

STANDARD TERMS AND CONDITIONS

These Terms apply where Dawn Tools and Vices Pty Ltd ACN 616 452 781 (**Seller**) supplies Goods and Services to a purchaser.

1. DEFINITIONS

In these Terms:

- (a) **Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts;
- (b) **Confidential Information** means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods, Services or the Seller's business;
- (c) **Consequential Loss** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;
- (d) **Consumer** has the meaning given to it in section 3 of the Australian Consumer Law;
- (e) **Consumer Guarantee** means a right or guarantee under the Australian Consumer Law that cannot lawfully be excluded;
- (f) **Contract** means the contract of purchase of Goods or Services between the Seller and the purchaser which comprises the Credit Application, these Terms and all orders for Goods placed by the purchaser and accepted by the Seller;
- (g) **Credit Application** means the Seller's credit application of which these Terms form part;
- (h) **Goods** means goods supplied by the Seller to the purchaser;
- (i) **Insolvency Event** means the happening of any of these events:
 - (i) a party suspends payment of its debts generally, is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
 - (ii) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (iii) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
 - (iv) a party goes bankrupt; or
 - (v) a party ceases, or threatens to cease, to carry on business;
- (j) **Intellectual Property Rights** means:
 - (i) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
 - (ii) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
 - (iii) confidential information and trade secrets;
 - (iv) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and

- (v) proprietary rights under the Circuit Layouts Act 1989 (Cth).
- (k) **Loss** means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;
- (l) **Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (i) whether the information or opinion is true or not; and
 - (ii) whether the information or opinion is recorded in a material form or not, or as otherwise defined by the *Privacy Act 1988* (Cth).
- (m) **PPS Act** means the Personal Property Securities Act 2009 (Cth);
- (n) **purchaser** means the person, entity, firm or corporation that acquires Goods from the Seller pursuant to these Terms, the details of which are set out in all orders for Goods and Services placed by the purchaser and / or the Credit Application (as the case may be) and includes the purchaser's permitted assigns, successors, employees, servants and agents;
- (o) **Services** means services performed by the Seller for the Purchaser; and
- (p) **Terms** means these sale terms and conditions.

2. AGREEMENT

- (a) To the extent permitted by law, the Seller and the purchaser acknowledge and agree these Terms take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the purchaser to the Seller.
- (b) The Seller's failure to object to provisions contained in the purchaser's purchase orders or other communications shall not be deemed waiver of these Terms or acceptance of such provisions. Without restricting the generality of the foregoing, agents and sales representatives of the Seller do not have authority to modify these Terms or make representations or warranties other than those contained herein.
- (c) Acceptance by the purchaser of these Terms may be by any one of the following ways:
 - (i) by signing and returning a copy of these Terms;
 - (ii) by performing an act that is done with the intention of adopting or accepting these Terms, including continuing to order Goods or Services after receiving these Terms or an amended version of them from the Seller or by oral acceptance.

3. ACCEPTANCE AND PRICES:

- (a) Each order placed by the purchaser will constitute an offer by the purchaser to acquire the Goods or Services from the Seller on and subject to these Terms.
- (b) The Seller may refuse to accept an order, or part of an order, placed by the purchaser without giving reasons.
- (c) The purchaser may not without the Seller's consent cancel an order after the Seller has accepted the order. If the Seller consents to the cancellation of an order, the purchaser will be liable for any costs incurred by the Seller up to the time of cancellation including but not limited to a 10% restocking fee (if applicable). The cancellation charges shall not in any way whatsoever limit the Seller's other remedies it may have at law including the ability of the Seller to claim and recover any Loss to which the Seller would otherwise be entitled by reason of accepted orders being cancelled by the purchaser.
- (d) All prices quoted are in Australian dollars and except as otherwise expressly stated, exclusive of insurance, delivery charges, GST and any other sales, value added or similar tax which may apply.

- (e) The amount of any present or future taxes shall be added to the price contained herein and shall be paid by the purchaser in the same manner and with the same effect as if originally added thereto.
- (f) The method of delivery will be one of the following options:
 - (i) **Purchaser pick up:** in which case the purchaser must pick up the Goods from the Seller premises (as specified by the Seller) within 48 hours after the Seller advises the purchaser that the Goods are ready for collection; or
 - (ii) **Seller delivery:** in which case the Seller will deliver the Goods to the delivery destination .
- (g) The purchaser is deemed to accept delivery of the Goods and risk in the Goods will pass to the purchaser:
 - (i) in the case of delivery in accordance with clause 3(g)(i), when the Goods are picked up by the purchaser; and
 - (ii) in the case of delivery in accordance with clause 3(g)(ii) (if the purchaser fails to accept delivery within 48 hours from shipment) at the time the goods are shipped.

4. TERMS OF PAYMENT:

- (a) Unless subject to a credit trading account, the terms of payment are 100% of order value with order unless otherwise agreed in writing by the Seller's Credit Department.
- (b) The Seller may require the payment of a deposit, which must be paid by the Seller upon the Seller accepting the order in accordance with clause 3(b).
- (c) Where delivery is under Incoterms 2010 FOB, FCA, CPT or CIP "delivery" means delivery to the purchaser's carrier.
- (d) Overdue accounts will bear interest at the prevailing bank rate charged to the Seller and such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the purchaser upon demand by the Seller.
- (e) No amount owing by the purchaser to the Seller may be offset against any amount owing to the purchaser from the Seller under the Contract or on any other account whatsoever.
- (f) Despite any provision of these Terms, payment will become immediately due and payable to the Seller without further notice if:
 - (i) the purchaser makes the goods subject to any security, including any "all present and after-acquired property" charge over the purchaser;
 - (ii) the purchaser suffers an Insolvency Event.
- (g) If the Seller takes steps or action to recover any amount due to it the purchaser will be responsible for all Losses incurred by the Seller in recovering the monies due.
- (h) All payments received from the purchaser may be applied by the Seller in the manner the Supplier, in its absolute discretion, determines.

5. CONFIDENTIAL INFORMATION

The purchaser is authorised to use the Confidential Information for the sole purpose of using or selling the Goods supplied under the Contract and must not otherwise use or disclose any Confidential Information.

6. FREIGHT CLAIMS

- (a) The Seller will use all commercially reasonable efforts to deliver the Goods for which it has accepted an order by the date (if any) specified in the order and in the absence of any date, within a reasonable time. The failure of the Seller to deliver the Goods by the date specified in the order does not entitle either party to treat an order or the Contract as repudiated

- (b) Unless otherwise expressly agreed in writing, delivery of the product is made FCA (under Incoterms 2010) to the purchaser's nominated carrier at the Seller's plant.
- (c) If the purchaser has asked the Seller to nominate and arrange a carrier, it does so as agent for the purchaser and the transaction will, notwithstanding the nomination and arrangement of the carrier by the Seller, proceed as FCA (rather than CPT or CIP).
- (d) The liability and responsibility of the Seller for the goods ceases upon delivery of the goods to the carrier. All claims for loss, damage or shortage in loading onto the carrier's vehicle and in transit are the purchaser's sole responsibility. To the extent permitted by law, the Seller accepts no responsibility for any liability caused to the goods in loading or transit howsoever arising, including any liability arising out of any negligence on the part of the carrier, and the purchaser hereby agrees that it will not hold the Seller responsible for any costs and expenses whatsoever arising out of or in connection with any loss or damage occurring in loading or transit, or arising out of the loading or transit of the goods (including any loss caused by delay).
- (e) In circumstances where the purchaser arranges its own freight, the purchaser is responsible for all insurance of the goods in loading and transit and the Seller takes no responsibility for ensuring that such insurance has been arranged prior to delivery of the goods.
- (f) Claims for factory shortage will not be recognized unless such alleged shortage is reported to the Seller in writing within 5 days after delivery of the goods.

7. RETENTION OF TITLE

- (a) The property in the goods supplied does not pass to the purchaser until the Seller has received payment for those particular goods and payment in full of all other money owing by the purchaser on any other account, whether or not that account relates to the sale of goods and the purchaser's cheque has been honoured.
- (b) Until full payment in cleared funds is received by the Seller for all Goods supplied by it to the purchaser, the purchaser must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.
- (c) Until full payment in cleared funds is received by the Seller for all Goods supplied by it to the purchaser, as well as all other amounts payable by the purchaser to the Seller on any account whatsoever:
 - (i) legal title and property in all Goods supplied under the Contract remain vested in the Seller 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 the Seller so that they are readily identifiable as the property of the Seller;
 - (iii) the purchaser must not sell the Goods except in the ordinary course of the purchaser's business;
 - (iv) in addition to any rights the Seller may have under Chapter 4 of the PPS Act, the Seller may, at any time, demand the return of the Goods and shall be entitled without notice to the purchaser and without liability to the purchaser, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Seller, and for this purpose the purchaser irrevocably licenses the Seller to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Seller from and against all loss suffered or incurred by the Seller as a result of exercising its rights under this clause, except to the extent that such loss was directly caused by the Seller's acts or omissions. If there is any inconsistency between the Seller's rights under this clause and its rights under Chapter 4 of the PPS Act, this clause prevails;

- (v) the purchaser acknowledges and warrants the Seller has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in clause 7(f)(iv) until title passes to the purchaser in accordance with these Terms. The purchaser must do anything reasonably required by the Seller to enable the Seller to register its security interest, with the priority the Seller requires and to maintain that registration;
- (vi) the security interest arising under this clause 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 attaches at any later time; and
- (vii) the Seller may apply to wind up or bankrupt the purchaser if the goods are not paid for within the Seller's usual credit terms, even though property in the goods has not passed to the purchaser.

8. DELAYS

The Seller shall not be liable to the purchaser or to any third party for any delays caused by riots, strikes, lockouts, weather, fire, floods, lack of transportation, accidents, the failure of the Seller's suppliers to meet their contractual obligations, breakdowns, or any other contingency beyond the Seller's reasonable control and receipt of the goods by the purchaser shall constitute a waiver of all claims for loss or damage due to delay.

9. 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 the Seller notice of the damage or defect within 14 days after delivery.
- (c) If the purchaser gives the Seller notice under clause 9(b), it must:
 - (i) preserve the Goods in the state in which they were delivered for 7 days after it gives the Seller the notice; and
 - (ii) during that period, allow the Seller access to the purchaser's premises to inspect the Goods; or
 - (iii) at the Seller's request return the Goods, at the purchaser's cost, within 7 days after notice in accordance with clause 9(b) 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) To the extent permitted by law, the Seller's liability in respect of defective goods or for breach of a condition, warranty or Consumer Guarantee is limited to any one of the following options as determined by the Seller:
 - (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;
 - (iv) payment of the cost of repairing the Goods; or
 - (v) where the purchaser is not a Consumer, provision of a credit.

10. DEFECTIVE SERVICES

- (a) The purchaser must, as soon as possible after the Services have been provided give the Seller notice of any Services which are defective within 14 Business Days.
- (b) To the extent permitted by law, the Seller's liability in respect of defective Services or for a breach of a condition, warranty or Consumer Guarantee is limited to any one of the following options as determined by the Seller:
 - (i) provide the Services again;

- (ii) pay the cost of having the Services provided again; or
- (iii) where the purchaser is not a Consumer, provision of a credit.

11. PRODUCT CHANGES

The Seller reserves the right to change or modify the product in the interest of continuous product improvement without liability. For the avoidance of doubt, this provision will not apply once an order has been accepted by the Seller.

12. RETURNED GOODS

Unless the purchaser has rights under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified, if Goods are not defective goods:

- (a) Goods may only be returned with the written permission of the General Manager of the Seller and when so returned will be Incoterms 2000 DDP to the Seller's plant;
- (b) Goods must be returned in the same re-saleable condition as when they were originally sold, and the costs of return shall be borne by the purchaser; and
unless returns are due to an error by the Seller, the purchaser may be charged a reasonable fee which constitutes a genuine pre-estimate of the Seller's loss arising from the cancellation or return of the Goods.

13. INTELLECTUAL PROPERTY

- (a) The Seller remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Seller prior to the Contract and any other agreement with the Purchaser.
- (b) .
- (c) The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Goods are owned by the Seller.

14. PPS ACT

- (a) Unless otherwise defined in this agreement, the terms and expressions used in this clause have the meaning given to them by the PPS Act.
- (b) If at any time the Seller determines that the Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Seller may apply for any registration, or give any notification, in connection with that security interest and the purchaser must promptly, upon the Seller's request, do anything (including signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
 - (i) provide more effective security over the relevant personal property;
 - (ii) ensure that any such security interest in favour of the Seller:
 - (iii) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
 - (iv) ranks as a first priority security interest;
 - (v) enable the Seller to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
 - (vi) enable the Seller to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
 - (vii) All reasonably incurred costs and expenses arising as a result of actions taken by the Seller pursuant to clause 14(b) will be for the account of the Seller and the purchaser equally.

- (c) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under the Contract, the purchaser agrees that the following provisions of the PPS Act will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the purchaser;
 - (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (iii) section 125 (obligation to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the purchaser;
 - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vi) subsection 132(4) (statement of account if no disposal);
 - (vii) section 142 (redemption of collateral); and
 - (viii) section 143 (reinstatement of security agreement).
- (d) The Seller does not need to give the purchaser any notice required under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.
- (e) Neither party will disclose to a person or entity that is not a party to the Contract information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.

15. LIABILITY

- (a) The purchaser must:
 - (i) promptly inform the Seller of all complaints or claims relating to any of the Goods or Services;
 - (ii) not admit liability on behalf of the Seller in respect of any complaint or claim relating to any of the Goods or Services;
 - (iii) not resolve or settle any complaint or claim relating to any of the Goods or Services which may result in the Seller incurring any liability (whether to a customer, the purchaser or any other person); and
 - (iv) deal promptly with all complaints or claims relating to any of the Goods or Services which will not result in the Seller incurring any liability.
- (b) Except only for those rights and remedies that the purchaser has in respect of the Goods and Services under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:
 - (i) the Seller excludes any liability for Consequential Loss;
 - (ii) the Seller is not liable to the purchaser for any Loss which the purchaser suffers, incurs or is liable for in connection with supply of the Goods or Services under the Contract.

16. PRIVACY

- (a) The Seller can collect, use and disclose Personal Information about the purchaser and any guarantor, in accordance with the Credit Application and the Seller's privacy and credit reporting policy, which is available at <http://www.dawntools.com.au/>.
- (b) The purchaser and any guarantor must notify the Seller if any of its Personal Information changes and consents to the Seller collecting, using and disclosing this updated Personal Information in accordance with the Seller's privacy and credit reporting policy.

17. GENERAL

- (a) This Contract shall be deemed to have been made in Victoria and is governed by the law of Victoria. The parties agree to submit to the exclusive jurisdiction of the courts of Victoria.
- (b) In these Terms, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- (c) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- (d) The Seller and the purchaser are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.

The purchaser confirms its acceptance of these Terms: