

**MERCHANTS & TRADERS  
BY SIBELLA COURT PTY LTD**

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Here in after called "M&T"



**MERCHANTS & TRADERS WHOLESALE/TRADE TERMS & CONDITIONS**

**TRADING TERMS**

The following trading terms will govern the sale and delivery of products from Merchants & Traders By Sibella Court Pty Ltd. Limited ("M&T") to the Customer/Guarantors.

**1. GUARANTEE**

1.1 I/ We the Guarantors hereby agree jointly and severally to be answerable and responsible to M&T for the due payment by the Customer for all such goods and services as M&T may from time to time supply the Customer. 1.2 I/We acknowledge that this Agreement shall be continuing Guarantee to M&T for all debts whatsoever and whensoever contracted by the Customer with M&T in respect to goods and services supplied or to be supplied to the Customer (including any administration fee payable under 4.2 below). It is hereby agreed and declared that, although as between the Guarantors and the Customer, the Guarantors may be surety or sureties, yet as between the Guarantors and M&T, the Guarantors and each of them if more than one shall be deemed to be a principal debtor and liable jointly and severally release one liable only as surety. This Guarantee shall bind each of the persons executing it notwithstanding that one or more of the persons named in this Guarantee or Guarantor may not execute or may not be bound by this Guarantee.

**2. RETENTION OF TITLE**

2.1 M&T reserves the following rights in relation to any and all goods supplied by it to the Customer until all accounts and/or monies owed by the Customer to it, (whether goods or otherwise) are fully paid: 2.2 Legal ownership of the goods; 2.3 To Enter the Customer premises (or the premises of any associated Company or agent where the goods are located) without liability for trespass or any resulting damage and to retake possession of the goods; 2.4 To keep or resell any goods repossessed pursuant to 2.3 above. If the goods are resold by the Customer, the Customer shall hold such part of the proceeds or any sales as represents the invoiced price of the goods sold in a separate identifiable account as the beneficial property of M&T and shall pay such amount to M&T upon request. 2.5 To register our interest in on the PPSR (Personal Properties Securities Register).

**3. WARRANTY OF GOODS**

3.1 M&T warrant the goods are of merchantable quality and are fit for the purposes those goods are ordinarily used. 3.2 The warranty in the clause 3.1 operates for the period (if any) specified for any particular Good in the swing tags or other written materials that accompany them. 3.3 If any particular good does not conform to the warranty in clause 3.1 the: (a) At the request of M&T, you must send that good to us (at your cost) and (b) If M&T agrees that the goods do not conform to our warranty, we will (at our option) repair or replace that good and return it to you (at our cost). 3.4 To the maximum extent permitted by law: (a) M&T repairing or replacing the goods pursuant to clause 3.3 (b) is the limit of our liability to you; and (b) M&T are not liable to you or any other person, whether in contract, tort or otherwise, for more than the price paid by you for the goods. 3.5 Our warranty is invalidated if you or another person undertakes any unauthorized repairs or alterations to the goods. 3.6 This warranty does not cover damage to the goods from misuse, accident or neglect by you or your customer or you or they do not follow any applicable care instructions. 3.7: To the maximum extent permitted by law, we are not liable in any circumstances for: (a) Any injury, damage or loss, including consequential damage or loss (including without limitation loss of marker, loss of profit or loss of contracts) whether arising directly or indirectly, whether arising in contract, tort, in equality or on some other basis, to people or property arising out of us supplying the goods to you (or you supplying the goods to another person including a consumer who uses them) including because of any latent or other defects therein: or (b) any loss of or damage to the goods or cause by the goods whilst in transit.

**4. PAYMENT TERMS**

4.1 Unless otherwise agreed in writing all accounts shall be payable before delivery or as may otherwise be set out on any invoice or statement of account issued by M&T. In the event that the payment is not made as agreed, M&T may at its option withhold further deliveries or cancel any outstanding orders without notice to the Customer and without prejudice to any other action of remedy which M&T has or might otherwise have had, and all money owing and outstanding to M&T on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable (including any administration and freight fee payable under 4.2 below). 4.2 The Customer acknowledges and agrees that, if the Customer does not pay the invoiced price of the goods in full before delivery (or such other date as M&T may specify), or the Customer breaches any other trading terms (including, but not limited to, any term in the Application for Credit and Guarantee Form), the Customer must, in addition to the invoiced price of goods, pay to M&T an administration and freight fee equal in

value to 2.5% of the invoiced to price of the goods or \$15, whichever is greater. The administration and freight fee will be invoiced separately and appear on the account. 4.3 M&T reserves its right to amend its discount structure that may be in effect from time to time by providing 30 days notice.

## **5. ORDERS**

5.1 You can place an order for goods in writing or in any other way acceptable to us. 5.2 M&T can accept orders in our discretion. We will confirm order we accept by sending you an order confirmation, in which we will specify the intended delivery date. Acceptance is subject to you complying with clause 6.8 (if applicable). 5.3: Subject to clause 5.4 and 5.5, upon sending to you the order confirmation, you are obliged to purchase the goods set out in the order confirmation. 5.4: Notwithstanding clause 5.3 at your request we may, on our discretion, allow you to return goods. You must not return any goods to use until we have issued you an authorized return number for those goods. You must deliver to us at your cost goods returned for credit unsoiled, undamaged and accompanied by notice setting out the return authorization number, the ordinal invoice number, the date of purchase and the reason for return. 5.5: You can only cancel an order by notice in writing given to us at least 60 days before the intended delivery date and we agree to that cancellation.

## **6. PRICE**

6.1 Prices are subject to change without notice. 6.2: The price for the goods is the price applicable at the time the goods are invoiced to you. 6.3: Before delivery we will invoice you for the goods and send a statement at the end of the invoiced month. 6.4 You must pay for the goods before they are delivered. Your payment must be made without any set-off, discount or by way of exchange or your goods or service. 6.5: You must pay us in the currency indicated in the invoice. 6.6 If we request that you provide us security for the payment (or replacement security from time to time) then you must provide us the security we requested before we are required to deliver any goods to you. 6.7 If your account is overdue we can, without notice to you, cease to supply you or cease to supply you on credit. 6.8 You must inform us in writing of any discrepancies in our invoices within 7 days of the invoice date. 6.9 The price for the goods is exclusive of GST. You must pay all the GST arising from the supply of goods to you.

## **7. DELIVERY**

7.1 M&T will arrange delivery of the goods to you. 7.2 Subject to clause 6.5, unless provided for otherwise in the order confirmation, goods ordered by you will be delivered to you CPT (as interpreted in accordance with Intercoms (2000 Edition) to the place nominated by you and accepted by M&T from time to time or other agreed basis. 7.3 M&T make all statements or forecast of delivery times in good faith but the are estimates only. In particular, goods delivered in the intended month of delivery are not considered late. 7.4 You must notify us within 7 days after delivery of any alleged shortages in quality of goods delivered compared with the quantity ordered. M&T will investigate your claim within reasonable time. If we are satisfied that there was a shortage then we will make it up (and this is the maximum extent of our potential liability). 7.5 M&T is not liable to you from any loss or damage arising directly or indirectly from any delay in delivery of, or failure to deliver, the goods. If we are not able to deliver the goods to you we will notify you. 7.6 M&T reserves the right to dispatch your order in one delivery or by installments. Where we deliver in installments we will invoice you for each installment delivered. If we fail to deliver any installments this does not entitle you to repudiate any remaining installments.

## **8. DISTRIBUTION CHANNEL**

8.1 I/We acknowledge that the M&T marketing policy limits the distribution of M&T goods to approved outlets in the region, state, country or other territory approved by us. 8.2 I/We may only sell goods to consumers from end use and through designated outlets approved by us. 8.3 If you wish to open a new site or move an existing site you must give M&T notice in writing. M&T will determine if we will supply our goods to that new site and you acknowledge that M&T are not obliged to do so. 8.4 You must not sell or divert our goods at any place other than the outlets approved by M&T or through any other entity or person for resale, or to any entity or person who you know or should know has the intention of reselling the goods. 8.5 You must not sell, or offer for sale, the goods by any mean other than the physical display of goods at an approved outlet, including by mail order or through the Internet or by any other electronic means unless agreed in writing prior. You may advertise. 8.6 I/We acknowledge that damages will not be an adequate remedy for the breach of this clause and that we may immediately cease trading with you and obtain injunctive or other equitable relief.

## **9. INTELLECTUAL PROPERTY**

9.1 I/We agree that all intellectual property in the goods, their associated trademarks and marketing material and advertising material are our sold property. 9.2 You must not advertise or use our name, trademarks or other intellectual property in any manner without our prior written consent and must immediately cease using them at our request.

## **10. WITHDRAWAL OF CREDIT**

M&T may withdraw credit from the Customer at any time without prior notice.

## **11. CHANGE OF OWNERSHIP**

I/We shall advise M&T in writing of any changes in respect of ownership of address.

## **12. TERMS & CONDITIONS**

I/We shall abide by any M&T conditions of sale as may be advised to us from time to time.

## **13. PRIVACY LEGISLATION**

I/We agree, pursuant to the Commonwealth Privacy Act 1988 that disclosures by a Credit Reporting Agency to M&T, and use by M&T of the relevant information referred to in the Act may occur for the purpose of determining and extending credit.

## **14. WARRANTY OF INFORMATION**

I/We warrant the accuracy of the information set out in the Application for Credit and Guarantee Form.

## **15. MISCELLANEOUS**

15.1 The laws of New South Wales, without reference to choice of law principles, govern these standard terms of trade. I/We and M&T submit to the exclusive jurisdiction of the courts of that place. 15.2 Other than the clauses 5.5 and 6.4, time is not of the essence under these standard trading terms. 15.3 A reference to "includes," "including," "for example," "in particular" or "such as" are to be read as if followed by words "without limitation". 15.4 All rights and powers enjoyed by M&T and any discretion consent or decision to be made by us pursuant to these stand trading terms may be exercised by us in our absolute discretion and may be given or withheld subject to conditions. 15.5 If any provision or part of any provision of these terms is unenforceable does not affect any other part of such provision or any other provision of these terms. 15.6 In These standard terms of supply, the following terms apply: \*Goods mean any product delivered by us to you pursuant to these standard terms of supply; and \* GST means any consumption tax imposed by any government or government agency, whether at the point of sale or at some other occurrence, by whatever name, which operates during the time we supply you with goods and includes a goods and services tax, an indirect tax and value added tax.