

Hills Holdings Limited - Standard Terms

1 GENERAL

In these Hills Holdings Limited - Standard Terms:

- a) **Purchaser** means the person to whom a quotation is provided, or to whom goods are supplied;
- b) **Quotation** means a quotation for the supply of goods by Supplier to Purchaser;
- c) **Supplier** means the Hills Holdings Limited (ABN 35 007 573 417) business or member of the Hills Holdings Limited group of companies who provides a quotation or supplies goods;
- d) **Terms** means these Hills Holdings Limited Standard Terms.

2 QUOTATIONS

- 2.1 This section of the Terms applies to all Quotations provided by Supplier to Purchaser.
- 2.2 Unless stated specifically to the contrary in a Quotation, each Quotation is:
 - a) based on Supplier's understanding of Purchaser's requirements. It is Purchaser's responsibility to verify prior to accepting a Quotation that the Goods will meet the Purchaser's requirements;
 - b) valid for 30 days from the date it is given;
 - c) exclusive of GST and other taxes unless otherwise stated;
 - d) confidential, and Purchaser agrees not to disclose the pricing detail to any other person; and
 - e) in \$A unless stated to be in \$NZ.
- 2.3 If Purchaser places an order after a Quotation has expired, the price of the subject of the Quotation will be Supplier's prices current at the time of delivery.
- 2.4 Supplier reserves the right to vary or withdraw a Quotation prior to acceptance, to take into account any variation in currency exchange rates, government charges and import duties, transportation costs etc arising after the date of the Quotation.
- 2.5 Where a Quotation relates to goods to be exported from Australia, all prices are quoted FOB Melbourne or Sydney, Australia (as nominated by Supplier). The Purchaser acknowledges that it is responsible for all additional charges by any Government or other authorities.

3 STANDARD TERMS OF SALE

- 3.1 These Terms apply to the supply to the Purchaser of any goods described in Supplier's catalogue(s) or price books, or which are the subject of a Quotation, or are otherwise ordered by the Purchaser (**Goods**).
- 3.2 Supplier may amend these Terms on notice to the Purchaser in writing, and the amended Terms shall apply to the supply of Goods after such notice.
- 3.3 These terms and conditions shall prevail over any Purchaser terms and conditions, except to the extent specifically agreed by Supplier in writing, signed by an authorised representative of Supplier.
- 3.4 No variation to these terms and conditions is binding upon Supplier unless set out in writing and signed by an authorised representative of Supplier.

4 PRICE

- 4.1 Subject to these terms and conditions, the price of the Goods (**Price**) shall be:
 - a) The price set out in a Quotation where that Quotation has been validly accepted prior to expiry; or
 - b) In any other case, Supplier's applicable price listed in Supplier's catalogue(s) or price books current at the time of delivery, less any discount agreed in writing.
- 4.2 If currency exchange rates or customs duty rates for goods imported by Supplier change between Quotation or order by Purchaser and delivery, Supplier may vary the Price to the extent of such change.

5 PAYMENT

- 5.1 Terms are strictly cash on delivery unless:
 - a) a credit facility has been granted by Supplier, in which case payment is to be in accordance with the terms of that credit facility; or
 - b) other payment terms have been included in a Quotation validly accepted by Purchaser.
- 5.2 If Purchaser breaches its obligations relating to payment of the Price, then Supplier may:
 - a) require Purchaser to pay interest on any overdue amount at a rate of 1.5% per month (or the rate specified in Purchaser's credit facility, whichever is the higher) calculated daily on the overdue portion from the date payment was due, until payment in full is made.
 - b) suspend any further supply or deliveries of Goods;
 - c) revoke the credit facility provided to Purchaser and require that all further sales be on a cash on or before delivery basis; and
 - d) recover all debt collection and legal expenses incurred by Supplier on a client/solicitor basis in connection with the enforcement or attempted enforcement of these Terms.

6 CANCELLATION

An order accepted by Supplier shall not be cancelled by Purchaser without the written consent of Supplier. Where Supplier does so consent, Purchaser shall pay to Supplier all costs incurred by Supplier in relation to the supply of the Goods, up to the date Supplier consented to the cancellation.

7 DELIVERY AND FREIGHT

- 7.1 Unless other arrangements are agreed in writing, the Purchaser shall be responsible to arrange and pay freight from Supplier's place of business. Delivery occurs when Supplier delivers the Goods to Purchaser's nominated carrier, or Supplier's carrier where Purchaser has requested Supplier to arrange transport on its behalf (which shall be at Purchaser's cost and charged as a separate item). Risk in the Goods shall be Purchaser's once the Goods are despatched from Supplier's premises.
- 7.2 In the event of Purchaser returning or failing to accept any delivery of the Goods, Supplier shall be entitled to payment for those Goods and to treat the requirement to supply the remainder of the Goods (if any) as cancelled by Purchaser.
- 7.3 Supplier shall be entitled to store at the risk and cost of Purchaser any Goods which Purchaser refuses or fails to take delivery of, without limiting any other rights the Supplier may have.
- 7.4 Delivery and despatch dates are estimates only. Subject always to Goods being in stock, Supplier will use all reasonable endeavours to deliver the Goods:
 - a) at the time requested by, or agreed with, the Purchaser; or
 - b) if no delivery time is requested by or agreed with the Purchaser, within a reasonable period from the date of the order for the Goods.
- 7.5 Supplier will not in any circumstances be liable for late delivery and late delivery does not entitle the Buyer to cancel any order or part order for the Goods.

8 CLAIMS AND CREDITS

- 8.1 Any request for credit, or claim by Purchaser (including any claim that the Goods delivered do not correspond with the Goods ordered) shall be made in writing within 14 days of delivery, and must be accompanied by proof of purchase, otherwise Purchaser will be deemed to have accepted the Goods.
- 8.2 Small deviations or variations in the Goods shall not give rise to any claims.

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8.3 If Supplier accepts a request for credit, the Goods must be returned in "as new" condition, and are subject to a restocking fee of at least 10% of the Price.

9 REQUIREMENTS OF THE PURCHASER

Purchaser indemnifies Supplier against all claims made against Supplier:

- a) for infringement of third party intellectual property arising as a result of Supplier carrying out work on the Goods in accordance with the requirements of Purchaser; or
- b) resulting from or otherwise connected to the Purchaser's re-sale or other on-supply of the Goods to third parties, or any other use of the Goods by the Purchaser.

10 VARIATION OF DESIGN

Supplier reserves the right at any time to make such alterations to the specifications, design or construction of the Goods as Supplier shall in its own discretion deem fit to provided always that the Goods shall remain of merchantable quality and sufficient for the purpose of the Purchaser.

11 LICENCES OR CONSENTS

11.1 It is the Purchaser's responsibility to obtain any licence or consent required by any Government or other authority for the purchase or use of the Goods.

11.2 The Purchaser must comply with all applicable laws, regulations and requirements in connection with its use, re-sale or other on-supply of the Goods to third parties, including but not limited to the *Competition and Consumer Act 2010* (Cth) and its Schedules and Regulations.

12 TRADE MARKS

The supply of Goods shall not confer any right upon Purchaser to use any Supplier trade marks, which at all times remain the property of Supplier.

13 TITLE

Title of all Goods shall remain with Supplier and will not pass to the Purchaser until such time as all monies due from the Purchaser to Supplier are paid.

14 SECURITY IN GOODS (Goods supplied in Australia)

14.1 This clause applies only to Goods supplied in Australia.

14.2 Until full payment of the Price is made, Purchaser irrevocably authorises Supplier to enter any premises where the Goods are kept and to use the name of the Purchaser and to act on its behalf to recover possession of the Goods.

14.3 If the Purchaser sells the Goods or incorporates them into another product prior to payment of the Price, the proceeds of such sale shall be held on trust for Supplier, until such time as the Price has been paid in full.

14.4 Purchaser agrees:

- a) that these Terms create a security interest in all present and after acquired Goods as security for all Purchaser's obligations to Supplier, and that these Terms are a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA-Aus**) which is registrable under the PPSA - Aus;
- b) to do such things as the Supplier may require from time to time to ensure that any security interest of the Supplier is perfected under the PPSA-Aus for whatever period that the Supplier determines in its sole discretion and will reimburse and indemnify the Supplier for all expenses incurred by the Supplier in registering its security interest on the PPSA-Aus register;
- c) to keep the Supplier fully informed of all relevant information regarding the Purchaser, including providing not less than 14 days notice in writing of any proposed change in name or contact details and will immediately notify the Supplier of any material changes in business activities;

d) that nothing in sections 118, 121(4), 125, 130, 142 or 143 of the PPSA-Aus will apply to these Terms or any security interest created by these Terms;

e) that it waives its rights to receive any of the following documents under sections 95, 118, 121(4), 123, 130, 130, 132(3)(d), 132(4), 135, 157 and all sections in Part 4.3 (other than those in Division 6 of Part 4.3) of the PPSA-Aus; and

f) that no party may disclose information of the kind referred to in section 275(1) of the PPSA-Aus (except where required under section 275(7) of the PPSA-Aus) and the parties agree not to authorise the disclosure of such information at any time.

14.5 If Purchaser does any of the following things:

- a) fails to make payment in full as required by these Terms;
- b) fails to comply with any of these Terms; or
- c) commits an act of bankruptcy or makes an arrangement with all or any number of its creditors, or has a receiver or liquidator appointed,

then Supplier may repossess and sell the Goods (subject to these Terms and in accordance with the PPSA-Aus) and where reasonably necessary for such purpose, may exercise its rights under clause 14.2 of these Terms.

15 SECURITY IN GOODS (Goods supplied in New Zealand)

15.1 This clause applies only to Goods supplied in New Zealand.

15.2 Purchaser agrees:

- a) that these Terms create a security interest in all present and after acquired Goods as security for all Purchaser's obligations to Supplier, which is registrable in the Personal Property Securities Registry under the *Personal Property Securities Act 1999* (NZ) (**PPSA-NZ**);
- b) to do all things reasonably required by Supplier to ensure that Supplier acquires a perfected security interest in the Goods under the PPSA-NZ; and
- c) to waive its rights to receive a copy of any verification statement(s) under the PPSA-NZ and that as between Supplier and the Purchaser, it will have no rights under sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125, 126, 127, 129, 131, 132, 133 and 134 of the PPSA-NZ.

15.3 If Purchaser does any of the following things:

- a) fails to make payment in full as required by these Terms;
- b) fails to comply with any of these Terms;
- c) Commits an act of bankruptcy or makes an arrangement with all or any number of its creditors, or has a receiver or liquidator appointed or
- d) if the Goods are "at risk" within the meaning of the PPSA-NZ, then Supplier may repossess and sell the Goods (subject to these Terms and in accordance with the PPSA-NZ) and where reasonably necessary for such purpose, may enter the premises where it expects the Goods are held.

16 WARRANTY AND LIABILITY

16.1 The Supplier warrants that the Goods are free from defects caused by faulty manufacture or faulty materials. This warranty is for 12 months from delivery of the Goods, or such period provided in the manufacturer's warranty documentation accompanying the Goods, whichever is the lesser.

16.2 If the Purchaser makes a valid warranty claim, the Supplier will, at its option, either repair the Goods, supply replacement Goods or reimburse the Purchaser for the Price. The Supplier shall not be liable for defects arising from fair wear and tear or misuse of the Goods.

16.3 The Purchaser is liable for the transport or other cost of sending warranty claim Goods to the Supplier, and for

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collection of repaired or replacement Goods.

16.4 The Supplier does not exclude or limit the application of any provision of any applicable statute, legislation or other regulation (including the *Competition and Consumer Act 2010* (Cth) and its Schedules and Regulations) where to do so would contravene that statute, legislation or regulation or cause any part of these Terms to be void and nothing in these Terms is to be interpreted as doing so.

16.5 Subject always to clause 16.4, to the extent permitted by law, all warranties, conditions, obligations and liabilities, other than those specified in these Terms, are excluded by the Supplier, including for the avoidance of doubt all conditions, warranties, guarantees and terms implied by statute, general law, international convention or custom, except any implied term, condition, guarantee or warranty the exclusion of which would contravene any statute or cause this clause to be void (**Non-excludable Condition**).

16.6 To the fullest extent permitted by law, the Supplier's liability to the Applicant for breach of any Non-excludable Condition which is applicable is limited to any one of the following, at the Supplier's option:

- a) in the case of goods (including the Goods) - replacement of the goods or the supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the costs of having the goods repaired; and
- b) in the case of services - the supply of the services again or payment of the cost of having the services supplied again.

16.7 Notwithstanding anything else in these Terms, Supplier shall not be liable in any circumstances for any consequential, indirect, special, incidental, or exemplary damages even if such damages are foreseeable, and even if advised of the likelihood of such damages occurring.

17 DELAY - FORCE MAJEURE

Supplier shall not be liable for any loss sustained by Purchaser through delay in delivering the Goods caused by circumstances outside of the reasonable control of Supplier ("force majeure").

18 TERMINATION

18.1 Supplier may immediately on notice in writing to Purchaser terminate all outstanding obligations to supply Goods, and/or suspend Purchaser's credit facility, if Purchaser:

- a) breaches any of these Terms or the terms and conditions relating to Purchaser's credit application
- b) commits an act of bankruptcy or makes an arrangement with all or any number of its creditors, or has a receiver or liquidator appointed.

18.2 Upon termination provided by paragraph 18.1:

- a) Supplier may enforce its rights under these Terms, without prejudice to any other rights it may have.
- b) All other obligations upon the Purchaser shall remain.

19 WAIVER

The failure by either party to exercise or enforce any right shall not be deemed to be a waiver of any such right.

20 GOVERNING LAW

These terms and conditions shall in all respects be governed by and constructed and interpreted in accordance with the laws of the jurisdiction in which the Supplier has its principal place of business, and the parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.