

TERMS AND CONDITIONS

Payment terms

1. The terms of payment are strictly Net End of Month (or such other period as nominated by the supplier herein). Incite Fire Pty Ltd ABN 76 089 243 989 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
2. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier from time to time, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable per year, or part thereof, from the date the goods or services were supplied (and not the day when the Supplier's invoice was payable) until payment by the Applicant.

Price

3. The Supplier shall be entitled to adjust any price quoted by it or stated in any documents forming the contract between it and the Applicant to account of variations in the cost of the goods and services ordered by reason of variations in exchange rates, the cost of materials, rates of wages and hours of work and other conditions of employment described by law, award, determination or agreement, the cost of services including freight, cartage, insurance, customs duties and tariff classifications, statutory and governmental or local governmental authority charges.
4. All orders will be invoiced at the prices in effect at the time of delivery or provision of services.
5. All prices unless otherwise expressly stated are ex -warehouse and exclusive of G.S.T. The Applicant shall be responsible for the payment of any G.S.T and for the cost of delivery and insurance.

Delivery

6. Unless otherwise expressly agreed in writing, the Applicant shall take delivery from the Supplier's premises.

Jurisdiction

7. The Applicant acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
8. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
9. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

Security/charges

10. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
11. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
12. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder.
13. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Purpose of credit

14. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

Formation of contract

15. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
16. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

Retention of title

17. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
18. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.
19. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
20. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 19 hereof unless and until the funds held on trust are remitted to the Supplier.
21. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with or without prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
22. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 21. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
23. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
24. The Applicant will be responsible for the Supplier's costs and expenses in exercising its rights under clause 21. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
25. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

Risk

26. Risk in goods sold by the Supplier to the Applicant shall pass upon the sooner of delivery to the Applicant, loading of the goods on an outside carrier or the expiration of one month from the date upon which the Supplier informs the Applicant that the goods are ready for delivery.

Warranty

27. Where goods supplied are not manufactured by the Supplier, the manufacturer's warranty will apply.
28. The Supplier warrants the goods manufactured by it, will be free of defect in manufacture for a period of twelve (12) months. Should any fault occur within that period as the result of such defect, the Supplier will make all necessary repairs, or at its discretion, replacement of the product at no charge to the Applicant except for the costs of the freight.

29. To the fullest extent permitted by the *Competition and Consumer Act 2010* and any State legislation relevant to the sale and supply of goods by the Supplier to the Applicant, in the case of goods not manufactured by the Supplier, the Supplier's warranty shall be limited to the warranties implied by law and any further warranty contained in the manufacturer's warranty delivered to the Applicant with the goods.
30. The warranty's contained in clauses 27 and 29 shall not apply in the following circumstances:
- (a) if the goods are tampered with or repaired by personnel not authorised by the Supplier;
 - (b) in respect of loss or damage caused by rough or negligent treatment or by non observance of the Supplier's instruction; or
 - (c) in respect of loss or damage caused by act of God or any other cause not within the Supplier's control.
31. To the fullest extent permitted by the *Competition and Consumer Act 2010* and any other State Legislation relevant to the sale and supply of the goods or service by the Supplier to the Applicant, the Supplier's liability for breach of a condition or warranty implied by such Acts, including any consequential loss which the Applicant may sustain or incur shall be limited to one of the following at the election of the Supplier:
- (a) replacement of the goods or supply of equivalent services;
 - (b) repair of the goods or re-supply of the services;
 - (c) payment of the cost of replacing the goods, acquiring equivalent goods or re-supply of the services; and
 - (d) payment of the cost of having the goods repaired.
- Save for the express conditions and warranties herein contained all other conditions and warranties (whether as the quality, fitness for purpose or any other matter) expressed or implied by statute, the common law, equity, trade custom, usage or otherwise are hereby expressly excluded provided that nothing in these terms and conditions shall exclude or limit the liability of any breach of a term or condition implied by law, the exclusion or limitation of which is not permitted by law.
32. Goods returned under warranty for repair or testing will incur a charge to be fixed by the Supplier if no fault is found. The Applicant shall bear any cost of delivery and insurance of goods so returned.

Cancellation

33. The Supplier reserves the right to withdraw credit at any time, whether the Applicant is in default under the terms of this agreement or not. Upon cancellation with or without notice all liabilities incurred by the Applicant become immediately due and payable to the Supplier.
34. No order may be cancelled except with consent in writing and on terms which will indemnify the Supplier against all losses.
35. Goods returned for credit MUST be returned in their original state (final discretion rests with the Supplier) including all packaging within three months from invoice date. Custom product and special orders cannot be returned for credit. All goods returned for credit will incur a 20% re-stocking fee (exclusive of GST).

Claims

36. No claims will be recognised in respect of any mistake or shortage or over supply of goods after seven days from the invoice date.
37. Unless otherwise expressly agreed in writing the Applicant agrees that the Supplier is not liable for payment by it or liquidated damages or other penalties for delayed delivery of goods or provision of information, for delayed erection programs or for any other reason whatsoever.

Copyright and patents

38. The Applicant acknowledges the Supplier's license to use or ownership of the patents, trademarks or design principles contained within the goods manufactured or supplied by the Supplier and in particular acknowledges that any attempt by it, its servants or agents to copy in whole or in part the layout, circuitry or any other design principal or misuse any trademark will render it liable to the Supplier for violation or infringement of its license, trademark, copyright, patent or registered design.

Indemnity

39. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

Provision of further information

40. The Applicant undertakes to comply with any request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
41. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Trustee capacity

42. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
- (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
 - (b) the Applicant has the right to be indemnified out of trust assets;
 - (c) the Applicant has the power under the trust deed to sign this agreement; and
 - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
43. The Applicant must give the Supplier a copy of the trust deed upon request.

Partnership

44. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners will enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
45. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

Insolvency

46. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

Waiver

47. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
48. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
- (a) under section 95 to receive notice of intention to remove an accession;
 - (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
 - (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
 - (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
 - (e) under section 130 to receive a notice to dispose of goods;
 - (f) under section 132(2) to receive a statement of account following disposal of goods;
 - (g) under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
 - (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
 - (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
 - (j) under section 142 to redeem the goods;
 - (k) under section 143 to reinstate the security agreement; and
 - (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

Costs

49. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
50. The Applicant will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Applicant to the Supplier irrespective of whether pursuit of the recovery action, claim or remedy is successful.
51. The Applicant acknowledges and agrees that payments by the Applicant will be applied by the Supplier as follows.
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 21 and 49.
 - Secondly, in payment of any interest incurred in accordance with clause 53.
 - Thirdly, in payment of the outstanding invoice(s).

Taxes and duty

52. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
53. If as a result of:
- any legislation becoming applicable to the subject matter of this agreement; or
 - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration; the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on demand.

Interest rates

54. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

Set-off

55. Except as otherwise stated in writing by an authorised representative of the Supplier all payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

56. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier.

Miscellaneous

57. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
58. In relation to the supply of goods, the Supplier's liability is limited to:
- replacing the goods or supplying similar goods;
 - repairing the goods;
 - providing the cost for replacing the goods or for acquiring equivalent goods; and
 - providing the cost for having the goods repaired.
59. In relation to the supply of services, the Supplier's liability is limited to:
- supplying the service again; or
 - providing for the cost of having the services supplied again.
60. The Supplier is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant.
61. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
62. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
63. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
64. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, without notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

Severance

65. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
66. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

Variation

67. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant.
68. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

Consent to register

69. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
70. The Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

Entire agreement

71. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

Privacy Act

72. The Applicant agrees to the terms of the *Privacy Act 1988* authorisation contained in this document.