



ABN 25 184 266 097

CONDITIONS OF SALE

These conditions apply in respect of all goods or services at any time sold by the Seller to the Customer, whether under credit or otherwise and supersede all previous written or agreements or understandings (if any) entered into between the Seller and the Customer.

These conditions are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by service of amended or replacement conditions by the Seller.

1 DEFINITIONS

"Seller" means Blastmaster Management Pty Ltd and includes its successors and assigns and related entities where they have supplied goods to the Customer.

"Credit Application" means the Credit Application accompanying these conditions.

"Customer" means the party set out in the Credit Application provided and includes its successors, personal representatives and permitted assigns.

"goods" means any goods sold or supplied by the Seller to the Customer and is also deemed to include any services supplied by the Seller to the Customer, whether such services are related to goods or not.

2 GENERAL

The Customer and all persons signing the Credit Application:

- 2.1 Warrant that all information supplied in the Credit Application is true and correct.
- 2.2 Agree that these conditions will apply to all dealings between the Seller and the Customer and that this will be the case on the return of the Credit Application to the Seller notwithstanding any defects in the execution, or any non-execution, of the Credit Application.
- 2.3 Acknowledge that some goods may be supplied by entities related to the Seller rather than the Seller itself and that in those circumstances the Seller may issue invoices or statements in its name in respect of the goods and invoices or statements will be properly payable to the Seller.
- 2.4 Agree that if the Customer has not been correctly described in the Credit Application, then these conditions will nevertheless apply to the person or entity who is dealing with the Seller in connection with the goods as if that person or entity was properly described in the Credit Application.
- 2.5 Acknowledge the Seller may in the exercise of its complete discretion cancel or suspend credit facilities granted to, or any supply agreements or arrangements with, the Customer without notice or giving a reason.

2.6 Acknowledge that the Customer will be liable for the full amount of credit provided by the Seller, notwithstanding if any credit limited granted by the Seller is exceeded.

2.7 Undertake to inform the Seller immediately of any change in the proprietors or directors of the Customer or in trustee of any trust of which the Customer is trustee. If there is a change in proprietors or directors of the Customer then these conditions, and any personal guarantees, will continue to apply to any former proprietor(s) and director(s) until the new proprietor(s) and director(s) sign the Seller's conditions prevailing at that time and provide personal guarantees.

3 OFFER AND ACCEPTANCE

No quotation given by the Seller will constitute an offer. A contract will only have been entered into between the Seller and the Customer once the Seller has accepted an order placed by the Customer. Upon the Customer's order being accepted by the Seller, the order or contract cannot be cancelled by the Customer unless otherwise agreed in writing by the Seller and then upon such conditions as the Seller sees fit in the exercise of its discretion. The Customer acknowledges that, in addition to any Authorised Representative noted in the Credit Application, any of the Customer's employees, contractors, agents or representatives who place an order with the Seller or deal with the Seller in connection with the provision of goods to the Customer have the authority to do so and that the Seller can rely on such authority existing. Any confirmation order must be marked as such by the Customer, failing which the Seller is entitled to consider such an order as the initial order.

4 RETURN POLICY

To the extent permitted by law and subject to clause 11, goods may not be returned by the Customer to the Seller unless agreed to by the Seller in writing at the discretion of the Seller and upon such conditions as it sees fit, prior to the return of the goods. The return of goods is entirely at the Customer's risk and upon the return of goods the Customer must pay to the Seller a re-stocking charge of 15% of the price of the goods returned.

5 PURCHASE ORDERS

When ordering, an official order (in the form prescribed by the Seller from time to time) is to be submitted by the Customer showing an order number and full description of the goods.

6 PRICE

All prices charged by the Seller are subject to alteration without notice. Unless otherwise agreed in writing, the price charged shall be the price ruling at the date of delivery, plus GST at the prevailing GST rate.

7 DELIVERY

7.1 Unless other arrangements are made by the Customer with the Seller, the Seller will arrange delivery of the goods (exclusive of freight insurance) to the Customer. Freight insurance will only be arranged by the Seller if it has been requested in writing by the Customer before the Seller has made arrangements for delivery of the goods. The Customer must pay to the

Seller the cost of the delivery and any freight insurance arranged by the Seller.

- 7.2 Delivery will be at the place nominated by the Customer or, if none is nominated, at the Customer's place of business as stated in the Credit Application.
- 7.3 The Seller shall not be liable for any loss or damage whatsoever (including consequential loss or damage) arising from delay in delivery or supply or failure to deliver or supply goods to the Customer. If goods are delivered or supplied the Customer must accept and pay for the goods or services notwithstanding late delivery.
- 7.4 Where goods are not to be delivered to the Customer by or on behalf of the Seller, delivery shall be deemed to be effected 2 business days after advice is first given by the Seller to the Customer or its representative that the goods are ready for collection.
- 7.5 The Seller may deliver goods by instalments or partial deliveries, the timing of such deliveries being entirely at the Seller's discretion and the Customer shall accept each delivery.
- 7.6 Deliveries to third parties may be arranged at the written request of the Customer, subject to acceptance by the Seller. Deliveries to third parties pursuant to this sub-clause shall be deemed to be delivery to the Customer.
- 7.7 The Seller will make all reasonable efforts to have the goods delivered or supplied to the Customer on the date agreed between the parties as the delivery or supply date, but the Seller shall be under no liability whatsoever should delivery or supply not occur on that date.

8 PAYMENT

- 8.1 Payment for goods supplied on credit is due 30 days from the end of the month in which the goods are invoiced.
- 8.2 The Seller may require a deposit to accompany an order and/or that progress payments be paid in relation to an order.
- 8.3 The Customer must pay interest to the Seller on all overdue amounts under these conditions at the rate of 2.0% per month, calculated daily. Where the Customer makes payment by cheque, payment is deemed to be received when the cheque is cleared by the bank.
- 8.4 All collection charges, commissions and legal expenses (on an indemnity basis) incurred in attempting to recover payment, or to enforce as against the Customer any other rights of the Seller under these conditions including without limitation under clauses 16 and 23 hereof, are payable by the Customer on demand by the Seller.

9 INDEMNITY

Without prejudice to any other rights the Seller may have, the Customer agrees to indemnify the Seller for all loss, damage or expense incurred or suffered by the Seller should the Customer breach any term of these conditions or default on any order for the supply of goods.

10 CUSTOMER'S STATUTORY RIGHTS

These conditions do not exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Customer, or the liabilities imposed upon the Seller, by any condition, warranty or guarantee implied by legislation to the extent that such legislation renders void or prohibits such exclusion, limitation, restriction or modification.

11 WARRANTY AGAINST DEFECTS

11.1 To the extent that the Australian Consumer Law applies to any goods supplied to a Customer, those goods come with guarantees that cannot be excluded under the Australian Consumer Law. Such a Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Such a Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

11.2 All demands or claims under clause 11.1 must be made in writing addressed to the Seller's address (as contained on the invoice for the subject goods) and must be made within 14 days of the date of delivery of the goods. All such demands and claims must:

11.2.1 refer to the subject goods' invoice number and date; and

11.2.2 provide sufficient detail of the demand or claim, including of the nature of the alleged defect to the goods; when and how the defect was first discovered by the Customer; whether repair or replacement of the goods is sought; what, if any, other compensation is sought and the reason(s) why such compensation is sought.

11.3 On receipt of a demand or claim under this clause 11, the Seller will promptly:

11.3.1 consider the demand or claim;

11.3.2 advise the Customer if any further information is required by the Seller in relation to the demand or claim; and

11.3.3 notify the Customer of the Seller's decision in relation to the demand or claim (after the provision by the Customer of any further information under clause 11.3.2).

12 DISCLAIMER

12.1 Subject to clause 11 and to the extent permitted by law, any conditions, warranties or guarantees (express or implied) that the goods are fit for a particular purpose, and except as otherwise stated in these conditions any conditions or warranties (express or implied) relating to title, defects or conformity of the goods are expressly excluded.

12.2 No statement or recommendation made, or advice, supervision or assistance given by the Seller, its employees, agents or representatives, whether oral, written, published or otherwise, constitutes a warranty by the Seller or a waiver of any of the provisions of these conditions, and the

Seller accepts no responsibility for the same. The Seller shall not be liable for any loss or damage whatsoever (including consequential loss or damage) arising directly or indirectly from any act or forbearance resulting from any such statements, recommendations, advice, supervision or assistance.

13 LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by law and subject to clauses 11 and 13.2 hereof, the Seller shall not be liable or responsible for nor bear the risk of anything arising with respect to goods or its dealings with the Customer where the law (including but not limited to the law relating to negligence) may, but for this clause, give rise to a cause of action, remedy, claim, or consequence, including but not in any way limiting the generality of the foregoing, any loss and/or damage whatsoever (including consequential loss or damage) by reason of:

13.1.1 Misdelivery, failure to deliver or delay in delivery of goods; or

13.1.2 Delivery of goods that do not meet the order or requirements of the Customer or the purpose for which goods have been purchased by the Customer; or

13.1.3 Misdescription of goods; or

13.1.4 Defect; or

13.1.5 Faulty materials or workmanship; or

13.1.6 Loss, damage or deterioration of goods either in transit or in storage for any reason whatsoever; or

13.1.7 Any act or matter or thing done, permitted, suffered or omitted by the Seller.

13.2 To the maximum extent permitted by law, any liability of the Seller in relation to any of the matters set out in clause 13.1 hereof or under any legislation is limited to:-

13.2.1 In the case of goods, to repair or replacement or a refund of the purchase price, at the sole election of the Seller.

13.2.2 In the case of services, to re-supply of the services or a refund of the cost of the services, at the sole election of the Seller.

13.3 The Customer shall not assert, and hereby releases and indemnifies the Seller with respect to, any claim for any loss or damage of a consequential nature and/or any loss or damage exceeding the amount referred to in clause 13.2 hereof, except in relation to any loss and damage in respect of which the Customer has, prior to the Seller's acceptance of the Customer's order, given to the Seller a notice in writing headed "Notice of Allocation of Risk" containing full disclosure by the Customer of the risk of that loss or damage and sufficient information with respect to it as would permit the Seller to make an informed decision as to whether or not it will supply in those circumstances at all, obtain insurance or run the risk for itself. The Customer acknowledges that the Seller is relying upon the Customer exercising utmost good faith in identifying and disclosing any

and all such risks and that the Seller will be relying on any Notice of Allocation or Risk or the absence thereof.

- 13.4 Any demand or claim against the Seller, including but not limited to claims for non-delivery, must be made in writing within 14 days of the date of delivery of the goods (or the proposed date of delivery in the case of non-delivery). All claims and demands must refer to the subject goods' invoice number and date and provide sufficient detail of the demand or claim (including but not limited to the reasons why the demand or claim is made notwithstanding the terms of this clause 13).
- 13.5 These Conditions are subject to and do not exclude restrict or modify the application of any provision of the Australian Consumer Law and any other applicable legislation that are precluded by law from being excluded, restricted or modified. All conditions, warranties and other things expressed or implied by statute and/or common law or otherwise are hereby expressly excluded to the extent permitted by law.
- 13.6 The Customer hereby acknowledges and warrants to the Seller that the Customer will not rely on order and delivery documentation to accurately and correctly identify the goods supplied and that the Customer will conduct in a timely manner such examination and/or tests as are necessary and/or convenient to establish that the goods supplied are in fact as ordered.
- 13.7 Any errors, clerical or otherwise, in any catalogue, quotation, acceptance, offer, invoice, statement, delivery document, credit note or specification given by the Seller shall be subject to correction at any time by the Seller.
- 13.8 No sub clause of this clause 13 shall be read or construed as limiting or being limited by the contents of any other sub clause of this clause 13.
- 13.9 The Customer indemnifies the Seller in respect of anything done by or in the name of the Customer or its assigns contrary to or otherwise than as permitted by this clause 13.

14 NO IMPLIED OBLIGATIONS OF SERVICE

The Customer acknowledges that these conditions do not impose on the Seller an obligation to inspect any site of the Customer or any goods supplied, delivered or installed by the Seller on such a site. Any such obligation may only arise by way of a separate agreement between the Seller and the Customer.

15 RISK

- 15.1 Unless otherwise agreed in writing, the risk in the goods purchased shall pass to the Customer upon delivery to the Customer.
- 15.2 Without in any way limiting the operation of the foregoing, the Customer hereby covenants and where appropriate warrants with the Seller that, in the storage and handling of the goods, the Customer will comply with all relevant environmental laws and regulations and does or, on the acquisition of the goods, will possess and comply with all necessary and/or relevant permits and licenses, and that the Customer will adhere to all necessary and appropriate precautions and safety measures relating to the storing and handling of goods.

16 SOLVENCY OF CORPORATE CUSTOMERS

16.1 Where the Customer is a corporate body then the following provisions apply:

- 16.1.1 The provision of credit is subject to and conditional upon the Customer's directors executing personal guarantees in such a form as may at any time be required by the Seller.
- 16.1.2 The Customer declares and warrants that it is solvent and able to pay its debts as they fall due and is not in liquidation, administration, receivership or subject to any compromise or arrangement with its creditors or any of them.
- 16.1.3 The directors of the Customer by signing the accompanying Credit Application declare and warrant that they are not and have never been bankrupt and that they and the Customer are solvent, are able to pay their debts as they fall due, have not made any compromise or arrangements with their creditors and have not made or proposed any meeting of their creditors or any of them.
- 16.1.4 The directors of the Customer by signing the accompanying Credit Application declare and undertake to promptly inform the Seller in writing in the event of any material change in the circumstances set out in clauses 16.1.2 or 16.1.3 hereof.
- 16.1.5 The directors of the Customer by signing the accompanying Credit Application acknowledge that the Seller will rely upon the declarations, warranties and undertakings set out in clauses 16.1.2 and 16.1.3 in supplying goods to the Customer.

17 PROPERTY IN GOODS

- 17.1 Property and ownership in all goods remains with the Seller until such time as full payment is made for all amounts owing by the Customer to the Seller for all goods and on any account whatsoever.
- 17.2 The Customer acknowledges that until its total indebtedness under these conditions to the Seller and on any account whatsoever is discharged, the Customer holds all goods as bailee of the Seller and that a fiduciary relationship exists between the Seller and the Customer.
- 17.3 Until full payment of all amounts owing by the Customer to the Seller on any account whatsoever, the Customer must store the goods separately from its own and those of third parties and in a manner that enables them to be identified as goods of the Seller and cross referenced to particular invoices.
- 17.4 Without limiting clause 17.1, until payment in full of all amounts owing by the Customer to the Seller on any account whatsoever, the Customer charges to the Seller to secure payment in full of all amounts owing by the Customer to the Seller, including all charges, commissions and expenses under clause 8.4:
 - 17.4.1 All goods in the possession or control of the Customer, and all right, title, interest, estate and property of the Customer in or to goods; &

17.4.2 All proceeds of sale or other dealings or other proceeds of or arising from goods.

17.5 If:

17.5.1 the Customer fails to pay to the Seller the whole or any part of the purchase price or other consideration or amount due by the Customer to the Seller for any goods; or

17.5.2 the Customer fails to pay to the Seller the whole or any part of any amount due by the Customer to the Seller on any account whatsoever when it is due to the Seller; or

17.5.3 a receiver and manager, liquidator, provisional liquidator or other insolvency administrator is appointed in respect of the Customer or a scheme of arrangement is proposed or approved in respect of the Customer or a mortgagee enters into possession of any of the Customer's assets or an application is made for the winding up of the Customer; or

17.5.4 the Customer is otherwise in default of these conditions;

then the Seller may without notice and without prejudice to any of its other rights and remedies retake possession of all or any goods and may:

17.5.5 enter upon the Customer's premises by its servants or agents for that purpose; and

17.5.6 re-sell the goods.

17.6 The Customer consents to allow the Seller reasonable access to its premises in order to retake possession of goods in accordance with these conditions.

17.7 Unless otherwise notified by the Seller in writing, the Customer is authorised to sell the goods to a third party in the ordinary course of business on commercially reasonable terms, provided those terms include a term in the same or similar terms to this clause 17. Insofar as the Customer is empowered to sell goods, it:

17.7.1 sells as principal in relation to any third party;

17.7.2 has no right to commit the Seller to any contractual relationship or liability to any third party; and

17.7.3 holds all proceeds of sale on account of the Seller as a fiduciary and not on its own account.

17.8 The proceeds of sale of all goods sold by the Customer are held on trust by the Customer for the Seller to the extent of any amounts owing to the Seller on any account whatsoever and are to be kept in a separate account until all liability of the Customer to the Seller on any account whatsoever has been discharged. Such proceeds must not be mixed with any moneys, including general funds of the Customer.

17.9 Goods must not be attached to or in any way mixed or co-mingled with property belonging to a third party without the prior written consent of the Seller. Where goods have been attached to or in any way mixed or co-mingled with property belonging to a third party, the Customer holds on

trust for the Seller such part of the proceeds of sale or use of that property as relates to the goods. Such part of the proceeds will be deemed to be equal to the invoiced price of the goods that are attached to or mixed or co-mingled with that property.

17.10 The Customer must not, without the Seller's prior written consent use any goods in such a way that they become non-recoverable prior to payment being made to the Seller in full.

17.11 The Seller may appropriate and apply any payment received by the Customer to any goods, invoices and accounts as it thinks fit in the exercise of its sole discretion.

17.12 Without in any way limiting the Seller's discretion in clause 17.11, if any payments received from the Customer are not able to be matched by the Seller to particular goods or invoices then the Seller may if it deems fit elect to apply such payments to the oldest outstanding invoice(s) or statement(s) issued by the Seller.

17.13 In this clause 17, "*proceeds*" has the same meaning as in the *Personal Property Securities Act 2009* (Cth).

18 STORAGE

If the Seller notifies the Customer that goods are ready for delivery and the Customer requests the Seller to hold goods on its behalf or fails or refuses to accept delivery, then such goods will be held by the Seller at the Customer's risk and the Seller shall be entitled to charge a reasonable storage fee in respect of the goods or to re-sell any goods in respect of which the Customer refuses to accept delivery.

19 JURISDICTION

All contracts between the Customer and the Seller are subject to South Australian law and the parties agree to be subject to the exclusive jurisdiction of the Courts of South Australia.

20 PRIVACY ACT

The Customer and any person who provides, or is able to be requested by the Seller to provide, a personal guarantee in connection with these conditions:

20.1 Acknowledge that the Seller has informed them in accordance with section 18E(8)(c) of the Privacy Act 1988 that items of personal information contained in the Credit Application or permitted to be kept on a credit information file might be disclosed to a credit reporting agency.

20.2 Agree in accordance with sections 18k(1)(b), (e), (h) and (g) and section 18L(4) of the Privacy Act 1988 that the above personal information may be disclosed to a credit reporting agency or insurer or used by the Seller or a credit reporting agency or insurer for the purposes set out in those sections, including the assessment of the Credit Application, the collection of overdue payments and/or an application made by the Seller for credit insurance.

20.3 Agree that the Seller may, for the purposes of section 18N(1)(b) of the Privacy Act 1988, disclose a report or any information from a report in its

possession or control to any other credit provider for the purpose of providing a reference to any other credit provider concerning the Customer's credit worthiness, credit history or credit capacity.

21 WAIVER

The waiver by the Seller of any provision or breach of any provision of these conditions is not to be construed as a waiver of any other provision, or a breach of any other provision, or subsequent breach of the same or any provision hereof.

22 ENTIRE CONTRACT

Subject to clauses 10 and 22 hereof, these conditions and the terms of the accompanying Credit Application (as may be updated from time to time under clause 22 hereof) contain the complete and final agreement between the Customer and the Seller and no other agreement or terms in any way modifying the conditions will be binding on the Seller unless made in writing and signed by the Seller's authorised representative.

23 RECORDS UPDATE

The Seller may from time to time provide the Customer with a document described as "Credit Account Records Update" or similar, in which case:

23.1 The Customer must promptly and accurately complete that document and return it to the Seller.

23.2 The details in that document will supersede the details in the Credit Application, save and except to the extent otherwise indicated by the Seller or to the extent that that document contains incorrect information or any misrepresentations.

24 CHARGE

The Customer hereby grants a fixed and floating charge in favour of the Seller over all assets of the Customer from time to time, including but not limited to real estate, to secure payment of all monies that are owing to the Seller or are claimed by the Seller to be owing under these conditions.

25 SEVERENCE

Each provision of these conditions is independent from each other. If any provision of these conditions, or any part thereof, is invalid or inoperable then such provision or part thereof will only be ineffective to the extent of any such invalidity or inoperability and this will not affect the validity or operation of the remainder of these conditions.

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