
A. Lewis & Co. Pty Ltd Commercial Terms & Conditions of Trade

1. Definitions

Australian Consumer Law means schedule 2 of the *Competition and Consumer Act 2010* (Cth).

The expressions **Consumer, Consumer Guarantees, Fair and Reasonable** have the meanings given by the *Australian Consumer Law*.

Customer means the person described in the accompanying Application for Commercial Credit as the Applicant or the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Supplier to the Customer.

Goods means any goods supplied by the Supplier to the Customer (and where the context so permits includes any supply of Services) under these terms and conditions. They include goods described on any invoices, quotation, work authorisation or any other forms provided by the Supplier to the Customer.

Price means the price payable for the Goods or Services as agreed between the Supplier and the Customer in accordance with clause 3 of these terms and conditions.

Services mean all Services supplied by the Supplier to the Customer. Without limitation it includes any advice or recommendations (and where the context so permits includes any supply of Goods).

Supplier means A. Lewis & Co. Pty Ltd

2. Acceptance

2.1 Any instructions received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Supplier shall constitute acceptance of these terms and conditions.

2.2 Where more than one Customer has accepted or is deemed to have accepted these terms, they shall be jointly and severally liable for all payments of the Price.

2.3 After acceptance of these terms and conditions by the Customer they can only be amended with the written consent of the Supplier.

2.4 The Customer must give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, email address, trustee or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.

3. Price And Payment

3.1 At the Supplier's sole discretion the Price shall be as indicated on invoices provided by the Supplier to the Customer in respect of Goods supplied

3.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation.

3.3 At the Supplier's sole discretion a deposit may be required.

3.4 At the Supplier's sole discretion:

(a) payment must be made on the pick up of the Goods; or

(b) payment for approved Customers may be made by installments in accordance with the Supplier'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 must be made within seven (7) days following the date of the invoice.

3.6 Payment must be made by cash, cheque, bank cheque, BPay, or by direct credit, or by any other method as agreed between the Customer and the Supplier.

3.7 The Price payable is exclusive of GST and other applicable taxes and duties except where the Price is expressed to be inclusive of GST.

4. Delivery Of Goods

4.1 At the Supplier's sole discretion delivery of the Goods will take place when:

(a) the Customer takes possession of the Goods at the Supplier's address; or

(b) the Customer takes possession of the Goods at the Customer's nominated address (in the event

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- that the Goods are delivered by the Supplier or the Supplier's nominated carrier).
- 4.2 At the Supplier's sole discretion the costs of delivery are included in the Price.
- 4.3 The Customer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier is entitled to charge a reasonable fee* for redelivery.
- 4.4 Delivery of the Goods to a third party nominated by the Customer will be deemed to be delivery to the Customer for the purposes of these terms and conditions.
- 4.5 The failure of the Supplier to deliver will not be treated as an act of repudiation of any contract arising out of the acceptance of these terms and conditions.
- 4.6 The Supplier will not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1 Despite clause 6, risk in respect of the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable in respect of the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

6. Title

- 6.1 Title and property in and to any Goods remains in the Supplier until:
- (a) the Customer has paid in full and in cleared funds all amounts owing by the Customer to the Supplier in connection with the Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Supplier in respect of all Goods supplied by the Supplier to the Customer under these terms and conditions.
- 6.2 Receipt by the Supplier of any form of payment other than cash shall be conditional and will not be deemed to be payment until actual payment in cleared funds.
- 6.3 Unless otherwise agreed in writing:
- (a) the Customer must where practicable store the Goods separately and identified in an appropriate manner as Goods of the Supplier;
 - (b) until such time as title to the Goods passes to the Customer the Customer shall be a bailee only of the Goods. Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice the Customer shall cease to have any rights to the Goods and must forthwith return the Goods;
 - (c) the Supplier has the right of stopping the Goods in transit whether or not delivery has been made;
 - (d) if the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods. The Customer agrees to indemnify the Supplier in respect of any such entry;
 - (e) until such time as the Supplier has received payment in full for the Goods then the Customer must hold any proceeds from the sale or disposal of the Goods on trust for the Supplier and must pay such proceeds of sale into a bank account of the Customer styled "proceeds of sale of Supplier's goods".
 - (f) if the Customer has not been paid by a third party customer of the Customer and the Customer has not paid the Supplier for the Goods, the Customer agrees at the option of the Supplier that the Supplier may collect the account on giving the Customer notice to that effect and the Supplier shall be entitled to issue proceedings in the name of the Customer for recovery of that account for the benefit of the Supplier.
 - (g) the Customer must not charge or create any Security Interest in or in respect of the Goods nor otherwise give or grant any interest in the Goods while they remain the property of the Supplier;
 - (h) the Supplier may issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.

7. Customer's Disclaimer

7.1 The Customer disclaims any right to rescind, or cancel any contract with the Supplier arising out of the acceptance of these terms and Conditions or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Goods are bought relying solely upon the Customer's own skill and judgment.

8. Defects

8.1 The Customer must inspect the Goods on delivery and must within five (5) business days of delivery (time being of the essence) notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If the Customer believes the Goods are defective in any way, the Customer must afford the Supplier an opportunity to inspect the Goods within a reasonable time following delivery. To the extent permitted by law, if the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

8.2 Goods will not be accepted for return other than in accordance with 8.1 above or 9 below.

9. Exclusions of warranties and limitation of liability

9.1 The Supplier acknowledges that the *Australian Consumer Law* and similar legislation provides certain rights for Consumers that cannot be excluded, and in relation to the supply of Goods and Services, the Customer may be a Consumer.

9.2 Subject to 9.3, the Supplier excludes all conditions, warranties, terms and Consumer Guarantees implied by statute, the general law or custom (without limitation, it includes the *Australian Consumer Law*) applicable to any supply of Goods and Services.

9.3 Consumer Guarantees may apply to any supply of Goods where the Customer is a Consumer. The liability of the Supplier in connection with Consumer Guarantees is not limited except as set out in 9.4.

9.4 Where the Customer is a Consumer in relation to the supply of Goods and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Supplier in relation to Consumer Guarantees, in the Supplier's sole discretion, is limited to (i) the replacement of the Goods or the supply of equivalent goods; (ii) repair of the Goods; (iii) the costs of replacing the Goods or of acquiring goods similar to the Goods; or (iv) the cost of having the Goods repaired, except where it is not Fair and Reasonable to limit liability in this way.

9.5 If the Customer is a Consumer in relation to the supply of Services under a contract arising under these Terms and Conditions, and those Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Supplier in relation to Consumer Guarantees relating to that contract, in the Supplier's sole discretion, is limited to (i) supplying those Services again; or (ii) the cost of supplying the Services again, except where it is not Fair and Reasonable to limit liability in this way.

9.6 To the extent permitted by law, the Supplier excludes any liability in contract, tort (including negligence) or otherwise, in connection with the supply of Goods and Services, for any indirect damages or losses, or for any special, punitive or exemplary damages. Without limitation, this includes any liability in connection with a claim that the Goods and Services are not fit for a particular purpose, except in circumstances where paragraphs 9.4 and 9.5 apply.

10. Warranty

10.1 To the extent permitted by law, and subject to 9 above, in relation to any Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

11. Cancellation

11.1 The Supplier 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 Customer. On giving such notice the Supplier agrees to repay to the Customer any sums paid in respect of the Price. The

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- Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

12. General

- 12.1 Any provision that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these terms and conditions nor affect the validity or enforceability of that provision in any other jurisdiction.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and any applicable laws of the Commonwealth of Australia. The Customer submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria, and waives any right to claim that those courts are an inconvenient forum.
- 12.3 The Supplier shall be under no liability whatever to the Customer for any indirect loss and for expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions.
- 12.4 In the event of any breach of this contract by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 12.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Supplier. The Supplier may set off or deduct any amount due to it from any moneys that may become payable to the Customer by the Supplier.
- 12.6 The Supplier may licence or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 12.7 The Supplier reserves the right to 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 Supplier notifies the Customer of such change. Notification will occur upon the Supplier placing the amended version of these terms on the Supplier's website or, at the Supplier's discretion, delivery of a copy of the amended terms to a Customer by email, text-SMS or post.
- 12.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 12.9 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 12.10 The singular includes the plural and the converse. A gender includes all genders. A right or obligation of any 2 or more persons (other than the Supplier) in these terms and conditions is joint and several. A reference to a party to these terms and conditions or other document includes the party's successors and permitted substitutes or assigns. An event of default subsists until waived by the Supplier. All references to time are Melbourne time. Nothing in these terms and conditions is to be interpreted against the Supplier on the ground that it put it forward.

13. Certificates

A certificate signed by the Supplier or a director of the Supplier stating the amount of the Price of any Goods or Services, or an amount owing under these terms and conditions, at a date mentioned in the certificate is sufficient evidence and binds the Customer and each Guarantor unless proved wrong.

14. Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to these terms and conditions:

- (a) must be in writing signed by the Supplier or an authorised officer of the Supplier or by a director of the Customer or, if an individual, by the Customer personally; and
- (b) will be taken to be given or made when delivered, received or left at the address or fax number

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or electronic mail address of the recipient shown in this terms and conditions or to any other address or fax number or electronic email address which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place.