

## TERMS AND CONDITIONS OF SALE

### 1. TERMS APPLY TO ALL CONTRACTS

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- 1.1 These Terms & Conditions (**Terms**) apply to any contract, verbal or written, arising from any transaction between the Customer and Olsson Industries Pty Ltd, Pacific Salt Pty Ltd or any other related entity (collectively referred to as **Olsson's**).
- 1.2 Any variation or waiver of these Terms is ineffective unless agreed to in writing by the Parties.

### 2. DEFINITIONS & INTERPRETATION

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- 2.1 According to these Terms & Conditions, unless the context otherwise requires:
- (a) Goods refers to all products offered for sale by Olsson's;
  - (b) Customer refers to the parties ordering and/or using the products offered by Olsson's;
  - (c) Parties refers to Olsson's and the Customer, and Party refers to either one of them;
  - (d) Words importing the singular include the plural and vice versa;
  - (e) Headings are for convenience only and do not affect the meaning or operation of these Terms.

### 3. ACCEPTANCE

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- 3.1 The placing of an order with Olsson's is a full acceptance of these Terms and any terms and conditions sought to be introduced by the Customer's order will be disregarded and form no part of the contract.
- 3.2 Each Customer order signifies acceptance by the Customer of these Terms (which may be amended from time to time), as well as the conditions (if any) that may be incorporated on any quote by Olsson's.
- 3.3 Olsson's may decline any order received from the Customer, by written notice to the Customer. This includes (but is not limited to) where Goods are unavailable for any reason, or where credit limits cannot be agreed upon, or credit limits have been exceeded.
- 3.4 If the Customer requests a variation to its order, Olsson's may levy an additional charge and/or extend the time for delivery. A variation request by the Customer will only be effective if accepted by Olsson's in writing.

### 4. CUSTOMER'S OBLIGATIONS

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- 4.1 In consideration for the Goods, the Customer must pay the price (as further described in clause 5).
- 4.2 The Customer agrees to:
- (a) provide all information and documentation that Olsson's reasonably requires;
  - (b) provide a site that is suitable for the provision or delivery of the Goods by Olsson's;
  - (c) procure all necessary licences, approvals or permits (if any) necessary for the provision of the Goods (at the Customer's expense);

- (d) ensure that any of its worksites provided are safe and will comply with any work health and safety standards, legislation or regulation;
  - (e) promptly do any other act Olsson's reasonably requires so that Olsson's can perform its obligations under these Terms.
- 4.3 If Olsson's, in its sole and absolute discretion, determines that any site is unsafe for its personnel, then Olsson's may delay performance of its obligations until the site is made safe by the Customer (at the Customer's expense).

## **5. PRICE**

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- 5.1 In consideration for the provision of Goods by Olsson's, the Customer must pay the price, being the amount:
- (a) quoted to the Customer by Olsson's;
  - (b) as provided on the applicable Olsson's invoice, or
  - (c) as otherwise stated by Olsson's.
- 5.2 Unless otherwise stated all prices quoted are exclusive of freight and/or delivery costs, insurance and/or other charges in relation to the transfer of the Goods from the Olsson's premises to the location designated by the Customer.
- 5.3 Quotes remain valid for the time given on the quote document, or otherwise for 30 days.
- 5.4 Unless otherwise agreed in writing Olsson's reserves the right to vary all prices without notification.
- 5.5 Unless otherwise stated, quoted amounts do not include GST and therefore Olsson's may add on GST to the amount payable by the Customer.

## **6. TERMS & PAYMENT**

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- 6.1 Unless otherwise agreed by Olsson's in writing, invoices must be paid within 30 days of the invoice date.
- 6.2 If payment is made by cheque which is dishonoured, Olsson's reserves the right to charge the Customer for all fees incurred by Olsson's in respect of such dishonour.
- 6.3 If the Customer fails to make payment by the due date, Olsson's may do any or all of the following (at its option), and without prejudice to any other rights it may have:
- (a) charge interest on any outstanding amount;
  - (b) require the Customer to pay in advance for Goods;
  - (c) suspend the delivery of Goods until payment is made;
  - (d) terminate these Terms.
- 6.4 The Customer agrees to indemnify Olsson's for all costs incurred in recovering debts owed by the Customer to Olsson's.
- 6.5 The Customer must not set-off, deduct from or withhold any payments due to Olsson's because the Customer claims to be owed any amount by Olsson's, or disputes any invoice (including any portion of the invoice).

## **7. DELIVERY DELAY**

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- 7.1 For the avoidance of doubt, where Olsson's provide delivery dates to the Customer these timeframes are given for convenience only and do not constitute part of the Terms with the Customer.
- 7.2 While Olsson's will endeavour to complete delivery within stated timeframes, Olsson's will not in any circumstances be liable for any claim, liability, expense or cost from delay in delivery or no delivery caused by circumstances beyond the control of Olsson's even indirectly affecting the availability of the Goods.

## **8. TITLE TRANSFER**

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- 8.1 Title of delivered Goods shall remain with Olsson's until payment has been received in full by Olsson's.
- 8.2 Risk in the Goods passes to the Customer immediately upon delivery of the Goods to the Buyer or collection of the Goods by a courier or agent of the Customer.
- 8.3 Until all outstanding amounts owed by the Customer to Olsson's are fully paid:
- (a) Olsson's remains owner of the Goods;
  - (b) the Customer must not supply of any of the Goods to any person outside its ordinary or usual course of business;
  - (c) the Customer must insure the Goods for their full insurable or replacement value (whichever is higher); and
  - (d) subject to these Terms and the *Personal Property Securities Act 2009*, the Customer grants Olsson's the right to keep or resell any Goods repossessed from the Customer pursuant to these Terms.
- 8.4 If the Customer resells the Goods (or any new product derived from the Goods), the Customer must hold part of the proceeds of any such sale, as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold, in a separate identifiable account as the beneficial property of Olsson's. The Customer must pay this amount to Olsson's upon request. Despite these provisions, Olsson's is entitled to maintain an action against the Customer for the purchase price and the risk of the Goods must pass to the Customer upon delivery.
- 8.5 If the Customer fails to pay for the Goods by the invoice due date, subject to, and in accordance with, the PPSA, Olsson's may recover possession of the Goods at any site owned, possessed or controlled by the Customer and the Customer agrees that Olsson's has an irrevocable licence to do so, and without liability to the Customer.

## **9. CLAIMS**

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- 9.1 If the Customer fails to advise Olsson's in writing of any fault, damage, deficiency or non-delivery of the Goods (or part of the Goods) within 7 days of the delivery date, the Customer is deemed to have accepted that the Goods as delivered.
- 9.2 To the maximum extent permitted by law, the Customer waives its rights to any claims with respect to the Goods after the period specific in clause 9.1 has elapsed.
- 9.3 Goods returned for credit will only be accepted if received in original condition. The following Goods cannot be returned under any circumstances:
- (a) any Goods specially made or purchased for the Customer; and

(b) any Goods damaged or altered in any way by the Customer.

9.4 Nothing in this clause 9 is intended to limit any non-excludable rights applicable to the Customer (if any) under the Australian Consumer Law.

## **10. LIABILITY AND INDEMNITY**

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10.1 Olsson's shall not be responsible for damage or fault in performance arising out of incorrect or inappropriate use of the Goods by the Customer. The Customer acknowledges that Olsson's gives no warranty as to the fitness of the Goods for the intended application of the Customer and that the Customer has relied entirely upon its own independent enquiries about the suitability of the Goods for its circumstances.

10.2 To the fullest extent permissible at law, Olsson's is not liable for any direct, indirect, punitive, incidental, special or consequential damages or any damages whatsoever including, without limitation, damages for loss of use or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on these Terms, negligence, strict liability or otherwise, even if Olsson's has been advised of the possibility of damages.

10.3 To the full extent allowed by law, Olssons' liability for any breach of these Terms (whether express or implied by any law) is excluded.

10.4 In any event, Olssons' liability for any defect in the Goods is (at Olssons' option):

- (a) replacement of the Goods;
- (b) the supply of equivalent Goods; or
- (c) payment of the cost of replacing the Goods or of acquiring equivalent Goods, and

the Customer agrees that Olsson's maximum total liability under these Terms is capped at the price payable by the Customer for the Goods (as described at clause 5).

10.5 To the maximum extent permitted by law Olsson's is not liable and the Customer holds Olsson's harmless for any defect, loss (including consequential or indirect loss), damage, harm, injury, cost in connection with the Goods, including but not limited to:

- (a) the Customer's failure to make proper independent enquiries about the suitability of the Goods;
- (b) the Customer's failure to comply with its obligations under these Terms; or
- (c) Olsson's exercising any of its rights under these Terms or at law.

10.6 The Customer indemnifies and keeps indemnified Olsson's (including its servants and agents) against all harm, loss, damage, claim, injury (including death), cost or delay suffered by the Customer, whether directly or indirectly, in connection with these Terms, and including any claim, action or demand commenced by any person (not limited to the Customer).

## **11. CREDIT**

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11.1 Credit (and credit terms) is granted to the Customer in Olssons' sole and absolute discretion and may be withdrawn or varied at any time by Olsson's.

11.2 Any application by the Customer to return Goods and receive a credit shall be in writing and shall state the reason for the return and the action requested by the Customer on the part of Olsson's.

11.3 Goods wrongly ordered by the Customer and accepted for credit return by Olsson's shall be subject to a 15% re-stocking fee.

## **12. PERSONAL PROPERTY SECURITIES ACT**

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- 12.1 The Customer agrees and acknowledges that the title to Goods supplied on credit is retained by Olsson's until such time that all debts are duly discharged, and that Olsson's title is not displaced by possession of the Goods by the Customer or any third party.
- 12.2 The Customer acknowledges and agrees that these Terms, and any subsequent sales agreements are an accepted and adopted Security Agreement between Olsson's and the Customer for the purposes of the Personal Property Securities Act (PPSA), and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the Parties includes any arrangements documented by emails or information or documents exchanged electronically.
- 12.3 In requesting Olsson's to provide Goods, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- 12.4 The Customer acknowledges, agrees and grants to Olsson's a Security Interest in:
- (a) all Goods and any proceeds previously supplied or that will be supplied in the future by Olsson's to the Customer; and
  - (b) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- 12.5 The above Security Interest secures all moneys owing by the Customer to Olsson's under these Terms or otherwise.
- 12.6 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 12.7 The Customer acknowledges that the Security Interest over Goods or their proceeds arising under these Terms as and where applicable will be a Purchase Money Security Interest (PMSI).
- 12.8 The Customer will do everything reasonably required of it by Olsson's to enable Olsson's to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- 12.9 The Security Interests arising under this clause 12 will be perfected by Olsson's prior to the Customer obtaining possession on delivery of the Goods and the Parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- 12.10 Olsson's does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- 12.11 Any time the Customer makes a payment to Olsson's, irrespective of whether the payment is made under or in connection with these Terms, Olsson's may apply that payment:
- (a) first, to satisfy an obligation that is not secured;
  - (b) second, to satisfy an obligation that is secured, but not by a PMSI;
  - (c) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
  - (d) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- 12.12 For the avoidance of doubt and without prejudice to Olsson's rights under the PPSA, the Customer:

- (a) may sell the Goods to its customers and if it does so, then Olsson's will have a Security Interest in the proceeds of sale; and
  - (b) will, where and when applicable and instructed by Olsson's, implement, maintain and comply in all material respects with procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- 12.13 The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- 12.14 The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any information of the kind described in section 275(1) of the PPSA including these Terms as the Security Agreement between the Customer and Olsson's.
- 12.15 The Customer will notify Olsson's immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these Terms.
- 12.16 The Customer's right to possession of Goods still owned by Olsson's under these Terms will cease if:
- (a) the Customer commits an act of bankruptcy;
  - (b) circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement;
  - (c) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;
  - (d) the Customer fails to comply with any demand for payment issued by Olsson's; or
  - (e) the Customer is in breach any of these Terms or is in default of any other agreement with Olsson's.
- 12.17 The Customer agrees that Olsson's is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by Olsson's are still unpaid for to repossess such Goods. The Customer agrees to indemnify and keep Olsson's indemnified in respect of any claims, actions and costs that may arise against Olsson's in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- 12.18 The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to Olsson's by the Customer, as is equivalent to Olsson's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Goods.
- 12.19 Until any obligations owed to Olsson's by the Customer are discharged in full, the Customer must not give Olsson's a written demand or allow any other person to give Olsson's a written demand requiring Olsson's to register a financing change statement under the PPSA or enter into, or allow any other person to enter into, the PPSR, a financing change statement.
- 12.20 The rights and obligations of Olsson's and the Customer under the Terms will be binding on, and will be of benefit to, each of their respective successors, permitted assigns, heirs, executors and administrators.

### **13. DEFAULT AND TERMINATION**

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- 13.1 The Customer may not cancel any order accepted by Olsson's without the written consent of Olsson's. In any event of cancellation by the Customer, the Customer agrees to indemnify Olsson's against all losses suffered by Olsson's as a result of such cancellation.
- 13.2 Either Party may terminate these Terms if:
- (a) the other Party is in material breach of any of its obligations under these Terms; and
  - (b) the other Party fails to remedy the breach for a period of 14 days after receipt of a written notice of the breach from the other Party.
- 13.3 Olsson's may (at its option) suspend or terminate these Terms on written notice to the Customer, in the event that:
- (a) the Customer fails to make required payment by the due date;
  - (b) the Customer enters into (or threatens to enter into) any arrangement with creditors, or has a receiver appointed over any of its assets, or is (or is presumed to be) insolvent;
  - (c) the Customer breaches any of its obligations contained in clause 4, each of which constitutes a warranty made by the Customer in favour of Olsson's; or
  - (d) in any other circumstances, upon Olsson's providing 30 days written notice to the Customer.

#### **14. GENERAL**

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- 14.1 Unless otherwise expressly provided for in these Terms, neither Party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond its reasonable control, including without limitation acts of God, fire, flood, pandemic, accident, terrorism, strike and riots.
- 14.2 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 14.3 Unless otherwise expressly provided, these Terms supersede all oral and written negotiations and constitute the entire agreement between the Parties.
- 14.4 If any provision of these Terms is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- 14.5 These Terms are governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the courts of that state or territory.
- 14.6 Notices under these Terms must be given in writing to the address indicated on a quote or as otherwise agreed between the Parties. A Party may only change its address for notices by giving written notice of that change to the other Party.
- 14.7 For the avoidance of doubt, the following clauses survive termination or expiry of this agreement:
- (a) clause 6;
  - (b) clause 8;
  - (c) clause 9;
  - (d) clause 10;
  - (e) clause 12; and
  - (f) clause 13.