

Australian Professional Shopfitters Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Company" shall mean Australian Professional Shopfitters Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Australian Professional Shopfitters Pty Ltd.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Client
- 1.5 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Client subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 2.4 The Client undertakes to give the Company at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.
- 2.5 These terms and conditions are meant to be read in conjunction with the Company's schedule attached.

3. Price And Payment

- 3.1 At the Company's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Company to the Client in respect of Goods supplied; or
- (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation subject to clause 4 below.
- 3.3 At the Company's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 At the Company's sole discretion;
- (a) payment shall be due on delivery of the Goods, or
- (b) payment shall be due before delivery of the Goods, or
- (c) payment for approved Clients shall be made by instalments in accordance with the Company's payment schedule.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Company.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Variations

- 4.1 The Company shall vary the Services only on the written instructions of the Client.
- 4.2 The price of any variation as agreed by the parties shall be added to or deducted from the contract sum as the case maybe. If the parties do not agree upon a price the Client may direct that;
- (a) in the case of additional work, the variation be effected by the Company on an actual cost basis; in which case the Company will record the actual cost of materials and labour involved in the variation and will be entitled to add to the actual cost the percentages shown in the Schedule to cover administration, overheads and profit and to be paid by the Client accordingly;
- (b) in the case of omitted work the Company shall provide to the Client details of the materials and labour, and the cost thereof, that would be used had the omitted work been carried out and the cost thereof shall be deducted from the contract sum by an amount representing the percentage shown in the schedule to cover administrations, overheads, and profit applicable of the cost of the omitted work shall not be deducted from the contract sum;
- 4.3 The Client shall not without consent of the Company have omitted work carried out by others during the term of the Contract;
- 4.4 The cost of any additional work arising from site conditions which could not have reasonably been discovered by the Company prior to the date for commencement shall be priced as a variation and added to the contract sum.
- 4.5 The Company shall at its discretion be entitled to add the cost of any such variation to a progress claim and be paid in accordance with clause 3.5 (c).

5. Delays

- 5.1 The Client shall allow a reasonable extension of time for completion of the Services if the Company is delayed for any reason beyond the control of the Company, which shall include variations to the Services. If delay is caused by an act, default or omission of the Client, his Agent or servant or other agents, the loss and expense incurred by the Company as a result of such delays, shall be paid to the Company by the Client or, if agreed by the parties, added to or otherwise adjusted against the Contract Sum.

6. Permits & Fees

- 6.1 Unless otherwise agreed in writing, all permits and fees to be obtained and/or paid for by the Client.

7. Time

- 7.1 Where referred to in this document "days", "weeks" or "months" shall be calendar days, weeks or months but where any notice is to be given under the Agreement in a stated period of days, the following days within that stated period shall not be counted: Saturdays, Sundays, Trade Rostered Days Off, Statutory or Public Holidays.

8. Services & Facilities

- 8.1 The Client shall provide the Company with the services free of all charges as specified in the schedule, which services shall, where applicable, in the case of;
- (a) electricity, include all electricity for lighting and power reasonably adjacent to the Services. The Company shall provide its own electric leads and connections.
- (b) water, includes all water necessarily required to effect the Services, and cold water and/or boiling water required for drinking purposes;
- (c) amenities, include toilet and washing facilities of the standard reasonably required by the Company's workmen
- (d) rubbish disposal containers and/or rubbish removal services details of which shall be included in item 17 in the schedule.

9. Delivery Of Goods

- 9.1 At the Company's sole discretion delivery of the Goods shall take place when;
- (a) the Client takes possession of the Goods at the Company's address; or
- (b) the Client takes possession of the Goods at the Client's address; or
- (c) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 9.2 At the Company's sole discretion the costs of delivery are;
- (a) included in the Price, or
- (b) in addition to the Price, or
- (c) for the Client's account.
- 9.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 9.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 9.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 9.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 9.7 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

10. Export Contracts

- 10.1 In the event that the Goods are exported, delivery of the Goods may be subject to either FOB Contract or CIF Contract.
- 10.2 In the event of a FOB Contract the following shall apply;
- (a) The Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on the delivery date. The Company shall promptly notify the Client that the Goods have been delivered aboard. Title to and risk in the Goods shall pass to the Client upon such delivery being effected. The Company shall promptly provide the Client with a clean shipped bill of lading in respect of the Goods.
- (b) The Client shall reserve the necessary space on board the agreed upon mode of transport and give the Company due notice of the loading berth and any revised delivery dates. The Client shall bear any additional costs caused due to the failure of the agreed upon mode of transport being available to load the Goods on the delivery date.
- 5.3 In the event of a CIF contract the following shall apply;
- (a) The Goods shall be delivered to the Client by delivery on board the agreed upon mode of transport on or before the delivery date. The Company shall procure a contract of carriage and insure the Goods from dispatch until delivery on terms current in the trade for the benefit of the Client. The Goods shall be at the risk of the Client as they are loaded on board. The Company shall promptly

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- tender to the Client a clean shipped bill of lading, the insurance policy and an invoice in respect of the Goods.
- (b) The Client shall accept the documents tendered by the Company if they correspond to this contract and take delivery of the Goods at the port of destination and bear all other costs and charges arising out of shipment of the Goods to the port of destination.
- 11. Risk**
- 11.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 11.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 11.3 The Company shall maintain the Goods until completion of the Services provided that if any part is taken over or taken into use by the Client before completion of the Services the Company shall be responsible for only that portion of the Services remaining under the Company's control. The Services or part thereof shall be deemed to be completed upon either the Client taking over or taking in to use the whole of the same or the Company giving notice that the services or such part thereof are completed (whichever shall first occur).
- 12. Insurance, Loss, Damage or injury**
- 12.1 The Company shall insure and keep insured during the term of this contract against liability for workers compensation or any equivalent form of workmen's compensation as specified in the schedule arising under any statute or at common law in respect of any person employed by him in or about the execution of the Services or in respect of whom the Company may be or may become liable, whether directly employed by the Company or not.
- 12.2 The Company also shall insure and keep insured as specified in the Schedule during such term against liability to third persons, and shall when requested to do so on reasonable notice, lodge with the Client evidence that such insurance has been effected in the amount stated in the schedule and is current.
- 12.3 The Company shall also insure and keep insured as specified in the schedule during such term for the Company's risk in respect of risk of damage to the Services up until and including the date for completion.
- 12.4 The Client shall insure and keep insured as specified in the schedule his existing premises against loss and damage and shall keep the Company harmless against all liability for damage to existing premises or to movable property thereon or therein or for any injury to any person on existing premises, provided such damage and/or injury to any person on existing premises, provided such damage and/or injury shall not have been caused through the Company's default or negligence.
- 12.5 The Client shall prior to the commencement of work hereunder furnish to the Company evidence that the insurance under provision has been effected, that the premium in respect thereof has been paid and if requested by the Company provide evidence of the currency of such insurance.
- 13. Title**
- 13.1 It is the intention of the Company and agreed by the Client that ownership of the Goods shall not pass until:
- (a) the Client has paid all amounts owing for the particular Goods, and
- (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 13.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Client the Company may give notice in writing to the Client to return the Goods or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
- (f) the Client shall not deal with the money of the Company in any way which may be adverse to the Company; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.
- 14. Client's Disclaimer**
- 14.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Company and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgement.
- 15. Defects**
- 15.1 The Client shall inspect the Goods on delivery and shall within seven (7) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.
- 15.2 Goods will not be accepted for return other than in accordance with 15.1 above.
- 16. Warranty**
- 16.1 Subject to the conditions of warranty set out in Clause 16.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within three (3) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) repair the defect or remedy the workmanship.
- 16.2 The conditions applicable to the warranty given by Clause 16.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) Failure on the part of the Client to properly maintain any Goods; or
- (ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Company; or
- (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
- (c) In respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- 16.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
- 17. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
- 17.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 18. Intellectual Property**
- 18.1 Where the Company has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.
- 18.2 The Client warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order.
- 19. Default & Consequences Of Default**
- 19.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 19.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and

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- disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 19.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.
- 19.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 19.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 20. Security And Charge**
- 20.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 20.1.
- 21. Cancellation**
- 21.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 21.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
- 22. Privacy Act 1988**
- 22.1 The Client and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.
- 22.2 The Client and/or the Guarantor/s agree that the Company may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 22.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and Company or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Company, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 22.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 23. Notices**
- 23.1 Any notice to be given hereunder shall be deemed to be sufficiently given if served personally on one party by the other or upon receipt if sent by certified post or facsimile transmission addressed to the other party at the address appearing herein or at the other parties last known place of abode or business.
- 24. Dispute Resolution**
- 24.1 If a dispute between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within 14 days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 25. General**
- 25.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 25.3 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.
- 25.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.
- 25.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Company.
- 25.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 25.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 26. Building and Construction Industry Security of Payments Act 2002**
- 26.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment may apply
- 26.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2002 of Victoria, except to the extent permitted by the Act where applicable.