

**1. DEFINITIONS**

## 1.1 In these conditions:

- "Additional Charges" includes all delivery, handling and storage charges, packing costs, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Buyer to the Seller arising out of the sale of the Goods.
- "Buyer" means the party purchasing the Goods from the Seller.
- "Goods" means the goods supplied to the Buyer by the Seller.
- "Purchase Price" means the list price for the Goods as charged by the Seller at the date of delivery or such other price as may be agreed by the Seller and the Buyer prior to delivery of the Goods.
- "Seller" means Alpha Lifecare Pty Ltd ABN 69 646 760 803 ACN 646 760 803
- "Terms and Conditions" means these terms and conditions of trade.

**2. GENERAL**

## 2.1 An order given to the Seller is binding on the Seller and the Buyer, if:

- (a) a written acceptance is signed for or on behalf of the Seller; or
- (b) the Goods are supplied by the Seller in accordance with the order.

## 2.2 An acceptance of the order by the Seller is then to be an acceptance of these Terms and Conditions by the Seller and the Buyer and these Terms and Conditions will override any conditions contained in the Buyer's order. The Seller reserves the right to accept a part only of any order by notifying the Buyer in writing or by delivering the Goods to the Buyer. No order is binding on the Seller until accepted by it.

## 2.3 An order which has been accepted in whole or in part by the Seller cannot be cancelled by the Buyer without obtaining the prior written approval of the Seller, which it may refuse in its absolute discretion.

**3. WARRANTY**

## 3.1 Certain laws imply terms, conditions and warranties ("Prescribed Terms") into contracts for the supply of goods and prohibit the exclusion, restriction or modification of such terms, conditions and warranties. The liability of the Seller in respect of a breach of a Prescribed Term or any warranty made under these Terms and Conditions is limited, to the extent permissible by law and at the option of the Seller, to the:

- (a) replacing the Goods or the supply of equivalent Goods;
- (b) repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired.

## 3.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Terms and Conditions are excluded and the Seller is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Buyer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever.

**4. ADVICE AND INFORMATION**

Any advice of information provided by the Seller in relation to the Goods or their use under any specific conditions, the life and wear of the Goods or their immunity from the possibility of attack by corrosion, pitting, erosion, chemical, electrolytic action or otherwise is given in good faith and is believed by the Seller to be appropriate and reliable but is given without any liability as to the suitability of the Goods for a particular purpose.

**5. DELIVERY**

## 5.1 The times quoted for delivery are estimates only and the Seller accepts no liability for failure or delay in delivery of Goods. The Buyer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of the Seller.

## 5.2 All Additional Charges are payable by the Buyer in addition to the Purchase Price of the Goods.

## 5.3 Risk in the Goods passes to the Buyer on delivery.

## 5.4 Unless otherwise agreed, delivery shall be deemed to have taken place:

- (a) if the Goods are to be collected from the Seller's premises, then:
  - (i) just prior to the Goods being loaded onto the carrier organised by the Buyer; or
  - (ii) at the time and date when the Goods are scheduled to be collected by the Buyer,

whichever occurs first; or

- (b) if the Goods are to be delivered to Buyer's address as nominated by the Buyer on the order, then just prior to the Goods being unloaded from the carrier at the nominated address in accordance with the order, which order is delivered to the Buyer at the Buyer's expense.

**6. PRICE AND PAYMENT**

## 6.1 The Buyer must pay the Purchase Price and the Additional Charges to the Seller.

## 6.2 If the Buyer is in default, the Seller may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

## 6.3 Unless otherwise agreed to in writing by the Seller, the Purchase Price must be paid by the Buyer in full within 30 days of the date of invoice. The Buyer is not entitled to withhold payment or make any deduction from the Purchase Price in respect of any set-off or counter-claim. The Buyer is liable to pay interest at the rate equal to the Commonwealth Bank of Australia overdraft rate plus 2% on all outstanding amounts calculated from the due date of payment until full payment is received by the Seller.

## 6.4 If the Buyer is in default, the Buyer agrees to pay the Seller all costs and disbursements including legal costs on a solicitor and own client basis incurred by the Seller in collecting or attempting to recover money outstanding.

**7. RETENTION OF TITLE**

## 7.1 Ownership in and title to the Goods remains with the Seller until payment in full for the Goods and all sums due and owing by the Buyer to the Seller on any account has been made. Until the date of payment:

- (a) the Buyer has the right to sell the Goods in the ordinary course of business;
- (b) until the Goods have been sold by the Buyer in the ordinary course of the Buyer's business, the Buyer holds the Goods as bailee for the Seller;
- (c) the Goods are always at the risk of the Buyer.

## 7.2 The Buyer is deemed to be in default immediately upon the happening of any of the following events:

- (a) if any payment to the Seller is not made promptly before the due date for payment;
- (b) if the Buyer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Buyer payable to the Seller is dishonoured;

# Terms & Conditions continued

- 7.3 In the event of a default by the Buyer, then without prejudice to any other rights which the Seller may have at law or under this contract:
- (a) the Seller or its agents may without notice to the Buyer enter the Buyer's premises or any premises under the control of the Buyer for the purposes of recovering the Goods.
  - (b) the Seller may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Buyer has or claims to have paid for in full, the Seller may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Seller and the Buyer may be ascertained. The Seller must promptly return to the Buyer any goods the property of the Buyer and the Seller is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Buyer's business howsoever arising from the seizure of the Goods.
  - (d) In the event that the Buyer uses the Goods in some manufacturing or construction process of its own or some third party, then the Buyer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Seller. Such part will be an amount equal in dollar terms to the amount owing by the Buyer to the Seller at the time of the receipt of such proceeds. The Buyer will pay the Seller such funds held in trust upon the demand of the Seller.

## 8. PERSONAL PROPERTY SECURITIES ACT ("PPSA")

The prices and delivery dates given in quotations are for the quantity of goods specified therein. Any deviation when ordering may render the quotation subject to revision.

- 8.1 Defined terms in this clause that are not defined in these Terms and Conditions have the same meaning as given to them in the PPSA.
- 8.2 The Seller and the Buyer acknowledge that these Terms and Conditions constitute a Security Agreement and give rise to a Purchase Money Security Interest ("PMSI") in favour of the Seller over the Goods supplied or to be supplied to the Buyer as Grantor pursuant to the Terms and Conditions.
- 8.3 The Goods supplied or to be supplied under these Terms and Conditions fall within the PPSA classification of "Other Goods" acquired by the Buyer pursuant to these Terms and Conditions.
- 8.4 The Seller and the Buyer acknowledge that the Seller as Secured Party, is entitled to register its interest in the Goods supplied or to be supplied to the Buyer as Grantor under the Terms and Conditions on the PPSA Register as Collateral.
- 8.5 To the extent permissible at law, the Buyer:
- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Buyer, as Grantor, to the Seller;
  - (b) agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
    - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Seller; and
    - (ii) enforcement or attempted enforcement of any Security Interest granted to the Seller by the Buyer.
  - (c) agrees that nothing in sections 130 and 143 of the PPSA will apply to the Terms and Conditions or the Security under the Terms and Conditions;
  - (d) agrees to waive its right to do any of the following under the PPSA:
    - (i) receive notice of removal of an Accession under section 95;
    - (ii) receive notice of an intention to seize Collateral under section 123;
    - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
    - (iv) receive notice of disposal of Collateral under section 130;
    - (v) receive a Statement of Account if there is no disposal under section 132(4);
    - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
    - (vii) receive notice of retention of Collateral under section 135;
    - (viii) redeem the Collateral under section 142; and
    - (ix) reinstate the Security Agreement under section 143.

## 9. RETURN OF ITEMS

- 9.1 To the extent permitted by law, return of Goods will not be accepted by the Seller except by prior agreement in writing with the Seller.
- 9.2 The Buyer must obtain a Return Authority Number ("RAN") from the Seller before returning any Goods. The Seller will send a return authority form with the RAN to the Buyer and the Buyer must attach this form with the returned Goods together with a copy of the delivery docket/invoice and any other relevant correspondence.
- 9.3 Goods are returned to the Seller at the Buyer's expense. Returned Goods must be in their original packaging and in unused and re-saleable condition.
- 9.4 Goods that have been custom made, processed or acquired cannot be returned by the Buyer and are not refundable.
- 9.5 Items returned are subject to a restocking fee of 15% of the gross invoice value of the returned items or \$40.00, whichever is greater.
- 9.6 Credit for or replacement of returned Goods will be at the sole discretion of the Seller.

## 10. LAW

This contract shall be governed in all respects by the law of the state in which the Goods are manufactured or at the option of the Seller by the law of the state in which the quotation is given by the Seller and any disputes hereunder shall be referred to arbitration in that state in accordance with the Arbitration (Civil Actions) Act 1983 or any similar statutory enactment then in force.

## 11. FORCE MAJEURE

The Seller is not liable for any delay or any breach or default under these Terms and Conditions due to any act of God, labour dispute, difficulty in procuring materials, accidents, legislative restrictions or other act whatsoever (where similar or not to the forgoing) beyond the Seller's reasonable control.

## 12. WAIVER

No waiver of any of these Terms and Conditions or failure to exercise a right or remedy by the Seller will be considered to imply or constitute a further waiver by the Seller of the same or any other term, condition, right or remedy.

## 13. SEVERABILITY

Any part of these Terms and Conditions being the whole or part of any clause(s) shall be capable of being severed without affecting any other part of these Terms and Conditions.

I am duly authorised to sign on behalf of the Buyer and agree that these Terms and Conditions are understood and accepted.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date