



Trading as *Ivy Trading Tools*

TERMS AND CONDITIONS

1. Definitions

- 1.1. "Company" means Ivy Trading Tools Pty Ltd, U24/192A Kingsgrove Road, Kingsgrove, NSW 2208; 283 Holt Parade, Thomastown, Melbourne, VIC 3074
- 1.2. "Customer" means the person or entity being supplied the goods.
- 1.3. "Goods" means all equipment including tools, consumables, accessories and parts supplied.

2. Payment

- 2.1. Unless otherwise agreed, the price of the Goods, plus GST (if any) and any other amounts payable by the Customer in respect of the Goods, will be paid in full no later than the 20th of the month following the date of the Company's invoice. However, the Company reserves the right to require payment for any Goods in cash before such Goods are delivered.
- 2.2. The Customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to the Company.
- 2.3. If full payment for the Goods is not made by the due date of payment, the Customer will pay, on demand, default interest on any amount outstanding, at a rate of 2% per month from the date when payment is due until the date when payment is made in full and all expenses and costs (including legal costs) incurred by the Company in recovering or attempting to recover any overdue amount.

3. Delivery

- 3.1. Unless otherwise agreed by the Company prior to delivery, the price of the Goods excludes the costs of delivery of the Goods, which will be paid by the Customer in addition to the price. The Customer shall also pay any insurance and other expenses in relation to the delivery of the Goods.
- 3.2. The Company shall not be responsible for any loss or damage whatsoever for failure to or delay in supply or delivery of goods.
- 3.3. Late delivery does not entitle the Customer to cancel any order or part order.

4. Title

- 4.1. Title of any goods supplied by the Company will not pass to the Customer until all amounts owing by the Customer to the Company in respect of those Goods have been received by the Customer. The Company shall retain legal and equitable title in the Goods until paid in full.
- 4.2. Until title passes to the Customer, the Customer shall hold the Goods for the Company as bailee.

5. Risk

- 5.1. Risk passes to the Customer from the time the Goods leave the Company's premises.



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6. Returns

- 6.1. To the extent permitted by law, Goods may not be returned except with the prior written consent of the Company, and when Goods are returned all monies payable to the Company remain due and payable.
- 6.2. No complaint or claim in respect of Goods supplied by the Company shall be considered unless made in writing together with proof of delivery within seven days of delivery. Failure to give such notice within specified time will be deemed an acceptance in full of any such delivery and Customer is not entitled to reject, return or otherwise make a claim in relation to the Goods.
- 6.3. The Company will not accept any returned Goods which, in its opinion, the condition have deteriorated or changed in any way that may affect the value of such Goods.
- 6.4. The Customer is responsible for the cost of returning the Goods.

7. Personal Property Securities Act

- 7.1. The Customer acknowledges that these conditions constitute a security agreement within the meaning of the Personal Property Securities Act 2009 ("PPSA") and gives rise to a Purchase Money Security Interest in favour of the Company over the Goods supplied and their proceeds or Goods to be supplied in the future (and their proceeds) to the Customer as grantor.
- 7.2. The Customer is to execute documents and do such further acts as may be required by the Company to register the security interest granted to the Company under these conditions under the PPSA.
- 7.3. The Customer waives its right to receive notification of any such registration by the Company.

8. Defective Goods

- 8.1. The Company does not warrant as to the quality, fitness, description or sample of Goods supplied by the Company to the Customer.
- 8.2. In any event, the Company's liability is limited to the price of the Goods or the cost of repairing or replacing the Goods, whichever is lesser.
- 8.3. The Company will not be liable in contract, tort (including without limitation, negligence or breach of statutory duty) or otherwise for any loss of profits or any consequential, indirect or special damage, liquidated or exemplary damages, loss of injury of any kind suffered by the Customer or any other person, or any loss or expense resulting from a claim by third party.
- 8.4. Any implied warranties that can be excluded by law are excluded under these conditions.
- 8.5. The Company shall not be bound to consider any defective Goods claims unless notice of defective Goods is given to the Company in writing within seven (7) days from the date of delivery.
- 8.6. The Company does not accept any liability or responsibility in respect of any information, advice, recommendation, assistance or service provide by the Company or its agents or other third parties in relation to the Goods or their use or application.

9. Indemnity

The Purchaser will indemnify and keep indemnified the Company and its successors and assigns from and against any claim, liability, loss or damage the Company may sustain as a



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result of breach, act or omission, arising directly or indirectly in connection with the supply, use and/or subsequent dealings of the Goods by the Customer.

10. Termination

- 10.1. The Company may terminate the contract without notice if the Customer shall commit any breach of this contract or if the Customer commits any act of bankruptcy, or being a company an application is made or resolution is passed for its winding up, or receiver of its asset or any of them is appointed, or if any execution or distress shall be levied upon the goods or if any judgment against the Customer shall remain unsatisfied for seven (7) days or more, or if the Customer makes an assignment or compromise for the benefit of its creditors or being a company is placed under Statutory Management or it ceases to carry on business.
- 10.2. Upon termination the Company (its agents, servants or contractors), shall be entitled to take possession of the plant and for this purpose, the Customer hereby gives the Company an irrevocable licence to enter upon any land or premises of the Customer, or any other place (as the agent of the Customer) where the Goods are located.

11. Governing Law

- 11.1. These conditions will be governed by the law of New South Wales and the Customer agrees to submit to the non-exclusive jurisdiction of the New South Wales Courts.
- 11.2. The application of the United Nations Convention on Contracts for the International

12. Acceptance of Conditions of Sale

The Customer's acceptance of delivery of the goods together with these terms and conditions shall constitute acceptance by the Customer of these conditions of sale.

13. General Provisions

- 13.1. If any clause of these conditions is invalid, void or enforceable, all other provisions which are capable of separate enforcement are and will continue to be full force and effect in accordance with their terms.
- 13.2. The Customer's purchase order, any quotations and these conditions constitute the entire agreement between the parties and all prior agreements and representations, save those expressly incorporated and all local, general, trade customs, are hereby excluded.
- 13.3. Unless otherwise agreed in writing by the Company, these conditions prevail over any other terms and conditions of sale sought to be imposed by the Customer.