

DLS Group Terms & Conditions of Trade

1. Definitions

- 1.1. "Seller" shall mean the DLS Group and its related companies, its successors and assigns or any person acting on behalf of and with the authority of the DLS Group.
- 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Seller to the Client.
- 1.3. "Goods" shall mean Goods supplied by the Seller to the Client (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 forms as provided by the Seller to the Client.
- 1.4. "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5. "Price" shall mean the price payable for the Goods as agreed between the Seller and the Client in accordance with clause 4 of this contract.

2. The Commonwealth Trade Practices Act 1074 ("TPA") 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 TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable

3. Acceptance

- 3.1. Any instructions received by the Seller from the Client for the supply of Goods & Services and/or the Client's acceptance of Goods & Services supplied by the Seller shall constitute acceptance of the terms & conditions contained herein.
- 3.2. Where more than one Client has entered into this agreement the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3. Upon acceptance of these terms & conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 3.4. The Client shall give the Seller not less than fourteen (14 days prior written notice of any proposed change of ownership of the Client or any change in the Clients name and/or any other change in the Clients details (including but not limited to, changes in the Clients address facsimile number, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Clients failure to comply with this clause.
- 3.5. Goods & Services are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Clients order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1. At the Seller's sole discretion, the Price shall be either:
 - 4.1.1. As indicated on invoices provided by the Seller to the Client in respect of Goods & Services supplied; or
 - 4.1.2. The Seller's current price at the date of delivery of the Goods & Services according to the Seller's current Price List; or
 - 4.1.3. The Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Client shall accept the Sellers quotation in writing within thirty (30) days.
- 4.2. The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 4.3. At the Seller's sole discretion, a deposit may be required.
- 4.4. At the Seller's sole discretion:
 - 4.4.1. Payment shall be due on delivery of the Goods & Services; or
 - 4.4.2. Payment shall be due before delivery of the Goods & Services; or
 - 4.4.3. Payment for approved commercial Clients shall be due thirty (30) days from the date of invoice.

- 4.5. Payment will be made by cash, cheque, bank cheque, direct debit or any other method as agreed between the Client and the Seller.
- 4.6. 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. Delivery of Goods & Services

- 5.1. At the Seller's sole discretion delivery of the Goods & Services shall take place when:
 - 5.1.1. The Client takes possession of the Goods at the Seller's address; or
 - 5.1.2. The Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - 5.1.3. The Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
 - 5.1.4. Provision of the Goods and Services are completed at the address nominated by the Client. In the absence of the Client or the Clients Representative being in attendance delivery will be determined as complete at the sole discretion of the Seller.
- 5.2. At the Sellers sole discretion, the costs of delivery are:
 - 5.2.1. Include in the price: or
 - 5.2.2. In addition to the Price.
- 5.3. The Client shall all make arrangements necessary to take delivery of the Goods & Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods & Services as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4. In the event the Seller is delayed in the delivery of Goods & Services by the Client, the Clients Representative or others contracted to provide services on behalf of the Client, the Seller will be entitled to charge a reasonable fee for the delay.
- 5.5. Delivery of the Goods & Services to a third party nominated by the Client is deemed to be delivery to the Client for the purpose of this agreement.
- 5.6. The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods & Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

6. Risk

- 6.1. The Seller retains ownership of the Goods nonetheless, all risk passes to the Client on delivery.
- 6.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms & conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Title

- 7.1. The Seller and Client agree that ownership of the Goods shall not pass until:
 - 7.1.1. The Client has paid the Seller all amounts owing for the particular Goods; and
 - 7.1.2. The Client has met all other obligations due by the Client to the Seller in respect of all contracts between the Seller and the Client.
- 7.2. Receipt by the Seller 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 the Seller's ownership rights in respect of the Goods shall continue.
- 7.3. It is further agreed that:
 - 7.3.1. Where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Client are met; and

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- 7.3.2. Until such time as ownership of the Goods shall pass from the Seller to the Client the Seller may give notice in writing to the Client to return the Goods or any of them to the Seller. Upon such notice of the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- 7.3.3. The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- 7.3.4. If the Client fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods: and
- 7.3.5. The Client is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to the Seller for the Goods, on trust for the Seller; and
- 7.3.6. The Client shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
- 7.3.7. The Client shall not charge the Goods in any way nor grant or otherwise give any interest in the Goods while they remain the property of the Seller; and
- 7.3.8. The Seller can issue proceedings to recover the Price of The Goods and Services sold notwithstanding that ownership of the Goods may have not passed to the Client: and
- 7.3.9. Until such time that the ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Defects

- 8.1. The Client shall inspect the Goods on delivery and shall within 7 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Client is entitled to reject, the Seller's liability is limited either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 or the Fair Trading Acts of the relevant State or Territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2. Goods will not be accepted for return other than in accordance with 8.1 above.
- 8.3. Where provision of the Goods and Services are completed at the address nominated by the Client. In the absence of the Client or the Client's Representative being in attendance the Goods and Services will be considered free from defects at the discretion of the Seller.

9. Warranty

- 9.1. Subject to the conditions of warranty set out in clause 9.2 the Seller becomes apparent and is reported to the Seller within Seven (7) days from the Date of Delivery (time being of the essence) the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 9.2. The conditions applicable to the warranty given by clause 9.1 are:
 - 9.2.1. The warranty shall not cover any defect or damage which may be caused or partly be caused by or arise through:

- 9.2.1.1. Failure on the part of the Client to properly maintain any Goods; or
- 9.2.1.2. Failure on the Part of the Client to follow any instructions or guidelines provided by the Seller; or
- 9.2.1.3. Any use of the Goods otherwise than for any application specified on a quote or order form; or
- 9.2.1.4. The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user: or
- 9.2.1.5. Fair wear or tear, any accident or act of God; or
- 9.2.1.6. Where the area goods are installed is of poor or sub-standard quality and at the sole discretion of the Seller it is determined this has caused or contributed to the failure.

9.2.2. The warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.

9.2.3. In respect of all claims the Seller shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.

9.3. For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

10. Intellectual Property

- 10.1. Where the Seller has designed, drawn or written Goods for the Client, then the copyright in those designs, drawings and documents shall remain vested in the Seller, and shall only be used by the Client at the Seller's discretion
- 10.2. The Client warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by any third party against the Seller in respect of any such infringement.

11. Default & Consequences of Default

- 11.1. Interest on overdue invoices shall accrue daily from the date when the payment becomes due, until the date of the payment, at the rate of two and one-half percent (2.5%) per calendar month. (and at the Seller's sole discretion such interest shall compound monthly at such rate) after as well as before any judgement.
- 11.2. In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Seller.
- 11.3. If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs and the Seller's collection agency costs.
- 11.4. Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Seller will not be liable to the Client for any loss or damage the Client suffers because the Seller has exercised its rights under this clause.
- 11.5. If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately payable.
- 11.6. Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to

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the Seller shall, whether or not due for payment, become immediately payable.

- 11.6.1. Any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to meet its payments as they fall due; or
- 11.6.2. The Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes assignment for the benefit of its creditors; or
- 11.6.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12. Cancellation

- 12.1. The Seller may cancel any contract to which these terms & conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Seller (including but not limited to, any loss of profits) up to the time of cancellation.

13. Privacy Act 1988

- 13.1. The Client agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client and its Officers in relation to credit provided by the Seller.
- 13.2. The Client and its Officers agree that the Seller may exchange information about the Client and its Officers with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - 13.2.1. To assess and application by the Client; and/or
 - 13.2.2. To notify other credit providers of a default by the Client; and/or
 - 13.2.3. To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - 13.2.4. To assess the credit worthiness of Client and its Officers.
- 13.3. The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- 13.4. The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Client and Seller or required by law from time to time:
 - 13.4.1. Provision of Goods; and/or
 - 13.4.2. Marketing of Goods or Services by the Seller, its agents or distributors in relation to the Goods; and/or
 - 13.4.3. Analysing, verifying and/or checking the Clients credit, payment and/or status in relation to provision of Goods or Services; and/or
 - 13.4.4. Processing of any payment instructions, direct debit facilities requested by the Client; and/or
 - 13.4.5. Enabling the daily operation of the Clients account and/or the collection of amounts outstanding in the Clients account in relation to the Goods or Services.
- 13.5. The Seller may give information about the Client to a Credit reporting agency for the following purposes:
 - 13.5.1. To obtain a consumer credit report about the Client; and/or
 - 13.5.2. Allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

14. General

- 14.1. 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.

- 14.2. The terms & conditions and any contract to which they apply shall be governed by the laws of the State of Victoria and are subject to the jurisdiction of the courts of the State of Victoria.
- 14.3. The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of these terms and conditions.
- 14.4. In the event of any breach of this contract by the Seller the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.
- 14.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.
- 14.6. The Seller may license or sub-contract all or any part of its rights and obligations without the Clients consent.
- 14.7. The Client agrees that the Seller may review these terms and conditions at any time. If, following any such review there is to be a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Client of such change.
- 14.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 14.9. The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.