

Terms and Conditions of Sale

1. APPLICATION

1.1 These Terms and Conditions apply to the sale of all Goods by the Company to the Buyer from the date that you accept these Terms and Conditions.

1.2 You accept these Terms and Conditions when you submit an Order, accept delivery or part delivery of Goods pursuant to an Order or you make Payment or partial Payment for any Goods supplied by us.

1.3 The Company will not be bound by any modification or variation of these Terms and Conditions unless the Company expressly accepts such variations in writing.

1.4 New Terms and Conditions for the sale or supply of Goods by the Company may be adopted by us from time to time. If we adopt new Terms and Conditions we will give you written notice (if you are a Customer at the relevant time) and they will apply to the supply of Goods after you accept such new terms and conditions.

1.5 These Terms and Conditions will prevail to the extent of any inconsistency between a Quotation, Order or any other documents provided by the Company and these Terms and Conditions.

2. QUOTATIONS AND ORDER

2.1 Unless previously withdrawn, a Quotation is valid for thirty (30) days from issue or such other period as expressly stated by the Company in writing on the Quotation.

2.2 Any Quotation provided by Company is a mere invitation to treat and does not constitute a binding contractual offer.

2.3 A Buyer must provide an Order to the Company in respect of any Goods the Buyer would like to purchase. The Order may be made in writing or made verbally.

2.4 All Orders are subject to the Company's review and acceptance, which the Company may withhold at its absolute discretion.

2.5 A contract for supply of Goods shall not come into existence until an authorised representative of the Company accepts the offer of the Buyer.

2.6 Once the Company has accepted an Order, the Buyer may not alter or modify the Order without the written consent of an authorised representative of the Company.

2.7 The Company will not be bound by any conditions included in an Order unless the

Company expressly accepts such conditions or any of them (in which case only to that extent) in writing.

3. PRICE

3.1 Subject to the provisions contained in clause 3.2, the price payable is, unless otherwise agreed in writing, the total amount quoted in the Quotation.

3.2 In addition to the price, the Buyer agrees to pay for, if so requested by the Company in writing:

3.2.1 all goods and services tax payable which is not otherwise included in the price. The Company shall issue a tax invoice to the Buyer for the relevant goods and services tax;

3.2.2 the cost of any freight charges from the agreed delivery point to another delivery point (where the Buyer requests that Goods are on-transported or delivered to customers of the Buyer). The Company will advise you of the delivery fee when the Order is made and confirmed;

3.2.3 special handling (which includes a handling fee of \$10 (subject to change) where the value of an Order is AUD\$200.00 or less);

3.2.4 reasonable costs associated with special packing or special documentation where such special packing or special documentation is requested or required by the Buyer;

3.2.5 the reasonable cost of holding, storing and insuring the Goods if delivery is delayed or at the request of the Buyer; and

3.2.6 extra or additional costs or expenses incurred by the Company by reason of the instructions or information given by the Buyer being incorrect, insufficient or unclear or by reason of variations or amendments to an Order.

4. PAYMENT

4.1 The Buyer shall pay the price and other amounts payable within thirty (30) days of the invoice date (being the due date for payment).

4.2 Unless otherwise indicated, all payments shall be made in Australian currency and must be paid by cheque, credit card, direct credit or cash. Payments made by cash are subject to the terms in clause 4.4

4.3 No goods are sold by the Company on consignment (unless specifically stated in writing by the Company). Accordingly, unless the Company has specifically stated in writing that the goods are sold on consignment, the goods must be paid for in accordance with clause 4.1 of these Conditions of Sale.

4.4 In the event that the Goods are paid for by cash (or intend to be paid for by cash):

4.4.1 the Buyer must pay the price and other amounts payable before delivery of the Goods; and

4.4.2 a restocking fee of 15% of the total price (including additional amounts) of the Goods must be paid by the Buyer if the Buyer cancels the order prior to collection or delivery.

4.5 Without prejudice to the other remedies available to the Company, where a Buyer does not pay the price in accordance with these Terms and Conditions interest of any overdue amounts may be charged by the Company at a rate equal to 15% on any debt not paid by the due date.

4.6 Time of payment is of the essence.

4.7 The Buyer will indemnify the Company on demand against all costs, charges, expenses and legal costs incurred by the Company in the collection of payment of any invoice not paid in accordance with clause 4.1.

4.8 The Buyer may not set off against the price payable for any Goods, at law or in equity, any claims which the Buyer may have against the Company.

4.9 The Company may accept and apply payments from the Buyer in respect of any indebtedness and the Company will not be bound by any conditions of qualifications attached to such payments.

5. DELIVERY AND RISK

5.1 Risk in the Goods will pass to Buyer at the time the Goods are delivered by the Company to the Buyer at the address nominated by the Buyer in the Order.

5.2 The Company does not guarantee that delivery will occur on the date agreed between the Company and the Buyer.

5.3 The Company shall not be liable to the Buyer for any loss or damage whatsoever should the Company be delayed or prevented from delivering the Goods, or otherwise performing any of its contractual obligations

due to any cause or circumstance of any kind whatsoever beyond its control. In the event of any such delay in delivery or supply, the due date for delivery shall be deferred for a period equal to the time lost by reason of the intervening cause or circumstance. Delay in delivery or any other default in respect of a delivery shall not relieve the Buyer of any obligation in respect of any other delivery.

5.4 The Company reserves the right to make deliveries pursuant to these Terms and Conditions in instalments and the contract shall be severable as to such instalments. All such instalments, when separately invoiced, shall be paid for by the Buyer without regard to the delivery of subsequent instalments.

5.5 Subject to clause 5.2 and 5.3, delivery dates shall not be varied by the Buyer once they have been agreed to by the Company without the prior written consent of an authorised representative of the Company.

6. SECURITY INTEREST AND TITLE

6.1 This clause 6 sets out the Security Agreement between the Buyer and the Company.

6.2 The Buyer (**Grantor**) grants to the Company (**Secured Party**) a purchase money security interest (**PMSI**) in the Goods (**Collateral**) as security for all or part of the Payment for the Goods.

6.3 The Company's security interest attaches to the Collateral by virtue of the Buyer's possession of the Goods as bailee under clause 6.7.

6.4 The Company may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 6.

6.5 Until full title in the Goods has passed to the Buyer, the Buyer will ensure that:

6.5.1 the Goods are identifiable and distinguishable from any other goods that may be in the Buyer's possession; and

6.5.2 the particular Goods to which any particular invoice relates.

6.6 The Company will retain absolute title over the Goods until:

6.6.1 the Company has received payment in full in respect of the Goods;

6.6.2 the Company registers a financing statement as described in clause 6.4; or

6.6.3 the Buyer sells the Goods in the manner prescribed under clause 6.10.

6.7 After delivery of the Goods, until the full payment has been made, the Buyer shall possess the Goods as bailee only.

6.8 Until payment in full for the Goods has been received by the Company, the Company may, without notice, seize the Goods at any time.

6.9 For the purposes of carrying out seizure under clause 6.8, the Company may without notice, enter the Buyer's premises and seek any all remedies provided under Chapter 4 of the Personal Property Securities Act 2009 (Cth) (PPSA), and any other remedies provided at law or in equity or otherwise.

6.10 The Buyer may only sell all or any of the Goods in respect of which full payment has not been received to a third party if:

6.10.1 the Company has not exercised its right to seize the Goods under clause 6.8;

6.10.2 the sale is a bona fide transaction at market value in the ordinary course of business; and

6.10.3 all proceeds of sale of those Goods is:
(i) immediately paid to the Company; or
(ii) held on trust for the Company in a separate account, payable immediately on demand.

6.11 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on us in the Buyer's favour.

6.12 The Buyer agrees to waive its right to receive from the Company a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these Terms and Conditions and this Security Agreement.

6.13 The Buyer shall immediately notify the Company in writing of any change of name.

6.14 The Buyer acknowledges receipt of a copy or due notice of these Terms and Conditions and this Security Agreement.

7. EXCLUSIONS AND LIMITATIONS

7.1 The exclusions and limitations in this clause are subject to clause 8 (**Statutory Rights**).

7.2 To the fullest extent permitted by the relevant law including the ACL, the Company will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort arising from any other cause of action) suffered by the Buyer or any other person resulting from any act or omission of the Company.

7.3 No warranty is given and the Company will not be liable for:

7.3.1 damage or loss caused by factors beyond the Company's control;

7.3.2 the failure to maintain the Goods according to any care or maintenance instructions that the Company provides with the Goods;

7.3.3 any alterations made to the Goods which are not performed by the Company; or

7.3.4 damage or defects caused to the Goods due to unusual or non-recommended use of the Goods.

7.4 The Company's total liability for defective or damaged Goods or breach of its contractual obligations or duties under these Terms and Conditions, at law or in equity (however arising) is limited at its option to:

7.4.1 the replacement of the Goods;

7.4.2 the repair of the Goods;

7.4.3 the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

7.4.4 the payment of the cost of having the Goods repaired.

8. STATUTORY RIGHTS

8.1 In circumstances where the Buyer is acquiring goods from the Company as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, the Company acknowledges and agrees that certain statutory guarantees and rights shall apply to the Buyer as provided by relevant laws but subject to these Conditions of Sale as applicable and where permitted by relevant laws.

8.2 Nothing in clause 7 or/or these Terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of

State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.

8.3 If section 23 of the ACL applies to any provisions in these Terms and Conditions, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.

9. TERMINATION

9.1 The Buyer may terminate in whole or in part any contract for the supply of Goods before the supply has been made if:

9.1.1 the Buyer obtains written approval of an authorised employee of the Company to terminate the contract; and

9.1.2 the Buyer agrees to pay any cancellation charge, being a reasonable pre-estimate of the Company's loss as determined and specified by the Company in writing at the time of termination.

9.2 The Company reserves the right to immediately terminate or suspend the Company's performance of the whole or any outstanding part of any contract for the supply of the Goods without incurring any liability to the Buyer if:

9.2.1 the Buyer fails to take delivery of or pay for the Goods by the delivery date agreed between the Buyer and the Company (in accordance with these Terms and Conditions);

9.2.2 the Buyer breaches any term of these Terms and Conditions including but not limited to, failing to pay for the Goods in accordance with these Terms and Conditions;

9.2.3 the Company forms the reasonable opinion that the Buyer is insolvent or at material risk of insolvency; or

9.2.4 the Company forms the reasonable opinion that the supply of Goods to the Buyer may have a negative impact upon the Company's business or commercial reputation or image.

9.3 Without prejudice to the Company's other rights, the Company may require the Buyer to pay the Company for the cost of labour and other direct or indirect costs incurred by the Company where a contract for

the supply of Goods is terminated pursuant to clause 9.2.

10. FORCE MAJEURE

10.1 Subject to your rights under the ACL, the Company may cancel any Order which has been accepted by the Company or supply only part of an Order. In such circumstances the Company shall not be liable for any default, delay or failure to perform where this is due (to a material extent) to causes beyond the Company's reasonable control, including but not limited to, a Force Majeure Event.

10.2 If a Force Majeure Event or such other causes beyond the Company's control arise, the Company may elect to extend the period for performance as is reasonable in all the circumstances.

10.3 If a delay or failure by the Company to perform its obligations under these Terms and Conditions is due to a Force Majeure Event or other circumstance contemplated above exceeds 60 days, the Buyer may be entitled to terminate an Order (or the relevant part which has not been delivered) by giving the Company not less than 5 day's written notice.

11. SEVERABILITY

11.1 Each clause in these Terms and Conditions is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

12. NO WAIVER

12.1 If the Company waives any breach of these Terms and Conditions by the Buyer the waiver will not affect the Company's right to exercise its rights under these Terms and Conditions at any further time.

13. GOVERNING LAW

13.1 These Conditions of Sale will be interpreted in accordance with and governed by the laws of the State of New South Wales and the courts of New South Wales will have non-exclusive jurisdiction over any dispute in relation to these Terms and Conditions.

14. INTERPRETATION AND DEFINITIONS

14.1 Except where the context otherwise provides or requires the terms **we, us or our** refers to the Company and the terms **you or your** refers to the Buyer.

14.2 In these terms and conditions, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Competition and Consumer Act 2010* (Cth) as amended.

Buyer means any person or company (including its Related Bodies Corporate, administrators, successors and/or permitted assignees) which:

is the other party to a contract for the sale or supply of Goods;

is named in or receives a Quotation or sales invoice for the sale or supply of Goods by Company.

Collateral means property that is the subject of a security interest.

Company means J Leutenegger Pty Limited (ACN 056 414 647) or Bianta Pty Ltd (ACN 067 134 409) (as applicable).

Force Majeure Event means strikes, lock-outs or other labour disputes, riots, civil disturbance, computer downtime, actions or inaction of governmental authorities, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default by a common carrier.

Goods means goods described in the Quotation, Order or sales invoice from the Company.

Grantor means the person who grants the Security Interest in the Collateral under the Security Agreement.

Order means an order for Goods received in writing or given verbally by the Buyer.

Quotation means a written quotation provided by the Company to the Buyer for the supply of particular Goods.

Related Bodies Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Security Agreement means the security agreement set out in clause 6.