



EXCLUSIVE DISTRIBUTORS OF



Edgar Edmondson Pty Ltd

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TERMS AND CONDITIONS OF TRADE

These are the terms and conditions of sale of goods and materials (Goods) supplied by Edgar Edmondson Pty Ltd A.C.N 27 000 450 144, (EDCO) to any person, firm or company placing an order with EDCO (Customer).

1. Orders

- a) Unless otherwise agreed in writing, every order placed with EDCO shall be subject to these Conditions of Trade. By placing an order or seeking a quotation from EDCO, the Customer agrees to these Conditions of Trade, and acknowledges that all other terms and conditions, including any standard terms and conditions stipulated, incorporated or referred to in the Customer's order, are merged in and superseded by these Conditions of Trade and are of no effect.
- b) Without limiting Clause 1a, these Conditions of Trade are subject to the Competition and Consumer Act 2010 (Cth) incorporating the Australian Consumer Law. Notwithstanding any other provision of these Conditions of Trade: (i) the Goods come with guarantees that cannot be excluded under the Australian Consumer Law; (ii) the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; and (iii) the Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- c) Orders are subject to approval and acceptance by EDCO. Subject to law, EDCO may in its absolute discretion, refuse to supply goods to the Customer without giving any reason for its decision. The Customer acknowledges that EDCO does not guarantee supply or repeat orders of the same design, quality or price.
- d) The Customer in selecting goods for use in any order agrees, undertakes and acknowledges that it does so at its own discretion. Except as required by law, EDCO will not accept any returns or claims if the customer determines that the Goods or any components of the Goods are not suitable for their purpose.
- e) Any changes to an order must be in writing.
- f) The Customer agrees that by placing each order, it represents to EDCO that it is solvent and able to pay all of its debts as and when they fall due
- g) The Customer shall at all times comply with EDCO's minimum invoice policy as may at any time and from time to time apply on such terms as EDCO considers reasonable.
- h) When any order is placed the Customer shall inform EDCO of any facts which might reasonably affect any decision to accept the order and/or grant credit.

- i) EDCO may increase the current price of the Goods from time to time at its own discretion with prior notice, it being acknowledged that this will not affect then-current orders.
- j) The Customer accepts the Goods and the Goods are at the Customer's risk immediately upon leaving EDCO premises, whether the Goods are delivered by EDCO or by someone other than EDCO or contracted by the Customer. If the Customer wishes to insure against loss or damage to the Goods after they have left EDCO's premises, it shall be the Customer's responsibility to do so.

2. Property:

- a) Title to the Goods will pass to the Customer upon the later of receipt of the Goods by a duly authorised officer of the Customer into the Customer's nominated warehouse and the Customer's payment to EDCO of the full purchase price for the Goods.
- b) The Customer acknowledges that:
 - i) EDCO's supply and retention of title in the Goods pursuant to these Conditions of Trade give rise to a Security Interest in favour of EDCO being a Purchase Money Security Interest; and
 - ii) EDCO's rights and interest in Proceeds from the Goods constitute a Security Interest in such Proceeds.
- c) EDCO may register any Security Interest granted or arising under or in respect of these Conditions of Trade on the PPS Register in any manner the EDCO chooses. The Customer must as soon as reasonably practicable provide EDCO with any information it requires for the purposes of effecting such registration.
- d) EDCO is not required to give any notice under the PPSA to the Customer or any other person, and the Customer waives the right to receive any such notice (including a notice of verification statement) unless the notice is required by the PPSA and that obligation cannot be excluded.
- e) The Customer must take such steps as EDCO reasonably requires to perfect or otherwise ensure the enforceability and first ranking priority of any Security Interest in EDCO's favour granted or arising under or in respect of these Conditions of Trade, including (without limitation) by:
 - i) obtaining and giving consents;
 - ii) producing and providing receipts;
 - iii) attending to the signing of documents or procuring the signing of documents;
 - iv) facilitating the registration of any Security Interest on the PPS Register;
 - v) facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over any Relevant Collateral; and
 - vi) facilitating the exercise of EDCO's rights in enforcing any Security Interest.
- f) For the purposes of section 115 of the PPSA, sections 95, 121(4), 125, 129(2), 129(3), 130 (to the extent that it requires EDCO to give any notice to the Customer), 132(3)(d), 132(4), 135, 142 and 143 of the PPSA will not apply in relation to any Relevant Collateral.
- g) Each party agrees not to disclose:
 - i) information about the Conditions of Trade;
 - ii) information about the obligations secured by any Security Interest under or in respect of these Conditions of Trade or the terms of payment or performance in respect of any obligation under these Conditions of Trade at any particular time; and

- iii) without limitation to the above, any information of the kind described in section 275(1) of the PPSA, except:
 - iv) to the Customer's or EDCO's officers, employees, legal and other advisers and auditors;
 - v) with the consent of the other party; or
 - vi) if the disclosure is necessary to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure.
- h) The Customer agrees not to authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPSA except in accordance with these Conditions of Trade or with EDCO's consent.
 - i) The Customer must not register a Financing Change Statement or make a demand to alter any registration in respect of Relevant Collateral under section 178 of the PPSA without EDCO's prior written consent.
 - j) The Customer must give EDCO not less than 14 days' written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details.
 - k) The Customer grants permission to EDCO to enter any property to recover any Goods or Relevant Collateral;
 - l) The Customer agrees that a certificate purporting to be signed by an officer of EDCO identifying Goods as unpaid shall be conclusive evidence that Goods have not been paid for and of EDCO's title to those Goods;
 - m) The Customer will be responsible for payment of any fees (and any other costs) that EDCO incurs in relation to investigating, perfecting or registering its security interest in the goods, and those fees and costs may be added as a charge on invoices by EDCO to the Customer.
 - n) Goods shall be deemed to be dealt with by the Customer on a "first in first out" basis at all times.
 - o) In these Conditions of Trade:
 - i) each of "**Collateral**", "**Financing Change Statement**", "**Proceeds**", "**Purchase Money Security Interest**" and "**Security Interest**" has the meaning given in the PPSA;
 - ii) "**PPS Register**" means the Personal Property Securities Register established under the PPSA;
 - iii) "**PPSA**" means the Personal Property Securities Act 2009 (Cth); and
 - iv) "**Relevant Collateral**" means Collateral which is the subject of a Security Interest granted or arising under or in respect of these Conditions of Trade.

3. Payments

- a) Payment in full must be made by Customer for all goods supplied to the Customer within trading terms after the end of the month in which the goods are invoiced, as set out on the invoice.
- b) If the Customer fails to pay for goods supplied by the due date EDCO may recover from the Customer the price of those goods as a liquidated sum.
- c) EDCO may allocate a credit limit to the Customer's account at any time. This limit will be advised in writing to the Customer and may be reduced by EDCO at any time. Any credit provided in excess of the credit limit shall be repayable on demand.
- d) EDCO, at its discretion, may suspend supplies of goods to Customers who are in default or have failed to make any payment in accordance with clause 3(a) until full

payment of all amounts due has been received.

- e) EDCO will claim from the Customer all costs, expenses and charges incurred relating to any action taken by EDCO to recover goods or monies due from the Customer, including but not limited to, any collection agent costs or legal costs.
- f) Payment is only received by EDCO when it receives a cheque or when the proceeds of other methods of payment are credited and all payments are cleared to EDCO's bank account.

4. Limitation of Liability: The Customer agrees that to the fullest extent legally permissible and except as otherwise provided under applicable laws (including statutory guarantees set out above):

- a) The liability of EDCO arising under or in connection with these Conditions of Trade (whether in contract, tort (including negligence), statute, equity or otherwise) is limited to the cost of replacement of Goods or of acquiring equivalent products;
- b) EDCO shall not be liable for any damages for personal injury, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligence or otherwise;
- c) Other than any statutory guarantees that cannot be excluded by law, no other term, condition, agreement, warranty, representation and/or understanding whether express or implied, is in any way extending to, otherwise relating to or binding upon EDCO, other than as set out in these Conditions of Trade, is made or given by or on behalf of EDCO;
- d) Any and all statements made by EDCO as to the weight, length, quantity, dimensions or performance characteristics of the Goods are approximate and should be construed as such by the Customer; and
- e) Unless agreed to the contrary in writing, EDCO reserves the right to supply an alternative brand or substitute Goods.

5. Exclusions: The Customer agrees that:

- a) No dealing between EDCO and the Customer shall be or be deemed to be a sale by sample;
- b) The Customer shall rely on its own knowledge and expertise in selecting Goods for any purpose and any advice or assistance given by or on behalf of EDCO shall be accepted at the Customer's risk and shall not be deemed to have been given as an expert or adviser nor to have been relied upon;
- c) Goods are sold subject to each and every manufacturer's trading terms and conditions and are protected by each and every manufacturer's warranty and EDCO shall not be liable to the extent that any manufacturer is liable under a manufacturer's warranty unless otherwise required by law; and
- d) EDCO shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any Goods and/or otherwise) which are not precisely and accurately communicated in writing directly to the appropriate personnel at EDCO prior to the entry by EDCO into any relevant sale contract.

6. Cancellations and Returns: The Customer agrees that:

- a) The Customer shall at no time cancel the whole or part of any order placed without EDCO's prior approval, EDCO may invoice the Customer for any costs incurred by EDCO in relation to the order and its cancellation, including the cost of any materials, labour or transport;
- b) Returns will only be accepted where a customer has initiated a Return Request within

14 days of invoice. We will not accept returns unless they are accompanied by the correct Return Request Form. Goods are to be returned to the EDCO DC from which they were despatched in original saleable condition;

- c) Subject to paragraph (d) below, EDCO, in its absolute discretion, may accept returned goods from the Customer. Where the return is due to a customer error, change of mind or any other variation, goods returned will be subject to a re-stocking charge equivalent to 20% of the gross invoice value of the returned goods or \$55.00 (GST inclusive) whichever is the greater. The goods will need to be returned directly to the DC from which they were despatched within 14 days of the Return Request date at the customers' expense;
- d) Where goods have been returned as a result of EDCO's error, including a defect in the goods – no re-stocking fee will apply and EDCO will arrange and pay for the return freight;
- e) Notwithstanding any other provisions of these Conditions of Trade, when returning any Goods, the Customer must provide EDCO with an original invoice as proof of purchase; and
- f) Notwithstanding any other provisions of these Conditions of Trade the Customer shall not return any Goods which have been custom made, custom cut, custom processed or custom acquired, other than where the Goods do not comply with any statutory guarantees that cannot be excluded by law.

7. **Delivery:**

- a) EDCO accepts no responsibility or duty to deliver but may elect to arrange delivery at its discretion and subject to applicable statutory guarantees, without liability and at the Customer's cost and risk in all things, including late delivery or failure to deliver;
- b) Goods shall be deemed to be delivered as soon as they are ready for delivery at which time risk shall be deemed to have passed to the Customer;
- c) EDCO may charge for delivery together with a Small Order Fee (SOF) of \$11.00 (including GST) to cover EDCO's reasonable expenses if the order is below the Free In Store (FIS) value. SOF will also apply to any pickup orders that are under FIS;
- d) The customer will be advised of this charge at the time the order is enter in the system for approval prior to picking;
- e) FIS value will be determined by EDCO based customer's geographic location. This value will be reviewed annually and may change at the discretion of EDCO. The customer will be notified of any change at least 30 days prior to implementation.

8. **Entire Agreement:** These Conditions of Trade constitute the entire agreement between the parties in connection with their subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter. No oral explanation or information provided by any party to another affects the meaning or interpretation of these Conditions of Trade or constitutes any collateral agreement, warranty or understanding between any of the parties.

9. **Recovery Costs:** The Customer shall pay all costs and expenses (including legal costs on an indemnity basis) reasonably incurred by EDCO and/or its agents in respect of enforcing its rights under these Conditions of Trade whether relating to any debt, possession of the Relevant Collateral and/or otherwise.

10. **Customer Restructure:** The Customer shall notify EDCO in writing of any change in its structure and/or management including any change in director, shareholder and/or management and any change in partnership or trusteeship prior to any such change.

11. **Jurisdiction:** These Conditions of Trade are governed by and are to be construed

in accordance with the laws applicable in New South Wales, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12. **Forward Orders:** The Customer agrees:
 - a) To pay for so much of any forward order as is from time to time invoiced by EDCO;
 - b) That no delay or failure to fulfil any part of such order shall entitle any cancellation or variation of any order or delay or reduce any payment; and
 - c) To pay any demurrage and/or other costs and expenses of EDCO in handling and/or holding Goods once ready for delivery.
13. **Force Majeure:** EDCO shall not be or be deemed to be in default or breach of any contract as a result of Force Majeure. Force Majeure shall include any circumstance beyond the reasonable control of EDCO including strikes and lockouts.
14. **Power of Attorney:** For the purpose of giving effect to the Customer's obligations under these Conditions of Trade (in particular clause 13. of these Conditions of Trade) the Customer hereby irrevocably appoints the Accountant (or like equivalent) for the time being of EDCO, and any director or company secretary of EDCO, as the Customer's attorney in all things.
15. **Defaults:** Upon the appointment of an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy to the Customer or a breach of any of these Conditions of Trade by the Customer, EDCO may inter alia retain all monies paid, cease further deliveries, recover from the Customer any loss of profits arising and/or at EDCO's election take immediate possession of the Relevant Collateral without prejudice to any other rights EDCO may have and without EDCO being liable in any way to any person.
16. **Severability:** Any part of these Conditions of Trade being a whole or part of a clause shall be capable of severance without affecting any other part of these Conditions of Trade.
17. **Goods and Services Tax [GST]:** All monies payable to EDCO and any other consideration for any other "taxable supply" (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated legislation as amended from time to time (GST Act)) shall unless EDCO otherwise directs be deemed at all times to be exclusive of GST and/or any other applicable taxes, government charges, levies and/or imposts of any kind whatsoever – any and all of which must be paid by the Customer to EDCO as and when and in such manner as EDCO reasonably requires. EDCO shall provide the Customer with a Tax Invoice including the ABN number and other details required in the GST Act. The Customer shall pay GST at the rate set by the GST Act and shown on the tax invoice.
18. **Waiver:** No waiver of a right or remedy under these Conditions of Trade is effective unless it is in writing and signed by the party granting it. A single or partial exercise or waiver by a party of a right relating to these Conditions of Trade does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss or damage incurred by any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
19. **Credit Information:** The Customer irrevocably authorises EDCO and its servants and agents to make such enquiries from time to time as EDCO may deem necessary to obtain information and/or to investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any land titles office, the Australian Securities and Investments Commission, the Insolvency and Trustee Service Australia and/or any similar

body and/or related information service (**Sources**) and including personal credit and consumer credit information and any property, business and/or solvency information. The Customer by this clause irrevocably authorises the Sources to disclose anything about the Customer which is in the Sources' possession and the Customer agrees that EDCO may disclose any information it has about the Customer to any interested person (subject only to any obligations EDCO may have under the *Privacy Act 1988* (Cth)).

- 20. Rights cumulative:** Except as expressly stated otherwise in these Conditions of Trade, the rights of a party under these Conditions of Trade are cumulative and are in addition to any other rights of that party.
- 21. Notice:** EDCO may from time to time amend these Conditions of Trade, by notifying the Customer in writing, it being acknowledged that the amended Conditions of Trade will apply only to orders made after EDCO notifies the Customer. A copy of the then-current version of these Conditions of Trade may also be obtained by request. No other variation of these Conditions of Trade is effective unless made in writing and signed by each party.