
Active Pool Supplies (Australia) Pty Ltd – Terms & Conditions of Trade

All dealings between the Customer, Guarantor and the Seller are subject to these terms and conditions to the extent permitted by law.

1. Definitions

- 1.1 "Agreement" includes any agreement contemplated by these terms and conditions.
- 1.2 "Seller" means Active Pool Supplies (Australia) Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Active Pool Supplies (Australia) Pty Ltd.
- 1.3 "Customer" means the Customer (or any person acting on behalf of and with the authority of the Customer) named in any application or as described on any quotation, work authorisation or other form as provided by the Seller to the Customer and all successors and assigns.
- 1.4 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.5 "GST" has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.6 "Goods" means any Goods, products and equipment supplied by the Seller to the Customer (and where the context so permits includes any supply of Services) as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer
- 1.7 "Services" means all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply and installation of Goods).
- 1.8 "Price" means the price payable for the Goods or Services as agreed between the Seller and the Customer under these terms and conditions.

2. The Commonwealth Competition and Consumer Act 2010 ("CCA"), Fair Trading Acts ("FTA") and legislation

- 2.1 The CCA and FTA provide consumers with guarantees and rights and nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA, the FTA or any relevant legislation in each of the States and Territories of Australia, except to the extent legally permitted by those Acts.

3. Acceptance

- 3.1 Any instructions received by the Seller from the Customer for the supply of Goods or Services, the Customer's acceptance of Goods or Services supplied by the Seller and acceptance by electronic means or allowing the Seller to supply the Goods or Services are acceptance of these terms and conditions and the Seller and the Customer consent to communication and execution by electronic means.
- 3.2 Where more than one Customer has entered this agreement, the Customers are jointly and severally bound by these terms and conditions for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be by agreement.
- 3.4 The Customer acknowledges that the Seller may commence provision of the Services or Goods at any time after these terms and conditions have been accepted in accordance with this clause.
- 3.5 The Customer undertakes to give the Seller at least fourteen (14) days' notice of any change in the Customer's name, address and any other change in the Customer's details.

4. Price And Payment

- 4.1 At the Seller's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied or Services rendered; or
 - (b) the Seller's quoted Price (subject to clause 4.2) and is binding upon the Seller provided that the Customer accepts the Seller's quotation within thirty (30) days.
- 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 4.3 At the Seller's sole discretion a deposit may be payable prior to delivery of Goods or commencement of Services if included in the invoice or quotation.
- 4.4 Payment is due in accordance with the invoice or quotation which may include cash on delivery, progress payments and if not specified then fourteen (14) days after the date of the invoice by cash, bank cheque, electronic funds transfer or credit card (credit card surcharges will apply in accordance with the minimum prescribed amount permissible under the Competition and Consumer Amendment (Payment Surcharges) Act 2016, which may change from time to time) to the Seller's nominated account and interest at 2.5% per month may be charged on overdue amounts until paid.
- 4.5 GST, delivery costs, any taxes and duties that may be applicable must be added to the Price except when they are expressly included in the Price.

5. Delivery Of Goods and Services

- 5.1 Delivery of the Goods and Services takes place when the Customer takes possession of the Goods or receives the Service.
- 5.2 The costs of delivery are payable as included in the invoice or quotation and if not specified are in addition to the Price payable on delivery.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and receive the Services when they are available. If the Customer is unable to take delivery of the Goods or receive the Service as arranged then the Seller may charge a reasonable fee for redelivery.
- 5.4 Delivery of Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The failure of the Seller to deliver Goods or provide Services shall not entitle either party to treat this contract as repudiated.

5.6 The Seller is not liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods or supply the Services promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

6.1 All risk for the Goods and Services passes to the Customer on delivery or supply by the Seller. If any of the Goods or Services are damaged or destroyed following delivery or supply but prior to ownership or risk passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods or Services. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6.2 To the fullest extent permitted by law any claim by the Customer is limited to repair, replacement, resupply or refund.

7. Title

7.1 Ownership of the Goods or Services does not pass until:

- (a) the Customer has paid the Seller the Price and all amounts owing for the particular Goods or Services, and
- (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.

7.2 The Customer must not deal with, charge or give any interest in the Goods or Services or any end product until the Customer has paid the Seller the Price and all amounts owing for the particular Goods or Services.

7.3 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods and Services shall continue.

7.4 It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until the Seller has received payment and all other obligations of the Customer are met;
- (b) until ownership of the Goods passes from the Seller to the Customer, the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
- (c) the Seller has the right of stopping the Goods in transit whether or not delivery has been made;
- (d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods;
- (e) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller;
- (f) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller;
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller;
- (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Personal Property Securities Act 2009 ("PPSA")

8.1 In this clause the terms financing statement, financing change statement, security agreement, and security interest have the meanings defined by the PPSA.

8.2 Upon assenting to these terms and conditions in writing the Customer agrees these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods or Services previously supplied and that will be supplied in the future by the Seller to the Customer. For the avoidance of any doubt, the Customer agrees and acknowledges that the security interest created under this agreement is a Purchase Money Security Interest ("PMSI") as defined in the PPSA, in goods or services supplied and is a continuing and subsisting security interest attaching to all Goods or Services now or in the future supplied to the Customer by the Seller.

8.3 The Customer must promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement or any other document in relation to a security interest on the Personal Property Securities Register and must not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or Services in favour of a third party without the prior written consent of the Seller.

8.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.

8.6 The Customer waives their rights as a grantor or a debtor under sections 142 and 143 of the PPSA.

8.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

8.8 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Customer's Disclaimer

9.1 The Customer disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods and Services are bought relying solely upon the Customer's skill and judgement.

10. Defects

10.1 The Customer must inspect the Goods on delivery and the Services on supply and shall within seven **(7) days** notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall then afford the Seller an opportunity to inspect the Goods and/or Services within five (5) days of notifying the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. If the Customer fails to comply with these provisions the Goods or Services shall be presumed to be free from any defect or damage. For defective Goods or Services, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods or Services except where the Customer has acquired Goods or Services as a consumer within the meaning of the CCA or FTA, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods or Services, resupply or repair of the Goods or Services, or replacement of the Goods or Services.

10.2 Except as expressly set out in these terms and conditions the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods or Services or that they will be defect free. The Seller's liability regarding these warranties is limited to the fullest extent permitted by law.

11. Returns

11.1 The return of Goods will only be accepted if:

- (a) the Customer has complied with the provisions of clause 10.1;
- (b) the Seller has agreed in writing to accept the return of the Goods;
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date;
- (d) the Seller will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material and instruction material in as new condition as is reasonably possible in the circumstances.

11.2 The Seller may (in its discretion) accept the return of Goods for credit.

12. Warranty

12.1 For Goods not manufactured by the Seller or Services not originating from or supplied by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods or Services. The Seller is not bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods or Services.

12.2 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods or Services for any purpose and any implied warranty, is expressly excluded (notwithstanding clause 12.1). The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

13. Default & Consequences Of Default

13.1 Interest on overdue invoices or outstanding amounts payable to the Seller shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate before and after any judgement.

13.2 If the Customer defaults in payment of any invoice or amounts payable to the Seller when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs and such costs and disbursements are a liquidated debt.

13.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may make any claim, sue for damages, loss of profits, terminate or the Seller may suspend or terminate the supply of Goods and Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

13.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have :

- (a) where the Customer and the Guarantor (if any) is the owner of land, realty or any other assets capable of being charged, both the Customer and the Guarantor agree to mortgage and charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable to the Seller under the terms and conditions. The Customer or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a mortgage or caveat, which caveat shall be withdrawn and mortgage released once all payments and other monetary obligations payable have been met.
- (b) should the Seller elect to proceed in any manner under this clause, the Customer and Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and the Guarantor (if any) irrevocably nominate, constitute and appoint the Seller or the Seller's nominee as the Customer's and Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of these terms and conditions and this clause.

15. Cancellation

- 15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods or supply of Services at any time before the Goods are delivered or the Services are supplied by giving written notice. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event the Customer cancels delivery of Goods or supply of Services the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

16. Privacy Act 1988

- 16.1 The Customer and the Guarantor (if any) agree to the Seller obtaining from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor in relation to credit provided by the Seller.
- 16.2 The Customer and the Guarantor (if any) agree that the Seller may exchange information about the Customer and the Guarantor with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer;
 - (b) to notify other credit providers of a default by the Customer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
 - (d) to assess the credit worthiness of Customer and Guarantor (if any).
- 16.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information, commercial and consumer information may be collected, disclosed and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:
- (a) provision of Goods;
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 16.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and
 - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. Intellectual Property

- 17.1 All intellectual property of the Seller remains the property of the Seller and any intellectual property in the design, creation or delivery of the Goods or Services remains the property of the Seller.
- 17.2 If any intellectual property is made available to the Customer or Guarantor this is only a personal, non-exclusive, non-transferable limited licence to use only for the purposes of the use of the Goods or Services under these terms and conditions and any conditions notified by the Seller.
- 17.3 The Customer and the Guarantor must keep confidential and secure any confidential information and intellectual property.

18. General

- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply are governed by the laws of Queensland and the Commonwealth of Australia and are subject to the jurisdiction of the courts of Queensland and the Seller, Customer and Guarantor submit to the non-exclusive jurisdiction of those courts.
- 18.3 The Seller is not liable to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 18.4 In the event of any breach of these terms and conditions or any agreement by the Seller the remedies of the Customer are limited to damages which under no circumstances shall exceed the Price of the Goods or Services.

- 18.5 The Customer cannot set off against or deduct from amounts payable or the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 18.6 The Seller may assign, license or sub-contract all or any part of its rights and obligations without the Customer's or Guarantor's consent.
- 18.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 18.8 Neither party is liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the Seller to enforce any provision of these terms and conditions is not treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 18.10 The electronic acceptance, accepted quotation, application, work authorisation, invoice or purchase order and these terms and conditions constitute the entire agreement between the parties and all previous negotiations, understandings or representations are merged in this Agreement and are of no effect.

19. Guarantee and Indemnity

- 19.1 The Seller may require another individual or legal entity as Guarantor to guarantee the Customer's obligations, rights and debts under this Agreement on terms required by the Seller.
- 19.2 Each party signing or electronically giving any Guarantee and Indemnity attached to or under this Agreement:
- (a) confirms its request to the Seller to grant this Agreement;
 - (b) agrees to be bound as a party to the Agreement; and
 - (c) accepts and undertakes to all obligations of the Customer in the Agreement.
- 19.3 If there are two or more Guarantors, each Guarantor is liable for the obligations individually and together with each Guarantor.