



Terms of Sale

1. DEFINITIONS

In these Terms: "**AusPress**" means AusPress Systems Pty Ltd ABN 48 057 345 114; "**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), "**Consumer**" means a consumer as that term is defined in the Australian Consumer Law; "**Customer**" means the person or entity who has entered into a contract, transaction or arrangement to obtain Services or Goods from AusPress; "**days**" means calendar days; "**Goods**" means all goods supplied or to be supplied by AusPress to the Customer; "**GST**" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth); "**Intellectual Property**" means intellectual property whether protected by statute, at common law or in equity, including any patent, invention, copyright, trade mark or design right (whether or not registrable); "**Order**" means the Customer's offer to purchase Goods or Services from AusPress however communicated, including as set out in a purchase order form, written or verbal acceptance of a quotation issue by AusPress, or any order for Goods or Services contained in the most recent price list issued by AusPress to the Customer; "**PMSI**" has the meaning given in section 14 of the *PPSA* as amended from time to time; "**PPSA**" means the *Personal Property Securities Act 2009* (Cth); "**Services**" means all services supplied or to be supplied by AusPress to the Customer; "**Terms**" means these terms and conditions as amended or varied in writing by AusPress; "**Warehouse**" means AusPress' warehouse located at 127 Corunna Ave, Melrose Park SA.

2. THESE TERMS

- 2.1 Unless otherwise agreed in writing, any agreement or arrangement between AusPress and the Customer for supply of Goods or Services is governed by these Terms to the exclusion of any written or oral agreements or understandings (if any) between the parties in connection with the supply of the Goods or Services. These Terms supersede all terms and conditions of sale previously issued by AusPress and take precedence over any terms and conditions which may be contained in any document provided by the Customer.
- 2.2 AusPress may vary these Terms by notice in writing to the Customer (which notice may be given via the AusPress website), and:
- If the Customer is a Consumer, then the Customer may consider the variation, and if not accepted, may elect not to proceed with the purchase of the Goods or Services ordered before the date of the variation, but which are intended to be the subject of the variation.
 - If the Customer is not a Consumer, the Customer agrees that Goods or Services delivered and/or ordered after the notice of the variation will be subject to the variation, and acceptance of the Goods or Services, or the placing of an Order, will be deemed to be an acceptance of such varied terms and conditions.
- 2.3 No employee, agent or contractor of AusPress has authority to vary or add to these Terms without the prior written authority of its directors.

3. QUOTATIONS AND ORDERS

- 3.1 Any quotations or price lists issued by AusPress for the supply of Goods or Services, however made, are not offers capable of acceptance by the Customer.
- 3.2 Quotations issued by AusPress are valid for a period of thirty (30) days from date of issue (subject to written notice of change or withdrawal at any time), unless specified otherwise in the quotation.
- 3.3 Each Order placed by the Customer constitutes an offer by the Customer to purchase Goods and Services from AusPress on these Terms. No variations or additions to these Terms will bind AusPress unless expressly and specifically agreed to in writing by AusPress.
- 3.4 AusPress may accept or refuse any Order, or part thereof, in its absolute discretion, and may make its acceptance of an Order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 3.5 AusPress reserves the right to alter the range of any Goods or Services contained in a quotation or price list prior to any Order being accepted and without notice to the Customer.
- 3.6 A contract for the supply of goods or services will only be formed between AusPress and the Customer when the Customer's Order has been accepted by AusPress:
- Verbally or in writing; or
 - By delivery of the Goods or Services.
- 3.7 Once an Order is accepted by AusPress, the Customer may not suspend or cancel an Order unless:
- AusPress agrees in writing; and
 - The Customer makes payment of Goods or Services supplied as at that date, and any reasonable expenses incurred by AusPress due to the suspension of cancellation.
- 3.8 AusPress will consider any request for cancellation of an Order in its absolute discretion.

4. PRICES

- 4.1 Unless otherwise specified:
- All prices contained in a quotation or price list issued by AusPress are for delivery ex works at its Warehouse unless otherwise stated.
 - All prices contained in any quotation or price list issued by AusPress are exclusive of GST. Any GST payable by the Customer in respect of the supply of the Goods or Services will be paid by the Customer at the same time and on the same basis as it pays the price.
- 4.2 Any prices quoted by AusPress are only for the supply of those Goods or Services specified in the quotation and do not apply to any lesser quantities or additional Goods or Services supplied by AusPress to the Customer unless specified in writing by AusPress prior to supply.
- 4.3 AusPress reserves its right to vary any prices contained in a quotation or price list prior to any Order being accepted.
- 4.4 AusPress may vary the price after an Order is accepted if:
- Quantities quoted for by AusPress are varied by the Customer;
 - Specifications do not meet those represented by the Customer; or
 - Any other relevant representation made by the Customer is incorrect or inaccurate.

If AusPress gives notice under this clause 4.4 and the Customer is a Consumer, then the Customer may consider the variation, and if not accepted, elect not to proceed with the purchase of the Goods or Services ordered before the date of the variation, but which are intended to be the subject of the variation.



4.5 Goods which are quoted by AusPress as ex inventory or ex stock are subject to prior sale to other buyers.

5. PAYMENT

5.1 Unless otherwise agreed in writing by AusPress, the Customer must pay AusPress in full within thirty (30) days of the date of invoice, even if the Goods may not have been installed or commissioned.

5.2 Unless otherwise agreed in writing, if the Customer is placing an Order from a country outside of Australia, the Customer must make payment in full prior to dispatch of the Goods.

5.3 If the Customer does not pay AusPress by the due date, AusPress may, in its absolute discretion:

- Require that all future dealings be on the basis of cash payments upon placing an Order (excluding any cheques which have not been cleared by a bank prior to the dispatch of Goods);
- Charge interest on any amounts overdue from more than seven (7) days at a rate of 10% per annum, accruing from the due date;
- Without notice withdraw or vary any credit facilities AusPress previously provided; and/or
- Where delivery is by instalment, AusPress may withhold indefinitely any further instalments until full payment for prior instalments has been made.

In the case of 5.3(c), where a credit facility is withdrawn, the Customer must make a new application for credit, which application may be refused by AusPress.

5.4 AusPress may grant the Customer additional credit following its completion of documents as required by AusPress.

5.5 If the Customer does not place an Order with AusPress for six (6) months after establishing a credit facility, AusPress may withdraw the credit facility without notice and may only be reinstated upon acceptance by AusPress of a new application for credit completed by the Customer.

5.6 Payments by credit card attract a surcharge of 1.5% added for each payment transaction.

5.7 If payment is to be by letter of credit, the Customer must establish an irrevocable letter of credit at a bank acceptable to AusPress. The issuing bank is to be acting for AusPress if so advised.

6. DELIVERY

6.1 Goods will be delivered, or deemed to be delivered, when they are delivered to the delivery place nominated by the Customer. The Customer authorises AusPress to deliver the Goods to the place nominated by the Customer and to leave the Goods at such place whether or not any person is present to accept delivery. AusPress will not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.

6.2 Any time or date for delivery indicated by AusPress is an estimate only. To the extent permitted by law, AusPress will have no liability to the Customer in relation to any direct or indirect (including consequential) losses, damages, costs, penalties or expense caused by any failure to deliver, or for delay in delivery of, Goods or Services.

6.3 The Customer shall not be relieved of any obligation to accept or pay for Goods or Services by reason of any delay in delivery.

6.4 AusPress reserves the right to make delivery of any Order by way of instalments, in which case, AusPress is entitled to render, and the Customer must pay, a separate invoice in respect of each instalment.

6.5 Unless otherwise agreed in writing:

- Delivery is ex works at the Warehouse;

- AusPress will determine the delivery method and the carrier, which will be at the Customer's expense.

6.6 The Customer must notify AusPress in writing within fourteen (14) days of delivery if there is a shortage in the quantities of Goods delivered.

7. TITLE & PPSA

7.1 Property in, and title to, the Goods will not pass from AusPress to the Customer until those Goods and all other amounts owed to AusPress by the Customer have been paid in full and until then:

- The Buyer will hold the Goods as fiduciary and bailee for AusPress;
- The Goods must be stored separately and in a manner enabling them to be identified as goods of AusPress and cross-referenced to particular invoices and the Customer acknowledges and agrees that if it should process or mix the Goods with other products or items such that the Goods are no longer separately identifiable then the Customer and AusPress will be owners in common of the new product;
- The Customer may sell the Goods in the ordinary course of its business as bailee for AusPress and will hold the proceeds of sale in a separate account on trust for AusPress and account to AusPress for those proceeds;
- AusPress may require the Customer to return the Goods to it on demand and may enter upon the Customer's premises to inspect or repossess the Goods.

7.2 The Buyer agrees that these Terms may create a PMSI in the Goods (and their proceeds) supplied presently and in the future by AusPress to the Customer and a security interest in the personal property of the Buyer.

7.3 The Customer agrees to do all things necessary and execute all documents reasonably required to register the security interests granted by the Customer under these Terms and to ensure that AusPress acquires perfected security interests under the PPSA.

7.4 The Customer will, upon demand, pay all of AusPress' expenses and legal costs (on an indemnity basis) in relation to or in connection with the registration of AusPress' security interests and all other costs associated with protection and enforcement of AusPress' security interests created by these Terms or by undertaking an audit under the provisions of the PPSA, or the repossession of the Goods the subject of these Terms or the exercise, enforcement or preservation of any right or interest under these Terms or any contract that AusPress has with the Customer incorporating these Terms.

7.5 To the extent permitted by law, the Customer waives its rights:

- To receive notices or a verification statement under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA;
- To give a notice of objection under section 137(2);
- As a grantor and a debtor under sections 142 and 143 of the PPSA;

7.6 The Customer agrees that where AusPress has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.



8. RISK

8.1 Risk in the Goods ordered by the Customer will pass to the Customer upon dispatch or collection from the Warehouse, even if AusPress is required to install, set up or perform any service in connection with the Goods.

9. RETURNS

9.1 Subject to clause 10.3:

- (a) AusPress will only accept returns where:
 - (i) The Customer makes a request in writing for the return of a specific item within fourteen (14) days of taking delivery of the Goods. If the Buyer fails to provide such a request, it is deemed to have accepted the Goods and Services; and
 - (ii) AusPress approves in writing a request for the return of a specific item; and
 - (iii) The Goods are fit for resale (no tube lengths, drainage pipe lengths, non-standard ring seals or the like will be accepted for return) and received by AusPress in 'as-supplied' condition; and
 - (iv) The Customer pays all expenses associated with returning the Goods to the Warehouse in an insured, secure and packed condition; and
 - (v) If the Goods are being returned due to an ordering error or for some reason other than the Goods being defective, a surcharge of 25% of the price for restocking the item will be applicable.
- (b) The Customer may not return Goods which have been modified or specially manufactured specifically for the purpose of supplying to the Customer.
- (c) Any refund in respect of returns under this clause will be given by way of account credit only.

10. LIMITATION OF LIABILITY

10.1 Nothing contained in these Terms excludes, restricts or modifies the application of any implied condition or warranty, the exercise of any right or remedy, or the imposition of any obligation, right or liability implied or conferred under the Australian Consumer Law, or any other statute, to the extent that doing so would contravene that statute or cause any part of these terms and conditions to be void.

10.2 Subject to clause 10.3:

- (a) The Customer acknowledges and agrees that:
 - (i) It will rely solely on its own knowledge, skill and judgment in selecting Goods for a particular purpose;
 - (ii) It does not rely on the knowledge, skill or judgement of AusPress in relation to the suitability of any Goods for a particular purpose; and
 - (iii) Any advice, recommendation, information or assistance provided by AusPress is provided without any liability by AusPress whatsoever.
- (b) To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on AusPress are expressly excluded from these Terms.
- (c) AusPress will not be liable for any defects in the Goods or Services unless the Customer notifies AusPress in writing within fourteen (14) days of the date of supply specifying the defect, which notice is a condition precedent to a right to recover by the Customer. In that event:
 - (i) In its absolute discretion, AusPress may elect to replace, repair or offer an account credit to the

Customer in respect of the defective Goods or Services; and

- (ii) AusPress' total aggregate liability in all circumstances is limited (to the extent permitted by law) to the amount paid by the Customer for the Goods or Services.

10.3 If the Customer is a Consumer:

- (a) The Goods and Services supplied by AusPress come with guarantees that cannot be excluded under the Australian Consumer Law.
- (b) If the Customer believes the Goods or Services do not comply with the guarantees under the Australian Consumer Law, it must contact AusPress and the parties may make arrangements for the return of the Goods. Any returned Goods must be accompanied by proof of purchase.
- (c) If the Goods or Services do not comply with the guarantees, AusPress will refund the costs of returning the Goods to AusPress and, in all other respects, act in accordance with its obligations under the Australian Consumer Law, including:
 - (i) For major failures with the Services, the Customer is entitled:
 1. to cancel any service contract with AusPress; and
 2. to a refund for the unused portion, or to compensation for its reduced value.
 - (ii) The Customer is also entitled to choose a refund or replacement for major failures with Goods.
 - (iii) If a failure with the Goods or a Services does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done the Customer is entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion.
 - (iv) The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Services.
- (d) All other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless agreed by AusPress in writing. AusPress does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between AusPress and the Customer by law.
- (e) The Customer acknowledges and agrees that it must install the Goods in accordance with their applicable installation instructions and manuals provided with the Goods or to operate the Goods in accordance with their applicable operation instructions and manuals provided with the Goods.

11. INTELLECTUAL PROPERTY

11.1 AusPress retains ownership of all of the Intellectual Property rights in connection with the Goods, including in any design, plans, illustrations, drawings or specifications furnished to the Customer for the purposes of the supply of the Goods or Services, and neither they nor their contents may be used by the Customer for any purpose other than that for which they were furnished without the express written consent of AusPress. The Customer must not use, reproduce or communicate the contents of such material to any third party unless authorised by AusPress in writing to do so. This clause survives the termination of any contract incorporating these Terms.



- 11.2 Where any parts have been supplied by the Customer for the purposes of manufacture, repair, redesign or upgrade, the Customer:
- (a) Represents and warrants that the supply of any Goods or Services in relation to those spare parts will not infringe the Intellectual Property rights of any third party.
 - (b) Undertakes to hold AusPress harmless and indemnifies AusPress for any losses, damages or costs that AusPress suffers if the provision of those Goods or Services results in a claim being made against AusPress by a third party alleging that their Intellectual Property rights have been infringed.
- 12. SPECIAL ORDERS & SPECIFICATIONS**
The Buyer warrants to the Seller that all drawings, specifications, methods of construction and other design information provided to the Seller for the manufacture of special orders are accurate and correct in all respects and do not infringe upon the Intellectual Property rights of any third party including any copyright, patents, designs or trademarks of a third party.
- 13. FORCE MAJEURE**
To the extent permitted by law, AusPress will have no liability to the Customer in relation to any costs, losses, damages, penalties or expense caused by AusPress' failure to supply the Goods or Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, industrial dispute, delay, the failure of AusPress' suppliers to supply materials, or any other matter beyond the reasonable control of AusPress.
- 14. DEFAULT & INSOLVENCY**
- 14.1 If:
- (a) AusPress has any reasonable grounds to believe that the Customer may not be able to make payment strictly in accordance with these Terms, or there is any default or failure by the Customer to make payment strictly in accordance with these Terms; or
 - (b) the Customer fails to take delivery of the Goods or Services; or
 - (c) an administrator, liquidator or provisional liquidator or external manager is appointed in respect of the Customer; or
 - (d) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
 - (e) the Customer goes into bankruptcy or is wound up;
 - (f) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
 - (g) there is a material breach by the Customer of these Terms or any contract incorporating these Terms;
- 14.2 then
- (h) all monies payable by the Customer to AusPress may, at AusPress' election, become immediately due and payable notwithstanding the due date for payment may not have expired; and
 - (i) AusPress may, without prejudice to any other rights it may have, do any or all of the following:
 - (i) suspend or withdraw any credit facilities which may have been extended to the Customer;
 - (ii) immediately terminate or suspend the whole or any outstanding part of any contract for the supply of Goods or Services;
 - (iii) in respect of Goods already delivered, and which title has not passed to the Customer, enter onto the Customer's premises to recover and resell the Goods for its own benefit;
 - (iv) recover from the Customer the cost of materials or Goods acquired for the purpose of future deliveries of Goods or the performance of Services;
 - (v) exercise such rights as are afforded to AusPress under the PPSA; and
 - (vi) register a default with any credit reference facility.
- 15. GOVERNING LAW & JURISDICTION**
- 15.1 These Terms, and any contract incorporating these Terms, are governed by and construed in accordance with the laws of South Australia.
- 15.2 The parties irrevocably submit to the exclusive jurisdiction of the South Australian courts and Federal courts sitting in South Australia.
- 16. ASSIGNMENT**
The Customer must not assign, or purport to assign its rights or obligations under any contract formed incorporating these Terms, to any other person without the prior written consent of AusPress.
- 17. SEVERABILITY**
If any provision of these Terms is held to be invalid or unenforceable in whole or in part, the validity of other provisions of these Terms and the remainder of the provision in question will not be affected.