

1. Definitions

- 1.1 "Seller" shall mean Lubon Holdings Pty Ltd T/A Doug Smith Spares its successors and assigns or any person acting on behalf of and with the authority of Lubon Holdings Pty Ltd T/A Doug Smith Spares.
- 1.2 "Customer" shall mean 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 Seller to the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
- 1.5 "Services" shall mean all Services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any change or proposed change of circumstance, including ownership of the business, change of address, or any other material change which may be reasonable expected to alter the Seller's decision to offer credit terms to the Customer. This includes but is not limited to: solvency of the customer or related entities; or bankruptcy of the customer or related entities; or appointment of receivers or administrators in relation to the affairs of the customer or related entities; or any motions by ASIC in relation to the customer or its directors or related entities; or any appointment of trustees in relation to the affairs of the customer or related entities; or any unresolved legal action against the customer or its directors or related entities. 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. Failure to comply with this clause is considered an Act of Default under clause 11.
- 3.5 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
 - (b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within twenty eight (28) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of fluctuations in the currency exchange rate, or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Seller's sole discretion a deposit may be required.
- 4.4 At the Seller's sole discretion:
 - (a) payment shall be due before delivery of the Goods; or
 - (b) payment for approved Customers shall be due thirty (30) days following the end of the month in which the invoice is dated, irrespective of when delivery is made. For example all February invoices will be summarized on the February statement, which will be sent to the customer in early March. The February balance form that statement must be received by us no later than 31st march.
- 4.5 Invoices are delivered with goods. Statements will be issued on the last trading day of each calendar month, and mailed or emailed to the Customer as shortly thereafter as practicable. It is the responsibility of the Customer to check the statement and ensure that all invoices listed have been received. Any disputes, or claims regarding invoices or statements must be given to the Seller within fourteen (14) days of the date of the invoice or statement. Any disputes or claims made outside this period will not be considered
- 4.6 Payment will be made by cash, or by cheque, or by credit card (plus a surcharge of up to two and one fifth percent (2.2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.8 Where an account customer is also a Supplier to the Seller, the Seller reserves the right to apply part or all of an outstanding invoice(s) towards payment of the Supplier's account or invoices.

5. Delivery Of Goods

- 5.1 At the Seller's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at the Seller's address; or
 - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 5.2 At the Seller's sole discretion the costs of delivery are:
- (a) included in the Price; or
 - (b) in addition to the Price; or
 - (c) for the Customer's account.
- 5.3 The Customer shall 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 Seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 All Goods to be collected by the Customer must be collected within twenty one (21) days of notification. Customers will be deemed to be notified after three (3) failed attempts to contact the Customer on three (3) different days on the phone number and email address supplied by the Customer to the Seller. The Customer acknowledges and agrees that the Seller reserves the right to dispose of any Goods not collected within the twenty one (21) day period, and the Seller shall not be liable for any loss, damages, or costs resulting from the disposal of the Goods.
- 5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

- 6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 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.
- 6.3 Where the Customer expressly 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 and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

7. Title

- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
- 7.2 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 and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller'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; and
 - (e) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Seller for the Goods, on trust for the Seller; and
 - (f) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
 - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
 - (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - (i) until such time that ownership in the Goods passes to the Customer, the Seller has the right to seize any goods from the Customer, and to enter any premises where it suspect the goods may be located and remove them without committing trespass even though the goods may be attached to other goods or land which is not the property of the Seller.
 - (j) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Defects

- 8.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.

9. Returns

- 9.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 8.1; and
 - (b) the Seller has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Customer's cost within twenty (21) days of the delivery date; and
 - (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 The Seller may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 9.3 Non-stocklist items or Goods made to the Customer's specifications, or ordered specifically for the Customer, are under no circumstances acceptable for credit or return.

10. Warranty

- 10.1 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods, and may be subject to terms and conditions (including, but not limited to, the original invoice number must be quoted, the parts must have been correctly fitted, the parts must not have been water damaged, the parts must not have been modified or damaged, and the parts must not have been affected by another fault with the appliance). The Seller 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.
- 10.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

11. Default & Consequences of Default

- 11.1 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 one 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.
- 11.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller. Offering a cheque for payment of goods, and then dishonouring the cheque is an offence in NSW and in Qld, and in each case The Seller reserves the right to pass the dishonoured cheque to the police for processing. A Dishonoured cheque administration fee of \$33 (including GST) is payable for each dishonoured cheque received. In the case of Account customers the cheque payment will be reversed, and a new statement issued. The effects of the reversal of payment may result in the account falling account outside the agreed terms. If this occurs, the account must be brought back within terms within 7 days to avoid further fees being incurred.
- 11.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 11.4 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) the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. 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. Any decision to continue supplying goods to the customer does not constitute a waiver of the terms of trade, or the default.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of four hundred dollars (\$400.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 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 in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

- 11.7 If an account is in default, all invoices on the account become due and payable in their entirety, irrespective of the age of invoices on the account.

12. Personal Property Securities Act 2009

- 12.1 The Buyer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the Personal Property Securities Act 2009 (the PPSA) and that a security interest exists in all goods (and their proceeds) previously supplied by the Seller to the Customer and in all future goods (and their proceeds)
- 12.2 The Customer acknowledges that the Seller may register any security interest over the goods and all current and future assets of the Customer as the Seller may see fit.
- 12.3 The Customer will execute documents and do such further acts as may be required by the Seller to register the security interest granted to the Seller under these Terms and Conditions. Under the PPSA
- 12.4 Until ownership of the goods passes, the Customer waives its rights under the following sections of chapter 4 of the PPSA:
- (a) To receive a notice of intention of removal of an accession. (section 95)
 - (b) To receive a notice that the Seller decides to enforce its security interest in accordance with the land law (section 118)
 - (c) To receive a notice on enforcement of security in liquid assets (section 120)
 - (d) To receive a notice on enforcement action against liquid assets. (section 121(4)).
 - (e) To receive a notice to seize collateral (section 123)
 - (f) To receive a notice on enforcement of security interests in liquid assets (section 125)
 - (g) To receive a notice of disposal of goods by the Seller purchasing the goods (section 129)
 - (h) To receive a notice to dispose of goods (section 130)
 - (i) To receive a statement of account following disposal of goods (section 135(2))
 - (j) To receive a statement of account if no disposal of goods for each 6 month period. (section 135(4));
 - (k) To receive a notice of any proposal of the Seller to retain goods (section 135(2))
 - (l) To object to any proposal of the Seller to either retain or dispose of goods (section 137(2));
 - (m) To redeem the goods (section 142);
 - (n) To Reinstate the security agreement (section 143)
 - (o) To receive a notice of any verification statement (section 157(1) and section 157(3))
- 12.5 The Customer further agrees that where the Seller has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- 12.6 Until ownership of the goods passes, the Customer must not give to the Seller written demand or allow any other person to give to the Seller a written demand requiring the Seller to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- 12.7 The Customer acknowledges that it has received value as at the date of the first delivery of the goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the Seller under these Terms and Conditions.
- 12.8 The Customer irrevocably grants the Seller the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any other third party, if the Seller has cause to exercise any of the Seller's rights under section 123 and/or section 128 of the PPSA, and the Customer shall indemnify the Seller from any claims made by any third party as a result of such exercise.

13. Cancellation

- 13.1 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 sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Cancellation of orders for Goods made to the Customer's specifications or non-stocklist items, or Goods ordered specifically for the Customer will definitely not be accepted, once production has commenced.

14. Privacy Act 1988

- 14.1 The Customer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Seller.
- 14.2 The Customer and/or the Guarantor/s agree that the Seller may exchange information about the Customer and the Guarantor/s 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:
- (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (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
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 14.3 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).

- 14.4 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:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (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 Goods.
- 14.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

15. Unpaid Seller's Rights

- 15.1 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 the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item.
- 15.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

16. Personal Guarantee by directors

- 16.1 The directors of the Customer jointly and severally guarantee to the Seller the due and punctual payment by The Customer of all monies owing or payable by The Customer to The Seller and the due performance and observance by The Customer or the terms and conditions set here, and in the application for credit. The Liability of The Guarantor shall not be impaired or affected by:
- (a) The granting of time or any other indulgence to The Customer or any other Guarantor whether in respect of the payment of the monies or otherwise or;
 - (b) The making of any composition or the entry into any arrangement with The Customer or any other Guarantor or;
 - (c) Any other acts, omissions, delays or defaults on the part of the Seller whereby the liability by The Customer would otherwise have been discharged or affected.
- 16.2 This Guarantee shall be a continuing guarantee and shall not be discharged or released by any payment made by The Customer or any other Guarantor which is thereafter avoided by statute or otherwise for any reason whatsoever.

17. General

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 17.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 17.5 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 17.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 The Customer agrees that the Seller may 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 Seller notifies the Customer of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 17.9 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.