



TERMS AND CONDITIONS OF SALE

In these terms and conditions:

- a) "Seller" means HAMER and its agents, successors and assigns.
- b) "Buyer" means the person, firm, company or entity buying the Goods from the Seller.
- c) "Goods" means all Goods the subject matter of any contract for purchase between the Seller and Buyer, including where the context permits a resulting product into which the Goods are so incorporated, manufactured or commingled that their identity is lost in the resulting product.

1. Contract

All Goods supplied by the Seller to the Buyer are supplied subject to the following Terms and Conditions of Sale which shall prevail despite any indication to the contrary by any person, agent or representative acting or purporting to act on behalf of the Seller.

2. Supply of Goods

Goods will be supplied where either direct credit, cheque or credit card payment accompanies an order or where a duly authorised Company Purchase Order has been received (whether in writing or verbal) and is charged against an account previously opened with the Seller.

3. Pricing

All prices listed are GST Exclusive unless otherwise stated. Prices are subject to change without notice.

4. Payment

- a) The Buyer agrees to pay to the Seller in full all invoices by the due date with no off-set or deduction. The due date shall be defined as the earlier of:
 - i) On or before the due date for payment as listed on the invoice;
 - ii) Immediately when the Buyer sells or disposes of the Goods; or
 - iii) At the completion of any action which involves the Buyer's solvency at which time the Buyer shall keep the proceeds of any sale separate from the Buyer's funds.
- b) Where the Buyer's account is overdue the Seller may, at its discretion, refrain from supplying any further Goods.
- c) The Buyer agrees to pay interest on all sums and overdue amounts outstanding at 1.5% per month from the due date or date of default as the case may be until payment is made. Interest will be compounded monthly and added to the overdue amount.
- d) If a solicitor or debt collector is instructed by the Seller to enforce or attempt to enforce any rights pursuant to these terms and conditions of sale then the Buyer agrees to reimburse (with all monies due) any liabilities, fees and disbursements as charged to the Seller as a result.
- e) The Seller may at its discretion apply any payments it receives from the Buyer in and towards the satisfaction of any indebtedness of the Buyer to the Seller and it shall not be bound by any conditions or qualifications that the Buyer may make in relation to such payments.

5. Personal Property Securities Act 1999:

- a) The Buyer grants to the Seller a security interest in the Goods and all the Buyer's present and after acquired property supplied by the Seller and their proceeds and accessions to secure payment of the purchase price of the Goods and all outstanding debts and obligations of the Buyer to the Seller.
- b) The Buyer will provide such information, do such acts and execute such further documents as in the Seller's opinion may be necessary or desirable to enable the Seller to perfect under the PPSA the security interest created by these terms and conditions as a first priority interest or with such other priority as the Seller may agree in writing.
- c) The Buyer will supply the Seller within 7 business days of written request copies of all documents granting security interests registered over the Buyer's personal property. The Buyer authorizes the Seller as an agent to request copies of all documents granting security interests registered over the Buyer's personal property. The Buyer authorizes the Seller as an agent to request any information from any secured party relating to any security interest which is held in any personal property which is or has been in the Buyer's possession or control.
- d) The Buyer will immediately notify the Seller in writing of any change in the Buyer's name.
- e) The Buyer agrees sections 114(1)(a), 116, 117(1)(c), 119, 120(2), 121, 125 to 127, 129, 131 to 133 of the PPSA shall not apply to these Terms and Conditions or the security created hereunder.
- f) The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these Terms and Conditions.
- g) The buyer must not create, or allow or permit the creation of, a security interest (as defined in the PPSA) in any of the Goods in favour of any person other than the Seller without first obtaining the Seller's written consent, nor may the Buyer allow or permit the creation of a lien over any of the Goods.

6. Delivery

The Seller shall use its best endeavours to arrange prompt delivery of goods ordered. Dates given by the Seller for delivery shall be deemed to be indicative only but will not be accepted as a condition of sale. If delivery of the goods is delayed for any reason whatsoever the Seller shall not be liable in any way for loss of revenue or profits or any consequential loss or damages for failure to deliver on such date.

7. Freight and Handling

Goods are sold ex store with any freight and handling charges for the account of the Buyer. Goods returned from evaluation or for warranty claims must be consigned by the Buyer freight pre paid.

8. Risk

Risk of any loss, deterioration or damage of or to the goods shall be borne by the Buyer from the time of despatch from the premises of the Seller. The Buyer shall insure and keep insured the goods to the full price against all risk until the Seller has received payment for the goods in full. The Seller will not be held liable for any damage,



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9. Ownership of Goods

All goods shall remain the property of the Seller as legal and equitable owner pending cleared payment in full of all moneys due and owing in respect of the Goods owed by the Buyer to the Seller. The Buyer acknowledges that the Buyer is in possession of the Goods as bailee for the Seller pending payment in full of all moneys due to the Seller. Unless the Seller directs otherwise, the Buyer may dispose of any Goods to third parties by way of bona fide sale at full market value in its normal course of trading.

10. Default

a) In addition to any other provision hereof, the Buyer shall be in Default if any of the following events shall occur:

- i) If the Buyer fails to pay any amount due by the due date.
- ii) If the Buyer fails to meet any obligation to the Seller.
- iii) If the Buyer becomes insolvent.
- iv) If a Receiver, Liquidator or Official Manager is appointed in respect of the Buyer.
- v) If a compromise arrangement with the Buyer's creditors is made or likely to be made.
- vi) If the Buyer ceases or threatens to cease carrying on business.
- vii) If the ownership or effective control of the Buyer is transferred, or the nature of the Buyer's business is materially altered.
- viii) If the Buyer does or permits any act or thing likely to prejudice or put at risk the Goods or the Seller's rights or interest (including its security interest) in the Goods.

b) For the purposes of clause 10a) hereof, a reference to the Buyer shall include the Guarantor(s).

c) If an event of Default shall occur (notwithstanding that the Seller may have waived some previous default by the Buyer) then:

- i) All sums owing by the Buyer to the Seller shall become immediately due and payable.
- ii) The Seller may, without prior notice, enter the premises of the Buyer or any other premises that the Buyer is authorised to enter and retake possession of the Goods and sell them without being liable in any way to the Buyer. Furthermore, the Buyer shall indemnify the Seller for all costs (including legal costs), claims by third parties or whatsoever in retaking possession and selling the Goods.
- iii) The Seller may by notice in writing suspend or terminate the Credit Account.

d) Notwithstanding the foregoing, the Seller shall be entitled at any time in its sole discretion and without notice to the Buyer to suspend or terminate any credit account with the Buyer and the Buyer shall forthwith deliver the Goods to the Seller at its place of business or at such other place as shall be agreed upon.

11. Product Warranties

The Seller warrants all goods to be free from defect and, unless stated otherwise, such warranty shall be for a period of 12 months from date of purchase. The Seller shall, at its option, repair or replace any defective goods provided that the goods have not been subjected to improper use and that the claim is within the provisions of the warranty applicable to the respective products. Proof of date of purchase may be requested by the Seller to support any warranty claim. The specifications of all products are approximate and are subject to change without notice.

12. Returns

The Seller will not accept the return of goods already invoiced unless any such return is arranged in advance. Where the Seller accepts returned goods a 20% restocking fee may be levied. Approval for credit returns must be requested on the Seller's Return Authority (RA) form within 14 days of receiving the goods. Approval for credit is at the Seller's exclusive discretion and any goods approved for return must be:

- Returned to the Seller within 7 days of receiving RA approval;
- Returned free into the Seller's store with all costs including the original shipping costs to the Buyer being payable by the Buyer;
- In "as new" condition in the manufacturer's original container, unsoiled and undamaged.

No credit will be issued for:

- Goods specifically imported or manufactured for the Buyer;
- Goods received without an approved RA.
- Goods returned more than 30 days from the invoice date.
- No cash refund will be given for goods returned and accepted by the Seller but a credit will be applied against the Buyers account.

13. Errors and Omissions

The Seller shall not be liable for any errors or omissions or for incidental or consequential damages arising from the supply or use of any Goods supplied by the Seller.

14. Exclusions of Liability

To the maximum extent permitted by law, the Seller shall not be liable for lost profits, loss of goodwill or any incidental or consequential damages. Further the Buyer agrees that in no case shall the liability of the Seller exceed the purchase price of the goods giving rise to any liability.

15. Privacy Act

The Buyer consents to the Seller making inquiries of third parties with regard to the Buyers credit worthiness and receiving and disclosing information in respect of the Buyer to such third parties as deemed appropriate by the Seller.