

## Terms & Conditions of Trade – Good Source

### Agreement and Terms & Conditions of Trade

#### 1. Definitions

- 1.1. "Seller" shall mean Sangita Yogesh Chavan trading as Good Source (ABN 84 962 991 836), its successors and assigns or any person acting on behalf of and with the authority of Sangita Yogesh Chavan.
- 1.2. "Purchaser" shall mean all services supplied by the Seller to the Purchaser (and with the authority of the Purchaser) as described on any invoice, quotation, work authorisation or other form as provided by the Seller to the Purchaser.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Purchaser on a principal debtor basis.
- 1.4. "Goods" shall mean goods supplied by the Seller to the Purchaser (and where context so permits shall include any supply of Services as hereinafter defined) and are described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Purchaser.
- 1.5. "Services" shall mean all services supplied by the Seller to the Purchaser and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price" shall mean the price payable for the Goods as agreed between the Seller and Purchaser in accordance with clause 3 of this agreement.

#### 2. Acceptance

- 2.1. Any instructions received by the Seller from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Purchaser has entered into this agreement, the Purchasers shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Purchaser, the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 2.4. The Purchaser shall give the Seller not less than seven (7) days prior written notice of any proposed change of ownership of the Purchaser or any change in the Purchaser's name and/or any other change in the Purchaser's details (including but not limited to changes in the Purchaser's address, facsimile number or banking details). The Purchaser shall be liable for and indemnify the Seller for any direct, special, indirect or consequential loss howsoever caused (including by the negligence of the Seller) incurred by the Seller as a result of the Purchaser's failure to comply with this clause.

- 2.5. Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Purchaser's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

- 2.6. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manufacturer of the Goods in writing nor is the Seller bound by any such unauthorised statements.

#### 3. Price and Payment

- 3.1. At the Seller's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Seller to the Purchaser in respect of Goods supplied; or
  - (b) the Seller's current price at the date of delivery of the Goods according to the Seller's current Price List; or
  - (c) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Purchaser shall accept the Seller's quotation in writing within thirty (30) days.
- 3.2. The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation, including but not limited to any variation to the Price as a result of an increase in the manufacturer prices, a fluctuation in exchange rates or duties, or rising freight costs.
- 3.3. At the Seller's sole discretion a deposit may be required.
- 3.4. At the Seller's sole discretion:
  - (a) payment shall be due on delivery of the Goods; or
  - (b) payment shall be due before delivery of the Goods; or
  - (c) payment for approved Purchasers may be made by instalments in accordance with the Seller's payment schedule.
- 3.5. Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.6. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Purchaser and the Seller.
- 3.7. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.8. All quoted Prices include standard packaging. Any special packaging shall be treated as a variation to the Price.
- 3.9. Any credit amount owing to the Purchaser is non-transferable and shall not be refunded under any circumstances by the Seller to the Purchaser, by way of cash, cheque, electronic or other immediate or non immediate settlement means. Furthermore, any outstanding credit shall expire twelve (12) months after the date the credit was issued by the Seller to the Purchaser in the event the credit has not been offset against other orders.

#### 4. Delivery of Goods

- 4.1. At the Seller's sole discretion delivery of Goods shall take place when:
  - (a) the Purchaser takes possession of the goods at the Seller's address; or
  - (b) the Purchaser takes possession of the Goods at the Purchaser's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
  - (c) the Purchaser's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Purchaser's agent.
- 4.2. At the Seller's sole discretion the costs of delivery are:
  - (a) in addition to the Price; or
  - (b) for the Purchaser's account.
- 4.3. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.4. The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5. The failure of the Seller to deliver shall not entitle either party to treat this agreement as repudiated.
- 4.6. The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation, including but not limited to any variation to the Price as a result of an increase in the manufacturer prices, a fluctuation in exchange rates or duties, or rising freight costs.

#### 5. Availability

- 5.1. The Purchaser acknowledges that any delivery date, either stated or implied, is an estimate only, subject to availability of the Goods, and the Seller shall not be liable for any direct, special, indirect or consequential loss, damage or delay howsoever caused (including by the negligence of the Seller) incurred by the Purchaser arising from the non-availability or delayed-availability of the Goods from the manufacturer.
- 5.2. The Purchaser acknowledges that the inclusions of certain Goods on Price lists, catalogues, advertising material and otherwise, or a verbal quotation or representation regarding Goods, does not mean that such Goods are items normally stocked by the Seller or that such Goods continue to be available from the manufacturer.
- 5.3. Where Goods have either been quoted by the Seller to the Purchaser and/or Goods were present on an order (indent or otherwise) submitted by the Purchaser to the Seller and such Goods are no longer available from the manufacturer and/or such Goods are unavailable to be delivered by the manufacturer, the Seller shall be under no obligation to substitute the Goods with other Goods (similar in description, application or otherwise) at the same Price or any Price to make available for current or future delivery any Goods of similar or improved description or application at either the Price so ordered or any particular Price.

#### 6. Purchaser's Disclaimer

- 6.1. The Purchaser hereby disclaims any right to rescind or cancel the agreement or to sue for damages or to claim restitution arising out of any misrepresentation made to the Purchaser by the Seller and the Purchaser acknowledges that the Goods are purchased relying solely upon the Purchaser's skill and judgement.

#### 7. Risk

- 7.1. If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Purchaser upon departure of the Goods from the Sellers premises. The Seller shall not be liable for any direct, special, indirect or consequential loss or damage howsoever caused (including by the negligence of the Seller) incurred by the Purchaser in connection with the Goods whilst in transit, caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to such loss or damage).
- 7.2. If any of the Goods are lost or destroyed following delivery but prior to ownership passing to the Purchaser, the Seller is entitled to give all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

#### 8. Title

- 8.1. The Seller and the Purchaser agree that the ownership of the Goods shall not pass until:
  - (a) the Purchaser has paid the Seller all amounts owing for the particular Goods; and
  - (b) the Purchaser has met all other obligations due by the Purchaser to the Seller in respect of all agreements between the Seller and the Purchaser.
- 8.2. Receipt by the Seller 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 and until then the Seller's ownership to rights in respect of the Goods shall continue.
- 8.3. It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Purchaser are met; and
  - (b) until such time as the Goods shall pass from the Seller to the Purchaser the Seller may give notice in writing to the Purchaser to return the Goods or any of them to the Seller. Upon such notice, the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Purchaser fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied by, used by the Purchaser, or any premises as the invitee of the Purchaser, where the Goods are situated and take possession of the Goods; and
  - (e) the Purchaser is only a bailee of the Goods until such time as the Seller has received payment in full for the Goods then the Purchaser shall hold any proceeds from the sale or disposal of Goods, up to and including the amount the Purchaser owes to the Seller for the Goods, on trust for the Seller; and
  - (f) the Purchaser shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
  - (g) the Purchaser shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
  - (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Purchaser; and
  - (i) until such time that ownership in the Goods passes to the Purchaser, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

#### 9. Consignment

- 9.1. The risk in the goods pass to the Purchaser when all or part of the goods are loaded for consignment at the Seller's premises whether by carrier employed or engaged by the Seller of the Purchaser.
- 9.2. For goods consigned by the Seller to the Purchaser, the Purchaser shall:
  - (a) Maintain suitable premises for the storage and display of the goods;
  - (b) Ensure adequate insurance policies are held for the goods including insurance against loss or damage by fire or theft for the value of the goods and if requested by the Seller, will provide a copy of such relevant insurance policies to the Seller;
  - (c) If requested by the Seller, the Purchaser is to supply to the Seller not later than the 15<sup>th</sup> day of each month a written statement showing:
    - i) The quantities of goods received by the Purchaser from the Seller during the preceding month;

- i) Full details of all purchasers of goods during that period, together with the quantities of goods purchased and the relevant prices paid;
- (d) Keep the Seller fully indemnified for any damage to or deterioration of any such goods whilst in the possession of the Purchaser.

- (e) Notwithstanding anything contained herein, property in and legal title to the goods does not pass to the Purchaser until payment for all debts owing to the Seller by the Purchaser has been received by the Seller. Until such payment has been received by the Seller, the Purchaser will store the goods separately and apart from its own goods and those of any other person or company. The Seller is entitled to re-take possession of all goods delivered until all debts owing to the Seller by the Purchaser have been paid in full.

These provisions apply despite any arrangement under which the Seller provides credit to the Purchaser and these provisions will prevail to the extent of any inconsistency between these provisions and any other agreement or arrangement entered into by the Purchaser and the Seller.

#### 10. Personal Property Securities Laws

- 10.1. The Seller and the Purchaser agree that the terms and conditions of this agreement create a purchase money security interest in the Goods and the Purchaser must do all things reasonably required by the Seller to register and perfect that interest under the terms of the *Personal Property Securities Act 2009* (Cth) (PPSA) or otherwise.
- 10.2. If the Seller repossesses the Goods the Seller does not need to provide the Purchaser with any notices under section 130 or 135 of the *Personal Property Securities Act 2009* (Cth).
- 10.3. The Purchaser agrees to the Seller's request, pay any or all of the Seller's costs and expenses, on an indemnity basis related to registration and enforcement of any security interest related to the Goods under this agreement (including in relation to any security interest granted by a person guaranteeing the Purchaser's performance of these terms) or related to ensuring the payment of the Seller's overdue debt, commission and fees payable to a collection agency, solicitor or the like.

#### 11. Specifications

- 11.1. All specifications, drawings and images, particulars of weight and dimensions and other information submitted to the Purchaser and supplied by the manufacturer and the Seller shall not be liable for any direct special, indirect or consequential loss or damage howsoever caused (including by the negligence of the Seller) incurred by the Purchaser resulting from the discrepancies between this information and the Goods.
- 11.2. The Purchaser acknowledges that neither the Seller nor any person acting on the Seller's behalf has made any representation or given any promise or undertaking not expressly set out in this agreement whether as to the fitness of the Goods for any particular purpose or any other application or matter.

#### 12. Defects

- 12.1. The Purchaser shall inspect the Goods on delivery and shall within three (3) days of delivery (time being of the essence) notify the Seller of any alleged defects in writing including shortage in quantity, damage to the Goods so that they are no longer fit for their purpose or failure to comply with the description, invoice or quote. The Purchaser shall afford the Seller an opportunity to inspect the Goods within seven (7) days following delivery if the Purchaser believes the Goods are defective in any way. If the Purchaser fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Purchaser is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Purchaser has acquired Goods as a consumer within the meaning of the *CCA* or *FTA* (or its equivalent) of the relevant State or Territory of Australia, and is therefore also entitled to, at the Purchaser's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 12.2. Goods will not be accepted for return other than in accordance with 12.1 above.

#### 13. Manufacturer's Warranty

- 13.1. The Seller is not an actual or deemed manufacturer of the Goods and has not in any way assisted with the manufacturing or alteration of the Goods. Any warranty provided with the Goods shall be the current warranty (if any) provided by the actual manufacturer of the Goods which may be located outside Australia. The Seller shall not be bound by nor responsible for any terms, conditions or representation of any other manufacturer that which is given by the actual manufacturer of the Goods or as advertised or disclosed on the Goods as supplied.

#### 14. Limitation of Liability

- 14.1. Subject to clause 12, the Seller is not liable under any circumstance, for any claim arising out of the suitability of the Goods as a result of the sale of the Goods by the Seller to the third party.
- 14.2. If the Goods and/or Services supplied by the Seller under this agreement are supplied to the Purchaser as a 'consumer' of the Goods and/or Services within the meaning of that term in the Australian Consumer Law, the Seller limits its liability in respect of all claims, at the option of the Seller:
  - (a) the supply of the Goods and/or Services again; or
  - (b) the payment of the cost of having the Goods and/or Services supplied again.
- 14.3. The Seller is not liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials, labour or transportation or any other cause beyond the reasonable control of the Seller.
- 14.4. The Purchaser agrees to indemnify the Seller for any loss, including direct, special, indirect or consequential loss howsoever caused incurred by the Purchaser or the third party arising as a result of the sale of the Goods by the Purchaser to the third party.
15. **Default and Consequences of Default**
  - 15.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of eight and one half percent (8.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 15.2. In the event that the Purchaser's payment is dishonoured for any reason the Purchaser shall be liable for any dishonour fees incurred by the Seller or the Seller's agent.
  - 15.3. If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
  - 15.4. Without prejudice to any other remedies the Seller may have, if at any time the Purchaser is in breach of any obligation (including those related to payment), the Seller may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under the terms and conditions. The Seller will not be liable to the Purchaser for any loss or damage to the Seller or the Seller's agent or the Seller's agent or the Seller's agent or the Seller's agent or the Seller's agent.
  - 15.5. If any account remains overdue after thirty (30) days, then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of three hundred dollars (\$300.00) shall be levied for administration fees which sum shall become immediately due and payable.
  - 15.6. Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any order of the Purchaser which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
    - (a) the Purchaser becomes insolvent, or the Seller becomes overdue, or in the Seller's opinion the Purchaser will be unable to meet its payments as they fall due; or
    - (b) the Purchaser becomes insolvent, conveys a meeting with its creditors or proposes to enter into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
    - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Purchaser or any asset of the Purchaser.

#### 16. Security and Charge

- 16.1. Notwithstanding to the contrary contained herein or any other rights which the Seller may have however:
  - (a) where the Purchaser and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Purchaser and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Purchaser and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
  - (b) should the Seller elect to proceed in any manner in accordance with this cause and/or its sub-clauses, the Purchaser and/or the Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) The Purchaser and/or Guarantor (if any) agree to irrevocably nominate, constitute and appoint the Seller or the Seller's nominee as the Purchaser's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 16.1.

#### 17. Cancellation

- 17.1. The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice, the Seller shall repay to the Purchaser any sums paid in respect of the Price. The Seller shall not be liable to any loss of damage arising from such cancellation.
- 17.2. In the event that the Purchaser cancels delivery of Goods, the Purchaser shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

#### 18. Privacy Act 1988 (Cth)

- 18.1. The Purchaser agrees that personal credit information provided may be used and retained by the Seller for the following purposes or required by law from time to time:
  - (a) provision of Goods or supply of Services;
  - (b) marketing of Goods or supply of Services by the Seller, its agents or distributors in relation to the Goods or Services;
  - (c) analysing, verifying and/or checking the Purchaser's credit, payment and/or status in relation to provision of Goods or supply of Services;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Purchaser; and/or
  - (e) enabling the operation of Purchaser's account and/or the collection of amounts outstanding in the Purchaser's account in relation to the Goods or Services.
- 18.2. The Seller may give information about the Purchaser to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Purchaser; and/or
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.

#### 19. General

- 19.1. 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.
- 19.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales;
- 19.3. The Seller shall be under no liability whatever to the Purchaser for any direct losses and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Seller of these terms and conditions, including the Seller's negligence.
- 19.4. In the event of any breach of this contract by the Seller, the remedies of the Purchaser shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5. The Purchaser shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Purchaser by the Seller.
- 19.6. The Seller may license, assign or sub-contract all or any part of its rights and obligations without the Purchaser's consent.
- 19.7. The Purchaser agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Purchaser of such change.
- 19.8. 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.
- 19.9. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.