



PSW PTY. LTD. (PSW)

TERMS AND CONDITIONS OF TRADING

GENERAL: To the fullest extent legally permissible including under The Australian Consumer Law (ACL), these Terms and Conditions (Terms) shall apply to the exclusion of all others including any terms and conditions of the party dealing with PSW as a Customer (Customer) (whether on the Customer's order form or otherwise). No goods shall be supplied by PSW on any terms and conditions other than those set out herein and by taking delivery of the goods the Customer shall be deemed to have agreed to these Terms. Where the ACL applies, to the extent of any inconsistency these Terms or any part thereof will be void and capable of severance without affecting any remaining clauses.

PAYMENT: (i) The Customer agrees to comply with the trading terms of PSW and payment for goods shall be made within 30 days' from the date of the invoice. (ii) Interest shall be charged on overdue accounts calculated daily at the cash target rate plus 2% until such time as the account is paid in full if an account remains unpaid from the invoice due date with an initial invoice raised once the account is 15 days' overdue.

CLAIMS:

The Customer will be deemed to have accepted the goods as being in accordance with their order unless they notify PSW in writing within 7 days' of the receipt of goods.

WARRANTY:

Under the ACL the Customer has the benefit of certain consumer guarantees, non-excludable rights and remedies in respect of goods (and/or services) supplied by PSW (Consumer Rights) and nothing in these Terms shall exclude, restrict or modify any Consumer Rights: a) The Customer acknowledges and agrees that if it is a consumer under the ACL then (i) its right to make any claim(s) for any loss or damage sustained by the Customer and/or any third parties shall be limited to the Consumer Rights (ii) the liability of PSW for failure to comply with a consumer guarantee in relation to the supply of goods and/or services will be limited to that set out under s64A of the ACL including A. replacement of the goods or supply of equivalent goods; B. repair of the goods; C. payment of the costs of replacing the goods or acquiring equivalent goods. D. payment of the cost of having the goods repaired.

FORCEMAJEURE: If for any reason beyond the control of PSW (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown), orders cannot be filled at the time stipulated by the Customer, PSW shall be entitled to determine the Contract and the Customer shall not have any claims for damages arising out of such a cancellation, without prejudice to the rights of PSW to recover all sums owing to it in respect of deliveries made prior to the date of such determination.

FREIGHT COSTS: PSW shall not be liable for freight costs on goods returned to them by the Customer.

RETURN OF GOODS:

- (i) To the fullest extent permitted by law, no return of goods shall be accepted by PSW unless the Customer has been given prior written authorisation for the return, or an authorisation number from the PSW Customer Service Department. Goods arriving under this clause without authorisation will not be accepted by PSW.
- (ii) Freight will be at the Customer's expense unless arranged prior and a restocking fee of 10% shall apply to all goods returned to PSW.
- (iii) Any first quality goods returned (except for sampling) will incur a 10% handling fee.

DEFAULT:

- (i) Subject to applicable law, in the event of the Customer's default under these Terms the Customer agrees to indemnify PSW for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of PSW in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis).

CHANGE OF OWNERSHIP: The Customer agrees to notify PSW in writing of any change of ownership of the Customer within 7 days from the date of such a change.

CANCELLATION: Orders placed with PSW cannot be cancelled without the written approval of PSW. In the event that PSW accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done on behalf of PSW to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

LIEN: The Customer hereby acknowledges that PSW has a lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

TITLE OF GOODS:

The Customer acknowledges that PSW has a security interest (for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA)) in the goods and any proceeds until title passes in accordance with this clause and Customer further agrees to waive rights that it has or may have with regard to PPSA sections 125,130, 132(3)(d), 132(4), 135 and 157:

- (a) Property in the goods shall not pass until payment in full in cleared funds of all monies owed to PSW has been received for the goods and all other monies owed to PSW by the Customer.
- (b) The Customer acknowledges that until property in the goods passes to the Customer in accordance with clause (a), the Customer is in possession of the goods concerned for and on behalf of PSW as a fiduciary bailee and agent and is only authorised to sell the goods in the ordinary course of business. Upon taking delivery of the goods, the Customer must keep the goods identifiably separate from other goods on the Customer's premises to enable the goods to be identified.
- (c) In addition to any rights PSW may have under Chapter 4 of the PPSA, where the Customer fails to perform or observe any of these terms and conditions or PSW in its absolute discretion considers that the Customer is in financial difficulties, PSW:
 - (i) Shall have an immediate right to possession of the goods and the Customer irrevocably authorises PSW to enter any premises (forcibly if necessary without trespass) in the name of the Customer and take the goods;
 - (ii) May retain all monies paid on account of the goods;
 - (iii) May cease delivery of the goods; and
 - (iv) May recover from the Customer all losses (including profits foregone) without prejudice to any other rights of PSW and without PSW being liable in any way to any party whatsoever.
- (d) Until payment in full for the goods and of all other amounts owing by the Customer to PSW in the event of sale of goods by the Customer:

The Customer must:

 - (i) Deposit all proceeds of sale in a separate and identifiable bank account;
 - (ii) Not mix such proceeds with any other monies; and
 - (iii) Account to PSW for such processes; and
 - (iv) PSW will be entitled to trace all proceeds of sale of the goods received by the Customer through the relevant account or any other account maintained by the Customer.
- (e) If at a time when PSW seeks to recover the goods, the goods have been incorporated in any product:
 - (i) PSW and the Customer shall become tenants in common of the goods concerned in proportion to their respective contributions; and
 - (ii) If relevant, the Customer will be presumed to have disposed of goods not incorporating the goods ahead of goods, incorporating the goods.
 - (f) This clause does not purport to confer on PSW any contractual rights, but only serves as confirmation of PSW's rights at law and in equity.
 - (g) This clause is not intended to create a charge over the goods or any book debts. To the extent that any part of this clause is construed as creating a charge, the offending words shall be deleted.

POWER TO SELL GOODS: Nothing herein contained shall prevent the Customer from selling the goods to any third party provided that the proceeds of any such sale shall be held in trust by the Customer, its Servants and/or Agents for PSW until PSW has received payment in full for the goods.

JURISDICTION: The proper law of all contracts arising between PSW and the Customer is the law of the State of Victoria and the parties agree that all disputes relating to the goods should be determined in a Court of competent jurisdiction nearest Melbourne and the parties irrevocably agree to submit to the exclusive jurisdiction of such Court.