

# Oceania Distributing Pty Ltd – Terms & Conditions of Trade

1.	<b>Definitions</b>	interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer.	13.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
1.1	"Seller" means Oceania Distributing Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Oceania Distributing Pty Ltd.	(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 Seller may reasonably require to:	(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
1.2	"Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.	(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;	(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
1.3	"Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).	(ii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
1.4	"Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 below.	(b) indemnify, and upon demand reimburse, the Seller 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;	<b>14. Cancellation</b>
2.	<b>Acceptance</b>	(c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;	14.1 The Seller 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 Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
2.1	The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.	(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 Seller;	14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
2.2	These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.	(e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.	<b>15. Privacy Act 1988</b>
3.	<b>Change in Control</b>	The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.	15.1 The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
3.1	The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.	8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.	15.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
4.	<b>Price and Payment</b>	8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.	(a) to assess an application by the Customer; and/or
4.1	At the Seller's sole discretion the Price shall be either:	8.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.	(b) to notify other credit providers of a default by the Customer; and/or
4.1	(a) as indicated on any invoice provided by the Seller to the Customer; or	8.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 8.3 to 8.5.	(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
4.1	(b) the Price as at the date of delivery of the Goods according to the Seller's current price list; or	8.9 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.	(d) to assess the creditworthiness of the Customer.
4.2	The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested.	<b>Security and Charge</b>	15.3 The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
4.3	At the Seller's sole discretion a non-refundable deposit may be required.	In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).	15.4 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
4.4	Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:	The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.	15.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time):
4.4	(a) on delivery of the Goods;	The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.	(a) the provision of Goods; and/or
4.4	(b) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;	<b>10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b>	(b) the marketing of Goods by the Seller, its agents or distributors; and/or
4.4	(c) the date specified on any invoice or other form as being the date for payment; or	(1) Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after such defect becomes evident. Upon such notification the Customer must allow the Seller to inspect the Goods.	(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
4.4	(d) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.	Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) shall be implied into these terms and conditions ( <b>Non-Excluded Guarantees</b> ).	(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
4.5	Payment may be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Seller.	The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.	(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the (7) Goods;
4.6	Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.	Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these Goods is limited to the fullest extent permitted by law.	15.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
5.	<b>Delivery of Goods</b>	If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.	(a) to obtain a consumer credit report about the Customer;
5.1	Delivery ("Delivery") of the Goods is taken to occur at the time that:	If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods.	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
5.1	(a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or	If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:	15.6 The information given to the credit reporting agency may include:
5.1	(b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.	(a) limited to the extent of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;	(a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
5.2	At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.	(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;	(b) details concerning the Customer's application for credit or commercial credit and the amount requested;
5.3	Delivery of the Goods to a carrier, either named by the Customer or falling such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Customer is deemed to be a delivery of the Goods to the Customer.	(c) otherwise negated absolutely.	(c) advice that the Seller is a current credit provider to the Customer;
5.4	Where there is no agreement that the Seller shall send the Goods to the Customer, delivery to a carrier at limited carrier's risk at the expense of the Customer is deemed to be delivery to the Customer.	Subject to this clause 10, returns will only be accepted provided that:	(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;
5.5	The cost of carriage and any insurance which the Customer reasonably directs the Seller to incur shall be reimbursed by the Customer (without any set-off or other withholding whatsoever) and shall be due on the date for the payment of the Price. The carrier shall be deemed to be the Customer's agent.	(a) the Customer has complied with the provisions of clause 10.1; and	(e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
5.6	Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.	(b) the Customer has agreed that the Goods are defective, and	(f) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
6.	<b>Risk</b>	(c) the Goods are returned in as close a condition to that in which they were delivered as is possible.	(g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
6.1	Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.	Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:	(h) that the Customer has agreed to the Customer by the Seller has been paid or otherwise discharged.
6.2	If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.	(a) the Customer failing to properly maintain or store any Goods;	<b>16. Lien &amp; Stoppage in Transit</b>
6.3	If the Customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.	(b) the Customer using the Goods for any purpose other than that for which they were designed;	16.1 Where the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
7.	<b>Title</b>	(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;	(a) a lien on the Goods;
7.1	The Seller and the Customer agree that ownership of the Goods shall not pass until:	(d) the Customer failing to follow any instructions or guidelines provided by the Seller;	(b) the right to retain them for the Price while the Seller is in possession of them;
7.1	(a) the Customer has paid the Seller all amounts owing to the Seller; and	(e) fair wear and tear, any accident, or act of God.	(c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
7.2	(b) the Customer has met all of its other obligations to the Seller.	Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.	(d) a right to resale;
7.3	Receipt by the Seller 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.	<b>11. Customers Disclaimer</b>	(e) the foregoing right of disposal.
7.3	It is further agreed that:	The Customer hereby disclaims any right to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller.	<b>17. Unpaid Seller's Rights</b>
7.3	(a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request.	<b>12. Intellectual Property</b>	17.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Customer, the Seller shall have, until all moneys owing to the Seller are paid:
7.3	(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.	Where the Seller has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.	(a) a lien on the item; and
7.3	(c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.	The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.	(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
7.3	(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.	The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.	17.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Customer.
7.3	(e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.	<b>13. Default and Consequences of Default</b>	<b>18. General</b>
7.3	(f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.	Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	18.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
7.3	(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of the Seller.	If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).	18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.
7.3	(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.	Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.	18.3 Subject to clause 10 the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including lost profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
8.	<b>Personal Property Securities Act 2009 ("PPSA")</b>	13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	18.4 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
8.1	In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.	13.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).	18.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
8.2	Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security	13.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.	18.6 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods to the Customer.