



TERMS AND CONDITIONS OF SUPPLY

To the fullest extent legally permissible, the following terms and conditions (*Terms and Conditions*) will apply to the supply of all goods and/or services (*Products*) by Bushmans Group Pty Limited A.C.N. 137 242 347 (*Bushmans*) to a customer (*Customer*) to the exclusion of all other terms.

1. ORDERS

- (a) Except as otherwise expressly agreed in writing by the Managing Director of Bushmans, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by Customer. Without limiting the generality of the foregoing, the placing of an order by Customer and/or Customer's acceptance of Products is deemed to be an acceptance of these Terms and Conditions.
- (b) Any amendment, variation or deviation to the Terms and Conditions in order to be effective must be agreed in writing by the Managing Director of Bushmans.

2. PRICE AND PAYMENT

- (a) Subject to these Terms and Conditions, the price payable for the Products shall be the price provided for in the current Bushmans price list issued from time to time and current at the time the Customer places an order. However, notwithstanding this and any quotation by Bushmans or any prior representation by Bushmans of the price of Products, Bushmans reserves the right to invoice all Products at Bushmans' price prevailing at the date of dispatch unless the Customer has previously paid the purchase price in full. Bushmans will notify the Customer of any such change in the price and if the Customer does not accept the price, Bushmans may cancel all or part of the relevant order and will refund any payments made by Customer.
- (b) Unless otherwise agreed by Bushmans in writing, prices do not include the cost of delivery to Customer's delivery destination, any applicable sales tax, goods and services tax, customs duties or other applicable taxes, duties, imposts, levies, industry imposed levies or currency fluctuations, and any variations in the price as a consequence of same shall be added to the price and be payable by the Customer.
- (c) If required by Bushmans, Customer must pay a deposit of 25% of the price of the Products at the time an order is placed. Unless otherwise agreed in writing by Bushmans, Customer must pay the balance of the price of the Products and any delivery charge in full at the time it is notified of the proposed delivery date of the Products.
- (d) Credit account Customers must make full payment on or before 30 days from the date of invoice. If Bushmans grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. Bushmans may at its sole discretion at any time without notice terminate any credit accommodation granted to Customer or alter Customer's credit terms for any reason, without liability to Customer or any other person. Bushmans will notify Customer of such termination or alteration by notice in writing to Customer and upon service of such notice all monies owing shall forthwith become due and payable and Bushmans may demand and Customer shall pay interest on all amounts outstanding in accordance with these Terms and Conditions.
- (e) During each month Bushmans will render to the Customer a statement of account in respect of the preceding month. In the event of any charges appearing on that statement of account being disputed by the Customer, notice of such dispute must be advised to Bushmans immediately on receipt of the statement of account otherwise the Customer is deemed to have accepted all such charges.
- (f) That in the event of any charges alleged to be in dispute the Customer will pay for all other charges appearing on the statement of account on or before the due date for payment.
- (g) If the amount shown to be payable on such statement of account is not paid to Bushmans on or before the due date such amount will be deemed to be overdue and The Company may, at its discretion, impose an account service fee. This service fee will be charged at the rate of 5% per month, or such other rate as may, from time to time, be set by Bushmans at its discretion, and will be calculated on the amount remaining unpaid and overdue at the end of each month.
- (h)
- (i) All Financial Institutions duty, stamp duty and other government charges relating to the establishment and/or operation of, and any commissions legal or other cost relating to the collection of any overdue portion of the Customer's account, will be charged to that account.
- (j) Where an account is opened in the names of two or more persons those persons are jointly and severally liable for payment of that account.

- (k) Bushmans may deduct from or set off against any money to the Customer amounts owed by the Customer to Bushmans whether under these Terms and Conditions or otherwise and the Customer acknowledges that any moneys refunded by Bushmans to the Customer for any reason shall be repaid without interest or liability.

3. DELIVERY

- (a) Bushmans shall deliver the Products to the location specified on the Purchase Order. Any delivery times provided to the Customer are estimates only and Bushmans will attempt to deliver the Products by that time but shall not be liable for any loss, expense or damages directly or indirectly attributable to Bushmans' failure to deliver Products or delay in delivery, nor shall the Customer be relieved of any obligation to accept or pay for the Products nor shall the Customer have the right to cancel or vary any order, refuse delivery or reduce payment.
- (b) Bushmans may, at its discretion, make and invoice deliveries by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment shall not entitle the Customer to repudiate or terminate the contract.
- (c) Delivery of Products will be deemed to have taken place on arrival of the Products at the Customer's nominated delivery destination, nominated transport company or nominated agent. If no such address is nominated, then delivery will be deemed to occur at the time when the Products are ready for delivery. Bushmans will not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery but if a signed receipt or other acknowledgement is obtained from someone believed by Bushmans to be authorized by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the Products delivered.
- (d) Any shortages in delivery must be reported to Bushmans within 24 hours of receipt of the Products otherwise delivery in full shall be deemed to have been made.
- (e) If the Customer is unable or unwilling to accept physical delivery of the Products when the Products are ready for delivery, Bushmans may charge a fee for the delay experienced or arrange for the storage of the Products at the risk and cost of the Customer including all transportation, storage and other consequential costs.

4. RISK AND TITLE

- (a) The risk of loss and damage to the Products shall pass to Customer immediately on delivery to Customer or deemed delivery in accordance with clause 3 above, notwithstanding that title may not have passed to the Customer.
- (b) Title to the Products will not pass to Customer and shall remain with Bushmans until Bushmans receives payment in full of all moneys outstanding from Customer to Bushmans.
- (c) Until title passes to Customer in accordance with clause 4(b):
- (i) the Customer will hold the Products solely as a bailee for Bushmans;
 - (ii) the Customer must store the Products separately and in such a way that they may be identified as Products belonging to Bushmans;
 - (iii) the Customer may sell the Products in the ordinary course of its business as bailee for Bushmans and must keep separate records in relation to the proceeds of any such sale and will hold the entire proceeds of sale in a separate account on trust for Bushmans and immediately account to Bushmans for such proceeds even if the Customer has a credit facility and/or time to pay;
 - (iv) the Customer must return the Products to Bushmans on demand and Bushmans is irrevocably authorised by the Customer to enter any premises where the Products are located and use such force as is necessary to take possession of the Products without liability for trespass, negligence or payment of any compensation to the Customer whatsoever and Bushmans may dispose of the Products as it sees fit;
 - (v) if any Products are used in a manufacturing process or mixed with other materials such that the Products are no longer identifiable, the Customer shall record the value of the Products so consumed in relation to each unit of finished product and will hold that amount from the proceeds of sale in a separate account on trust for Bushmans and immediately account to Bushmans for such proceeds;
 - (vi) the Customer shall insure the Products against loss or damage until such Products have been paid for or until they are sold by the Customer whichever first occurs, and will provide evidence of such insurance to Bushmans on demand. If the Customer fails to insure the Products or provide evidence of insurance as required by this clause, Bushmans may arrange such insurance at the Customer's cost.

Nothing in this clause shall be construed to relieve the Buyer from paying the full sum due to Bushmans or from bringing the sum held in trust to account.

5. CANCELLATION AND RETURNS

- (a) To the full extent permitted by law, the Customer must not without the prior written consent of Bushmans cancel the whole or any part of an order placed with Bushmans. In the event that Bushmans consents to cancellation, a cancellation fee of up to 25% of the price of the order or the cancelled portion may be charged by Bushmans.
- (b) Customer must inspect all Products upon delivery and inform Bushmans at that time of any issues or defects in respect of the Products. If no issues or defects are notified to Bushmans at such time, to the full extent permitted by law, the Products will be deemed to have been accepted by Customer.
- (c) To the full extent permitted by law, Bushmans shall not be liable to accept any returned Products but may in its absolute discretion accept returned Products, provided that such Products shall only be accepted for credit and with the prior

written approval of a duly authorized officer of Bushmans and the return of Products pursuant to this clause will not be or be deemed to be an admission by Bushmans of any liability or fault. Returned Products may be subject to an administrative fee of up to 25% of the invoiced cost and any return freight and other expenses incurred by Bushmans and Bushmans may recover from Customer any loss on resale.

6. LIABILITY

- (a) To the full extent permitted by law and subject to the terms of any express warranties or guarantees which may be provided by Bushmans from time to time, all express and implied warranties and conditions under statute or general law as to merchantability, description, quality, suitability or fitness for any purpose or otherwise are expressly excluded. Bushmans' liability for breach of a warranty or condition which cannot be excluded, restricted or modified shall be limited, at Bushmans' option, to (i) replacement of the Products, repair of the Products or the supply of equivalent products, (ii) the cost of replacing or repairing the Products or acquiring equivalent products, and (iii) in the case of services, supplying the services again or paying the costs of having the services supplied again.
- (b) To the full extent permitted by law, Bushmans shall not be liable for any injury, loss or damage (including, without limitation, direct, indirect, special or consequential loss or damage) suffered or liability incurred by Customer arising out of or in any way connected with the supply or operation of the Products, whether in contract, tort, negligence or otherwise.

7. DEFAULT AND LIABILITY OF CUSTOMER

- 7.1 Upon any default or breach by the Customer of these Terms and Conditions or any other dealing or arrangement with Bushmans, Bushmans may at its discretion, amongst other things, without being liable to any party:
- (a) retain all moneys paid and/or require payment of any moneys unpaid and/or require payment for any further Products on a cash on delivery basis and/or refuse to supply the Customer and/or cease any further deliveries to the Customer and/or terminate any agreement in relation to Products that have not been delivered and/or take immediate possession of any Products held by the Customer and dispose of them as it sees fit;
 - (b) recover from the Customer:
 - (i) all costs and expenses (including but not limited to legal costs and disbursements and mercantile agents' costs) on a full indemnity basis relating to any action taken by Bushmans to recover moneys or Products due from the Customer;
 - (ii) interest on all amounts outstanding at the rate of 2% per annum above the base lending rate of Westpac Banking Corporation from the due date for payment until the day that payment is actually received by Bushmans, and the parties agree that such interest is not a penalty but is a true measure of damages incurred by Bushmans. Payments received from the Customer will be credited first against any default interest and all such charges shall be payable on demand. If the Customer has an account with Bushmans, Bushmans may debit the Customer's account monthly or at such other times it chooses for such interest.
- 7.2 If the Customer commits or is involved in any act of insolvency (including bankruptcy, liquidation, receivership, administration or the like), it shall be deemed to be in default under these Terms and Conditions.
- 7.3 The Customer agrees not to commence or continue or cause to be commenced or continued through it any suit or action against Bushmans whilst the Customer is in default under any part of these Terms and Conditions or in any of its dealings with Bushmans.
- 7.4 The Customer indemnifies Bushmans and shall hold Bushmans harmless from and against all claims, liability, loss, damage, cost or expense suffered or incurred by Bushmans (including loss of profits and/or consequential loss) in connection with or arising from any default or breach by the Customer of these Terms and Conditions or any other dealing or arrangement with Bushmans.

8. GENERAL

- (a) Without prejudice to any other provisions, Bushmans shall not be liable for any delay in performance or failure to perform any of its obligations if such performance is prevented, restricted or affected by a force majeure event or any other cause beyond Bushmans' control.
- (b) These Terms and Conditions constitute the entire agreement between the parties.
- (c) Failure or neglect by Bushmans to enforce any of these Terms and Conditions shall not be construed as a waiver of Bushmans' rights nor affect Bushmans' rights to take any subsequent action.
- (d) If any provision or part of any provision of these Terms and Conditions is determined by a court of competent jurisdiction to be invalid, unlawful or unenforceable it shall be read down as far as possible to what may be considered reasonable in all the circumstances and if such provision cannot be read down then that provision shall be deemed to be void and severable from the rest of these Terms and Conditions and shall in no way affect any other terms or conditions hereof or the application of that, or any other, provision hereof in other circumstances.
- (e) These Terms and Conditions shall be governed by the laws of New South Wales and the parties submit irrevocably and unconditionally to the non-exclusive jurisdiction of the Courts of New South Wales.
- (f) Bushmans may at any time and from time to time alter these Terms and Conditions by notice in writing to the Customer.
- (g) No right, power or remedy conferred by these Terms and Conditions is exclusive of any other right, power or remedy also contained in these Terms and Conditions, or provided by law or equity, but may be enforced concurrently with them or from time to time as the Seller thinks fit in its entire discretion.

- (h) Where the Customer is a trustee, the Customer accepts these Terms and conditions both in its personal capacity and also as trustee, irrespective of whether or not it discloses to Bushmans that it is a trustee. The Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by Bushmans.
- (i) The Customer must notify Bushmans in writing of any change in its structure or management including any change in director, shareholder or management and any change in partnership or trustee within 7 days of any such change. The Customer must if requested by Bushmans procure such further guarantees or other form of security as may be required by Bushmans.
- (j) A contract of sale shall only be deemed to have been entered into between Bushmans and the Customer for the supply of Products when, upon an order having been placed upon Bushmans for Products, that order has been accepted by Bushmans whether made and communicated by Bushmans in writing to the Customer or by overt act of acceptance.
- (k) In these Terms and Conditions: words importing the singular number shall include the plural and vice versa; words denoting natural persons shall include an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust, and vice versa.
- (l) Headings are for convenience only and do not affect interpretation.