

HAWK GROUP LIMITED
NZ Company No. 163485
trading as Hawk
ABN 48 379 940 812

TERMS AND CONDITIONS

The following terms and conditions apply to all purchases of goods or services by the Buyer from Hawk Group Limited Company No. 163485 (including purchases on credit) whether such purchases are completed by written, electronic or oral communication.

1 DEFINITIONS

1.1 In these terms and conditions:

- "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;
- "Agreement" means any agreement for the provision of Goods by Hawk to the Buyer;
- "Buyer" means the person, jointly and severally if more than one, to whom any quotation is made or invoice rendered to, any person offering to contract with Hawk on these Terms and any person who purchases Goods from Hawk and/or who enters and signs these Terms;
- "Hawk" means Hawk Group Limited Company No. 163485 and its agents, servants and employees and any Related Entity (if such Related Entity is named as the party making, or accepting, the Buyer's order of Goods);
- "consumer" is as defined in the ACL and in determining if the Buyer is a consumer, the determination is made if the Buyer is a consumer under the Agreement;
- "Corporations Act" means the *Corporations Act 2001* (Cth.) and its associated Regulations as amended;
- "Default Interest Rate" means the rate five (5%) per cent above Hawk's bank commercial overdraft interest rate from time to time;
- "Goods" means all products and services supplied by Hawk to the Buyer under any contract, arrangement or understanding between Hawk and the Buyer;
- "GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;
- "PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;
- "Quoted Date" means the scheduled date of delivery as agreed between the Buyer and Hawk;
- "Related Entity" means:
- (a) in respect of a body corporate, anyone who is an associate of that body corporate under sections 11 to 15 (inclusive) of the Corporations Act; and
 - (b) in respect of an individual, an 'Associate' of that individual as defined in section 318 of the Income Tax Assessment Act 1936 (Cth); and

"Terms" means these terms and conditions of trade.

2 TERMS AND CONDITIONS

- 2.1 Unless Hawk otherwise agrees in writing, the Terms apply exclusively to every Agreement and the Buyer agrees that these Terms will prevail over any of the Buyer's terms and conditions of purchase (if any).
- 2.2 To the extent permitted by law, these Terms (and any Supplier Agreement terms in force from time to time between the parties) supersede and exclude all prior discussions, representations (contractual or otherwise) and arrangements (in writing or otherwise) relating to the supply of the Goods
- 2.3 The Terms may include additional terms in Hawk's quotation, which are not inconsistent with the Terms.
- 2.4 An Agreement is accepted by Hawk when Hawk accepts, in writing or electronic means, an offer from the Buyer or provides the Buyer with the Goods.
- 2.5 Hawk has absolute discretion to refuse to accept any offer.
- 2.6 The Buyer must provide Hawk with its specific requirements, if any, in relation to the Goods.

3 ADVICES

- 3.1 The Buyer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Hawk in relation to the Goods or their use or application; and
 - (b) it has not made known, either expressly or by implication, to Hawk any purpose for which it requires the Goods and it has the sole responsibility of satisfying itself that the Goods are suitable for the use of the Buyer.

4 DELIVERY

- 4.1 Subject to clause 4.7(a), Hawk will arrange for the delivery of the Goods to the Buyer.
- 4.2 The Buyer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Buyer to the point of delivery.
- 4.3 Hawk may make part delivery of Goods and Hawk may invoice the Buyer for the Goods provided.
- 4.4 The Buyer indemnifies Hawk against any loss or damage suffered by Hawk, its sub-contractors or employees as a result of delivery, except where the Buyer is a consumer and Hawk has not used due care and skill.
- 4.5 Any period or date for delivery of Goods stated by Hawk is an estimate only and not a contractual commitment.
- 4.6 Hawk will make all reasonable efforts to have the Goods delivered to the Buyer on the Quoted Date, but Hawk shall not be liable to the Buyer or any third party for any failure to deliver or delay in delivery for any reason. No delay in delivery, or failure to deliver, will entitle the Buyer to cancel its order, claim compensation or damages of any type or treat the purchase order as repudiated.
- 4.7 Delivery of Goods is deemed to be made on the earlier of the following:

- (a) when the Buyer, or the Buyer's agent (including the Buyer's carrier), is given possession of the Goods at Hawk premises or elsewhere (in which case loading is then at the Buyer's risk); or
- (b) when the Goods arrive at the Buyer's premises (unloading is then at the Buyer's risk).

5 RISK

5.1 Unless otherwise agreed in writing, all risk in and to the Goods purchased and all insurance responsibility for theft, damage or otherwise shall pass to the Buyer immediately on delivery or when the Goods are taken from Hawk's premises.

5.2 If:

(a) Hawk does not receive instructions sufficient to enable it to deliver the Goods within four (4) business days of notification to the Buyer that the Goods are ready to be delivered; or

(b) delivery is attempted and is unable to be completed, the Buyer shall be deemed, for all purposes, to have taken delivery of the Goods from such date and the Buyer shall be liable to Hawk for storage charges payable on demand.

5.3 The Goods are sold to the Buyer on the basis that the Buyer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

5.4 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation or possession of any of the Goods sold by Hawk, unless recoverable from Hawk on the failure of any statutory guarantee under the ACL.

6 TITLE

6.1 Title to the Goods shall pass to the Buyer when the goods are delivered and all monies are received, under a direct sale Agreement. Title to the Goods shall pass to the Buyer when the Goods are scanned for use, under a consignment Agreement.

6.2 The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with clause 6.1:

(a) title and property in all Goods remain vested in Hawk and do not pass to the Buyer;

(b) the Buyer holds the Goods as bailee and agent for Hawk; and

(c) a fiduciary relationship exists between the Buyer and Hawk.

6.3 Until title in and to the Goods passes to the Buyer in accordance with this clause 6 the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Hawk. Hawk shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer, or any other party, to enter any premises occupied by the Buyer or where it suspects the Goods are held in order to search and remove the Goods and sever or disconnect in anyway whatsoever the Goods from other property (if required by Hawk). For this purpose, the Buyer irrevocably licences Hawk to enter such premises and also indemnifies the Buyer from and against all costs, claims, demands or actions by any party arising from such action.

6.4 The Buyer acknowledges that if it wishes to sell the Goods (full and unopened pallets) before title to the Goods has passed to the Buyer, it must obtain the prior written consent of Hawk and the Buyer sells the Goods as a fiduciary agent of Hawk provided that such sales shall not give rise to any obligations on the part of Hawk. The Buyer shall hold the proceeds of sale on trust for Hawk in a separate account with a bank to whom the Buyer has not given security (however failure to do so will not affect the Buyer's obligation as trustee) and account and pay to Hawk the subject proceeds on demand.

6.5 This clause will not limit Hawk's rights under the PPSA and clause 13 of these Terms.

7 PRICE

7.1 Unless otherwise agreed in writing, the price charged for the Goods shall be the price determined by Hawk at the date of order (when a purchase order number has been received).

7.2 If the Buyer requests any variation to the Agreement, Hawk may increase the price to account for the variation.

7.3 Where there is any change in the costs incurred by Hawk in relation to Goods, Hawk may vary its price to take account of any such change, by notifying the Buyer.

8 FORCE MAJEURE

8.1 Deliveries may be totally or partially suspended by Hawk during any period in which Hawk may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Hawk's reasonable control, including, but not limited to industrial disputes, strikes, lockouts or other labour difficulty, inability to obtain any materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network, import or export restrictions, acts of God, acts or threats of terrorism or war, epidemic or pandemic (**Force Majeure Event**). Hawk shall not incur any liability to the Buyer to the extent that it is prevented from acting by any such Force Majeure Event.

8.2 If a Force Majeure Event occurs, Hawk may suspend or terminate the Agreement by written notice to the Buyer.

9 PAYMENT AND DEFAULT

9.1 Unless agreed in writing and subject to clause 9.2, all accounts shall be payable on the 20th of the month following delivery of the Goods, in a direct sale Agreement, or on the 20th of the month following scanning of the pallet, in a consignment Agreement, or as otherwise identified on any statement of account issued by Hawk. All payments must be made in full and without any deduction or set off or counterclaim.

9.2 Hawk reserves the right to require payment in full on delivery of the Goods.

9.3 The time for payment is of the essence.

9.4 If the Buyer defaults in payment of any amount payable to Hawk, the Buyer shall, on demand, pay interest at the Default Interest Rate compounding monthly on the moneys unpaid from the due date for payment to the date of actual payment.

9.5 Hawk may allocate any payment received from the Buyer to any account, or accounts including any debts, charges and expenses incurred under these Terms, owed by the Buyer to Hawk in such proportions as Hawk in its sole discretion sees fit.

9.6 The Buyer shall be liable for and hereby agrees to indemnify Hawk in respect of all costs and expenses which Hawk may incur as a result of any default by the Buyer under these Terms, including legal costs and expenses incurred on a solicitor/client basis. The costs and expenses that may be claimed in accordance with this clause include, but are not limited to, any cost or expenses that may be incurred by Hawk in enforcing its rights under clauses 6 and 13 hereof.

9.7 If the Buyer defaults in payment by the due date of any amount payable to Hawk, then all money which would become payable by the Buyer to Hawk at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and Hawk may, without prejudice to any of its other accrued or contingent right:

(a) cease or suspend supply of any further Goods to the Buyer; and

(b) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.

9.8 Clause 9.7 may also be relied upon, at Hawk's option:

(a) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Buyer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

10 CANCELLATION

10.1 Hawk may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms on giving the Buyer written notice. Without limiting the generality of the foregoing, the decision of Hawk shall be final and Hawk accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to operation of this condition.

10.2 If Hawk is unable to deliver or provide the Goods, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.

10.3 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on Hawk once the order has been accepted.

11 DEFECTS

11.1 The Buyer shall inspect the Goods on delivery and shall within forty-eight (48) hours of the delivery notify Hawk directly in writing of any alleged external defect (rips to shrouds or damage that may have occurred in transit that could lead to faulty product due to a lack of weather tightness), shortage in quantity, rubbed off labels, damage or failure to comply with the description or quote. Notification shall also be made on the deliverer's copy and the Buyers copy of the consignment note. The Buyer shall afford Hawk an opportunity to inspect the Goods within a reasonable time following the delivery if the Buyer believes the Goods are defective in any way. Subject to clause 11.4, if the Buyer fails to comply with this clause the Goods shall be conclusively presumed to be provided in accordance with the Terms and free from any external defect or damage.

11.2 For defective Goods which Hawk has agreed in writing that the Buyer is entitled to reject, Hawk's liability is limited to (at Hawk's discretion) replacing the Goods or crediting the purchase price provided that:

(a) the Buyer has complied with the provisions of clause 11.1.

11.3 Subject to clause 11.4, Hawk will not accept Goods for return or be liable for the Goods that:

(a) have not been stored or used in the proper manner;

(b) have been specifically produced, imported or acquired to fulfil the Agreement;

(c) are discontinued Goods or no longer stocked by Hawk;

(d) have been altered in any way;

(e) have been used; or

(f) are not in their original condition and packaging.

11.4 If the Buyer is a consumer, nothing in this clause 11 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

12 EXPORT PROHIBITION

12.1 Subject to clause 12.2 hereof, the Goods are for use in Australia only and must not be exported without the written consent of Hawk.

12.2 This clause shall not apply to Goods that are used for the packing of export fruit, eggs or other produce and then exported with those fruit, eggs or other produce.

13 PERSONAL PROPERTY SECURITIES ACT 2009 (Cth.)

13.1 Upon assenting to these Terms and notwithstanding anything to the contrary contained in these Terms, the Buyer acknowledges and agrees that, for the purposes of the PPSA:

(a) terms used in clause 13 that are defined in the PPSA have the same meaning as in the PPSA;

(b) these Terms are a security agreement and Hawk has a Purchase Money Security Interest in all present and future Goods supplied by Hawk to the Buyer and the proceeds of the Goods;

(c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and

(d) the Buyer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Hawk on the Personal Property Securities Register.

13.2 The security interest arising under this clause 13 attaches to the Goods when the Goods are collected or dispatched from the Hawk's premises and not at any later time.

13.3 Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

13.4 Hawk and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

13.5 To the extent permitted by the PPSA, the Buyer agrees that:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on Hawk will apply only to the extent that they are mandatory or the Buyer agrees to their application in writing; and

(b) where Hawk has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

13.6 The Buyer must immediately upon Hawk's request:

(a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and

(b) procure from any person considered by Hawk to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Hawk may at any time require.

13.7 Hawk may allocate amounts received from the Buyer in any manner the Buyer determines, including in any manner required to preserve any Purchase Money Security Interest (**PMSI**) it has in Goods supplied by Hawk.

13.8 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

13.9 The Buyer consents to Hawk registering a Financing Statement under the PPSA in respect of the Goods supplied (for which express purpose credit has been extended) in accordance with these Terms to create a PMSI. The Buyer agrees to the debiting of its accounts with Hawk with the cost of registration of the PMSI and all other costs associated with perfection and enforcement of the PMSI (including Hawk's full solicitor/own client costs.)

13.10 The Buyer agrees that the seizure, and/or repossession and retention of the Goods will only satisfy so much of the Buyer's debt to Hawk as is equivalent to Hawk's estimation of the market value of the Goods as they are to be used by Hawk at the date of seizure, and/or repossession and the seizure, and/or repossession and retention will immediately extinguish any right and/or interest the Buyer has in the Goods.

13.11 The Buyer will indemnify Hawk for any claims brought by a third party against Hawk as a result of Hawk's repossession and retention of the Goods.

14 PRIVACY AUTHORITY

14.1 The Buyer is informed that personal information (including any opinion) relating to the Buyer might be disclosed by Hawk to a

credit reporting business (as that term is defined in the Privacy Act 1988 (Cth)). The Buyer authorises any such disclosure.

14.2 The Buyer authorises:

(a) Hawk to obtain from, receive from or disclose to, a credit reporting business or trade reference, and that any such credit reporting business or trade reference might disclose to Hawk, personal information concerning the Buyer's commercial activities, commercial credit worthiness credit standing, credit history or credit capacity and use that information for the purposes of assessing any application, exchanging information with other credit providers, and the Buyer's credit worthiness at any time; and

(b) any credit reporting business giving to Hawk a credit report requested by it for the purpose of assessing any application and which contains personal information about the Buyer.

15 INTELLECTUAL PROPERTY

15.1 Where Hawk has any intellectual property rights in the Goods (including but not limited to copyright, trade mark rights, patent rights, design rights and trade secrets) the intellectual property shall remain with Hawk and shall only be used by the Buyer with Hawk prior written consent.

16 LIABILITY

16.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any contractual remedy for their failure.

16.2 If the Buyer is a consumer nothing in these Terms restricts, limits or modifies the Buyer's rights or remedies against Hawk for failure of a statutory guarantee under the ACL.

16.3 If the Buyer on-supplies the Goods to a consumer and:

(a) the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Hawk's liability to the Buyer;

(b) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Hawk's liability to the Buyer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by the Buyer or any third party.

16.4 If clause 16.2 or 16.3 do not apply, then other than as stated in the Terms or any written warranty statement, Hawk is not liable to the Buyer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by the Buyer or any third party.

16.5 Hawk is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

16.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of services which cannot be excluded, restricted or modified.

17 MISCELLANEOUS

17.1 If any provision of these Terms or its application to any person or circumstances is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it

shall be deemed to be void and severable and the remaining provisions of these Terms shall not in any way be affected or impaired.

17.2 The supply of Goods is governed by the law New South Wales from time to time and Hawk and the Buyer submit to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and all courts entitled to hear appeals from those Courts

17.3 Failure by Hawk to enforce any of the Terms shall not be deemed to be a waiver of any of the rights or obligations Hawk has under these Terms.

17.4 Hawk may amend these Terms at any time by written notice to the Buyer. Any variations or amendments will apply to orders placed after the notice date.

17.5 Hawk has the right to assign its rights under these Terms without the consent of the Buyer. The Buyer may not assign its rights under these Terms or under any purchase arrangement with Hawk, without first obtaining the written consent of Hawk.

17.6 These Terms may be signed in any number of counterparts with the same effect as if the separate signatures or executions were on the same instrument.

17.7 A notice must be in writing and handed personally or sent by email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email are deemed received on confirmation of successful transmission.

17.8 The Buyer must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Agreement.

Execution by Buyer

By signing these Terms and Conditions, the Buyer:

- Acknowledges having been provided with Hawk Group Limited Company No. 163485 Terms and Conditions and having read and understood them; and
- Agrees that the Terms and Conditions apply to the provision of goods and services to it by Hawk Group Limited.

If company or corporate trustee – signed for and on behalf of the Buyer

| | |
|----------------------------------|-----------------|
| Name of authorised person: _____ | Position: _____ |
| Signature: _____ | Date: _____ |

If sole trader, partnership or individual(s) as trustee

If partnership or individual(s) as trustee - all partners and individuals must sign

| | | |
|-------------|------------------|-------------|
| Name: _____ | Signature: _____ | Date: _____ |
| Name: _____ | Signature: _____ | Date: _____ |
| Name: _____ | Signature: _____ | Date: _____ |

If more than 3 directors or individuals, please have additional directors/individuals sign a copy of this page

Execution by Hawk Group Limited Company No. 163485

| | |
|----------------------------------|-----------------|
| Name of authorised person: _____ | Position: _____ |
| Signature: _____ | Date: _____ |