

Paskal Pty Ltd Standard Terms and Conditions of Sale

1. Interpretation

In these terms and conditions:

- (1) "Seller" means PASKAL PTY LTD of Factory 3 Shearson Crescent, Mentone, Victoria and its successors and assigns.
- (2) "Purchaser" means the purchaser of the goods specified overleaf and its successors, executors, administrators and permitted assigns.
- (3) "Goods" means the products and, if any, services specified overleaf and/or in an order confirmation from the Seller.
- (4) Nothing in these conditions will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) which by law cannot be excluded, restricted or modified.

2. General

- (1) These conditions (which can only be waived in writing signed by the Seller) will prevail over all conditions of the Purchaser to the extent of any inconsistency, and the Goods and all other products sold by the Seller are sold on these terms and conditions.
- (2) No time or indulgence or waiver of the Seller's rights under these Terms and Conditions will constitute a waiver or release of any breach committed by the Purchaser.
- (3) Any invalidity or unenforceability of any of these terms or part of any term shall in no way affect the remaining terms, and all other provisions that are self-sustaining and capable of separate enforcement without regard to any invalid provisions will be and continue to be valid and enforceable in accordance with their terms.
- (4) The person signing any purchase order or request on behalf of the Purchaser warrants that they have full authority and power to order the Goods and bind the Purchaser and to personally guarantee the performance of all of the Purchaser's obligations under these terms.

3. Prices

- (1) Prices quoted in the Seller's published price list or by a representative of the Seller are subject to change without notice and are not binding on the Seller. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rates of wages, costs of materials and other charges affecting the cost of supply or production ruling on the date it is made and any alterations thereto either before acceptance of or during the currency of the contract may be made without notice and will be to the Purchaser's account. All Goods are charged at the applicable price ruling on the date the Goods leave the Seller for delivery to the Purchaser.
- (2) The suggested or recommended retail prices ("RRP") of goods shown in the Seller's catalogue are inclusive of Goods and Services Tax ("GST").

4. Specifications, etc.

- (1) Any deviation from specifications, particulars of colours, weights and dimensions submitted to the Seller will not be taken to vitiate any contract with the Seller or form grounds for any claim against the Seller.
- (2) The colours, descriptions and illustrations contained in the Seller's website, catalogues, price lists and other advertising matter are representative only. Actual colours on finished products may vary from those displayed; and colour, weights and pack ratios may vary from those shown; and any variation will not form grounds for any claim against the Seller.

5. Terms of Payment

- (1) Where the Purchaser receives Goods on a credit account from the Seller the price for the Goods must be paid in full within 30 days of the date of the invoice. The Seller reserves the right to review or vary the period of credit at any time on 30 days prior written notice to the Purchaser. Overdue accounts may be refused further credit.
- (2) Where the Purchaser has been given delivery of Goods on credit and is overdue with any payment or if the Seller receives any bank or trade references which it regards as unsatisfactory, the Seller reserves the right to change the terms of delivery to C.O.D. and to hold delivery of any Goods until it receives payment of all amounts due to it or is satisfied with the financial position or status of the Purchaser.
- (3) The Purchaser is not entitled to set-off any amounts which it claims are owed to it by the Seller from any amounts owing to the Seller.
- (4) A processing administration fee may be charged on all payments made by credit card, payable at the time of the credit card payment.
- (5) The Seller reserves the right to charge interest on all accounts outstanding for 30 days or over, at the rate of 18.0% per annum.
- (6) Any expenses, costs or disbursements incurred by the Seller in recovering any outstanding monies including bank fees or charges, dishonour fees, legal costs and expenses, agent's fees, or debt collection fees and/or costs must be paid by the Purchaser.
- (7) In the event of any default of payment, any deposit or part of the purchase Price paid to the Seller will be forfeited to the Seller in full, and any additional costs or expenses incurred in restoring the Goods to their original saleable condition may be recovered from the Purchaser. The Purchaser will indemnify the Seller from and against any loss or damage suffered or incurred in the event of any default.
- (8) All purchase requests shall be confirmed with an "Order Confirmation" and the Purchaser agrees that all order confirmations must be checked and any discrepancies advised to the Seller within 14 days of the date of confirmation. Any incorrect Goods received as a result of an error in an order confirmation will not be accepted for return unless advised to the Seller within 14 days of the date of confirmation, and any returned orders will only be accepted if an authorised return number has been issued.
- (9) The Seller reserves the right to immediately cancel any order or suspend any delivery without incurring any liability to the Purchaser if the Purchaser is in default of payment or if the Purchaser becomes bankrupt, goes into liquidation, makes any composition or scheme of arrangement with its creditors, has an administrator, receiver or receiver and manager appointed over the whole or any part of its assets or business, if any meetings of creditors or shareholders is called for any of those purposes or it suffers any similar action in consequence.

6. Delivery

- (1) The risk in the Goods will pass to the Purchaser upon delivery to the Purchaser or his Agent or to a carrier commissioned by either the Purchaser or Seller and delivery shall be taken to be effective when the Goods have been so delivered.
- (2) The Seller will use all reasonable endeavours to meet requested delivery times, but all delivery times made known to the Purchaser are estimates only and under no circumstances will the Seller be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from non-availability, late delivery, non-delivery or late installation of the Goods.
- (3) It is the Purchaser's responsibility to inspect all of the Goods upon delivery. The Seller shall not in any circumstances be liable for any loss or damage to goods in transit. The Seller will render the Purchaser such assistance as may be necessary to press claims on carriers provided the Purchaser will have notified the Seller and the carriers in writing and lodged a claim on the carrier within 7 days of delivery immediately loss or damage is discovered.
- (4) Any claim for short delivery, or discrepancies on invoices, must be made to the Seller in writing within 7 days of delivery, otherwise all rights are forfeited.

7. Cancellation or Variation of Orders

No order may be cancelled or varied except with the Seller's consent in writing and on terms which will indemnify the Seller against all losses.

8. Returned Goods

- (1) The Purchaser acknowledges and agrees that the Seller will accept no returns without prior authorisation. The Seller will not be under any obligation to accept Goods returned by the Purchaser and will do so only on terms to be agreed in writing in each individual case.
- (2) The Seller reserves the right to recover all freight or cartage costs and may charge a handling charge where Goods are accepted and cancellation of order has not been notified in writing at least 30 days prior to delivery.

9. Guarantee

- (1) The Seller's liability for Goods manufactured or imported by it is limited to making good at the Seller's option by replacement of faulty or defective Goods, within a period not exceeding twelve calendar months after the Goods have been delivered provided that:
 - (a) Defects have arisen solely from faulty produce or materials;
 - (b) The Goods have not received maltreatment, inattention, interference, overload or abuse;
 - (c) The damage has not arisen from:
 - (i) Improper use by the Purchaser;

- (ii) Any mishandling of the Goods; or
 - (iii) Inadequate or incorrect specifications, advice as to use or requirements provided by the Purchaser.
- (2) If any of the Goods are not manufactured or imported directly by the Seller the guarantee or warranty of the manufacturer or importer of such goods will be accepted by the Purchaser and is the only guarantee or warranty given to the Purchaser in respect of those goods.
- (3) Except as provided in these terms and to the extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods otherwise are expressly excluded and the Seller will not be liable for any injury, loss or damage or for consequential loss or damage of any kind arising out of the supply or arising out of the Seller's negligence or in any way whatsoever.

10. Consumer Warranties

- (1) The Seller's liability for a breach of any condition or warranty implied by Div.2 of Pt V of the Trade Practices Act 1974 (other than s 69) and similar provisions of the Fair Trading Act (Vic) or other relevant State legislation is hereby limited to any one or more of the following:
- (a) The replacement of the Goods or the supply of equivalent Goods;
 - (b) The repair of the Goods;
 - (c) The payment of the cost of replacing the Goods or acquiring equivalent Goods; or
 - (d) The payment of the cost of repairing the Goods.
- (2) The Seller's liability under s 74H of the Trade Practices Act 1974 and similar provisions of the Fair Trading Act (Vic) or other relevant State legislation is expressly limited to a liability to pay to the Purchaser an amount equal to the lowest of:
- (a) The cost of replacing the Goods; or
 - (b) The cost of obtaining equivalent Goods.

11. Rights in relation to Goods

- (1) The property or title in the Goods will not pass to the Purchaser and the Purchaser is a bailee of the Goods until the Seller has been paid in full the price of the Goods including transport charges and any other taxes, fees or charges related to the Goods.
- (2) Until such time as property or title in the Goods has passed to the Purchaser, the Purchaser must:
- (a) keep the Goods separate from other goods not belonging to the Seller in such fashion that they are clearly identified as the property of the Seller and mark them as the property of the Seller;
 - (b) Not allow any person to have or acquire any security interest in the Goods;
 - (c) Insure the Goods for their full replacement value and ensure that the Seller's interest is noted on the policy; and

- (d) Not represent or warrant to any party that the Goods are the property of the Purchaser.
- (3) Despite clause 11(2), if the Purchaser does supply any of the Goods to any person before property or title in the Goods has passed to the Purchaser, the Purchaser agrees that:
- (a) It holds the proceeds of re-supply of the goods on trust for and as agent for the Seller immediately when they are receivable or are received;
 - (b) It must either pay the amount of the proceeds of re-supply or re-sale to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
 - (c) Any accessory or item which accedes or is attached to any of the goods by an act of the Purchaser or of any person at the direction or request of the Purchaser becomes and remains the property of the Seller until the Seller is paid in full when the property in the goods (including the accessory) passes to the Purchaser;
 - (d) If the Purchaser fails to pay for the goods within the period of credit (if any) extended by the Seller to the Purchaser, the Seller may recover possession of the goods at any site owned, possessed or controlled by the Purchaser and the Purchaser agrees that the Seller has an irrevocable licence to do so.
- (4) The Purchaser hereby irrevocably authorises and licenses the Seller, its servants and agents at any time until property or title in the Goods has passed to the Purchaser to enter any premises occupied by the Purchaser, and use such force as is reasonably necessary to inspect and carry out an inventory of Goods held by the Purchaser or re-sold by the Purchaser.
- (5) On the happening of any of the events set out in this sub-clause in addition to any other remedies the Seller may have, all monies which the Purchaser may owe to the Seller on any account whatsoever whether under these terms or otherwise will thereupon without the necessity of any notice or demand to the Purchaser become immediately due, payable and recoverable and the Seller may without previous notice to the Purchaser repossess all of the Goods in which property or title has not passed to the Purchaser and recover from the Purchaser all costs incurred and damages sustained in connection with the costs of repossession and for that purpose the Purchaser hereby irrevocably authorises and licenses the Seller, its servants or agents to enter upon any premises occupied by the Purchaser or any other place where the Goods may be and use such force as is reasonably necessary:
- (a) If the Purchaser has defaulted in the due and punctual payment of the price of the Goods or any other monies due to the Seller;
 - (b) If the Purchaser has parted with possession of the Goods in respect of which property or title has not passed to the Purchaser;
 - (c) If the Purchaser, being a company, receives a Section 459 winding up notice pursuant to the Corporations Act 2001;
 - (d) If the Purchaser, being an individual, receives a bankruptcy notice;
 - (e) If any execution or distress is levied against the Purchaser;
 - (f) If the Purchaser enters into a scheme or arrangement with creditors or is placed under administration, receivership or some form of official management, or goes into liquidation, or any such meeting is convened for any such purposes.
- (6) The Purchaser will not alter, remove or in any way tamper with any of the trade or other marks, or numbers of the Sellers attached to or placed upon the Goods, and any special hardware, software,

dies, tools, patterns, designs, specifications and drawings used in the manufacture of the Goods or supplied to the Purchaser will remain the property of the Seller and will not be used in the production, manufacture or design of any other articles or disclosed or furnished to any other person firm or government except with the Seller's prior written consent.

- (7) All applicable rights in copyright, patents, trademarks, designs, trade secrets and other intellectual property rights in the Goods including any plans, designs, drawings or specifications in or relating to the Goods regardless of its type or form are and will remain the property of the Seller or its licensor, and are protected by all relevant Australian and international copyright, design, patent and design laws.
- (8) As the name "PASKAL" and other logos and trademarks used by the Seller may be registered trademarks it is necessary that written permission be obtained by the Purchaser from the Seller or its agents, before the Seller's name or logo or any product name, logo or trade mark can be reproduced in any form of advertising, signage or promotion.
- (9) The Purchaser will not reverse engineer, reverse assemble, copy, reproduce or store in any information storage or retrieval system or media or allow to be reverse engineered, assembled, copied, reproduced or stored in any such system or media the Goods or any drawings, plans or specifications for or in relation to the Goods.

12. Force Majeure

The Seller will not be liable for any failure to perform, and will be relieved of, its obligations under these terms occasioned by force majeure including (but without limiting the generality of the foregoing) war, legislation, civil commotions, fire, floods, explosions, acts of God, strikes, lockouts, sabotage, embargoes, labour employment difficulties, accidents, breakdowns, restrictions, prohibitions or any action by any government or quasi-government authority, and any other causes outside the reasonable control of the Seller.

13. Place of Contract

These terms and any Contract for sale of the Goods and the rights and obligations of the parties under these terms will be made in, governed and interpreted by and enforced in accordance with the laws in force in the State of Victoria.