

TERMS AND CONDITIONS OF TRADE

Definition and Interpretation

1. Definition

Agreement means these terms and conditions of trade, with or without the Application and/or the guarantee and indemnity as enclosed herein.

Application means the credit application enclosed with this Agreement.

Business Days means a day which is not a Saturday, a Sunday or a public holiday in Western Australia.

Customer means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Products and or Service Works as specified in any proposal, quotation, order, invoice or other documentation and:

- a. if there is more than one Customer, is a reference to each Customer jointly and severally; and
- b. if the Customer is part of a Trust, shall be bound in their capacity as trustee; and
- c. includes the Customer's executors, administrators, successors and permitted assigns.

Collateral means the Security Property to which the Security Interest is attached, and includes the Products, and in relation to Registration with respect to the Security Interest, includes the Security Property described by the Registration (whether or not the Security Interest is attached to the Security Property) and all other present and after-acquired rights and interests in land and any other property, rights and interests that is not personal property.

Delivery Date means the dates on which the Supplier is required to deliver or to install the Products to the Customer.

Enforceability means the Supplier's ability to exercise all of its rights, under this Agreement or otherwise, in relation to the Security Interest.

Order means an order for the Products and or Service Works made by the Customer to the Supplier.

PPSA means the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth).

Price means the sum payable by the Customer to the Supplier for the Products and/or Service Works

Products means office furniture manufactured by the Supplier plus any other products purchased and supplied by the Supplier for the Customer as part of the Project.

Project means a project developed by the Customer for which the Supplier has successfully tendered or quoted to supply the Products and or Service Works which have been awarded by the Customer to the Supplier.

Project Planning means planning of the Project by the Supplier with the Customer to discuss and finalise finishes and drawings for the Products, ordering of materials by the Supplier and Site surveying (if applicable) by the Supplier.

Project Start Up Period means a period of 7 days (or such longer period as reasonably required by the Supplier) from the date that the Project is awarded to the Supplier.

Quote means the estimated cost to the Customer for any of the Supplier's Products and/or Service Works.

Registration means:

- a. the same as defined in the PPSA; and
- b. also, means registration of the Security Interest on the relevant register to enable the Security Interest to have priority in accordance with this Agreement.

Security Interest means the Purchase Money Security Interest (PMSI), as that term is used and defined in the PPSA, granted by the Customer in the Security Property to the Supplier under this Agreement to secure payment of all money by the Customer and performance of all the Customer's obligations under this Agreement.

Security Property means:

- a. all the Customer's present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and/or all present and after-acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the Customer has rights and includes all of the Collateral and any other assets, property and rights over which the Security Interest is permitted by law; and
- b. all assets, property and rights, real or personal of any nature whatsoever owned by the Customer and/or in which the Customer has rights, at present or in the future,

and where applicable, includes:

- a. the proceeds from the sale of any of the Security Property; and
- b. the Customer's Security Interest in any Collateral; and
- c. the Products supplied by the Supplier; and
- d. any accession of the Products supplied by the Supplier and the proceeds of sale thereof.

Service Works means all works performed by the Supplier on or off Site for the Customer, including but not limited to the delivery of the Products to the Customer and the installation of the Products on Site.

Site means the site at which the Project will be undertaken.

Supplier means Freiberg Office Solutions Pty Ltd (ACN 067 183 055), its successors and assigns or any person acting on behalf of and with the authority of Freiberg Office Solutions Pty Ltd.

Variations means variations to:

- a. this Agreement;
 - b. the Project
 - c. the finishes and drawings of the Products; and/or
 - d. the quantity and or materials ordered by the Supplier for the Products, at the Customer's request.
2. Interpretation
- a. This Agreement contains the entire agreement between the Customer and the Supplier and overrides any of the Customer's purchase terms and conditions.
 - b. The Customer acknowledges and agrees that acceptance of the Supplier's Quote, Price, Products and/or Service works is automatic acceptance of the Supplier's terms and conditions of trade.

Project Planning

3. Once the Project is awarded, the Supplier will undertake Project Planning during the Project Start Up Period.
4. The Customer must do all things reasonably required by the Supplier to assist the Supplier to undertake and complete Project Planning within the Project Start Up Period.
5. The Supplier will commence manufacturing the Products following the completion of Project Planning, which completion is to be determined by the Supplier in its absolute discretion.
6. The Customer acknowledges and agrees that manufacture of the Products will require a minimum of 6 weeks from the completion of Project Planning.
7. The Customer further acknowledges and agrees that any Variations required by it after completion of Project Planning will:
 - a. delay the Delivery Date by a minimum of 5 Business Days; and
 - b. incur either:
 - (i) a minimum additional administration charge of \$300.00 for each Variation; or
 - (ii) a variation to the Price as determined by the Supplier having regard to the extent of the Variations required.

Cancellation of Orders

8. In the event that the Customer cancels an Order, the following fees will apply:
 - a. the Supplier will charge to the Customer an administration fee of \$350.00 ("Cancellation Administration Fee");
 - b. If Project Planning and measurement on Site ("Measurement") have already been carried out and completed by the Supplier, the Supplier will charge the following fees to the Customer:
 - (i) the Cancellation Administration Fee of \$350.00; and
 - (ii) planning and measurement fees charged at the rate of \$85.00 per hour + GST incurred by the Supplier in attending to Project Planning and Measurement; and
 - (iii) all applicable travelling and accommodation costs incurred by the Supplier in attending to Project Planning and Measurement.
 - c. If at the time of cancellation, Project Planning and/or Measurement have been completed and the Supplier has already ordered and received the necessary materials for the manufacture of the Products, the Supplier will charge the Customer the fees specified in clause 8.b. plus all the cost of the Materials and Products and manufacturing labour already incurred by the Supplier.
 - d. Any re-stocking charges incurred by the Supplier will be passed on to the Customer.
 - e. All fees and charges specified in clause 8 are payable by the Customer to the Supplier upon demand.

Variations

9. All Variations must be issued by the Customer in writing to the Supplier.
10. All Variations by the Customer will only be taken effect after being confirmed in writing by the Supplier.
11. The Customer will be deemed to have authorised all verbal requests issued on Site by any of the Customer's representatives or employees to the Supplier for immediate work or variations outside of the scope of the Contract. The Customer acknowledges and agrees that such work or variations may incur additional costs as determined by the Supplier which are payable upon demand by the Supplier, in addition to the Contract Price.
12. The Customer must pay to the Supplier any additional costs, including labour costs and attendance costs, incurred by the Supplier to complete the Project on time as a result of any delay on Site, whether caused or not caused directly or indirectly by the Customer or its sub-contractors.



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Delivery

13. If any Products cannot be delivered to the Customer and/or installed on Site at the times stipulated in the Contract, the Supplier reserves its right to invoice the Customer for all such Products plus any storage fees at the market rates then applicable.
14. Unless otherwise agreed by the Supplier and the Customer, the Supplier will notify the Customer or if applicable, the Customer or its representative prior to any Products being delivered to the Customer's Site.
15. The Customer acknowledges and agrees that the Price is not inclusive of the costs of any special site allowances, induction training or time or out of hours work. The Customer will be charged additional costs for any special site access, induction training or time, or out of hours work required by it.
16. All Service Works will be carried out by the Supplier during normal working hours of 7.00am to 5.00pm Monday to Friday excluding weekend and public holidays. If the Customer requires any Service Works to be carried out outside of these normal working hours, the Supplier will charge additional costs as determined by the Supplier to the Customer and these additional costs are payable upon demand by the Supplier to the Customer.

Insurance

17. The Customer acknowledges and agrees that the Contract Price does not include provision for any joint insurance in the name of the Supplier and the Customer or any other insurance policies such as contracts work insurance.
18. The Customer must take out and maintain such insurance policies as are necessary and adequate for the Site and the Project.
19. The Supplier will charge the Customer the costs of any joint insurance policies or any other insurance policies which the Customer requires the Supplier to take out and maintain on behalf of the Customer under the Contract and such costs will be charged in addition to the Contract Price.
20. If insurance of the Works is allowed for in the Quote at the request of the Customer or under the Conditions of the contract, the Customer agrees to pay all insurance excess on the insurance of the Works policy.

Delays

21. The Supplier will use its best endeavours to complete the Project on time. However to the extent permitted by law, the Supplier will not accept any responsibility and will not be held liable for any delays due to transport, flight, hotel accommodation, late deliveries by third party suppliers and in the event of a force majeure.

Site Access

22. The Customer must ensure that clear access to the Site is provided at all times to the Supplier including access by the Supplier with trolleys.
23. The Customer must also ensure that the Supplier is provided with at least one free loading bay no more than 20 metres from the entrance to the Site at no cost to the Supplier.

Advice

24. Any advice, recommendation, information or service given by the Supplier in relation to the Products sold or manufactured by the Supplier is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given.
25. To the extent permitted by law, the Supplier does not accept any liability or responsibility for any loss or damage suffered by the Customer as a result of or in connection with the Customer's reliance on such advice, recommendation, information or service.

Quotations

26. Quotations provided by the Supplier to the Customer are given with best estimate and to the best of the Supplier's knowledge, are accurate at the time they are provided.
27. However the Customer acknowledges and agrees that it is the responsibility of the Customer to carefully review the Contract, any bill of quantity, scope of the works, product description, finishes and measurements provided by the Supplier in relation to the Products and the Project.
28. To the extent permitted by law, the Supplier will accept no responsibility for any over or under estimates to quantities required for the Materials. The Customer acknowledges and agrees that the Supplier will charge the Customer for any additional Materials required if quantities have been underestimated.

Correct Information

29. The Customer warrants that all information which it has provided to the Supplier whether or not contained in this Agreement is true and correct and acknowledges that the Supplier will be relying on that information in accepting this Agreement.

Credit Enquiries

30. The Customer agrees that the Supplier may obtain, disclose and use information:
 - a. about the Customer's credit worthiness or for the purpose of obtaining and maintaining credit information file about the Customer or collecting overdue payments; and
 - b. about the Customer for the purpose of providing services to the Customer, including sharing information with other parties.
31. The Customer confirms that it consents to the use of the Customer's information in accordance with clause 30.

Due Date for Payment

32. Once the Application is assessed and approved, a credit trading account will be established with the Supplier's Terms and Conditions of Trade. The Customer will become an account holder and must pay the Supplier's invoices within 30 days of the date of each of the Supplier's invoice issued to the Customer.
All non-account holders must pay the Cash On Delivery (COD) final invoice in full before pick up, or delivery and/or installation of the Products by the Supplier.

Default

33. The following shall be an event of default ("Event of Default") for the purposes of this Agreement:
 - a. the Customer does not make payment due to the Supplier under this Agreement or any other agreement with the Supplier on the due date for payment;
 - b. the Customer is unable to pay its debts as and when they fall due;
 - c. the Customer ceases or suspends conduct of its business, or threatens to;
 - d. a resolution is passed or proposed or a summons is presented to wind up the Customer;
 - e. a receiver and/or manager or other form of insolvency administrator is appointed over the Customer or all or part of the Customer's assets;
 - f. the Customer makes or proposes to make any arrangement with its creditors; or
 - g. the Customer commits an act of bankruptcy.
34. If an Event of Default occurs with respect to the Customer, the Customer will be in breach of this Agreement and:
 - a. all monies owed by the Customer to the Supplier will immediately fall due and payable;
 - b. the Customer (at the Supplier's discretion) must (as a separate and independent obligation) pay interest on the amount due and payable at 12% per annum as and from the due date for payment and until and including the date that payment is made in full by the Customer to the Supplier;
 - c. the Supplier is immediately able to enforce its rights with respect to the Security Interest given to it by the operation of this Agreement and by the operation of the provisions of the PPSA; and
 - d. the Customer will pay the Supplier's costs or expenses incurred by the Supplier in relation to any actual or contemplated enforcement of the Agreement, or the actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under the Agreement which includes legal costs and expenses and collection charges on a full indemnity basis.

Termination

35. The Supplier may without notice terminate or suspend the Customer's credit account due to the non-activity of the account for six months or more.
36. If an Event of Default occurs with respect to the Customer, the Supplier may without notice terminate or suspend the Customer's credit account and the Supplier will not be liable in damages to the Customer for the non-supply of the Products or Service Works for any existing Project.
37. If the Project Delivery Date is extended or delayed by the Customer or its sub-contractors beyond the expected Delivery Date on the Order for a period of 6 months or longer, the Supplier will have an option to re-negotiate for a price variation due to increases in the Products and Service costs, regardless whether it is a fixed price Project or not.
If no agreement can be reached between the Supplier and the Customer, the Supplier can choose to either continue with the Project and absorb all costs increases or to terminate its obligations under the Project, and will not be liable in damages to the Customer for the non-supply of the balance of the Products and/or Service Works.

Application of Payments

38. Any money paid by the Customer will be applied firstly to interest and secondly to costs and lastly towards the payment of the Contract Price. Further, when applied towards the payment of the Contract Price, the money will be applied to the oldest invoice first.

Control Accounts

39. A statement of account verified by the credit manager, director and/or secretary of the Supplier or his/her nominee will be prima facie evidence of the sum due and owing by the Customer as at the date of that account.

Risk and Title

40. The risk in the Products passes to the Customer on delivery.
41. The Customer agrees that legal and equitable title to the Products is retained by the Supplier until the Supplier receives payment in full from the Customer for the Products.
42. Prior to title in the Products passing to the Customer, the Customer:
- holds the Products as bailee and fiduciary agent of the Supplier;
 - where the Customer processes the Products, either by using them to produce Products or by incorporating them in or with any other Products, holds such part of the new Products ("Processed Products") on trust for the Supplier as bailee and fiduciary agent of the Supplier;
 - must store the Products and such part of the Processed Products separate from its own products and those of any other third party in such a way as to clearly indicate at all times that the Products and such part of the Processed Products are owned by the Supplier; and
 - must ensure that, at all times, the Products and such part of the Processed Products are properly stored, protected, readily identifiable and insured.
43. The Customer may sell or deal in the ordinary course of business with the Products and such part of the Processed Products provided that:
- any such sale or dealing is at arms' length and on market terms; and
 - the Customer holds the proceeds of any sale of or dealing in the Products and such part of the proceeds of any sale of or dealing in the Processed Products on trust for the Supplier in a separate identifiable account as the beneficial property of the Supplier and the Customer must pay such amount to the Supplier on demand.
44. In the event of a breach of this Agreement including, without limitation, default in payment, the Customer must return the Products to the Supplier immediately on demand. If the Customer does not return the Products to the Supplier on demand, the Supplier will be entitled (without further notice) to enter upon any premises of or occupied by the Customer at any time to do all things necessary to recover the Products .
45. The Customer hereby grants full leave and irrevocable licence to the Supplier and any person authorised by the Supplier to enter upon any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products .
46. The Customer will be responsible for the Supplier's costs and expenses in exercising its rights under this Agreement or otherwise under the PPSA.

Security Interest

47. The parties agree that this Agreement constitutes a security agreement for the purposes of the PPSA and that the terms of this Agreement create a Security Interest.
48. The Customer (including account holder and non-account holder) grants the Security Interest to the Supplier to secure the payment of all money by the Customer and performance of all the Customer's obligations under this Agreement.
49. The Customer must, within the timeframe notified by the Supplier, sign all documents and do all things necessary, as notified by the Supplier to:
- enable Registration with respect to the Security Interest and for that Registration to continue until such time as all of the Customer's obligations under this Agreement have been satisfied, including providing the Customer's details and any serial numbers required for Registration;
 - in accordance with the PPSA requirements and provisions, enable the Security Interest to be perfected and continue to be perfected until such time as all of the Customer's obligations under this Agreement have been satisfied;
 - ensure that the Security Interest has priority over all other Security Interests in the Security Property, whether registered, perfected or otherwise and whether created or arising before or after the creation of the Security Interest, except those Security Interests which the Supplier agrees will have priority over the Security Interest as specified in the Application or which by law have priority over the Security Interest;
 - ensure that the Supplier is able to enforce the Security Interest until such time as all of the Customer's obligations under this Agreement have been satisfied and the Customer does not do anything which affects the Enforceability of the Security Interest;
 - make any changes to the Registration relating to the Security Interest as the Supplier may require from time to time, including to enable correction of any defects in the Registration;

- f. in accordance with the PPSA requirements and provisions, enable any Security Interest that forms part of the Collateral to be perfected and continue to be perfected until such time as all of the Customer's obligations under this Agreement have been satisfied;
- g. in accordance with the PPSA requirements and provisions, ensure that the Supplier's Security Interest in any Collateral has priority over all other Security Interests in the Collateral, except those Security Interests which the Supplier agrees will have priority over the Customer's Security Interest in the relevant Collateral; and
- h. in accordance with the PPSA requirements and provisions, ensure that a third person cannot acquire an interest in any Collateral free of the Supplier's Security Interest other than, where applicable, as a result of the Customer dealing with inventory in the ordinary course of business.

Supplier May Exercise Rights

- 50. The Supplier may exercise its rights in relation to the Security Interest at any time after the Customer fails to comply with its obligations under this Agreement including any failure by the Customer to pay any money under this Agreement by the time required under the Contract for such payment.
- 51. To the extent permitted by the PPSA or any other relevant laws, the Customer waives its rights to receive any notices required to be issued or which would ordinarily be issued, whether by the Supplier or any other person to the Customer under the PPSA or other relevant laws.
- 52. The Customer will be entitled to a release of the Security Interest when all its obligations under this Agreement have been satisfied.

Charges

- 53. The Customer as beneficial owner and as trustee of every trust hereby charges in favour of the Supplier all the Customer's estate and interest in any real property that the Customer owns at present and in the future to secure the payment of monies to the Supplier.
- 54. The Customer charges in favour of the Supplier all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 55. The Customer appoints as its duly constituted attorney the Supplier's director or secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own in any state or territory in Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder.

Claims

- 56. The Customer must inspect the Products upon delivery and if the Customer believes the Products are damaged, incorrect or otherwise not in accordance with the Agreement, the Orders or the Customer's instructions, the Customer must give written notice to the Supplier
 - a. setting out full particulars and evidence of the Customer's claims,
 - b. providing the original invoice and delivery docket.within seven (7) of delivery of the Products.
- 57. If the Supplier does not receive that written notice from the Customer with the specified seven (7) days, the Customer is deemed to have accepted the Products and the Customer waives and abandons any claim whatsoever against the Supplier
 - a. in respect of the Products ; and
 - b. in connection with the Products or any related matter.
- 58. Even if the Customer complies with clause 54 the entire extent of the Supplier's liability is limited to the replacement or repair of the defective Products together with transportation costs.

Severability

- 59. If any provision of this Agreement
 - a. is or becomes void, voidable, illegal or unenforceable in its terms; would not be void, voidable, illegal or unenforceable if it were read down; and is capable of being read down, then that provision will be read down accordingly.
- 60. If, notwithstanding clause the above clause, a provision of this Agreement is still void, voidable, illegal or unenforceable, then:
 - a. if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and
 - b. otherwise, the whole provision is severed, and the rest of this Agreement will be of full force and effect.

61. If, notwithstanding clause the above clause, a provision of this Agreement is still void, voidable, illegal or unenforceable, then:
- a. if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and
 - b. otherwise, the whole provision is severed, and the rest of this Agreement will be of full force and effect.

No Disadvantage

62. These terms and conditions are not to be constructed to the disadvantage of a party because that party was responsible for its preparation.

No Reliance

63. The Customer acknowledges that the Customer has not relied on any oral statements, representations, undertakings, covenants or agreements in relation to the subject matter of this Agreement other than those referred to in this Agreement.

No waiver

64. No failure by the Supplier to exercise and no delay in exercising any right, power or remedy under this Agreement operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

Continuing obligations

65. Unless otherwise stated, each indemnity, reimbursement or similar obligation in this Agreement:
- a. is of a continuing nature and are independent of each other;
 - b. is payable on demand; and
 - c. survives termination or discharge of this Agreement.

Cumulative Rights

66. The rights, powers and remedies provided to the Supplier in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

Jurisdiction

67. This Agreement is governed by the law applicable in Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Perth, Western Australia.