



Terms & Conditions of Quotation & Sale - 2021

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:

- Responsibility for any charges or duties etc levied after the date of quotation or invoice are placed on the Buyer (clause 15);
- The Seller is not liable for particular types of loss including indirect and consequential loss (clause 21(c));
- The Seller's total liability (except for its fraud or wilful misconduct) is limited to the value of the Purchase Price (clause 21(d))

These are the terms and conditions upon which the Seller (as named in section 1.1(q)) sells and quotes for the sale of goods

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- "Application" in relation to a Buyer means the Thirty Day Commercial Credit Account Application signed by the Buyer which refers to these terms and conditions.
- "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 in the relevant Sales Invoice or Quotation.
- "Business Day" means a day other than a weekend or public holiday in the place which the goods are delivered.
- "Consumer" means a consumer as defined by Schedule 2 of the Competition and Consumer Act 2010 as amended from time to time
- "Excluded Loss" means:
 - in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery; loss of data; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Buyer and the Seller at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and
 - in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.
- "Exclusive Goods" means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, customised, cut-to-size or specifically ordered for the Buyer.
- "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- "GST Amount" means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- "GST Law" has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- "Health Event" means any epidemic, pandemic, quarantine restriction, public health emergency, communicable disease outbreak, including without limitation, the Covid-19 outbreak and the consequences of any of the foregoing.
- "Payment" means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- "PPSA" means Personal Property Securities Act 2009 (Cth)
- "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice.
- "Quotation" means the form of quotation submitted by the Seller to the Buyer setting out the Purchase Price and any other special terms and conditions for the supply of goods by the Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- "Sales Invoice" means the sales invoice issued by the Seller to the Buyer evidencing their agreement for the sale and supply of goods by the Seller to the Buyer.
- "Seller" means, in relation to any Quotation or Sales Invoice, Bullivants Pty Limited ABN 47 087 887 072.



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- (s) "Tax Invoice" has the meaning given to that term by the GST Law.
- (t) "Taxable Supply" has the meaning given to that term by the GST Law.

1.2 Interpretation

- (a) Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these terms and conditions is invalid, these terms and conditions should be read as if that provision has been severed.

2. GOVERNING TERMS AND CONDITIONS

- (a) These are the only terms and conditions which are binding upon the Seller with the exception of those otherwise agreed in writing by the Seller or which are imposed by a statute including the Competition and Consumer Act 2010 (Cth) and which cannot be excluded.
- (b) 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 terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

3. TERMS OF PAYMENT

- (a) Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods.
- (b) If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest 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 three percent above the then current, 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.
- (c) The Buyer must pay the Seller (on a full indemnity basis) any costs (including legal costs) incurred by the Seller in taking steps to recover unpaid or overdue amounts under these terms and conditions.

4. INSPECTION AND ACCEPTANCE

Any timeframes quoted by the Seller for delivery of goods are estimates only. 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 purchase order or these terms and conditions. Failing such notice, subject to any non-excludable condition 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.

5. 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. These 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) the goods are returned within 14 days of supply. Other than in situations where the Seller is required to accept a return of goods under the Australian Consumer law, 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 goods specifically purchased, manufactured, machined or cut to size or to the Buyer's specification other than in situations where the Seller is required to accept a return of such goods under the Australian Consumer Law.

6. QUOTATIONS

- (a) 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 purchase order has been accepted in writing by the Seller.
- (b) The Seller shall not be bound by any conditions attaching to the Buyer's purchase 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.

7. GST

The parties agree that:

- (a) the Purchase Price is inclusive of GST;
- (b) all other Payments have been calculated without regard to GST;
- (c) each party will comply with its obligations under the Competition and Consumer Act 2010 (Cth) when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;



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- (d) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
- (e) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

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 terms and conditions shall not pass to the Buyer until those goods and all other amounts owing or unpaid by the Buyer to the Seller on any account 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 which supplied them; 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 irrevocably authorises the Seller at any time to enter onto any premises upon which:
 - (i) the Seller's goods are stored to enable the Seller to inspect the goods and/or reclaim the goods if the Buyer has breached these terms and conditions;
 - (ii) the Buyer's records pertaining to the goods are held to inspect and copy such records.
- (e) The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.
- (f) Each party consents to the other perfecting any security interest under this agreement which arises by operation of the PPSA in any property by registration under the PPSA and agrees to do anything reasonably requested by the other party to enable it to do so.
- (g) The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:
 - (i) sections 117 and 118 (relationship with land laws); and
 - (ii) sections 134(1) and 135 (retention of collateral).
- (h) Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- (i) Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

9. SUPPLY

The Seller reserves the right to suspend or discontinue the supply of goods to the Buyer on reasonable grounds without being obliged to give any reason for its action.

10. PART DELIVERIES

The Seller reserves the right to make part deliveries of any purchase order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of a purchase order shall not invalidate the balance of a purchase order.

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) All technical information (including photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue) is approximate only and to the extent permitted by law, the Seller gives no warranty and makes no representation with respect to the correctness, compliance, adequacy or otherwise of that information. To the extent permitted by law, the Buyer agrees that it uses that information at its own risk.
- (b) To the extent permitted by statute, any performance data provided by the Seller, a supplier or a manufacturer is an estimate only and is provided in good faith without liability or responsibility on the part of the Seller and without the intention that the Buyer should rely on it.
- (c) Unless agreed to the contrary in writing, the Seller reserves the right to supply 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.



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13. SHIPMENT AND DELIVERY

- (a) Upon acceptance of a purchase 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, that Seller will notify the Buyer.
- (b) 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. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the Seller will be to the Buyer's account.

15. CONTINGENCIES

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

16. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if the Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. The Seller reserves the right to nominate the means of delivery.

17. FORCE MAJEURE

The Seller shall be excused from the performance or observance of any obligations of the Seller 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 Seller. The Seller may, in its absolute discretion give prompt notice of that cause to the Buyer.

18. DEFAULT OF BUYER

If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller.

19. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the Buyer shall have no right to cancel a purchase order which has been accepted by the Seller. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be). Despite the cancellation of any purchase order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

20. WARRANTY AND LIABILITY OF THE SELLER

- (a) The Seller makes no express warranties or representations in respect of any goods or services supplied to the Buyer under these terms and 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. The Buyer must address issues relating to a manufacturer's warranty with the manufacturer on the terms of that warranty.



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- (b) The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that Seller to do so. The provisions of this clause 20 do not constitute a warranty in relation to the quality or fitness of the goods, or require the Seller to repair or replace goods, or offer a refund in relation to goods, in circumstances other than those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).

21. LIABILITY OF SELLER

- (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, but the Seller's liability in respect of any failure to comply is limited to the fullest extent permitted by law.
- (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, 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. the replacement of the goods or resupply of the goods by the Seller, or the cost of replacement or resupply of the goods; or
 - ii. the repair of the goods, or the cost of repair of the goods.
- (c) To the extent permitted by statute, the Seller shall not in any circumstances be liable to the Buyer for or in respect of any Excluded Loss.
- (d) Subject to clauses 21(a) to 21(c), and except in the case of fraud or wilful misconduct of the Seller, the total aggregate liability of the Seller, whether in contract, in tort (including but not limited to negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will to the extent permitted by law, be limited to the Purchase Price.
- (e) To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by the Seller, the manufacturer or a third party) and any obligation of the Seller to repair or replace any goods are void in respect of any goods which the Buyer tampers with or alters.

22. ALTERATION TO CONDITIONS

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

- (a) orders placed but not fulfilled prior to the date of such variation taking effect; or
- (b) contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

23. 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 comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

24. GOVERNING LAW

These terms and 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.