional terms in a Tax Invoice.

3. Purchase Price

- 3.1. The Vendor agrees to sell the Goods to the Customer and the Customer agrees to buy and receive the Goods from the Vendor for the price specified in a relevant Tax Invoice or as otherwise agreed.
- 3.2. The Customer must pay any Deposit as agreed in a Tax Invoice to the Vendor on acceptance of this Contract.

4. Completion

- 4.1. Completion of the sale of Goods shall take place when the Goods are ready to be delivered or collected (as the case may be) as notified by the Vendor on reasonable notice.
- 4.2. The Customer acknowledges that the date for Completion may depend on the suppliers of the Vendor. Any date for Completion given by the Vendor is an estimate only and to the extent permitted by law the Vendor is not liable for failing to deliver the Goods on any particular date.
- 4.3. On Completion, the Customer must:
 - (a) pay all outstanding amounts, including any outstanding amount specified in the relevant Tax Invoice (including the price) as reasonably directed by the Vendor without any deduction or set-off whatsoever; and
 - (b) accept delivery of or take the Goods, as the case may be.
- 4.4. On Completion, the Vendor must, subject to the Customer complying with clause 3.3:
 - (a) give the Customer possession of and title to the Goods; and
 - (b) deliver all duly executed and completed documents necessary to transfer any registration to the Customer.
- 4.5. For the avoidance of doubt, if the Vendor has not received cleared funds as payment for the Goods under clause 3.3(a), then the Vendor is not required to deliver or allow the Customer to take possession of the Goods until such cleared funds are received.
- 4.6. The Vendor carrying out its obligations under clause 3.4 does not prejudice its rights against the Customer if the Customer fails to comply with clause 3.3.

5. Customer Obligations

- 5.1. The Customer must pay all amounts in accordance with Clause 2 and 3. All payments must be in Australian Dollars.
- 5.2. The Customer must inspect the Goods and notify the Vendor of any patent defects thereto within seven (7) days of Completion, after which time the Customer shall be deemed to have waived their right to dispute the condition of the Goods at the time of Completion.
- 5.3. The Customer must make adequate arrangements to receive delivery or collect the Goods, as the case may be, and as advised by the Vendor. If the Customer fails to receive delivery of or collect the Goods on the Completion date or other relevant date for delivery or collection, then the Customer must

pay the Vendor any additional costs the Vendor incurs until delivery or collection is properly affected.

- 5.4. The Customer must immediately advise the Vendor in writing of the occurrence of any Insolvency Event, any change of name, any change of ownership or control, or any other event likely to affect the Customer's ability to comply with this Contract. The Customer acknowledges that they remain liable under this Contract notwithstanding any such event occurring.

6. Customer's Statements

- 6.1. The Customer warrants that all information related to the Customer or otherwise provided by the Customer in any Tax Invoice is true, accurate and not misleading in any way.
- 6.2. The Customer warrants that they:
- (a) Have investigated the goods or have been given the opportunity to investigate the goods to the Customer's reasonable satisfaction;
 - (b) Have read and understand the Statements;
 - (c) In purchasing the Goods, have had regard to the expected quality and condition of the Goods based on the age, physical condition, price, effect of normal use, the Statements and their own investigations; and
 - (d) Accepts the Goods subject to the Statements, their own investigations, and the expected quality and condition of the Goods.
- 6.3. The Customer warrants that it has not relied on any statement, representation, assurance or warranty other than as expressly set out in this Contract, including but not limited to any representation, assurance or warranty related to the description, condition, serviceability or suitability of the Goods.

7. Third Party Credit Providers

- 7.1. The Customer acknowledges that any credit provided to the Customer to buy the Goods is provided by a third party and not by the Vendor. The Vendor is not responsible for any act or omission of the credit provider.
- 7.2. The Customer acknowledges that the Vendor does not receive any benefit from any credit provider the Customer uses to purchase the Goods.
- 7.3. The Customer warrants that the Customer has not used any credit provider on the recommendation of the Vendor. The Customer is responsible for making its own enquiries to ensure that any credit is suitable for the circumstances of the Customer.

8. Interest on Overdue Amounts

- 8.1. Any overdue amounts owing by the Customer (including judgment debts) shall accrue overdue interest at the rate of 18%. Interest shall be calculated from the due date for payment up to and including the date payment is actually received by

the Vendor. Such interest may be recovered from the Customer as a liquidated debt.

- 8.2. In the event that the Vendor is permitted by law to claim a higher interest rate (for example, a pre-judgment or post-judgment interest rate), then the Vendor may charge such higher interest rate by written notice to the Customer.

9. Limitation of Liability

- 9.1. To the extent permitted by law, all guarantees and warranties not expressly contained in this Contract are excluded.
- 9.2. However, notwithstanding anything else in this Contract, the *Australian Consumer Law* contains guarantees that cannot be lawfully excluded and nothing in this Contract shall be construed to exclude such guarantees should they apply.
- 9.3. To the extent permitted by law, the Vendor's liability for a breach of any guarantee or warranty shall be limited to, at the option of the Vendor:
- (a) If the breach relates to goods – replacement or repair of the goods, or the supply of similar goods, or the cost thereof;
 - (b) if the breach relates to services – re-supplying the services or the cost thereof.
- 9.4. The Vendor will not in any circumstances be liable under or in connection with this Contract for any claim for consequential loss, loss of opportunity, revenue, profit or anticipated profit, accommodation costs or legal fees whether arising in contract, negligence or otherwise, unless such liability cannot lawfully be excluded.

10. Retention of Title

- 10.1. Notwithstanding physical delivery of the Goods to the Customer, ownership of the Goods shall remain with the Vendor until the Customer has made full payment for those Goods and paid any other amount owing under a relevant Tax Invoice. The parties acknowledge and agree that the Vendor's interest in the Goods under this clause is a Security Interest for the purposes of the PPSA.
- 10.2. If the Goods are sold before full payment is made, then the Vendor's Security Interest continues in and attaches to the proceeds.
- 10.3. Until the Customer has made full payment for the Goods, the Customer must keep the Goods safe and free from damage, destruction, loss or harm, clearly designate the Goods as the property of the Vendor and keep full records of the location and availability of the Goods.
- 10.4. The Customer consents to the Vendor effecting a registration on the PPSR (in any manner the Vendor considers appropriate) in relation to the Security Interest created by this clause. The Customer agrees to do all acts which the Vendor considers necessary for the purposes of ensuring the Security

Interest is enforceable, perfected and otherwise effective.

- 10.5. The Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 10.6. Terms used in this clause that are not otherwise defined have the same meaning as in the PPSA.

11. Default and Termination

- 11.1. Without limiting any other right or remedy, should the Customer:
- (a) default in the payment of any monies due under this Contract in any way; or
 - (b) refuse to take delivery of or collect the goods on Completion,
- then the Vendor may elect to affirm or terminate this Contract by written notice to the Customer.
- 11.2. If the Vendor terminates this Contract, then in addition to any other rights or remedies the Vendor may have at law, the Vendor may:
- (a) Keep any Deposit paid, or recover any unpaid Deposit from the Customer;
 - (b) Immediately and without notice repossess any Goods which remain the property of the Vendor pursuant to clause 9; and/or
 - (c) Sue the Customer for any loss, damage, cost or expense suffered by the Vendor arising from the Customer's default.
- 11.3. The Customer hereby indemnifies and keeps indemnified the Vendor against all loss, damage, costs and expenses (including legal costs on a solicitor-client basis) arising from the Customer's breach of the Contract or any other agreement in writing relating to this Contract. This indemnity includes, without limitation, the cost of recovery of the Goods and any amounts payable by the Customer.
- 11.4. If the Vendor elects to repossess the Goods, the Customer must cooperate with all demands of the Vendor and grant the Vendor or any representative of the Vendor access onto the Customer's property to collect the Goods. The Vendor is not liable for any damage caused to the Customer's property when repossessing the Goods, unless intentionally caused.
- 11.5. This Contract is immediately terminated if the Vendor suffers an Insolvency Event.
- 11.6. This Contract will continue to apply in relation to Goods supplied before the date of termination.

12. Privacy Disclosure and Consent

The Customer authorises the Vendor to:

- 12.1. Make all reasonable enquiries into the Customer's personal, consumer and commercial credit

worthiness from the Customer's trade referees, accountant or financial institutions, and any credit provider or credit reporting agency. The Customer shall provide any and all necessary instructions and authorisations to allow this to occur; and

- 12.2. Disclose or exchange information about the Customer's credit arrangements and creditworthiness with any other credit provider, credit rating or reporting agency, the Vendor's solicitors or any other agent of the Vendor.

13. Risk

All goods supplied by the Vendor shall be at the risk of the Customer from the time they are delivered to or collected by someone acting with the apparent authority of the Customer.

14. GST

Unless otherwise specified, the consideration for the supply of goods and services under this Contract is exclusive of GST. If the Vendor is liable for GST in respect of this Contract, then the consideration payable by the Customer shall be increased by an amount equal to the Vendor's GST liability on the supply.

15. General

- 15.1. This Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties in relation to this transaction. On no account will any additional terms supplied by the Customer (such as in a Purchase Order) apply unless expressly and explicitly agreed by the Vendor.
- 15.2. This Contract may be varied only by agreement in writing signed by the parties.
- 15.3. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver. A waiver or consent is only effective in the specific instance and for the purpose for which it is given.
- 15.4. This Contract shall be governed by and construed in accordance with the laws of the state of Queensland and, where applicable, the laws of the Commonwealth of Australia, for the time being in force. The parties hereby submit to the non-exclusive jurisdiction of the courts of exercising jurisdiction in that state and all courts competent to hear appeals therefrom.
- 15.5. If any term or part of a term of this Contract is or becomes legally ineffective, invalid or unenforceable in a Court of competent jurisdiction, it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.
- 15.6. Service of any notice, document or Court proceedings on the Customer will be deemed to have occurred if they are served at the address specified in the relevant Tax Invoice.
- 15.7. If the Vendor is not able to supply Goods or carry out an obligation pursuant to this Contract due to an act, cause or event outside its reasonable control (including but not limited to a transport delay or accident, adverse weather, action or inaction of a government authority, or breakdown of machinery) then such obligation shall be suspended until such cause ceases.
- 15.8. The Vendor may set-off and deduct any amounts it owes the Customer against any amount the Customer owes the Vendor. The Customer has no such right of set-off or deduction.