

Selkirk Pty Ltd

Conditions of Sale



1. INTERPRETATION

In these Conditions of Sale:

- (a) ACL means the Australian Consumer Law set out in a Schedule to the Competition and Consumer Act 2010 (Cth);
- (b) Approved Credit Limit has the meaning given to that term in clause 4(d);
- (c) Authority means any public utility services, governmental authority or government in any jurisdiction;
- (d) Buyer means the person or entity ordering the Goods, as shown on the invoice, purchase order or other document evidencing an order for Goods, or anybody claiming through the Buyer to accept delivery of the Goods;
- (e) Conditions of Sale means these conditions of sale as amended in accordance with clause 18(k);
- (f) Consumer Guarantee has the meaning given to that term in the Competition and Consumer Act 2010 (Cth);
- (g) Credit Application means any form accepted by the Supplier as an application for credit;
- (h) Delivery Date means the date on which the Goods are delivered to the Buyer;
- (i) Delivery Location means at, in the near vicinity of an address specified by the Buyer;
- (j) Goods means those products shown on an invoice sold by the Supplier to the Buyer from time to time;
- (k) GST means the goods and services tax levied under the GST Act;
- (l) GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (m) Guarantee means a guarantee and indemnity made by may one or more persons in favor of the Seller as security for obligations and payments due by the Buyer to the Supplier under these Conditions of Sale and provided as a condition of credit or extending credit and/or making supplies to the Buyer in a form accepted by the Supplier;
- (n) PPSA means the Personal Property Securities Act 2009 (Cth);
- (o) Services means any services that the Supplier supplies to the Buyer in accordance with these Conditions of Sale;
- (p) Supplier means the Selkirk Group entity named on the delivery docket or invoice issued for each supply of goods;
- (q) Suppliers Premises means any location from where the Goods are supplied or made available to the Customer;
- (r) the singular includes the plural and vice versa;
- (s) a reference to a document or instrument, including these Conditions of Sale, includes this document or instrument as novated, altered or replaced from time to time;
- (t) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (u) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;
- (v) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (w) if an act required to be done under these Conditions of Sale on or by a given day is done after 5:00 pm on that day, it is taken to be done on the following day;
- (x) a reference to a person includes a reference to that person's legal representative for the time being;
- (y) a party that is a trustee is bound both personally and in its capacity as trustee;
- (z) all monetary amounts are in Australian dollars; and
- (aa) headings are inserted for convenience only and do not affect the interpretation of this Agreement.

2. APPLICATION

- (a) These Conditions of Sale apply to all sales of Goods by the Supplier to the Buyer unless expressly waived or varied by the Supplier in writing.
- (b) At the time of the Buyer's order and again on the Delivery Date the Buyer accepts the Suppliers Conditions of Sale. The Buyer expressly acknowledges that any conditions of sale proposed by the Buyer do not apply to the purchase of Goods from the Supplier.

3. PRICE

- (a) Subject to clause 5(d) the order of precedence for determining the price of the Goods shall be:
 - (i) the Supplier's current ruling price at the date of delivery;
 - (ii) the price shown on the Supplier's invoice;
 - (iii) any quotation given by the Supplier; and
 - (iv) the price shown on the Buyer's order.
- (b) The Supplier makes no warranty that the price of Goods at the Delivery Date shall be the same as at the date of order or quotation. The Buyer acknowledges that the price of Goods is subject to change without prior communication by the Supplier.
- (c) Prices include delivery unless collection is arranged by the Buyer and it has been agreed that 'ex-yard' prices apply.
- (d) Unless specifically stated on the Supplier's invoice, prices include GST.

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4. CREDIT

- (a) The Supplier may, but is not obliged to, supply the Buyer with the Goods on terms that do not require payment in full by the Delivery Date. If it does so, this clause applies.
- (b) The Supplier will require the Buyer to complete a Credit Application as a condition of extending credit.
- (c) The Supplier may withdraw, suspend or vary the conditions of credit at any time.
- (d) The Supplier may set and vary credit limits for the Buyer from time to time (Approved Credit Limit).
- (e) The Supplier may:
 - (i) vary the Buyer's Approved Credit Limit at any time; and/or
 - (ii) require the Buyer to make a payment on or prior to delivery at any time.
- (f) The Buyer warrants and acknowledges that:
 - (i) the Buyer has read and understood the Credit Application and these Conditions of Sale;
 - (ii) all of the information provided by the Buyer to the Supplier is true and correct in every particular;
 - (iii) the Buyer can pay its debts as and when they fall due;
 - (iv) each person who submits a Credit Application and makes orders on behalf of the Buyer is (or at the time of making each order will be) authorised to do each of those things on behalf of the Buyer; and
 - (v) the Buyer promises not to make any claim or seek to withhold any payment or avoid its obligations, in respect of any of the above matters.
- (g) The Supplier may require one or more persons to provide a Guarantee;
- (h) If required, the Buyer must immediately procure and deliver executed Guarantee/s to the Supplier.
- (i) The Buyer authorises and consents to the release to the Supplier of any information sought by the Supplier from any bank, financial institution, credit provider, credit reporting agency or register. If requested by the Supplier, the Buyer must sign any document needed to enable the Supplier to obtain such information.
- (j) The Supplier may require further financial or personal information from the Buyer or third party on behalf of the Buyer. The Buyer must procure the immediate delivery of such items to the Supplier.
- (k) The Supplier's rights under paragraphs (i) and (j) above extend to any person who has or is required to give a Guarantee under this clause.
 - (l) The Supplier may, at any time and in its absolute discretion (subject to the ACL) do any one or more of the following:
 - (i) reduce the time for payment;
 - (ii) terminate any credit accommodation granted to the Buyer;
 - (iii) demand immediate repayment from the Buyer of all amounts owing (whether or not a due date for payment has arrived or passed);
 - (iv) impose interest and other charges in accordance with clause 6; and/or
 - (v) continue to supply the Buyer on a cash on delivery basis.
- (m) The Supplier may appoint an agent to act on its behalf in respect of invoicing and debtor management, in its absolute discretion.

5. PAYMENT

- (a) Notwithstanding any prior grant of credit to the Buyer, the Supplier reserves the right to demand payment prior to delivery in respect of any delivery of Goods.
- (b) Payment for the Goods is due on the last day of the month immediately following the month in which the Goods are delivered.
- (c) All payments must be made in full without set off.
- (d) The Supplier may accept pre-payments provided that delivery of the Goods must be taken within 3 months of the pre-payment. The price for Goods pre-paid shall be the Supplier's ruling price as at the date of the pre-payment. Should delivery of the Goods not be taken within the stipulated time frame, the Supplier may, in its absolute discretion:
 - (i) refund the pre-payment; or
 - (ii) continue to hold the pre-payment but the price of the Goods shall become the Supplier's current ruling price at the date of delivery, and the Buyer shall pay any balance due in accordance with paragraphs (a), (b) and (c) above.

6. INTEREST & CHARGES

- (a) The Supplier may charge and the Buyer must pay:
 - (a) interest at the Reserve Bank of Australia Cash Target Rate plus 10 percent basis points, on all amounts not paid by the due date for payment, with such interest calculated from the due date until the date that payment in full is received as clear funds by the Supplier; and
 - (b) The Buyer is liable for all out-of-pocket expenses and all other reasonable expenses including debt collection commission (as if the account had been collected) and any other contingent expenses and legal costs on a solicitor/own basis incurred by the Supplier for enforcement of obligations and recovery of monies due from the Buyer to the Seller.

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7. DELIVERY

- (a) For the purpose of these Conditions of Sale, Goods will be deemed to have been delivered at the earliest of any of the following:
- (i) when delivered at the Delivery Location;
 - (ii) when delivered into the possession of the Buyer or a carrier engaged by the Buyer, at the Suppliers Premises;
 - (iii) when delivered into the possession of a carrier engaged by the Supplier to deliver the Goods to the Buyer, at the Suppliers Premises;
 - (iv) when delivered to any station, wharf, rail yard or loading point specified by the Buyer; or
 - (v) when collected from the Suppliers Premises by the Buyer.
- (b) If the Supplier agrees to deliver the Goods to a place other than the Supplier's Premises then:
- (i) the Buyer shall ensure reasonable and proper access at the site specified for delivery, and without limitation must remove temporary fencing and other obstacles and ensure that there are crossing facilities approved by the relevant Authority;
 - (ii) if, by reason of obstruction or poor identification of the site, the Goods are returned to the Supplier, the price of the Goods shall be increased by any cost or charge incurred by the Supplier;
 - (iii) if access difficulties or other delays cause the time spent at the site by the carrier to exceed the standard delivery time, the price of the Goods shall be increased by any additional cost or charge incurred by the Supplier; and/or
 - (iv) where any damage is caused to any roads, footpaths, or other property in effecting delivery the Buyer shall indemnify and keep indemnified the Supplier for any costs, loss, damage, expense or other claim made against the Supplier arising directly or indirectly from the Supplier attempting to effect or actually effecting delivery.
- (c) The Buyer is solely responsible for, and must arrange at its cost, necessary traffic management to achieve safe delivery of the Goods. The Buyer warrants that it has obtained consent from any relevant Authority in respect of any traffic management necessary to ensure the safe delivery of the Goods. The Buyer indemnifies the Supplier for any cost incurred by the Supplier or the Supplier's agent due to a failure by the Buyer to comply with this clause 7(c);
- (d) Assessment as to whether a site is able to take safe delivery of the Goods is determined by the Supplier or the Suppliers agent. The Supplier or the Suppliers agent may (in its absolute discretion) render delivery unsafe or impractical and return the Goods to the Suppliers Premises. The Buyer will bear responsibility for payment of a cancellation fee, restocking fee and any additional costs that the Supplier incurs as a consequence of the incomplete delivery.
- (e) The Buyer acknowledges that a cancellation fee will be charged if any delivery is cancelled after 1:00pm on the day prior to delivery. The cancellation fee is subject to change at the discretion of the Supplier and will be the amount shown on the Supplier's final invoice
- (f) The type and number of delivery vehicles required to complete the delivery of the Goods is determined by the Supplier, in its absolute discretion. The Buyer acknowledges that it will be bound to comply with this clause 7(f) regardless of the type and number of delivery vehicles used by the Supplier.
- (g) The time of delivery of the Goods is determined by the Supplier, in its absolute discretion. The Supplier makes no representation that the Goods will be delivered to the Delivery Location at any particular time on the Delivery Date.
- (h) The Buyer is responsible for and shall indemnify the Supplier for all costs, claims, charges or expenses incurred by the Supplier (including those charged or payable to a third party) in connection with delivery of Goods which arises as a consequence of an act or omission by the Buyer or are contributed to by the Buyer (or a party for whom the Buyer is responsible).

8. ACCEPTANCE

- (a) The Buyer shall inspect all Goods immediately upon delivery.
- (b) The Buyer shall be deemed to have accepted the Goods and shall not make any claim in respect of the Goods or that the Goods do not comply with the order or Conditions of Sale unless the Buyer:
- (i) provides written notice of any alleged defect or non-compliance in respect of the Goods to the Supplier ("Defect Notice");
 - (ii) prior to affixing, laying or otherwise using the Goods (and in any event not later than 3 days after delivery); and
 - (iii) only if the defects amount to more than 5% of the total quantity of "first quality" Goods delivered.
- (c) If the Buyer fails to give a defect notice in accordance with this clause, then subject to any non-excludable condition implied by law (including the ACL), the Goods shall be deemed to have been accepted by the Buyer.
- (d) The Supplier makes no warranty of quality or fitness in respect of Goods sold as "seconds" or "commons".
In no circumstances may the Buyer cancel an order for Goods, however if the Supplier accepts a cancellation, the Supplier reserves the right to claim and the Buyer agrees to pay a cancellation fee equal to 10% of the price of the Goods for which the order is cancelled.

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9. RETURN

- (a) Except as required under the ACL, the Supplier is not obliged to accept return of any Goods.
- (b) If the Supplier accepts a defect notice, the Supplier may in its absolute discretion:
 - (i) accept the Goods for return and either:
 - (ii) credit the Buyer's account for the price of the Goods less any cartage and handling costs in returning the Goods (provided that the Supplier may not deduct the cartage and handling costs where the Supplier admits that through the Supplier's act or omission that incorrect or defective Goods were delivered); or
 - (iii) replace the Goods or supply equivalent Goods; or
 - (iv) refund any part of the price paid for the Goods.
- (c) If the Supplier does not accept a defect notice, it shall not be obliged to accept return of the Goods and clause 18(j) shall apply.

10. TITLE

- (a) Title to Goods does not pass to the Buyer until payment in full is received by the Supplier from the Buyer, and until the price is paid in full the Buyer must:
 - (i) store Goods which have not been paid for separately;
 - (ii) keep separate records in relation to the proceeds of the sale of any Goods which have not been paid for, hold the proceeds of any such sale upon trust for and immediately remit such funds to the credit of the Supplier; and
 - (iii) if any Goods are used in a manufacturing process or mixed with other materials, the Buyer must record the value of Goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product immediately remit that amount from the proceeds of sale to the Supplier.
- (b) If the Buyer does not pay for any Goods on the due date specified in each invoice, the Supplier is irrevocably authorised by the Buyer to enter the Buyer's premises (or any premises under the control of the Buyer or as agent of the Buyer if the Goods are stored at such premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Buyer or anyone claiming through the Buyer whatsoever.
- (c) Even after delivery, the Goods shall remain the property of the Supplier until all outstanding debts owed by the Buyer to the Supplier, including part paid debts and secured debts, are paid.
- (d) The risk of loss or damage to the Goods passes to the Buyer on the Delivery Date.

11. SECURITY INTEREST

- (a) In this clause 11, terms which are defined in the PPSA have the meaning given to them in the PPSA.
- (b) The Buyer agrees to grant the Supplier a security interest in all present and after-acquired Goods and their proceeds.
- (c) At the request of the Supplier, the Buyer agrees to promptly execute any documentation necessary, or to do anything else required by the Supplier, to ensure that the security interest created under these Conditions of Sale shall constitute a first ranking, perfected security interest over the Goods and their proceeds. This includes providing any information necessary for the Supplier to complete a financing statement or financing change statement.
- (d) The Buyer waives the Buyer's right to receive a copy of a verification statement under the PPSA.
- (e) The Buyer agrees to reimburse the Supplier for all costs and charges incurred, expended or payable by the Supplier in relation to the filing of a financing statement or financing change statement in accordance with these Conditions of Sale.
- (f) The Supplier reserves all rights and powers it may have in addition to those conferred under the PPSA.

12. RISK

Risk in the Goods passes to the Buyer upon delivery.

13. WARRANTIES AND ACKNOWLEDGEMENTS

- (a) The Supplier warrants that Goods sold under the description 'first quality' shall comply with the Supplier's quality standards as applying from time to time.
- (b) The Buyer acknowledges Goods sold under any description other than 'first quality' (including, without limitation, Goods sold as 'seconds', "specials" or "commons") may:
 - (i) be imperfect or damaged; and
 - (ii) vary in color and texture; and
 - (iii) the Supplier makes no warranty that such Goods:
 - (a) will meet a certain quality or standard;
 - (b) will comply with any description or sample or display; or
 - (c) will be fit for any particular purpose.
- (c) The Buyer shall make no claim and (subject to clause 14) the Supplier shall not be liable for any loss, damage, expense or claim arising directly or indirectly from any imperfections, damage, variations in color or texture or other defects in respect of such Goods.
- (d) The Buyer also acknowledges that, if the Supplier has estimated quantities of Goods for purchase by the Buyer, the Supplier shall not be liable for (and the Buyer shall make no claims in respect of) any incorrect estimate.
- (e) The Supplier makes no guarantee or warranty that additional Goods supplied will be from the same batch as from the initial Goods.

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14. CONSUMER GUARANTEES

- (a) Nothing in these Conditions of Sale operates to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any write or remedy, or the imposition of any liability, implied or conferred under the ACL or any other statute, where to do so would contravene that statute or cause any party of these Conditions of Sale to be void (Non-excludable Consumer Obligations).
- (b) Except in relation to Non-excludable Consumer Obligations, and otherwise to the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom or the common law that impose any liability or obligation on the Supplier are excluded from these Conditions of Sale.
- (c) Except in relation to Non-excludable Consumer Obligations, to the extent permitted by law, the Supplier will have no liability to the Buyer for any:
 - (i) loss, harm, damage, cost or expense (including legal fees), except to the extent that any loss, harm, damage, cost or expense was caused or contributed to by the Supplier; or
 - (ii) any special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data), arising directly or indirectly under or in connection with the supply of the Goods, whether by way of indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity.
- (d) In relation to Non-excludable Consumer Obligations, except where the Supplier is supplying Goods or Services of a kind ordinarily acquired for personal, domestic or household use or consumption to the Buyer (in respect of which the Supplier's liability is not so limited under these Conditions of Sale), the Supplier's liability to the Buyer for a failure to comply with any Non-excludable Consumer Obligation (other than a Guarantee as to title, encumbrances or quiet possession) is limited to:
 - (i) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
 - (ii) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, as permitted under the ACL.
- (e) Except as expressly set out, the Supplier makes no express warranties or other representations under these Conditions of Sale.

15. LIMITATION

- (a) The Supplier's liability in respect of the Consumer Guarantees and any other warranties is limited to the fullest extent permitted by law.
- (b) To the extent permitted by statute, the Consumer Guarantees and any other warranties or representations are void if the Buyer or any other person:
 - (i) attempts to modify, reverse engineer, decompile, create other works or products from, or disassemble any part of the information contained in or extrapolated or executed from the Goods;
 - (ii) interferes with, alters or removes any packaging or labelling of any of the Goods;
 - (iii) causes or permits any contamination of the Goods; or
 - (iv) fails to comply with the Supplier's reasonable directions in relation to the use, application, storage and integrity of the Goods (including specifications and installation guidelines set out in any product manual).
- (c) To the extent permitted by law, the liability of the Supplier from the failure of any Goods to comply with the Consumer Guarantees or any other warranty or condition implied by law shall be limited to (at the Supplier's option):
 - (i) the replacement or resupply of the Goods;
 - (ii) the cost of replacement or resupply of the Goods;
 - (iii) the repair of the Goods; or
 - (iv) the cost of the repair of the Goods.

16. TERMINATION

- The Supplier may in its absolute discretion (at any time and regardless of whether or not the Buyer has complied with these Conditions of Sale):
 - (a) terminate any credit accommodation granted to the Buyer; and/or
 - (b) demand immediate payment from the Buyer of all amounts due (notwithstanding that a due date for payment may not have arrived), and the Supplier may impose interest and other charges in accordance with clause 6 from a date which is 2 days after the Supplier demands payment; and/or
 - (c) continue to supply the Buyer on a payment on delivery basis.

17. REFUNDS

Any amount refunded by the Supplier shall be refunded without interest and after deducting any amounts which the Supplier may be entitled to charge and the Buyer expressly agrees that it will make no claim for interest on moneys refunded.

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18. GENERAL

- (a) Time: Time is of the essence of these Conditions of Sale.
- (b) Force Majeure: The Buyer releases the Supplier from any claim, liability or responsibility concerning late delivery or failure to deliver Goods if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God (as determined by the Supplier), material shortage, government law or regulation or requirement, declared epidemic or pandemic (including the occurrence or subsistence of Covid-19) or any other cause beyond the control of the Supplier and no such failure shall entitle the Buyer to cancel an order or withhold payment.
- (c) Entire Agreement:
 - (i) These Conditions of Sale contain the entire agreement between the parties and supersede all previous agreements concluded between the parties. Each order and invoice (or delivery slip) shall constitute a binding and enforceable contract between the Supplier and the Buyer on the terms set out in these Conditions of Sale.
 - (ii) Any attempt by the Buyer to impose any variation or additional terms inconsistent with these Conditions of Sale shall not bind the Supplier.
- (d) Severability: If any term agreement or condition of these Conditions of Sale or the application thereof to any person or any circumstance shall be or become illegal, invalid or unenforceable, the same shall be read down, if such reading down is possible, and if found to be impossible, shall be severed and the remaining terms, agreements and conditions shall not be affected.
- (e) Proper law: These Conditions of Sale are to be interpreted in accordance with the Acts of the State of Victoria Australia, and the parties submit to the jurisdiction of the Courts of that State.
- (f) Non-Merger: A provision of these Conditions of Sale which can, and is intended to, operate after the effective date remains effective.
- (g) Confidentiality:
 - (i) The Buyer acknowledges the confidential nature of its dealings with the Supplier and the Supplier's intellectual and industrial property rights in and to the Goods.
 - (ii) The Buyer shall not copy or disclose or cause to be copied or disclosed any details of its dealings with the Supplier to a third party except with the prior written consent of the Supplier.
- (h) Privacy: Any personal information collected by the Supplier will be dealt with in accordance with the Supplier's privacy policy.
- (i) Evidence: The quantity, description and place and date of delivery of the Goods as indicated on the Supplier's invoice, delivery docket or copies thereof shall be conclusive evidence of the quantity, description and place and date of delivery of the Goods.
- (j) Dispute Resolution:
 - If a dispute:
 - (i) arises out of, or in any way in connection with, or otherwise relates to the supply of Goods, these Conditions of Sale or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, and
 - (ii) cannot be resolved between the parties within a reasonable time, the parties agree to refer their dispute to arbitration administered by the Australian Commercial Disputes Centre (ACDC). The arbitration shall be conducted in Ballarat (unless otherwise agreed) in accordance with the ACDC Rules for Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into these Conditions of Sale.
- (k) Variation
The Supplier may vary these Conditions of Sale from time to time, by notice in writing to the Buyer.
- (l) License
Selkirk, the Selkirk logo and the names of the products and services supplied by the Selkirk Group or its affiliated suppliers are licensed to, or are either trademarks or registered trademarks of, the Selkirk Group or its affiliated suppliers, and may not be copied, imitated or used, in whole or part, without the prior written permission of the Selkirk Group or the respective trademark owner.