

**1. Definitions**

- 1.1 “Region4” shall mean Region4 Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Region4 Pty Ltd.
- 1.2 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Region4 to the Customer.
- 1.3 “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 “Goods” shall mean all Goods supplied by Region4 to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Region4 to the Customer.
- 1.5 “Services” shall mean all Services supplied by Region4 to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 “Price” shall mean the Price payable for the Goods as agreed between Region4 and the Customer in accordance with clause 4 of this contract.

**2. The Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)**

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.

**3. Acceptance**

- 3.1 Any instructions received by Region4 from the Customer for the supply of Goods and/or the Customer’s acceptance of Goods supplied by Region4 shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable 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 amended with the written consent of Region4.
- 3.4 The Customer shall give Region4 not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Region4 as a result of the Customer’s failure to comply with this clause.
- 3.5 Goods are supplied by Region4 only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.6 The Customer understands and accepts that the minimum value of any order accepted by Region4 is two hundred dollars (\$200), excluding GST.

**4. Price and Payment**

- 4.1 At the Seller’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Buyer; or
  - (b) the Price as at the date of delivery of the Goods according to the Seller’s current price list; or
- 4.2 The Seller’s quoted price (subject to clause 4.3) which will be valid for the period stated in the quotation or otherwise provided that the Customer shall accept Region4’s quotation in writing within seven (7) days.
- 4.3 Region4 reserves the right to change the Price in the event of a variation to Region4’s quotation and/or pricelist. Any variation from the quotation and/or pricelist (including, but not limited to, for overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, or as a result of increases to Region4 in the cost of materials and labour) will be charged for on the basis of Region4’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.4 At Region4’s sole discretion a non refundable deposit may be required.
- 4.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Region4, which may be:
  - (a) before delivery of the Goods; or
  - (b) for approved Customers only and at Region4’s sole discretion, twenty (20) days following the end of the month in which the invoice is dated.
- 4.6 Payment will be made by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Region4.
- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Default and Consequences of Default**

- 5.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Region4’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 5.2 In the event that the Customer’s payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Region4.

- 5.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Region4 from and against all costs and disbursements incurred by Region4 in pursuing the debt including legal costs on a solicitor and own client basis and Region4's collection agency costs.
- 5.4 Without prejudice to any other remedies Region4 may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Region4 may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. Region4 will not be liable to the Customer for any loss or damage the Customer suffers because Region4 has exercised its rights under this clause.
- 5.5 Without prejudice to Region4's other remedies at law Region4 shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Region4 shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Region4 becomes overdue, or in Region4's opinion the Customer will be unable to meet its payments as they fall due; or
  - (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.

## **6. Delivery of Goods**

- 6.1 At Region4's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at Region4's address; or
  - (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Region4 or Region4's nominated carrier); or
  - (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
- 6.2 At Region4's sole discretion the costs of delivery and insurance during transit are for the Customer's account.
- 6.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Region4 shall be entitled to charge a reasonable fee for redelivery.
- 6.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.5 Region4 may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 The failure of Region4 to deliver shall not entitle either party to treat this contract as repudiated.
- 6.7 Region4 shall not be liable for any loss or damage whatsoever due to failure by Region4 to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Region4.

## **7. Risk**

- 7.1 If Region4 retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Region4 is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Region4 is sufficient evidence of Region4's rights to receive the insurance proceeds without the need for any person dealing with Region4 to make further enquiries.
- 7.3 Where the Customer expressly requests Region4 to leave Goods outside Region4's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

## **8. Title**

- 8.1 Region4 and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Region4 all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to Region4 in respect of all contracts between Region4 and the Customer.
- 8.2 Receipt by Region4 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 Region4's ownership or rights in respect of the Goods shall continue.
- 8.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Region4 shall have received payment and all other obligations of the Customer are met; and
  - (b) until such time as ownership of the Goods shall pass from Region4 to the Customer Region4 may give notice in writing to the Customer to return the Goods or any of them to Region4. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) Region4 shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Customer fails to return the Goods to Region4 then Region4 or Region4's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
  - (e) the Customer is only a bailee of the Goods and until such time as Region4 has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Region4 for the Goods, on trust for Region4; and
  - (f) the Customer shall not deal with the money of Region4 in any way which may be adverse to Region4; and
  - (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 Region4; and

- (h) Region4 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 Region4 will be the owner of the end products.

## 9. Personal Property Securities Act 2009 (“PPSA”)

9.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Customer and Region4 by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
  - (i) all Goods previously supplied by Region4 to the Customer (if any);
  - (ii) all Goods that will be supplied in the future by Region4 to the Customer.

9.3 The Customer undertakes to:

- (a) 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 Region4 may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Region4 for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Region4;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Region4; and
- (e) immediately advise Region4 of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 Region4 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.

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

9.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by Region4, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Customer shall unconditionally ratify any actions taken by Region4 under clauses 9.3 to 9.5.

## 10. Security and Charge

10.1 Despite anything to the contrary contained herein or any other rights which Region4 may have howsoever:

- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Region4 or Region4’s nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Region4 (or Region4’s nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Region4 elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Region4 from and against all Region4’s costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Region4 or Region4’s nominee as the Customer’s and/or Guarantor’s true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.1.

## 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

11.1 The Customer must inspect the Goods on delivery and must within ten (10) days of delivery notify Region4 in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Region4 to inspect the Goods.

11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

11.3 Region4 acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Region4 makes no warranties or other representations under these terms and conditions including but not limited to the quality

- or suitability of the Goods. Region4's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Region4's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Region4 is required to replace the Goods under this clause or the CCA, but is unable to do so, Region4 may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, Region4's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Region4 at Region4's sole discretion;
  - (b) limited to any warranty to which Region4 is entitled, if Region4 did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has obtained from Region4 a Return Authority Number (RA); and
  - (b) the Customer has complied with the provisions of clause 11.1; and
  - (c) Region4 has agreed that the Goods are defective; and
  - (d) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (e) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Region4 shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Region4;
  - (e) fair wear and tear, any accident, or act of God.
- 11.10 Region4 may in its absolute discretion accept non-defective Goods for return in which case Region4 may require the Customer to pay restocking fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 11.11 Notwithstanding anything contained in this clause if Region4 is required by a law to accept a return then Region4 will only accept a return on the conditions imposed by that law.
- 12. Intellectual Property**
- 12.1 The Customer acknowledges that it has no proprietary right or interest in the intellectual property.
- 12.2 The Customer must not register or record or attempt to register or record anywhere in the world the intellectual property or any part thereof or any patents, inventions, trade marks or designs derived from or similar to the intellectual property or aid or abet anyone else in doing so.
- 12.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the intellectual property.
- 12.4 Any intellectual property provided to the Customer by Region4 in connection with the Goods remains the exclusive property of Region4 and must be returned to Region4 on demand and shall not be copied or communicated to any third party without the express prior written consent of Region4.
- 13. Cancellation**
- 13.1 Region4 may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Region4 shall repay to the Customer any sums paid in respect of the Price. Region4 shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Region4 (including, but not limited to, any loss of profits) up to the time of cancellation.
- 13.3 Except as may be required under the CCA, Goods made to the Customer's specifications or non-stocklist items will definitely not be accepted for return.
- 14. Privacy Act 1988**
- 14.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for Region4 to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Region4.
- 14.2 The Customer agrees that Region4 may exchange information about the Customer 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 the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (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/or
  - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to Region4 being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

- 14.4 The Customer agrees that personal credit information provided may be used and retained by Region4 for the following purposes (and for other purposes as shall be agreed between the Customer and Region4 or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by Region4, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (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.
- 14.5 Region4 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;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that Region4 is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of Region4, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by Region4 has been paid or otherwise discharged.

## 15. Unpaid Seller's Rights

- 15.1 Where the Customer has left any item with Region4 for repair, modification, exchange or for Region4 to perform any other Service in relation to the item and Region4 has not received or been tendered the whole of the Price, or the payment has been dishonoured, Region4 shall have:
- (a) a lien on the item;
  - (b) the right to retain the item for the Price while Region4 is in possession of the item;
  - (c) the right to retain or sell the item or dispose of the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 15.2 The lien of Region4 shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

## 16. General

- 16.1 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.
- 16.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 16.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 16.4 Region4 shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Region4 of these terms and conditions.
- 16.5 In the event of any breach of this contract by Region4 the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 16.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Region4 nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.7 Region4 may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 16.8 The Customer agrees that Region4 may 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 Region4 notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where Region4 supplies further Goods to the Customer and the Customer accepts such Goods.
- 16.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.10 The failure by Region4 to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Region4's right to subsequently enforce that provision.
- 16.11 Any advice, recommendation, information or assistance provided by Region4 in relation to the Goods supplied by it or their use or application is given in good faith and is believed by Region4 to be appropriate and reliable, however advices is provided with a disclaimer for any liability or responsibility on the part of Region4.