

**1. INTERPRETATION**

In these Conditions of Sale:

“the Firm” means MB Direct Pty Ltd, “The Buyer” means the person, Firm or Company purchasing the Goods. “The Goods” means the materials and/or services subject to the contract between the Buyer and the Firm.

**2. GENERAL**

2.1 Unless otherwise agreed in writing, every order, sale, quotation and contract placed with the Firm shall be subject to these Conditions of Sale to the extent that the same are applicable. The Conditions of Sale are deemed to be agreed and accepted by all parties involved and will override any standard terms and conditions stipulated, incorporated or referred to in the Buyer's order.

2.2 These Conditions of Sale shall be governed by the laws applicable in Western Australia and the Buyer submits to the jurisdiction of the Western Australia Courts and Tribunals.

2.3 If any clause or part of these Conditions of Sale, not being of a fundamental nature, is held to be illegal or unenforceable the validity and enforceability of the remainder of these Conditions of Sale shall not be affected.

2.4 The Firm may vary these Terms & Conditions of Sale at any time by notice in writing to you. Any such variation will take effect from acceptance of the first order for Goods following notice of the variation being given to the Buyer.

2.5 No waiver by the Firm of any term or condition will constitute a waiver of any other of these Terms & Conditions of Sale.

**3. PRICE**

3.1 The Buyer shall pay the price of the Goods stated in the invoice which will be the price ruling at the date of delivery or collection (“Price”)

3.2 The Buyer shall pay all taxes (including applicable GST), duties or charges where applicable at the rate specified in the invoice unless:-

3.2.1 a written exemption certificate was forwarded to the Firm at the time the order for Good was placed; and

3.2.2 the sales tax number of the Buyer is quoted in the invoice.

3.3 Unless otherwise agreed in writing the Price is exclusive of packaging costs, freight charges, delivery costs, bank charges and such other charges notified by the Firm to the Buyer all of which costs if incurred are payable by the Buyer (“Price Additions”).

3.4 If the cost to the Firm of supplying the goods not yet delivered shall be increased materially by any dispute or cause and the parties concerned cannot agree on how such increase shall be borne, the Firm may cancel the Contract without liability in respect of such undelivered Goods.

3.5 Where delivery of the Goods is to be made by installments, each delivery shall be treated as a separate contract and failure, suspension or delay in any delivery or defect in the Goods delivered shall not vitiate the Contract as to other deliveries.

**4. ACCEPTANCE AND RISK**

4.1 The Buyer accepts the Goods and the Goods are at the Buyer's risk immediately upon leaving the Firm's premises, whether the Goods are delivered by the Firm or by someone other than the firm or collected by the Buyer. If the Buyer wishes to insure against loss or damage to the Goods after they have left the Firm's premises, it shall be the Buyer's responsibility to do so.

**4. ACCEPTANCE AND RISK contd...**

4.2 All delivery dates are estimates only and the Firm shall not be liable in damages for any delay. The Buyer shall not be entitled to refuse or to accept delivery except where delay of an unreasonable length has occurred due to circumstances within the Firm's control (without limiting the generality of the foregoing). The following circumstances shall be deemed NOT to be within the Firm's control: Act of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, Government action and delay in delivery by the Firm's suppliers.

During any such period of delay the Buyer, after giving reasonable prior written notice of his intention to do so, shall be at liberty to purchase elsewhere such Goods only as shall be necessary for the Buyer's immediate requirements and to cancel a delivery from the Firm of any corresponding quantities so purchased.

**5. TERMS OF PAYMENT**

5.1 The Buyer shall pay the Price and Price Additions (“Total Price”) before the end of the month following the month of invoice (“Due Date”), unless otherwise stated on the invoice this shall be deemed the due date.

5.2 If the Buyer does not pay the full amount of the Total Price on or before the due date the Firm may charge interest at the rate of 1.5% per calendar month on the outstanding balance of the Total Price from the due date until the full amount of the Total Price has been paid to the Firm.

5.3 All expenses incurred by the Firm in collecting overdue payment from the Buyer including debt collection agency, legal and court fees shall be payable to the Buyer to the Firm as a debt due forthwith upon demand by the Firm.

5.4 The Buyer shall send all amounts due under these Conditions of Sale to the address of the Firm printed on the front of the invoice.

5.5 If the Buyer shall fail to make any payment on the due date or becomes bankrupt, enters into liquidation (other than for the purposes of amalgamation or reconstruction), makes any composition arrangement with creditors or has a receiver appointed of its undertaking property or assets or any part thereof, the Firm shall have the option to withhold or cancel further deliveries provided that the failure on the part of the Firm to exercise such option, in respect to one or more deliveries, shall not affect their right to exercise it in respect of other deliveries.

**6. CLAIMS**

6.1 The Buyer shall inspect, or shall be deemed to have inspected, the Goods upon delivery. Where the Goods supplied are not in accordance with the contract, the Buyer must give notice in writing within seven (7) days of receipt. No claim may be made after seven (7) days from the date of delivery. If the firm is satisfied that the goods are not in accordance with the contract the Firm will at their option:

- (a) Credit the Buyer with the price and recover the goods; or
- (b) Replace same.

All other warranties or conditions as to the Goods or their fitness for any purpose are excluded except where by statute such exclusions are prohibited. Slight changes in colours, thickness or exterior packaging condition do not constitute sufficient ground for complaint.

6.2 Goods are sold and service or advice is given in good faith in connection therewith on condition that the Firm and their servants are not liable in contract, tort or otherwise for any loss, damage or injury to persons or property arising therefrom.



**7. RETURNS**

7.1 The Buyer may only return the goods to the Firm for credit if:

7.1.1 the prior written approval of the Firm for the return has been obtained; and

7.1.2 the freight costs on the return have been paid by the Buyer.

7.2 If the Buyer returns the Goods otherwise than in accordance with Clause 7.1, then:

7.2.1 the Firm may at its sole discretion accept the return and grant a credit to the Buyer; or

7.2.2 the Firm may refuse to accept the return and the Firm may hold the goods on the Buyer's behalf at the Buyer's expense until arrangements satisfactory to the Firm are made by the Buyer for the disposal of the goods.

7.3 Any credit given by the Firm for Goods returned by the Buyer and accepted by the Firm may be subject to a re-stocking fee equivalent to 15% of the Price of the Goods.

**8. CANCELLATION**

No order for Goods placed by the Buyer and accepted by the Firm may be cancelled or deferred without prior consent (in writing) of the Firm and in the case of custom-made Goods ordered by the Buyer no order for such Goods may be cancelled after:

8.1 the Firm has scheduled manufacture of such Goods; or

8.2 the Firm has purchased the materials required for the manufacture of such Goods.

**9. PROPERTY**

9.1 Property in and title to each unit of the Goods supplied shall not pass to the Buyer until payment has been received by the Firm in full (each unit being considered as a whole).

9.2 Until property in the Goods passes to the Buyer hereunder the Buyer shall, unless otherwise agreed by the Firm in writing, store the Goods so that they are clearly identified as the property of the Firm.

9.3 If the Buyer fails to make payment in accordance with these Conditions of Sale or the Firm reasonably believes the Buyer is unable to make payment for the Goods within prescribed terms, the servants or agents of the Firm shall be entitled to enter any premises in which the Goods are stored to repossess the Goods (without being in any way liable to trespass).

9.4 Unless payment has been made in full to the Firm, the Buyer shall be entitled to re-sell the Goods or part thereof in the ordinary course of business only upon the condition that the proceeds of the Sale of the goods or such part of the Goods as shall be so sold shall be held by the Buyer in trust for the Firm.

**10. PERSONAL PROPERTY SECURITY ACT 2009 ("PPSA")**

10.1 The Buyer acknowledges that the Buyer grant the Firm a security interest in all present and after acquired Goods supplied by the Firm and their proceeds to secure all moneys owing to the Firm now and in the future in respect of the supply of Goods.

10.2 The Buyer undertakes to provide any information that the Firm may reasonably require to enable the Firm to perfect and maintain the perfection of the Firm's security interest (including by registration of a financing statement).

**10. PERSONAL PROPERTY SECURITY ACT 2009 ("PPSA") contd...**

10.3 The Buyer undertakes to immediately notify the Firm in writing of any changes in the Buyer's name and/or any other change in the Buyer's details (including, but not limited to, changes in the Buyer's address, facsimile number, trading name or business practice).

10.4 The Buyer waives its right to receive a verification statement in respect of any financing statement and agrees to the extent permitted by law that:

10.4.1 Where the Firm has rights in addition to, or existing separately from those in Chapter 4 of the PPSA, those rights will continue to apply and in particular, will not be limited by Part 4.3 in Chapter 4; and

10.4.2 The rights of the Buyer as debtor under Sections 130, 132, 135 and 137 shall not apply to these Terms & Conditions of Sale.

10.5 The Buyer will pay all costs, expenses and other charges incurred, expended or payable by the Firm in relation to the filing of a financing statement or financing change statement in connection with these Terms & Conditions of Sale.

10.6 The Buyer agrees that the Buyer will not allow security interests to be created or registered over the goods in priority to the security interest(s) held by the Firm.

10.7 Goods means all goods the Firm supplies to the Buyer from time to time, provided that:

10.7.1 (but solely for the purpose of the application of the PPSA) where the Goods supplied are the Buyer's inventory, then all references to Goods in these Terms & Conditions of Sale shall in respect of those Goods, be read as references to inventory for so long as they are held as inventory; and

10.7.2 where the Goods supplied are not, or are no longer held as, the Buyer's inventory, then all references to Goods in these Terms & Conditions of Sale shall, in respect of those Goods mean the Goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by the Firm and relating to those Goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Buyer, incorporated in, and form part of these Terms & Conditions of Sale, and unless the context requires otherwise, includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.

**11. COMPETITION AND CONSUMER ACT 2010**

11.1 Where the Terms & Conditions of Sale would otherwise be subject to the Competition and Consumer Act 2010 ("Act"), the Buyer agrees that the Buyer is acquiring the Goods for business purposes and that the Act does not apply to the supply of the Goods to the Buyer.

11.2 If the Buyer is a consumer as defined in section 4B of the Competition and Consumer Act 2010, and the Buyer has not contracted out of the Act under clause 11.1 of these Terms & Conditions of Sale, nothing in these Terms & Conditions of Sale will limit any rights the Buyer may have under this Act.

**12. BUYER'S STATUTORY RIGHTS**

These Terms & Conditions of Sale will not limit, restrict or modify any rights, entitlements and remedies available to the Buyer due to any Commonwealth or Western Australian legislation. Any excludable conditions, terms and warnings that are available to the Buyer under Commonwealth or Western Australian legislation are hereby excluded.

