



WESTEC DISTRIBUTION PTY LTD

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Westec Distribution Pty Ltd Invoice Terms and Conditions

1. The Purchaser agrees to pay, without any deduction, the price and all taxes charged from time to time by the Company for goods and services supplied by the Company to or at the request of, the Applicant within 30 days of the date of the invoice rendered by the Company for such supply.
2. The Purchaser and the Guarantors agree that each application for credit made by the Applicant and any company within the definition herein of the Company shall be deemed to have been accepted from the date of the said company's first invoice to the Applicant and without further notice to the Applicant and the Guarantor this agreement shall immediately have effect as an agreement by deed between the Applicant, the Guarantors and the said company.
3. All delivery times are estimates only and the Company will not be liable for any loss or damage whatsoever resulting from delays in delivery nor will it entitle you to cancel your order. The Company may co-ordinate the delivery of the goods. However the contract for delivery of the goods is between the Applicant and the courier and the Company is not liable for any loss or damage to goods in transit.
4. No order may be cancelled except with the written consent of the Company. The Company shall be entitled to charge a cancellation fee of 20% of the value of the goods.
5. The Company warrants that all the goods offered for the purpose for which goods of the same kind are commonly supplied, are of merchantable quality and free from defects in material or workmanship. The Company's liability under this warranty is limited to supplying replacement goods or replacing those goods which are defective. The Company does not accept any liability for loss or damage, whether direct, indirect or consequential, caused by the use of the goods or however arising.
6. In relation to goods not manufactured by the Company, the Applicant acknowledges that the Company passes onto the Applicant only the guarantee or warranty (if any) in respect of the goods given by the manufacturer of the goods and that the Company gives no guarantee itself in respect of the goods.
7. The Company shall be entitled to charge interest on all outstanding monies due by the Applicant at the rate of 15.0% per annum. Payment received by the Company will be applied, firstly, in reduction of any interest payable and, secondly, in reduction of all other sums owed to the Company until such a time as all sums owed to the Company have been paid in full.
8. The Applicant is liable to pay any stamp duty on this agreement. All legal costs (on a solicitor/client basis), charges, duties and other expenses incurred by the Company in respect of this agreement or the securities or other documentation required hereunder, or incurred as a result of the Applicant failing to perform their covenants and obligations contained herein, shall be paid by the Applicant to the Company. The expenses include, but are not limited to, the commission payable to a mercantile agent or a debt collector to pursue or recover outstanding monies pursuant to this agreement.
9. The Applicant agrees that goods supplied by the Company to, or at the request of, the Applicant shall be at the Applicant's risk immediately on delivery to the Applicant or into the Applicant's custody (whichever is the sooner). Property in the goods will not pass to the Applicant until such a time as the goods are paid in full. Until the Company receives payments in full for the goods supplied by the Company to, or at the request of, the Applicant.
 - (i) the Applicant shall store the goods in such manner as to show clearly that they are the property of the Company.
 - (ii) the Applicant shall be at liberty to sell the goods, in the ordinary course of business, but only as a fiduciary agent for the Company and shall account to the Company for any proceeds from any sale;
 - (iii) the Company may enter upon the Applicant's premises or elsewhere to take possession of and remove the goods. The Applicant shall indemnify the Company for any loss or damage suffered by the Company and all claims brought against the Company arising from the Company taking possession of the goods
 - (iv) in the event that the Applicant uses the goods in some manufacturing or construction process of its own or some third party, then the Applicant shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for the Company. Such part shall be deemed to equal in dollar terms the amount owed by the Applicant to the Company at the time of the receipt of such proceeds.
10. If the Applicant: - (a) defaults in the due and punctual observance of all or of their obligations or covenants under this agreement; or (b) being a person, dies or commits an act of bankruptcy; or (c) being a company, takes or shall have taken against it any action for its winding up, placement under official management, administration or receivership:

Then the Company without prejudice to any right open to it may:

 - (i) treat as discharged all or any obligation arising from any agreement with the Applicant;
 - (ii) retain any security given or monies paid by the Applicant or available though the enforcement of any guarantee, security or bond and apply this in reduction of any sum of money owed or owing by the Applicant to the Company.
 - (iii) Reserve the right to enter upon the Applicant's premises or enter upon any premises to which the Applicant has a right of access to take possession of and remove any goods supplied by the Company to the Applicant under this agreement or any other agreement between the Company and the Applicant for which payment has not been received.
 - (iv) Take such steps as it may deem necessary to mitigate the damages suffered including the putting to use, hiring out, sale or disposal of any goods supplied or to be supplied under this agreement or any other agreement or any other agreement between the Company and the Applicant.
11. should there be any variation in the information supplied in this document concerning the Applicant or a variation in the structure of the Applicant's business (such as conversion to, or from, a trustee) the Company shall forthwith be notified in writing by the Applicant by certified mail delivered to the Company's registered office. Unless such notification is given to the Company, the Applicant and the Guarantors shall remain liable to the Company as though any goods or services supplied by the Company were supplied to, or at the request of, the original Applicant.
12. If any payment made by or on behalf of the Applicant to the Company shall subsequently be avoided by any statutory provision or recovered by a liquidator or official manager or official receiver in bankruptcy such payment shall be deemed not to have discharged the Applicant's liability and in such event the Company and the Applicant shall be restored to the position in which each would have been had the payment not been avoided. The Guarantors agree to be liable to the Company for the payment so avoided.
13. The Applicant and the Guarantors agree that a waiver of a term or condition under this agreement is effective only if it is in writing and signed by the Company and such waiver is effective only in the specific instance and for the specific purpose it was given.
14. The Applicant agrees that the facility hereby applied for does not extend to any transaction on the Applicant will not use the facility for any transaction which is or may be a "credit contract" as that expression is defined in the Consumer Credit (Western Australia) Code. The Applicant declares that the credit to be provided to it by the Company is to be applied wholly, or predominately for business or investment purposes (or for both purposes). IMPORTANT- the Applicant should not sign this declaration (which is done when the Applicant executes this document on the front page hereof) unless this loan is wholly or predominately for business or investment purposes. By signing this declaration the applicant may lose their protection under the Consumer Credit Code.
15. The Applicant warrants and agrees that where the Applicant is at the time this document, or subsequently becomes, a trustee:- (a) to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Company; (b) the Applicant has full power and authority to make this agreement on behalf of the trust. (c) the Applicant shall be bound by the terms and conditions of this agreement in their individual capacity and their several capacity as trustee; and (d) the assets of the trust shall be available to meet payment of the Price or Other Monies.
16. The Applicant and the Guarantors agree that for the purpose of securing the obligations and liabilities hereunder to hereby charge and mortgage with the due and punctual payment and the due punctual and complete performance of all their liabilities and obligations hereunder all their legal and equitable interest of whatsoever nature held in any real property both present and future and each of the Applicant and Guarantors hereby consent to the Company lodging a caveat noting its proprietary interest hereunder. The Applicant and the Guarantors agree to execute any documents or do all such things as may be required by the Company to effect such security upon demand by the Company.
17. The Applicant and the Guarantors agree that a certificate by the Company or any person authorised by the Company to give the same shall be conclusive evidence as to the amount owed to the Company by the Applicant and the Guarantors.
18. The Applicant and the Guarantors agree that the Company may at any time transfer or assign to any person or corporation the whole or any part of each of their liabilities and obligations to the Company contained herein. In the event that the right to any of the liabilities and obligations of the Applicants are transferred or assigned to any person or corporation the benefit of the Guarantors guarantee shall extend to the transferee or the assignee and it is expressly provided that the benefit of the said guarantee shall continue to enure concurrently for the benefit of the Company notwithstanding any such transfer or assignment by it.
19. In this document words in the singular include the plural and visa versa, and reference to any gender includes the other genders.
20. If any party to this agreement comprises two or more parties each of those parties is jointly and severally liable on the covenants and obligations herein.
21. This deed shall be binding upon each party that as executed it not withstanding the failure of any other party to execute it or the avoidance or unenforceability of any part of the deed.
22. If any part of this deed becomes void or unenforceable then that part shall be severed to the intent that all parts that are not void or unenforceable shall remain in full force and effect. This deed shall be governed and construed in accordance with the laws of Western Australia.
23. Where there is any inconsistency between the terms and conditions of this agreement and any subsequent agreement for the supply of goods and services by the Company, any such subsequent agreement shall be read down to the extent necessary to give full force and effect to the terms and conditions of this agreement.
24. The Applicant and the Guarantors hereby authorise the Company to carry out credit checks and to obtain credit reports in respect of their credit worthiness in accordance with any law with respect thereto in force from time to time and to disclose to credit reporting agencies the information outlined in the deed for this purpose.

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