



Terms and Conditions of Quotation and Sale

IMPORTANT NOTE TO BUYER:

By entering into this Contract, you acknowledge that you have read these terms and conditions, and are aware of the following key terms which may be prejudicial to you:

- **Delivery dates not guaranteed.** Timeframes for delivery are estimates only and not guaranteed (*clause 5*).
- **Retention of title and security.** Seller retains title to goods until paid for. Buyer must consent to and assist Seller to perfect any security interest (*clause 8*).
- **Manufacturer or supplier data.** Seller does not guarantee information supplied by manufacturer or supplier of goods. Buyer should make their own enquiries (*clause 12*).
- **Charges and duty.** Responsibility for any charges or duties etc levied after the date of quotation or invoice are placed on the Buyer (*clause 14*).
- **Our liability is limited.** To the extent permitted by law:
 - Seller limits liability for faulty goods or services to: (a) in the case of goods, repair, replacement, or the cost of resupplying those goods; or (b) in the case of services, the re-supply of the services or the cost of having the services supplied again (*clause 19b*).
 - Seller excludes liability for particular types of loss including indirect and consequential loss (*clause 19c*),
 - The Seller's liability (except for its fraud or wilful misconduct) is limited to the amounts that are recovered under its insurance (up to \$10 million) and if the liability is not recovered under its insurance to an amount equal to the value of the Purchase Price (*clause 19d*).
- **Terms may change.** When Buyer orders goods, the terms and condition apply as at the time of order. These terms may change from time to time without notice. Buyer should check terms before each purchase (*clauses 2 and 20*).

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

"**Australian Consumer Law**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.

"**Buyer**" means the person named as the buyer or purchaser of the goods and/or services in the relevant Contract.

"**Business Day**" means a day other than a weekend or public holiday in the place which the goods are delivered.

"**Conditions**" means these Bullivants Terms and Conditions of Quotation and Sale.

"**Consumer**" means a consumer as defined by Schedule 2 of the Competition and Consumer Act 2010 as amended from time to time.

"**Contract**" means a contract for sale as referred to in clause 2(b) or any other contract for the supply of goods and/or services entered into between Seller and the Buyer which incorporates these Conditions.

"**Excluded Loss**" means loss of revenue, loss of profit, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, loss of data, loss arising from any business interruption, increased overhead costs, and any indirect, remote or unforeseeable loss.

"**Exclusive Goods**" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.

"**Force Majeure Event**" has the meaning ascribed to it in clause 15.

"**Health Event**" means any epidemic, pandemic, quarantine restrictions, public health emergency, communicable disease outbreak, including without limitation, the Covid-19 outbreak and the consequences of any of the foregoing.

"**Order Confirmation**" means a document issued by the Seller to Buyer evidencing their agreement for the



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sale and supply of goods and/or services by the Seller to the Buyer.

"PPSA" means Personal Property Securities Act 2009 (Cth).

"Purchase Price" means the price for the goods and/or services set out in the relevant Quotation, Order Confirmation or Contract or as otherwise agreed in writing by the Seller and the Buyer.

"Quotation" means the form of quotation or proposal submitted by the Seller to the Buyer setting out the Purchase Price and any other special terms and conditions for the sale and supply of goods and/or services by the Seller to the Buyer.

"Seller" means Bullivants Pty Limited ABN 47 087 887 072 trading as Bullivants.

1.2 Interpretation

- a. The words "**include**" and "**including**" are not to be interpreted as words of limitation and, when introduced as an example, do not limit the generality of the words to which the example relates.
- b. Words importing the singular shall include the plural (and vice versa).
- c. A reference to a "**person**" includes an individual, the estate of an individual, a body politic, a corporation, a trust, partnership, an association (incorporated or unincorporated) and a statutory or other authority.
- d. A reference to a "**party**" means a party to a Contract.
- e. A reference to "**in writing**" includes recorded by electronic or other durable means.
- f. If any provision of these Conditions is invalid, these Conditions shall be read as if that provision has been severed.

2. ORDERS, GOVERNING TERMS AND CONDITIONS

- a. Where the Buyer submits an order for goods and/or services and the Seller accepts such order, these Conditions shall apply to the supply of goods and/or services by the Seller to the Buyer.
- b. Any order placed by the Buyer will constitute an offer and shall not bind the Seller until accepted by it in writing (including by means of an Order Confirmation) or by the Seller commencing the supply of goods and/or services in accordance with that order. When the Seller accepts the Buyer's order a separate contract of sale will arise for the goods and/or services to which the order relates.
- c. Each Contract formed under clause 2b. will incorporate these Conditions. Where an order placed by the Buyer on the Seller references a Quotation, then any terms or special conditions contained in the Quotation will also be incorporated into the Contract.
- d. Unless otherwise expressly agreed in writing by the parties, any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these Conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.
- e. These Conditions prevail over any terms and conditions contained in any order, offer, acceptance or other document of the Buyer whether or not any inconsistency arises.

3. QUOTATIONS

- a. Unless previously withdrawn, a Quotation is valid for 30 days or such other period as stated in it. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation.
- b. The Seller shall not be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the Seller in writing, the Buyer acknowledges that such conditions are expressly negated.
- c. Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.



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4. TERMS OF PAYMENT

- a. Payment to the Seller for goods or services delivered is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods and/or services.
- b. The Buyer must not withhold payment or make any deduction from the invoiced price or any other amount owing to the Seller without the Seller's prior written consent.
- c. The Seller may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
- d. If the Buyer fails to make payment in accordance with this clause, without prejudice to any other remedy, Seller may charge interest on the outstanding amount at an annual rate of three percent above the current Bank Bill Swap Reference Rate as quoted in the Australian Financial Review at the date the amount is due and payable or an equivalent rate determined by the Seller (acting reasonably) if this rate ceases to be published, is updated, suspended or discontinued. Interest will be calculated on a daily basis from the day it falls due until the day it is paid. Any payment made by the Buyer shall be credited first against any interest that has accrued.

5. DELIVERY, INSPECTION AND ACCEPTANCE

- a. Any timeframes quoted by the Seller for delivery of goods are estimates only. The Seller will use its reasonable endeavours to supply goods in the quantities specified in the relevant Contract.
- b. Delivery will be made in the manner and at the place specified in the relevant Contract or if not specified delivery will be made as determined by the Seller. The Buyer agrees to accept delivery of goods at any time between 9.00am and 5.00pm on a Business Day.
- c. The Seller reserves the right to make part deliveries of any order. Each part delivery may be invoiced separately and shall constitute a separate sale of goods upon the same terms and conditions as those applying to the main order. A part delivery of an order shall not invalidate the balance of an order.
- d. The Buyer shall inspect all goods upon delivery and shall within seven (7) days of delivery give notice to the Seller of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order or these Conditions. Failing such notice, subject to any non-excludable rights, guarantees or conditions implied by law, such as those in the Australian Consumer Law, the goods shall be deemed to have been delivered to and accepted by the Buyer. Acceptance of the goods does not prevent the Buyer from making a claim under the statutory consumer guarantees under the Australian Consumer Law.

6. RETURNS

Return of goods (other than in situations where the Seller is required to accept a return of goods under the Australian Consumer Law) must be approved by the Seller. Any authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with the Seller) and the goods are returned within 14 days of supply. The Seller reserves the right to charge a handling fee of \$10 or 10% of the price of the goods returned (whichever is greater) under this provision. The Seller will not accept the return of Exclusive Goods other than in situations where the Seller is required to accept a return of such goods under the Australian Consumer Law.

7. GST

- a. If a supply under a Contract is subject to GST, the recipient of the supply must pay to the supplier, in addition to the other consideration payable or to be provided for the supply and at the same time as the other consideration, an additional amount equal to the GST.
- b. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim shall exclude any amount for which that party (or representative member if the party is a member of a GST group) may obtain an input tax credit.



- c. Where an adjustment event occurs in relation to a supply made by the supplier under or in connection with a Contract, the supplier will issue an adjustment note to the recipient in respect of that supply within fourteen (14) days after becoming aware of the relevant adjustment. Where the supplier becomes entitled to receive the amount of a variation from the recipient, the amount is not payable by the recipient unless and until the supplier provides a valid adjustment note.
- d. Unless clearly indicated to the contrary, 'GST' and other terms used in this clause 7 (and in other provisions of these Conditions where the GST meanings are expressly intended) have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* or any replacement or other relevant legislation and regulations. Any reference to GST payable by the supplier includes any GST payable by the representative member of any GST group of which the supplier is a member.

8. PASSING OF PROPERTY AND RISK

- a. Goods supplied by the Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate.
- b. Title in the goods supplied by the Seller to the Buyer under these Conditions shall not pass to the Buyer until those goods have been paid for in full.
- c. Until the goods have been paid for in full:
 - i. the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller; and
 - ii. the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- d. The Buyer agrees to grant the Seller reasonable access to any premises upon which the Seller's goods are stored to enable the Seller to inspect the goods and/or reclaim the goods, if the Seller has terminated, or has a right to terminate the relevant Contract. This right shall continue after termination and for so long as Seller reasonably believes that goods in which it retains title are held at premises owned or controlled by Buyer.
- e. The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement under which the Seller grants credit to the Buyer.
- f. The Buyer consents to the Seller perfecting any security interest (as defined in section 12 of the PPSA) in goods supplied under the Contract and their proceeds created by this clause 8 by registration under the PPSA and agrees to do anything reasonably requested by the Seller to enable it to do so.
- g. The parties contract out of the following provisions of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of:
 - i. sections 95 (notice of removal of accession) and section 130 (notice of disposal) to the extent that they require the secured party to give a notice to the grantor;
 - ii. section 96 (when a person with an interest in the whole may retain an accession);
 - iii. subsection 121(4) (enforcement of liquid assets—notice to grantor);
 - iv. section 129 (disposal by purchase)
 - v. paragraph 132(3)(d) (contents of statement of account after disposal);
 - vi. subsection 132(4) (statement of account if no disposal);
 - vii. section 142 (redemption of collateral); and
 - viii. section 143 (reinstatement of security agreement).
- h. Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- i. The parties agree that no one will disclose, or authorise the disclosure of, any information of the kind described in section 275(1) of the PPSA to any other person unless allowed or required by law.



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9. SUSPENSION, CANCELLATION AND DISCONTINUANCE OF SUPPLY

The Seller reserves the right to immediately suspend, cancel or discontinue the supply of goods or services to the Buyer without further notice to the Buyer where:

- a. the Buyer is in breach of these Conditions; or
- b. the Buyer is otherwise in breach of its payment obligations to the Seller,

and the Seller will not incur any liability to the Buyer in respect of such suspended, cancelled or discontinued supply.

10. CONTAINERS AND PALLETS

Any pallets or containers used for the delivery, storage or display of goods are not included in the Purchase Price unless otherwise specified and will remain the property of their owner. The Buyer must promptly return or exchange the pallets and containers in its custody on the day of delivery (unless otherwise agreed with the Seller) or reimburse the Seller for the cost of replacement or repair of lost or damaged pallets or containers. The Seller may charge a reasonable deposit to the Buyer for a pallet or container which will be credited in full if the pallet or container is returned to the Seller within 3 months of dispatch and is in good order and condition.

11. INSTALLATION

The Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the Seller.

12. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- a. To the extent permitted by law, and unless otherwise agreed, any performance data provided by the Seller which is sourced from a supplier of the Seller or a manufacturer is an estimate only and is passed on by the Seller in good faith, but the Seller has not independently verified the accuracy or completeness of such performance data. The Buyer should exercise reasonable care in relying on such performance data.
- b. Unless agreed to the contrary in writing, the Seller reserves the right to offer an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary. Substitution will not be given effect to until approval is received from the Buyer.

13. SHIPMENT AND DELIVERY

Upon acceptance of an order by the Seller, the Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, the Seller will notify the Buyer. The Seller may impose a delivery charge on all deliveries (subject to such charge being notified to the Buyer in advance) with the exception of back-order deliveries which are part of an original order that has been partly fulfilled.

14. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Seller's acceptance of an order but which is subsequently levied upon the Seller in relation to that order as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.



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15. FORCE MAJEURE

A party shall be excused from the performance or observance of any of its obligations under a Contract to the extent its performance or observance is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment, a Health Event, measures or actions taken by any government or government body including, without limitation, in connection with a Health Event and importation of goods or any other cause beyond the reasonable control of the affected party (**Force Majeure Event**). Notwithstanding a Force Majeure Event no party will be relieved from liability to pay moneys due under a Contract.

16. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by the Seller.

17. WARRANTY

The Seller makes no express warranties or representations in respect of any goods or services supplied to the Buyer under these Conditions. Manufacturers of goods may, from time to time, provide a voluntary warranty directly to the Buyer in relation to goods supplied to the Buyer.

18. INSURANCE

Seller will maintain whilst it supplies goods and/or services under these Conditions and for the period of any Contract the following insurances:

- a. product and public liability insurance to a limit of \$10 million; and
- b. workers compensation insurance as required by law.

19. LIABILITY

- a. Where goods are purchased from the Seller by the Buyer as a Consumer:
 - i. the Australian Consumer Law provides certain statutory guarantees in relation to the goods; and
 - ii. nothing in these Conditions purports to modify or exclude such guarantees.
- b. To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of any statutory guarantee under the Australian Consumer Law in relation to the supply of goods or services, other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to:
 - i. in the case of goods:
 1. the replacement of the goods or the supply of equivalent goods;
 2. the repair of the goods;
 3. the reimbursement of the cost of the repair of the goods; and
 4. the payment of the cost for the repair of the goods; and
 - ii. in the case of services:
 1. the re-supply of the services; or
 2. the reimbursement of the cost of having the services supplied again.
- c. To the extent permitted by statute, neither party shall be liable to the other in connection with a Contract for or in respect of any Excluded Loss.
- d. Subject to clauses 19a to 19c, and except in the case of fraud or wilful misconduct of the Seller, Seller's aggregate liability to Buyer in connection with any Contract for the supply of goods or services under these Conditions, howsoever arising, whether in contract, in tort (including but not limited to



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negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will, to the extent permitted by law, be limited as follows:

- i. for liability arising in connection with events or circumstances in respect of which the Seller is indemnified under a policy of insurance required to be taken out under these Conditions, the Seller's liability will be limited to the amount which is recovered by the Seller under that policy (or should have recovered had it complied with the relevant policy) and in all circumstances will not exceed the amount that is the specified limit for that policy of insurance required to be taken out by the Seller under these Conditions;
 - ii. for all liability in respect of which the Seller is not indemnified under a policy of insurance required to be taken out under these Conditions, Seller's liability will be limited to an amount equal to the Purchase Price for the goods under that purchase order Contract.
- e. To the extent permitted by statute, including the Australian Consumer Law, Seller will not be responsible for any damage or loss caused to goods which have been serviced or repaired by unauthorised persons.
 - f. At all times, a party's liability under a Contract or otherwise, shall be reduced proportionately to the extent that any act or omission of the other party, its personnel or any other third party caused or contributed to such loss or liability.

20. ALTERATION TO CONDITIONS

The Seller may, at any time and from time to time, alter these Conditions without notice and with immediate effect once posted on the Seller's website, provided that any variation to these Conditions will not apply to any:

- a. orders placed not yet fulfilled prior to the date of such variation taking effect; or
- b. contract for a specified term that incorporates a version of these Conditions released prior to the variation.

21. VIENNA SALES CONVENTION

To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the Contract incorporating these Conditions nor do any of the conditions express or implied by the Vienna Sales Convention form part of any Contract.

22. GOVERNING LAW

These Conditions and any Contract including them shall be governed by and construed in accordance with the laws of the State of New South Wales and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of New South Wales.