

Terms and Conditions of Sale

1. Effect and commencement

- 1.1 If a Credit Application by me/us ("the Customer") is accepted by Sitemax Group Pty Ltd ACN 600 760 030 ("the Seller") or any of the associated entities of the Seller, or the Customer places an order for Goods which is accepted by the Seller, then the Customer jointly and severally where applicable agrees to be bound by all the Terms and Conditions of Sale in respect of all orders for goods made by the Customer hereafter.
- 1.2 The Customer's signature on the Credit Application or placement of an order for Goods with the Seller constitutes the Customer's acceptance of these Terms and Conditions of Sale (as revised from time to time in accordance with clause 2) in consideration of the Seller extending credit to the Customer.
- 1.3 If the Seller trades with the Customer on credit, then the Credit Application is deemed to have been accepted by the Seller and the Customer. The Seller reserves the right to refuse any Credit Application.

2. Amendment

- 2.1 The Seller may revise these Terms and Conditions of Sale at any time by giving the Customer written notice of the revision ("Revised Terms"). The Revised Terms will apply to any purchases the Customer makes after the date that the Revised Terms take effect.

3. Termination and Cancellation

- 3.1 The provision of credit may be terminated by the Seller with immediate effect with or without cause at any time. If the provision of credit is terminated, the Customer will remain obliged to pay the Customer's existing debt to the Seller.
- 3.2 No order for Goods may be cancelled without the Seller's consent in writing and on terms which will reimburse and indemnify the Seller against all losses including cartage, bank charges and other incidental expenses of any part of the order that is cancelled.

4. Payment Terms

- 4.1 Unless otherwise stated, all prices quoted by the Seller do not include GST.
- 4.2 Payment of the purchase price must be made on or before the thirtieth (30th) day of the month next following the delivery of the Goods or as otherwise notified by the Seller to the Customer from time to time (which may include a requirement for the Customer to pay for Goods upfront). ("Due Date").
- 4.3 If payment is not received by the Seller in relation to an invoice on or before the Due Date, the Seller has the right to declare the entire balance of the Customer's account(s) immediately due and payable.
- 4.4 The Customer must pay interest on all amounts owing and not paid by the Due Date, including amounts declared due and payable under this clause. The interest rate will be the Commonwealth Bank of Australia corporate overdraft reference rate (quarterly cycle) on the Due Date plus 4%. Interest will accrue daily until the date of full payment is received by the Seller.

5. Timing of Payment

- 5.1 Payment shall be deemed to have been made:
 - (a) If cash is tendered - on the date it is tendered; and
 - (b) If a cheque (bank or otherwise) or other negotiable instrument is tendered - on the date upon which such cheque or other negotiable instrument is negotiated and cleared by the Seller's bankers.

6. Loss or damage in transit and shortage

- 6.1 The Seller is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Goods in transit caused in any way (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage) or any short delivery of the Goods unless a claim in respect for short delivery has been lodged with the Seller within seven (7) days from delivery of the Goods to the Customer at the Customer's nominated address.

7. Retention of Title and Risk

7.1 Definitions

In clause 7, proceeds, security interest, purchase money security interest, financing statement and financing change statement have the respective meanings given to those terms by the *Personal Properties Securities Act 2009* (Cth) (PPSA).

7.2 Seller retains title in the Goods

The Seller retains title in the Goods delivered under these terms and conditions until the Customer has paid both the Purchase Price of the Goods and all other money owed by the Customer to the Seller.

7.3 Seller has a PMSI

The Seller and Customer intend clause 7 to secure the purchase price of the Goods and create a purchase money security interest in the Goods. These terms and conditions may also create a security interest in the Goods that is not a purchase money security interest.

7.4 Seller may allocate payments by the Customer

The Seller may allocate payments made by the Customer to the Seller under these terms and conditions, or any other agreement with the Seller, to any obligation owed by the Customer to the Seller.

7.5 Storage of the Goods

Once the Customer takes possession of the Goods, the Customer must store the Goods:

- (a) separately from other goods of the Customer, so that the Goods are not mixed with those other goods; and
- (b) in such a way that the Goods are recognisable as the property of the Seller.

- 7.6 **Risk**
Risk in the Goods passes to the Customer when the Products leave the Seller's premises for delivery to the Customer, or upon the Customer taking possession of the Goods, whichever occurs first.
- 7.7 Once risk has passed to the Customer, the Customer must insure the Goods and keep them insured.
- 7.8 **Customer must not dispose of the Goods**
While the Goods remain the property of the Seller, the Customer must not sell, lease, or otherwise dispose of the Goods.
- 7.9 **Customer must not grant a security interest in the Goods**
While the Goods remain the property of the Seller, the Customer must not grant or allow another to hold a security interest in:
 (a) the Goods; or
 (b) the proceeds of the Goods; or
 (c) any goods to which the Goods are installed or affixed.
- 7.10 It is a condition of this agreement that the Customer complies with clause 7.9.
- 7.11 **Costs**
The Customer must pay all costs, expenses and other charges incurred or payable by the Seller in relation to the filing of a financing statement or financing change statement on the Personal Property Securities Register in connection with these terms and conditions
- 7.12 **Breach**
If the Customer fails to comply with any obligation under these terms and conditions, then without limiting the remedies available to the Seller:
 (a) upon request by the Seller, the Customer must return the Goods on which there are outstanding amounts owing;
 (b) the Customer authorises the Seller and any person authorised by the Seller to enter premises where the Goods may be located to take possession of the Goods; and
 (c) the Seller may retain, sell or otherwise dispose of the Goods.
- 7.13 The Customer agrees to the extent permitted under the PPSA, the Customer has no right:
 (a) to receive notice of removal of an accession under the PPSA;
 (b) under Chapter 4 of the PPSA; or
 (c) under the PPSA to receive a copy of any verification statement or financing change statement under the PPSA.
- 7.14 The Customer must unconditionally ratify any actions taken by the Seller under clauses 7.12 and 7.13.
- 7.15 **Confidentiality**
In clauses 7.16 to 7.18 PPSA Information means any information or documents of the kind mentioned in section 275(1) PPSA in relation to a security interest in the Goods or the proceeds of the Goods.
- 7.16 Each party must keep the PPSA Information in the strictest confidence and not disclose that information.
- 7.17 Each party must not request PPSA Information or authorise disclosure of the PPSA Information.
- 7.18 Despite clauses 7.16 and 7.17 if a party is required to disclose PPSA Information, that party must give all available notice to the other party to allow the other party to:
 (a) legally challenge the required disclosure; and
 (b) take all available steps to keep that PPSA Information confidential.
- 8. Goods on Consignment**
- 8.1 Any goods delivered to the Customer on consignment shall remain the property of the Seller until paid for in full.
- 8.2 Any goods on consignment will be at the risk of the Customer from delivery.
- 8.3 The Customer shall be responsible for the maintenance and repair of any goods on consignment.
- 8.4 The Customer will forthwith return any goods on consignment to the Seller on written demand.
- 9. Installation**
- 9.1 The Customer acknowledges that it has responsibility for the proper installation of the Goods and acknowledges that the Goods should be installed in accordance with applicable Australian Standards.
- 10. Returned Goods**
- 10.1 Except as specified by statute, the Seller is under no duty to accept Goods returned by the Customer and will do so only on terms to be agreed in writing. If the Seller agrees to accept returned Goods from the Customer, the Customer must return the Goods to the Seller at the Seller's address within seven (7) days.
- 11. Security**
- 11.1 To secure payment of all monies owed to the Seller by the Customer, the Customer hereby gives the Seller a fixed charge over all real property currently owned or later acquired by the Customer and consents to the Seller registering a caveat in this regard.
- 11.2 If the Customer is a trustee, the Customer represents to the Seller that the Customer has authority under the relevant trust instrument to trade with the Seller and to give the Seller a charge and security interest pursuant to this clause in its capacity as trustee.
- 11.3 The Customer hereby irrevocably appoints the Credit Manager from time to time of the Seller as its attorney to do all things necessary to create and register each caveat and/or security interest.
- 12. Guarantee and indemnity**
- 12.1 Where the Customer is a company, the directors of the Customer by signing the Credit Application ("Guarantors") unconditionally and irrevocably:
 (a) guarantee to the Seller the due and punctual payment by the Customer of all moneys payable to the Seller by the Customer and the due performance and observance by the Customer of all of its obligations contained in or implied under any contract between the Customer and the Seller ("Guarantee Obligations");
 (b) indemnify the Seller against all losses, damages, costs and expenses which the Seller may now or in the future suffer or incur consequent on or arising directly or indirectly out of any breach or non-observance by the Customer of a Guaranteed Obligation.
- 12.2 This guarantee shall be a continuing guarantee and shall not be wholly or partially discharged or affected by the payment at any time hereafter of any money, the granting of any time or indulgence or consideration to the Customer, any variation in the terms of credit or Terms and Conditions of Sale offered to the Customer or any other reason whatsoever.
- 12.3 This clause is:

- (a) a principal obligation and is not to be treated as ancillary or collateral to another right or obligation; and
 - (b) independent of and not in substitution for or affected by another security interest or guarantee or other document or agreement which the Seller or another person may hold concerning the Guaranteed Obligations.
- 12.4 The Seller may enforce this clause against the Guarantors without first having to resort to another guarantee or security interest or other agreement relating to the Guaranteed Obligations.
- 12.5 The Guarantors as beneficial owners jointly and severally hereby charge all freehold and leasehold interests in land which the Guarantors now own or may acquire hereafter with the payment of the Guaranteed Monies and the Guarantors further consent to the Seller registering a Caveat to protect its interests under this clause.
- 13. Warranties**
- 13.1 Subject to clause 14.3, the Seller makes no representation and gives no warranty in connection with a Good, including that the Good will have any particular functionality or be fit for any particular purpose.
- 13.2 The Seller makes no representation and gives no warranty in connection with the functionality or compatibility of any Goods, in the event the Customer incorporates or attaches the Goods to any other goods, materials, or equipment sourced from third parties.
- 14. Limitation of liability**
- 14.1 Except as contemplated by clause 14.2 and subject to clause 14.3 the Seller is not liable for any loss or damage however caused (including by the negligence of the Seller), suffered by the Customer in connection with these terms and conditions.
- 14.2 Subject to clauses 14.3 and 14.4, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with a Good is limited to, at the Supplier's option, the Purchase Price paid by the Customer to the Supplier for that Good, or resupply of that Good.
- 14.3 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Seller in connection with these terms and conditions agreement and the Seller's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 14.1, 14.2 and 14.5, do not apply to that liability and instead the Seller's liability for such failure is limited to (at the Seller's election)::
- (a) In the case of a supply of goods, the Seller repairing or replacing the goods or the supply of equivalent goods or the cost of such repair, replacement or supply; and
 - (b) In the case of supply of services, the Seller supplying the services supplied again or paying of the cost of having the services supplied again.
- 14.4 Subject to clause 14.3, the Seller is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with these terms and conditions.
- 14.5 Consequential Loss in clause 14.4 means loss of bargain, loss of revenues, loss of reputation, indirect loss, consequential loss, economic loss, loss of profits or damage to goodwill, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
- 15. Privacy Act**
- 15.1 Privacy Laws govern the way in which the Seller collects and uses Personal Information about an individual. In respect of such Personal Information, the Seller discloses that:
- (a) The Seller's Privacy Policy and Credit Reporting Policy found on its website or on request sets out how the Seller collects, uses and discloses Personal Information and credit related information about individuals.
 - (b) The individual is entitled to access and correction of the Personal Information collected.
 - (c) The Personal Information is collected for the purpose of processing the Customer's application for credit and/or this Guarantee and as otherwise set out in the Seller's Privacy Policy and Credit Reporting Policy.
 - (d) If the Personal Information is not provided is that the Seller will be unable to process the Customer's application for credit and/or this Guarantee and will be unable to supply the Goods to the Customer.
- 15.2 The Customer and Seller (as applicable) consent and agree to the Seller:
- (a) Giving a credit reporting agency certain personal information about the Customer and the Guarantor as permitted under the Privacy Act 1988; and
 - (b) Obtaining a consumer credit report about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit to the Seller as permitted under the Privacy Act 1988.
- 15.3 The Customer:
- (a) warrants at all times that it has obtained any necessary consents from, and made any necessary disclosures to, all relevant individuals for the purpose of disclosing their Personal Information to Seller under these terms and conditions, and has otherwise complied (and continues to comply) in all respects with its obligations under the Privacy Act in respect of any Personal Information disclosed to Seller;
 - (b) must provide all assistance requested by Seller from time to time in relation to compliance by Seller with the Privacy Act, or any investigation, request or enquiry (formal or otherwise) from the Australian Privacy Commissioner regarding the Personal Information disclosed to Seller under this agreement; and
 - (c) indemnifies Seller against all costs, expenses, losses, proceedings and claims of whatsoever nature suffered, brought or incurred directly or indirectly as a result of a breach by Customer of its obligations under this clause.
- 15.4 In this clause 15:
- (a) Personal Information means information or an opinion about an identified individual or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not;
 - (b) Privacy Act means the *Privacy Act 1988* (Cth); and
 - (c) Privacy Laws means the Privacy Act, the Australian Privacy Principles contained in the Privacy Act and all other applicable laws, regulations, registered privacy codes, privacy policies and contractual terms in respect of processing the Personal Information.
- 16. Recovery costs**
- 16.1 The Customer shall pay to the Seller the costs and expenses incurred by the Seller (including the costs of legal advisers or mercantile agents acting on behalf of the Seller) in respect of any recovery or attempted recovery of either the Customer's debt or possession of the Goods (whether in whole or in part) and the amount payable in respect of such costs and expenses shall

form part of the Customer's debt to the Seller. The Customer acknowledges that any security interest arising pursuant to these terms or any related agreement extends to the costs incurred in accordance with this clause.

16.2 If the Customer attempts to cancel or modify these terms after the Seller has incurred any costs and expenses in preparatory work or obligated itself in respect of goods or materials, the Customer shall be responsible for all non-recoverable costs and expenses incurred by the Seller related to such cancellation or modification and the Seller may invoice the Customer accordingly. If such invoices are not paid within 30 days after the invoice date, the Customer must pay interest on any outstanding amounts in accordance with clause 4.4.

17. Further assurances

17.1 The Customer agrees to do all things requested by the Seller which are reasonably necessary or desirable to give full effect to this contract.

18. Interpretation

18.1 In these terms:

- (a) the singular includes the plural and vice versa, and a gender includes other genders; and
- (b) any agreement, representation, warranty, guarantee or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally.

19. Governing Law

This contract is made in Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.