

Specialised Resources Product and Services Pty Ltd - Terms & Conditions of Trade

1. Definitions

- 1.1 "Client" means the person/s buying the Goods and/or Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.2 "Company" means Specialised Resources Products and Services Pty Ltd ABN 87 608 594 547, its successors and assigns or any person acting on behalf of and with the authority of Specialised Resources Products and Services Pty Ltd.
- 1.3 "Goods" means goods or products of any nature whatsoever to be manufactured or produced by the Company for the Client or to be supplied by the Company to the Client, and whether supplied or to be supplied by the Company to the Client, and whether ordered, manufactured or to be produced, and includes any goods or materials provided or supplied to the Company in order to produce or manufacture the goods or services the subject of the Service Agreement.
- 1.4 "Price" means the Price payable for the Services as agreed between the Company and the Client in accordance with clause 3 below.
- 1.5 "Service Contract" means any agreement between the Client and the Company of any nature whatsoever pursuant to which the Company provides the Services to the Client, and whether on a singular occasion or more than one occasion.
- 1.6 "Services" means all means all services and/or Goods to be supplied by the Company to the Client of any nature whatsoever, and where the context permits include any goods or services which a third party supplier supplies to the Company in order to manufacture or produce the Goods, and where the context permits included the Goods.

2. Purchase Order

- 2.1 The Company shall only commence supplying the Goods and/or Services to the Client following the receipt of a duly completed and legitimate purchase order from the Client and signed by the Client's authorised personnel.
- 2.2 For the avoidance of doubt, for the purposes of clause 2.1 a purchase order will be considered to be a legitimate purchase order if it is issued on the Client's letterhead or using the Client's stationary and is signed by the Client's authorised personnel.

3. Price and Payment

- 3.1 The Price shall be as indicated on invoices provided by the Company to the Client in respect of the Services supplied.
- 3.2 Time for payment for the Services shall be of the essence and will be due thirty (30) days following the date of the invoice unless the Company specifies an alternative time for payment on the invoice.
- 3.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Risk

- 4.1 Risk of damage to or loss of the Goods passes to the Client on delivery and the Client must insure the Goods on or before delivery.
- 4.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

5. Title to Goods (including any incidental items supplied as part of any Services)

- 5.1 The Company and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Company all amounts owing to the Company; and
- (b) the Client has met all of its other obligations to the Company.
- 5.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 5.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 5.1 that the Client is only a bailee of the Goods and must return the Goods to the Company on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
- (e) the Client irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
- (f) the Company may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.
- (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

6. Personal Property Securities Act 2009 ("PPSA")

- 6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 6.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Client.
- 6.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company;

- (e) immediately advise the Company of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

- 6.4 The Company and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 6.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 6.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 6.7 Unless otherwise agreed to in writing by the Company, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 6.8 The Client must unconditionally ratify any actions taken by the Company under clauses 6.3 to 6.5.
- 6.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

7. Client's Notification Obligations

- 7.1 The Client must immediately notify the Company in writing if any of the events specified in clause 7.2 occur or are likely to occur to the Client.
- 7.2 The events referred to in clause 7.1 are:
- (a) the Client changes its trading name or principal place of business;
- (b) the Client transfers its material business to a third party or amalgamates its business with that of another business operated by the Client or a third party, or other similar event;
- (c) the management of the Client is materially altered;
- (d) any competitor or person related to a competitor of the Company acquires an interest of any kind in the Client or otherwise becomes involved in the management or business operations of the Client in any way whatsoever;
- (e) in the event the Client is a company (as defined in the *Corporations Act 2001* (Cth)), the allotment of any additional shares in the capital of the Client to any person or entity or the sale or transfer of any shares in the Client to any person or entity;
- (f) an order is made, a resolution passed or a meeting summoned or convened for the purpose of considering a resolution for the Client's winding up;
- (g) a receiver, or receiver and manager, is appointed over the Client's assets or undertaking or any part of them;
- (h) any execution or other process of any court or authority is issued against or levied upon any of the Client's assets and that execution or process is not discharged or withdrawn within 60 Business days of the date of issue;
- (i) the Client ceases to pay its debts or suspends payment generally or would cease or threaten to cease to carry on its business or become insolvent or be presumed by the court to be insolvent within the meaning of the law;
- (j) an administrator, trustee, liquidator or provisional liquidator is appointed for all or any part of the Client's assets or undertaking; or
- (k) the Client enters into or resolves to enter into an arrangement, composition or compromise with, or assignment for the benefit of its creditors generally or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation; or
- (l) a meeting of the Client's directors, shareholders or creditors is convened, summoned or held for the purpose of considering or agreeing to any resolution for the winding up or administration of the Client.

8. Security, Charge and Guarantee

- 8.1 References to the Client in this clause 8 includes a reference to the signatories to the Service Contract and these terms and conditions.
- 8.2 In consideration of the Company agreeing to supply the Goods and/or Services and grant a credit trading account to the Client, the Client and each of the signatories of the client (on a joint and several basis) irrevocably guarantee and charge all of their rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client or the signatories either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 8.3 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs (plus interest) on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 8.4 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Client's behalf.
- 8.5 For the avoidance of doubt, each of the Client's signatories to the Service Contract and these terms and conditions irrevocably and unconditionally guarantee the performance of the Client's obligations under the Service Contract and undertake to be personally liable for any claims or debts made by the Company against the Client in respect of the Service Contract and these terms and conditions.

9. Default and Consequences of Default

- 9.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 9.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements (plus interest) incurred by the Company in recovering the debt (including but not limited to debt collection costs, costs of capital or finance, internal administration fees, legal costs on a solicitor and own client basis, the Company's Service Contract default fee (if applicable), and bank dishonour fees).

10. Termination

- 10.1 Without limitation to the rights and remedies of the Company under the Service Contract and these terms and conditions, the Company may in its absolute discretion elect to terminate the Service Contract by notice in writing to the Client in the event:
- (a) the Client breaches its obligations under clause 3; or
- (b) any of the events specified in clause 7.2(f) to 7.2(l) (inclusive) occur or the Client otherwise becomes bankrupt or insolvent.
- 10.2 In addition to the right of termination specified in clause 10.1, the Company is entitled to:
- (a) repossess any Goods supplied to the Client for which payment has not yet been received; and
- (b) cease providing any Services to the Client for which payment has not yet been received,
- where any of the events referred to in clause 10.1(a)-(b) occur.

11. Privacy Act 1988

- 11.1 References to the Client in this clause 11 includes a reference to the signatories to the Service Contract and these terms and conditions.
- 11.2 The Client agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Company.
- 11.3 The Client agrees that the Company may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

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- (a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 11.4 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.
- 11.5 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Client and Company or required by law from time to time):
- (a) the provision of Services; and/or
 - (b) the marketing of Services by the Company, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 11.6 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 11.7 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that the Company is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Company, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Company has been paid or otherwise discharged.
- 12. General**
- 12.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 12.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Western Australia in which the Company has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 12.3 The Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 12.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 12.5 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 12.6 The Client and signatories to the Service Contract and these terms and conditions acknowledge receipt of the Service Contract and agree to be bound by the conditions of the Service Contract and these terms and conditions.

Applicant's Name: _____

Title: _____

Signature: _____

Date: _____

Applicant's Name: _____

Title: _____

Signature: _____

Date: _____