

# TERMS AND CONDITIONS OF QUOTATION AND SALE – 2015

These are the terms and conditions upon which the Seller (as named in section 1.1(q)(i) below) or as agents for Seller sell and quote for the sale of goods.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

(a) "Application" in relation to a Buyer means the Thirty Day Commercial Credit Account Application signed by the Buyer which refers to these terms and conditions.

(b) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.

(c) "Buyer" means the Person named in the relevant Sales Invoice or Quotation.

(d) "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.

(e) "Consumer" means:

(i) a person acquiring Goods of a kind ordinarily acquired for personal, domestic or household use or consumption; or

(ii) a person acquiring Goods at a price not exceeding \$40,000; or

(iii) the Goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads,

But excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:

(i) re-supply; or

(ii) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

(f) "Excluded Loss" means:

(i) in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Buyer and the Seller at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and

(ii) in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.

(g) "Exclusive Goods" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.

(h) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.

(i) "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.

(j) "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

(k) "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

(l) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

- (m) "PPSA" means Personal Property Securities Act 2009 (Cth)
- (n) "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
- (o) "Quotation" means the form of quotation submitted by a Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- (p) "Sales Invoice" means the sales invoice issued by a Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- (q) "Seller" in relation to any Quotation or Sales Invoice means:
- (i) except as set out in (ii) below, TOP COPE INTERNATIONAL PTY LTD. ABN 91 108 535 735 (also trading as Ebolts, );
  - (ii) if in a Quotation or Sales Invoice a company referred to in (i) above is expressed to be acting as agent for a Person named in the Sales Invoice or Quotation then the Seller is that Person and the Buyer acknowledges that the Seller as named above acts only as the agent of that Person.
- (r) "Tax Invoice" has the meaning given to that term by the GST Law.
- (s) "Taxable Supply" has the meaning given to that term by the GST Law.

## 1.2 Interpretation

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

## 2. GOVERNING TERMS AND CONDITIONS

These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller which are imposed by a statute such as the Competition and Consumer Act 2010 (Cth) and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

## 3. TERMS OF PAYMENT

Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller named in the Sales Invoice or any other Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 10% per annum calculated on a daily basis from the day it falls due until the day it is paid.

## 4. INSPECTION AND ACCEPTANCE

The Buyer shall inspect all goods upon delivery and shall within two (2) Business Days of delivery give notice to the Seller named in the relevant Sales Invoice or of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Competition and Consumer Act 2010 (Cth), the goods shall be deemed to have been delivered to and accepted by the Buyer.

## 5. RETURNS

Return of goods (other than in situations where the Seller is required to accept a return of goods under the Australian Consumer Law) must be approved by the Seller named in the relevant Sales Invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with the Seller) the goods are returned within 14 days of supply. The Seller reserves

the right to charge a handling fee of \$10 or 20% of the price of the goods returned (whichever is greater) under this provision. The Seller will not accept the return of goods specifically purchased, manufactured, machined or cut to size or to the Buyer's specification other than in situations where the Seller is required to accept a return of such goods under the Australian Consumer Law.

## 6. QUOTATIONS

(a) Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation.

(b) No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Seller in writing, the Buyer acknowledges that such conditions are expressly negated.

(c) Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

## 7. GST

The parties agree that:

(a) the Purchase Price is inclusive of GST;

(b) all other Payments have been calculated without regard to GST;

(c) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;

(d) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.

(e) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

## 8. PASSING OF PROPERTY AND RISK

(a) Goods supplied by a Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller named in the relevant Sales Invoice on the insurance policy and shall produce a certificate to this effect to that Seller upon request.

(b) Property in the goods supplied by a Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.

(c) Until the goods have been paid for in full:

(i) the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller which supplied them; and

(ii) the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.

(d) The Buyer irrevocably authorises each Seller at any time to enter onto any premises upon which:

(i) the Seller's goods are stored to enable the Seller to:— inspect the goods; and/or — if the Buyer has breached these terms and conditions, reclaim the goods;

(ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.

(e) The Buyer and each Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.

(f) Each party consents to the other perfecting any security interest under this agreement which arises by

operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other party to enable it to do so.

(g) The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:

- (i) sections 117 and 118 (relationship with land laws); and
- (ii) sections 134(1) and 135 (retention of collateral).

(h) Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.

(i) Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

## 9. SUPPLY

Each Seller reserves the right to suspend or discontinue the supply of goods to the Buyer on reasonable grounds without being obliged to give any reason for its action.

## 10. PART DELIVERIES

Each Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

## 11. INSTALLATION

A Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the relevant Seller.

## 12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

(a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration by the manufacturer or supplier without notice.

(b) To the extent permitted by statute, any performance data provided by the Seller, a supplier or a manufacturer is an estimate only and should be construed accordingly.

(c) Unless agreed to the contrary in writing, each Seller reserves the right to supply an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary.

## 13. SHIPMENT AND DELIVERY

(a) Upon acceptance of an order by a Seller that Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, that Seller will notify the Buyer. Unless the Buyer objects in writing within 7 days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.

(b) A delivery charge will apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

## 14. MANUFACTURERS' CHANGES

Where a Seller is acting as agent for a manufacturer or supplier, to the extent permitted by statute, the Seller (as defined in clause 1.1(q)(i)) shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

#### 15. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the relevant Seller will be to the Buyer's account.

#### 16. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon a Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

#### 17. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if a Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. Each Seller reserves the right to nominate the means of delivery.

#### 18. FORCE MAJEURE

If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

#### 19. DEFAULT OF BUYER

If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller.

#### 20. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by a Seller. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be). Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

#### 21. WARRANTY AND LIABILITY OF SELLER

- (a) The Seller makes no express warranties under this Agreement. Manufacturers of goods may, from time to time, provide a voluntary warranty directly to the Buyer in relation to goods supplied to the Buyer. The Buyer must address issues relating to a manufacturer's warranty with the manufacturer on the terms of that warranty.
- (b) Buyer shall immediately notify the Seller in writing of any defect in the goods supplied by the Seller. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that Seller to do so. The provisions of this clause 21(b) do not constitute a warranty in relation to the quality or fitness of the goods, or require the Seller to repair or replace goods, or offer a refund in relation to goods, in circumstances other those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).
- (c) The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in these terms and conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded. Except as expressly set out in this Agreement and the Australian Consumer Law, the Seller makes no warranties or other representations under this Agreement. The Seller's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.
- (d) Without limiting clause 21(c), where the Seller sells goods to the Buyer, and the Buyer purchases them as a Consumer, then the Australian Consumer Law provides certain guarantees in relation to the goods. The rights of the Buyer buying goods as a Consumer include those set out in clause 21(e) below.
- (e) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are 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.
- (f) To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to:
- (i) the replacement of the goods or resupply of the goods by the Seller, or the cost of replacement or resupply of the goods; or
  - (ii) the repair of the goods, or the cost of repair of the goods.
- (g) Subject to clause 21(c), the Seller shall not in any circumstances be liable to the Buyer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.
- (h) The Seller makes no express warranties in relation to the suitability for any purpose of goods or materials supplied by a Seller.
- (i) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by the Seller, the manufacturer or a third party) and any obligation of the Seller to repair or replace any goods are void in respect of any goods which the Buyer tampers with or alters.

## 22. ALTERATION TO CONDITIONS

A Seller may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

## 23. VIENNA SALES CONVENTION

To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

#### 24. GOVERNING LAW

These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of Victoria and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of Victoria.