

TERMS & CONDITION FOR THE SUPPLY OF GOODS (SALES) - 20160913

1. These Terms and Conditions shall govern the supply of the Goods by the Dealer and prevail over any terms and conditions of the Buyer.
 2. **Acceptance:** The Buyer agrees that its order will only be accepted by the Dealer if it has been submitted on a duly executed order form (**the Order**). No order shall be binding on the Dealer until it has been accepted in writing or by performance by the Dealer.
 3. **Acknowledgement:** The Buyer acknowledges that in placing the Order it has not relied upon:
 - a. the skill or judgment of the Dealer in determining whether the Goods the Dealer reasonably fit for any particular purpose; and/or
 - b. been induced by any statements, representations or inducements by the Dealer, which the Dealer has not incorporated in these terms and conditions.
 4. **Cancellation Fee:** After acceptance no order may be cancelled by the Buyer without the consent of the Dealer (such consent not to be unreasonably withheld). Cancellation may attract a cancellation fee to cover the legitimate costs directly incurred by the Dealer as a result of such cancellation.
 5. **Payment:** The Dealer will invoice goods to the Buyer at the current list price or as otherwise agreed (e.g. price protection if applicable), together with any charges or expenses reasonably and properly incurred by the Dealer for transport, delivery, insurance, packaging, any other cost chargeable to the Buyer and any applicable tax. The Buyer shall not be entitled to take delivery of the Goods until all amounts due to the Dealer have been paid and Dealer has received clear and unencumbered title to any trade-in goods, which have been delivered to the Dealer and in respect of which the Dealer is satisfied they are in substantially the same condition as the trade-in goods were in at the date of this document.
 6. **Ownership:** Property in the Goods shall pass to the Buyer only when the Dealer has received payment in full from the Buyer.
 7. **Repossession:** Delivered Goods in respect of which property has remained with the Dealer shall be kept identifiable as those of the Dealer, and the Buyer shall at its own expense immediately return such Goods to the Dealer, or permit the Dealer to enter into the Buyer's premises to collect such Goods should the Dealer so request.
 8. **Risk:** Goods shall be at the risk of the Buyer from the time that the Goods are delivered to the Buyer and accordingly the Buyer shall be responsible for adequately insuring the same as from that time.
 9. **No Guaranteed Delivery Date:** Any representation made by the Dealer to the Buyer as to the exact date of delivery shall be considered by the Buyer only as an estimate. The Dealer shall not in any event be liable for any direct, indirect or consequential loss or damage arising from non-delivery or delay in delivery as long as the non-delivery or delay in delivery has not been caused wholly or in a large measure to the negligence or willful default of the Dealer.
 10. **Defective Delivery:** Any claim in respect of loss from transit damage of any kind, short shipment, wrong shipment, misdelivery or non-delivery of Goods must be made by the Buyer in writing to the relevant carriers and the Dealer within 3 working days from the date of delivery. It is acknowledged that after this period has elapsed the Dealer shall not be bound to accept any claim
 11. **Registration of Warranty:** On delivery of the Goods, the Buyer will be required to register the purchase of the Goods with the manufacturer to obtain the benefit of the manufacturer's warranty (**the Warranty**).
 12. **Warranty Acknowledgment:** The Buyer acknowledges;
 - a. it has received a copy of the terms and conditions of the Warranty; and
 - b. the only warranties to which the Buyer is entitled for defects in the Goods are as provided under the Warranty.
 13. **Exclusion of Warranties:**
 - a. To the fullest extent permitted by law, all express or implied warranties of merchantability or fitness for a particular purpose or fitness for any other purpose or the obligations of the Dealer are excluded from the Warranty.
 - b. Nothing in the Warranty will exclude, restrict or modify any condition, warranty, right or liability implied into the sale contract of the Goods by law which cannot be excluded restricted or modified by the Warranty.
 14. **Limitation of Liability:** Where a condition, warranty, right or liability cannot be excluded by law, then to the extent permissible by law, the Dealer's liability for a breach of the condition, warranty or right is limited to at the Dealer's option:
 - a. Replacement of the Goods or the cost of replacing; or
 - b. Repair of the Goods or payment of the cost of having the Goods repaired.
 15. **Sole and Exclusive Remedy**

Subject to Clause 17, the Buyer agrees that its sole and only remedy in respect of a breach any representation, warranty, covenant, agreement or obligation of the Dealer shall be the remedies set out in clause 14 and all other rights and remedies in respect of such a breach or breaches at common law including but not limited to tortious and negligent acts to the extent permitted by law are hereby expressly excluded.
 16. **Buyer's Negligent Acts and Omissions**
 - a. The Buyer will indemnify and keep indemnified the Dealer and the manufacturer jointly and severally against any and all losses in respect of all property and injury or death whosoever arising out of the wrongful and/or negligent use of the Goods while the Goods are in the Buyer's care, possession and control.
 - b. This indemnity is reduced proportionately to the extent to which the loss is caused or contributed to by the Dealer and/or the manufacturer.
 17. **Consumers:** The benefits provided under the Warranty are in addition to other rights and remedies the Buyers has at law if the Goods has been purchased for personal, household or domestic use. Those additional rights and remedies are set out in the statutory warranty below.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
 18. **PPSR:** The Dealer reserves its rights arising out of this Order to register a security interest in the Goods on the Personal Property Securities Register (PPSR).
- Privacy Statement:** The Dealer is bound by the National Privacy Principles under the Privacy Act 1988. A copy of the principles is available for perusal at www.oaic.gov.au/privacy-law. The kind of information the Dealer holds is that detailed within this contract or other information necessary to identify the Buyer. The main purposes the Dealer will use this information will be to facilitate delivery of the Goods and to meet the requirements of government authorities and third party suppliers associated with the supply of the Goods. If you have any queries or concerns about the way the Dealer manages your personal information you should contact the Dealership. You may also request access to the information held by the Dealer by contacting the Dealership.
- Trade-in terms (if applicable):**
19. A Trade-in is intended to be an allowance toward the purchase of Goods under the Contract and agreement to allow a Trade-in by the Dealer is not an independent transaction for the sale and purchase of the Trade-in and is subject to the terms and conditions of the Contract, including these special conditions. For the avoidance of doubt if the Contract is terminated for any reason the Dealer shall not be obligated to purchase the Trade-in.
 20. Trade-ins shall be delivered no later than the date of the delivery of the Goods under the Contract. If a Trade-in is delivered to the Dealer prior to the delivery of the Goods to the Buyer under the Contract, the Dealer shall hold the Trade-in as bailee for the Buyer with the right to promote the same for sale, but without obligation to do so. The Dealer shall use all commercial endeavours to secure, insure and maintain the Trade-in in the same condition as at the date of taking possession of the same from the Buyer (fair wear and tear excepted).
 21. If the Dealer identifies a purchaser for the Trade-in and the Contract for the Goods is lawfully terminated or settlement is delayed for a period exceeding 21 days from the estimated Delivery date, then the parties will negotiate in good faith whether to proceed with the sale of the Trade-in to the prospective purchaser and on what terms. If the Contract is settled then all right title and interest in the Trade-in will transfer to the Dealer who will be entitled to sell the Trade-in on such terms as it thinks fit.
 22. Any obligation of the Dealer in relation to any Trade-in shall arise only when the Dealer certifies that it is satisfied that the Trade-in goods are in substantially the same condition as they were in at the date of this Contract and the Contract is settled.
 23. The Dealer and the Buyer may agree that the Works need to be carried out on the Trade-in to make it capable of sale. If the Dealer carries out the Works and the Contract is not settled or is cancelled for any reason, then the Buyer shall remain liable to pay the Dealer the reasonable and proper costs for the same. The Estimated costs are an estimate only and the Dealer will use all reasonable endeavours to notify the Buyer of any change thereto.
 24. When a Trade-in is delivered to the Dealer it shall be inspected and if it is not in substantially the same condition as at the date of this Contract (fair wear and tear excepted) or accessories/attachments have been removed, without the knowledge and approval of the Dealer, the Dealer at its discretion may either terminate the Contract, propose a reduction of the amount of the Trade-in allowance or repair and make good the Trade-in and charge the Buyer. The amount of the reduction or charge shall be added to the amount payable by the Buyer on delivery of the Goods. This shall apply also to any accessories/attachment removed without consent when delivered to the Dealer.