

TERMS AND CONDITIONS

ACCESS TRADING COMPANY PTY LTD ABN 58 070 161 394

1. SCOPE

These are the terms and conditions upon which Access Trading Company Pty Ltd t/a Access Recycling (**Access Recycling**) agrees to sell and supply goods and/or services to the Customer in consideration for the Price. These Terms and Conditions will prevail to the extent of any inconsistency over any other terms and conditions.

2. PRICES

Unless otherwise stated in writing, all prices quoted are exclusive of GST. While Access Recycling will make every effort to invoice goods and/or services at the prices quoted, Access Recycling reserves the right to invoice at prices ruling at time of dispatch or at the time of provision of services, as the case may be.

3. WARRANTY & GUARANTEES

- (a) Our goods and services come with guarantees that cannot be excluded under the ACL. The Customer should inform themselves of their rights under the ACL.
- (b) Access Recycling does not provide any separate warranty on any of the goods or services it provides.

4. ORDERS

- (a) The Customer may from time to time place an order for goods and/or services with Access Recycling by submitting an order in writing to Access Recycling.
- (b) The Customer must provide and confirm details of all goods and/or services as stated in any Quotation provided and/or order in relation to quantities, description, sizes, dimensions, colour, and any other relevant details.
- (c) The Customer is responsible for providing and confirming all specifications stated in the Quotation and/or order, unless the Customer has requested and Access Recycling has agreed in writing that Access Recycling will conduct and be responsible for the accuracy of specifications.
- (d) The Customer (or authorised representative) must sign all Order Forms, providing full details of the order in writing and deliver the same to Access Recycling at the time of acceptance of the Quotation.
- (e) Once an order has been received by Access Recycling, cancellation of the order will not be accepted unless written confirmation is provided by Access Recycling.
- (f) Time is not of the essence of any order or delivery of any order, unless expressly agreed in writing.

5. VARIATIONS

- (a) A Customer may request a variation to an order by written request to Access Recycling.
- (b) Access Recycling will apply its reasonable endeavours to accommodate the variation request and, where a variation is agreed to by Access Recycling, issued a revised price for the variation, which must be agreed to by the Customer in writing.
- (c) In the event of a cancellation, the Customer must pay Access Recycling for all work done in pursuance to the order up to the date of receipt of the cancellation notice by Access Recycling. Restocking fees may apply.

6. DELIVERY

- (a) Access Recycling will deliver the goods in accordance with the applicable Quotation or as otherwise agreed by the parties in writing.
- (b) Any times or dates quoted for delivery are estimated as accurately as possible but are not guaranteed. Any estimated delivery date is subject to reasonable extension to cover delay caused by lockouts, breakdowns, delays in transport, strikes, fire, non-delivery of raw materials and/or other events or

causes affecting the completion of an order or otherwise beyond Access Recycling's control.

- (c) The Customer will not be relieved from any obligations to accept or pay for goods and/or services by reason of any delay in delivery or despatch.
- (d) Access Recycling is not liable for any loss, cost, damage or delay suffered by the Customer arising from late or non-delivery of the goods.
- (e) If written notice of damage suffered by the goods in transit is not provided to Access Recycling within 48 hours of delivery, the goods will be considered to have been received undamaged.

7. RISK AND TITLE

- (a) Risk in the goods passes to the Customer on delivery. If at the time of delivery the Customer is absent from the Site, delivery is deemed to have been made at the place and time and the date certified by the carrier of the goods.
- (b) Property in and title to the goods passes to the Customer upon full payment of the Price by the Customer being received by Access Recycling for those goods.
- (c) Until such time as title passes to the Customer in accordance with clause 7(b):
 - (i) the Customer holds the goods as fiduciary and agent for Access Recycling;
 - (ii) the goods must be stored separately and in a manner enabling them to be identified and cross-referenced to particular invoices and the Customer acknowledges that if the Customer should mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and Access Recycling will be owners in common of the new product;
 - (iii) the Customer may sell the goods in the ordinary course of its business as agent for Access Recycling and will hold the proceeds of sales in a separate account on trust for Access Recycling and account to Access Recycling for those proceeds; and
 - (iv) Access Recycling may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the relevant goods.

8. WARRANTIES

The Customer warrants:

- (a) that it has carefully reviewed all details of the goods and services as set out in any Quotation and/or order, including quantities, description, sizes, dimensions, colour, and any other relevant details and that those details are correct;
- (b) all information provided to Access Recycling for the purpose of delivering the goods and/or services are correct;
- (c) no third-party rights or interests will be infringed in the course of Access Recycling delivering the goods and/or services in accordance with the Customer's specification;
- (d) that it holds all appropriate insurances required by statute; and
- (e) that it holds all applicable permits, licences and approvals as required for the delivery of the goods and/or services.

9. GENERAL LIMITATION

To the full extent permitted by law, but subject always to these Terms and Conditions, all conditions and warranties not expressly contained herein are hereby expressly negated and excluded and in no event will Access Recycling be liable for any Claims or damages including, but not limited to, Claims for faulty design, negligent or misleading advice, damages arising from loss or use of the goods, or any direct, indirect, special or consequential damages or injury to any person, corporation or other entity.

10. INDEMNITY

The Customer indemnifies Access Recycling against all Claims arising in respect of any loss, cost or damage suffered by any person or property directly or indirectly occasioned by or arising from a breach of the warranties given by the Customer in these Terms & Conditions or the use or operation or possession of the goods other than by Access Recycling.

11. PAYMENT

- (a) Invoices for goods and/or services provided will be provided with delivery of goods or as agreed by the parties from time to time.
- (b) Payment is required within seven (7) days from the date the invoice was provided unless other payment terms have been agreed in writing.
- (c) Payment is to be made by cash or electronic transfer only. Cheques may be accepted if the Customer and Access Recycling have specifically agreed to this in writing.

12. NON-PAYMENT

- (a) Failure to comply with the payment terms set out in these Terms and Conditions will, without further notice, constitute a breach of these Terms & Conditions and Access Recycling may treat the whole of these Terms & Conditions as repudiated.
- (b) In the event the Customer fails to pay an invoice or the Price in accordance with these Terms & Conditions:
 - (i) Access Recycling may, without prejudice to any other rights it may have, refuse to supply or deliver further goods and/or services to the Customer until such time as the Customer has remedied the default;
 - (ii) if payment remains outstanding beyond Access Recycling's payment terms, the Customer must pay interest on all amounts outstanding from the due date until the date of payment at the rate of 15% per annum calculated daily; and
 - (iii) the Customer will be liable for all costs including legal costs (on an indemnity basis) and mercantile agents fees incurred by Access Recycling in recovering the amount outstanding.
- (c) If, in the reasonable opinion of Access Recycling, the credit worthiness or credit standing of the Customer alters from:
 - (i) that indicated by the Customer in their Application for Credit & Credit Terms (if applicable) or any application for credit executed by the Customer; or
 - (ii) the credit worthiness or credit standing of the Customer as at the first date Access Recycling supplied goods or services to the Customer,then Access Recycling may immediately cease supply of goods and services to the Customer and demand payment in full for any outstanding account within seven (7) days.
- (d) Where Access Recycling exercises its rights pursuant to clause 12(c), Access Recycling may refuse to supply or deliver further goods or services to the Customer unless such supplies are paid by the Customer in cash before delivery.
- (e) A statement in writing composed from information obtained from the accounting records of Access Recycling and signed by any manager or accountant of Access Recycling as to moneys owing in respect of the account of the Customer at the date provided on the statement shall be prima facie evidence that such money is owing.

13. GRANT OF SECURITY

- (a) The Customer acknowledges and agrees that these Terms and Conditions and any Invoice issued under these Terms:
 - (i) constitute a security agreement for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA"); and
 - (ii) create a Security Interest (and more specifically a purchase money security interest) in:

- A. all Goods previously supplied by Access Recycling to the Customer for which payment has not been made in full (if any); and
- B. all Goods that will be supplied in the future by Access Recycling to the Customer,

as security for all money owed by the Customer to Access Recycling.

(b) The Customer undertakes to:

- (i) 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 Access Recycling may reasonably require to:

- A. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register ("PPSR");
- B. register any other document required to be registered by the PPSA; or
- C. correct a defect in a statement referred to in Clauses 13(b)(i)A or 13(b)(i)B;

- (ii) indemnify, and upon demand reimburse, Access Recycling for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any goods charged;

- (iii) 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 Access Recycling (which can be withheld in its absolute discretion); and

- (iv) immediately advise Access Recycling 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.

- (c) To the extent section 115(1) of the PPSA allows this, sections 95, 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply to any Security Interest created under these Terms and Conditions and any invoices issued under these Terms and Conditions.

- (d) To the extent section 115(7) of the PPSA allows this, sections 127, 129(2), 132, 134(2), 135, 136(3)-(5) and 137 of the PPSA will not apply to any Security Interest created under these Terms and Conditions and any invoices issued under these Terms and Conditions.

- (e) The Customer waives any right to receive any notice required to be provided under the PPSA (including under section 157) in respect of any Security Interest unless the requirement to give the notice cannot be waived or excluded.

- (f) The Customer shall unconditionally ratify any actions taken by the Supplier under Clauses 13(a) to 13(e) of these Terms and Conditions.

14. CHANGE TO TRADING NAME

If the Customer carries on business under a business name the Customer must notify Access Recycling in writing of any change of ownership of the business name within seven (7) days of the change and agrees to indemnify Access Recycling against any loss or damage suffered by Access Recycling as a result of the Customer's failure to notify Access Recycling of such change.

15. INTELLECTUAL PROPERTY

- (a) Where goods are manufactured to the Customer's specification, the Customer indemnifies Access Recycling against any liability to or action by a third party for infringement or alleged infringement of a patent, registered design, trademark or copyright arising from Access Recycling complying with the Customer's specification.

- (b) Any works, items, materials or information produced or developed by Access Recycling in the course of delivering the goods and/or services will remain the property of Access Recycling.

- (c) No right or licence is hereby granted to the Customer to use any patent, copyright, registered design, trademark or other industrial property right of Access Recycling or otherwise.

16. MISCELLANEOUS

- (a) **Assignment:** The Customer must not assign any of its rights under these Terms & Conditions without Access Recycling's prior written consent. Access Recycling may assign its rights under these Terms & Conditions at its discretion.
- (b) **No waiver:** Any failure or delay by Access Recycling to enforce any term of these Terms & Conditions will not be deemed a waiver of that term. There is no implied waiver by Access Recycling in respect of any term of these Terms & Conditions. Any waiver granted is without prejudice to any other rights and is effective only in relation to the specific obligation or breach in respect of which it is given and does not cover subsequent breaches of the same or a different kind.
- (c) **Jurisdiction:** These Terms are governed by the laws of the Australian Capital Territory (ACT), and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the ACT.
- (d) **Severability:** If a term of these Terms & Conditions is void, unenforceable or illegal then it must be read down so as to be valid and enforceable or, if it cannot be read down, severed from these Terms & Conditions and the rest of these Terms & Conditions remains in force.
- (e) **Relationship:** Nothing in these Terms & Conditions creates a relationship of employment, partnership, joint venture or agency between the parties, or authorises a party to enter into any agreement which may bind the other party without their express written consent.
- (f) **Variation:** No variation to these Terms & Conditions will be effective unless in writing and signed by all parties.

17. DEFINITIONS

In these Terms & Conditions unless contrary intention appears or the context requires otherwise:

Act means the *Competition and Consumer Act 2010* (Cth).

ACL means the Australian Consumer Law.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent.

Customer means any person or entity that purchases goods and/or services from Access Recycling.

Goods means any good supplied by Access Recycling to the Customer from time to time pursuant to these Terms and Conditions.

Price means the price payable by the Customer to Access Recycling for the goods and/or services, as set out in the Quotation and as varied by Access Recycling from time to time in accordance with these Terms & Conditions, and includes any additional expenses.

Quotation means any quotation for the delivery of goods and/or services as issued by Access Recycling to the Customer from time to time.

Site means the site, property, premise or location nominated for delivery by the Customer (which may be the Access Recycling premises if the Customer is arranging for collection).