

Shamrock Poly Pty Ltd: Terms and Conditions of Trade

1. Definitions

"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 or services by Supplier to Customer;
"Conditions" means these Terms and Conditions of Trade;
"consumer" is as defined in the ACL and in determining if Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;
"Customer" means the person, jointly and severally if more than one, acquiring goods or services from Supplier;
"goods" means goods supplied by Supplier to Customer;
"GST" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 2009* (Cth) and its associated Regulations as amended;
"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;
"services" means services supplied by Supplier to Customer; and
"Supplier" means Shamrock Poly Pty Ltd (ABN 48 006 055 956) 59-61 Abbott Road, Hallam, Victoria 3803.

2. Basis of Contract

- 2.1 Unless otherwise agreed by Supplier in writing, the Conditions apply exclusively to every Agreement and cannot be varied or replaced by any other terms.
- 2.2 Any quotation provided by Supplier to Customer for the proposed supply of goods or services is:
 - (a) valid for 30 days;
 - (b) an invitation to treat only; and
 - (c) only valid if in writing.
- 2.3 The Conditions may include additional terms in Supplier's quotation which are not inconsistent with the Conditions.
- 2.4 Supplier may vary or amend these Conditions by written notice to Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Placing an Order

- 3.1 Customer must comply with the procedure prescribed by Supplier for the placing of orders.
- 3.2 Customer must provide Supplier with its specific requirements, if any, in relation to the goods and services.
- 3.3 Supplier has absolute discretion to refuse to accept any offer.
- 3.4 An Agreement is accepted by Supplier when Supplier accepts, in writing or electronic means, an offer from Customer or provides Customer with goods or services.

4. Payment

- 4.1 Payment for goods and services must be made within 30 days of the end of month in which Supplier's invoice is raised.
- 4.2 The time for payment is of the essence.

5. Payment Default

- 5.1 If Customer defaults in payment by the due date of any amount payable to Supplier, then all money which would become payable by Customer to Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to Customer, and Supplier may, without prejudice to any of its other accrued or contingent rights:
 - (a) charge Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 2% for the period from the due date until the date of payment in full.;
 - (b) charge Customer for, and Customer must indemnify Supplier from, all expenses and costs (including legal costs on an indemnity basis) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or recover any goods;
 - (c) cease or suspend supply of any further goods or services to Customer;
 - (d) by written notice to Customer, terminate any uncompleted contract with Customer.
- 5.2 Clauses 5.1(c) and 5.1(d) may also be relied upon, at Supplier's option:
 - (a) where Customer 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 Customer 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 Customer.

6. Passing of Property

- 6.1 Until Supplier receives full payment in cleared funds for all goods and services supplied by it to Customer, as well as all other amounts owing to Supplier by Customer:
 - (a) title and property in all goods remain vested in Supplier and do not pass to Customer;
 - (b) Customer must hold the goods as fiduciary bailee and agent for Supplier;
 - (c) Customer must keep the goods separate from its goods and maintain Supplier's labelling and packaging;
 - (d) Customer must hold the proceeds of any sale of the goods on trust for Supplier in a separate account with a bank to whom Customer has not given security however failure to do so will not affect Customer's obligation as trustee;
 - (e) in addition to its rights under the PPSA, Supplier may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Supplier, and for this purpose Customer irrevocably licences Supplier to enter such premises and also indemnifies Supplier from and against all costs, claims, demands or actions by any party arising from such action.

7. Personal Property Securities Act

- 7.1 Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- 7.2 For the purposes of the PPSA:
 - (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Conditions are a security agreement and Supplier has a Purchase Money Security Interest in all present and future goods supplied by Supplier to Customer and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by Customer at any particular time; and
 - (d) Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Supplier on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from Supplier's premises and not at any later time.
- 7.4 Where permitted by the PPSA, Customer 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.
- 7.5 Supplier and Customer 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 Conditions.
- 7.6 To the extent permitted by the PPSA, Customer agrees that:
 - (a) the provisions of Chapter 4 of the PPSA which are for the benefit of Customer or which place obligations on Supplier will apply only to the extent that they are mandatory or Supplier agrees to their application in writing; and
 - (b) where Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.7 Customer must immediately upon Supplier'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 Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Supplier may at any time require.
- 7.8 Supplier may allocate amounts received from Customer in any manner Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Supplier.
- 7.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Conditions 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 Conditions or the sale of the goods, except as otherwise required by law or that is already in the public domain.

8. Pricing

- 8.1 Prices quoted for the supply of goods and services exclude:
 - (a) GST and any other taxes, duties or imposts imposed on or in relation to the goods and services; and
 - (b) the cost of freight, insurance and other charges arising from the point of despatch of the goods to Customer to the point of delivery which are Customer's responsibility.

- 8.2 If Customer requests any variation to the Agreement, Supplier may increase the price to account for the variation.
- 8.3 Where there is any change in the costs incurred by Supplier in relation to the goods or services, Supplier may vary its price for goods or services on order to take account of any such change.
- 9. Intellectual Property**
- 9.1 Customer warrants that it owns the copyright in, or is licensed to authorize Supplier to, reproduce all material supplied by Customer to Supplier for the purpose of providing the goods and services and Customer hereby expressly authorises Supplier to reproduce all and any such material for the purpose of providing the goods and services.
- 9.2 Customer indemnifies and agrees to keep indemnified Supplier against all liability, losses, claims and expenses (including legal cost on indemnity bases) incurred by Supplier in relation to or in anyway directly or indirectly connected with any breach of intellectual property rights in relation to material supplied by Customer.
- 10. Risk and Insurance**
- 10.1 Customer must not use the goods in conjunction with flammable, toxic or dangerous products.
- 10.2 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to Customer immediately on the goods being delivered to Customer or taken from Supplier's premises.
- 10.3 Supplier has no obligation to insure any property of Customer in Supplier's possession.
- 10.4 Customer assumes all risk and liability for loss, damage or injury to persons or to property of Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Supplier, unless recoverable from Supplier on the failure of any statutory guarantee under the ACL.
- 11. Delivery and Performance of Contract**
- 11.1 Any period or date for delivery of goods or provision of services stated by Supplier is an estimate only and is not a contractual commitment.
- 11.2 Supplier will use its best reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by Customer of any third party for failure to meet any estimated date.
- 11.3 If Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 11.4 Supplier will use its best endeavours to supply the quantity of goods ordered by Customer, however, Customer will allow a variation in quantity of plus or minus 10%.
- 11.5 Subject to clause 11.10, Supplier will arrange for the delivery of the goods to Customer.
- 11.6 Customer authorises Supplier to subcontract delivery in its absolute discretion.
- 11.7 Supplier may make part delivery of goods or provision of services and Supplier may invoice Customer for the goods and services provided.
- 11.8 Customer indemnifies Supplier against any loss or damage suffered by Supplier, its sub-contractors or employees as a result of delivery, except where Customer is a consumer and Supplier has not used due care and skill.
- 11.9 If delivery is attempted and is unable to be completed Customer is deemed to have taken delivery of the goods. Customer is liable for storage charges payable monthly on demand.
- 11.10 If agreed that Customer will collect the goods:
- Customer must collect the goods within 14 days of being advised that the goods are ready;
 - if Customer does not collect the goods within this time, Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 12. Shortages and Exchanges**
- 12.1 Subject to clause 12.2 and 12.4, Customer must, within 7 days of delivery of goods, notify the company in writing of any alleged claims for short or wrongful delivery, damaged goods or non compliance with specifications. If Customer fails to inspect and give notice within 7 days, Customer is deemed to have accepted the goods.
- 12.2 Subject to clause 12.4, when a claim for short or wrongful delivery, damaged goods or non compliance with specifications is accepted by Supplier, it may at its option, replace the goods or refund the price of the goods.
- 12.3 Subject to clause 12.4, Supplier will not under any circumstances accept goods for return that:
- have been specifically produced, imported or acquired to fulfil the Agreement;
 - are discontinued goods or no longer stocked by Supplier;
 - have been altered in any way;
 - have been used; or
 - are not in their original condition and packaging.
- 12.4 If Customer is a consumer, nothing in this clause 12 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 13. Liability**
- 13.1 Except as the Conditions specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 13.2 If Customer is a consumer nothing in these Conditions restricts, limits or modifies Customer's rights or remedies against Supplier for failure of a statutory guarantee under the ACL.
- 13.3 Subject to clause 13.4, if Customer on-supplies the goods to a consumer and:
- the goods or services 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 Supplier's liability to Customer;
 - the goods or services 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 Supplier's liability to Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by Customer or any third party.
- 13.4 If:
- Customer uses up or transforms the goods in the course of trade, and when Customer supplies its own goods to a consumer the goods are no longer "goods" as defined under the ACL; or
 - clauses 13.2 or 13.3 do not apply;
- then Supplier will not be liable to Customer or the consumer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by Customer or any third party.
- 13.5 Supplier is not liable for any indirect or consequential losses or expenses suffered by Customer 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.
- 13.6 Customer acknowledges that:
- it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Supplier in relation to the goods or services or their use or application.
 - it has not made known, either expressly or by implication, to Supplier any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of Customer.
- 13.7 Nothing in the Conditions 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.
- 14. Cancellation**
- 14.1 If Supplier is unable to deliver or provide the goods or services, then it may cancel Customer's order (even if it has been accepted) by notice in writing to Customer.
- 14.2 No purported cancellation or suspension of an order or any part of it by Customer is binding on Supplier once the order has been accepted by Supplier.
- 15. Miscellaneous**
- 15.1 The law of Victoria from time to time governs the Conditions. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2 Supplier's failure to enforce any of these Conditions shall not be construed as a waiver of any of Supplier's rights.
- 15.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Conditions, without affecting the enforceability of the remaining terms.
- 15.4 A notice must be in writing and handed personally or sent by email, facsimile 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 facsimile or email are deemed received on confirmation of successful transmission.
- 15.5 Customer must comply with the National Privacy Principles in connection with any information supplied to it in connection with this Agreement.