

Standard Terms and Conditions

In these terms and conditions **MooreAir Pty Ltd as trustee for the Moore Discretionary Trust trading as "MooreAir" ABN 22 691 175 408**, including its successors and assigns (hereafter referred to as "MooreAir") and any customer for whom MooreAir accepts an order for the provision of goods and/or services ("**the Customer**").

1. Definitions

In these terms & conditions, unless the context otherwise requires or the contrary intention appears:

"Australian Consumer Law" means the law set out in Schedule 2 of the *Competition & Consumer Act 2010* (Cth);

"Event of Default" occurs upon any of the following events:

- (a) The Customer does not pay an amount owing to MooreAir when due in the manner required;
- (b) The Customer disposes of, or threatens to dispose of, its assets other than in the ordinary course of business; or
- (c) The Customer or any of its officers is or becomes insolvent, bankrupt, in liquidation, in administration, or makes any arrangement with or assignment for the benefit of its creditors, or has a receiver or receiver and manager or similar officer appointed in respect of any of its property.

"Goods" means all present and after-acquired parts and accessories supplied by MooreAir to the Customer;

"PPSA" means the *Personal Property Securities Act 2009* (Cth);

"Price" has the meaning given in clause 6;

"Services" means all present and future services supplied by MooreAir to the Customer.

2. Standard Terms of Sale and Supply

- 2.1. These terms and conditions shall apply to every sales/service contract and sale of goods between MooreAir and the Customer.
- 2.2. Except as specifically provided in these terms and conditions, any terms in respect of the supply of Goods and Services contained in or relating to any other documents, including any of the Customer's documents (even if they purport to provide that they prevail), are excluded. By accepting the Goods and Services, the Customer

acknowledges that these terms and conditions prevail over any qualification or condition purported to be imposed in any such other documents.

- 2.3. A contract shall only be or be deemed to have been entered into between MooreAir and the Customer for the supply of goods when upon an order having been placed upon MooreAir for goods, that order has been accepted by MooreAir (such acceptance of order may be made and communicated by MooreAir in writing or by overt act of acceptance).
- 2.4. The provisions of this clause 2. shall apply to every quotation or offer by MooreAir for the supply of goods and/or services.

3. Special Orders

- 3.1. The Customer shall submit any orders for non-stock items in writing to MooreAir ("Special Order").
- 3.2. MooreAir reserves the right to request payment of a deposit by the Customer as a condition of accepting a Special Order.
- 3.3. Subject to any mandatory terms implied by statute, MooreAir will not accept return of non-stock items unless the manufacturer of those items agrees to accept return from MooreAir. MooreAir reserves the right to deduct transport, insurance, handling and restocking charges from the refund due to the Customer.

4. Customer Responsibilities

- 4.1. The Customer hereby acknowledges and accepts the following terms:
 - 4.1.1. The Customer indemnifies MooreAir against all claims made against MooreAir for infringement of third party intellectual property arising as a result of MooreAir carrying out work on the Goods in accordance with the requirements of the Customer.
 - 4.1.2. MooreAir reserves the right at any time to make such alterations to the specifications, design or construction of the Goods as MooreAir shall in its own discretion deem fit to provided always that the Goods shall remain of merchantable quality and sufficient for the purpose of the Customer.
 - 4.1.3. It is the Customer's responsibility to obtain any licence or consent required by any Government or other authority for the purchase or use of the Goods.

- 4.1.4. The supply of the Goods or Services shall not confer any right upon the Customer to use any of MooreAir's trademarks, which at all times remain the property of MooreAir.

5. Cancellation

Any contract cancellations must be approved in writing by MooreAir, otherwise the Goods will be delivered to the Customer and MooreAir will be entitled to payment from the Customer.

6. Price

- 6.1. The Price of the Goods and Services shall be:
 - 6.1.1. The price set out in a quotation provided by MooreAir where that quotation has been validly accepted within the period of acceptance contemplated by the quotation; or
 - 6.1.2. In any case MooreAir's applicable price listed in MooreAir's catalogue(s) or price books current at the time of delivery less any discount agreed in writing.
- 6.2. If the GST (or any other transactional tax) or currency exchange rates or custom duty rates (for goods imported by MooreAir) change between quotation or order by the Customer and delivery, MooreAir may vary the Price to the extent of such change.

7. Payment

- 7.1. Unless otherwise agreed by MooreAir in writing, the Customer shall:
 - 7.1.1. pay cash on delivery for all Goods supplied by MooreAir; and
 - 7.1.2. pay for Services rendered by MooreAir within 7 days of the date of the invoice for those Services.
- 7.2. Payments must be made in immediately available funds, without set-off, counterclaim or deduction.
- 7.3. Payments made by credit card shall attract the following surcharges on the total amount payable:
 - 7.3.1. VISA, Mastercard: 1.5% (plus applicable GST);
Payment by American Express is not available

8. Payment Default

- 8.1. If the Customer breaches its obligations relating to payment of the Price, then MooreAir may:
 - 8.1.1. Retain possession of any of the Customer's chattels that have been repaired or serviced by MooreAir, pursuant to any statutory or common law lien that may apply and pursue enforcement of any such lien;
 - 8.1.2. Require the Customer to pay interest on any overdue amount at the rate of twelve per centum (12%) per annum, calculated daily and compounding monthly and shall be immediately payable by the Customer on demand by MooreAir;
 - 8.1.3. recover from the Customer, on demand, any legal, collection & recovery costs incurred by MooreAir in connection with the enforcement or attempted enforcement of these Terms & Conditions;
 - 8.1.4. suspend any further supply of Goods and Services to the Customer; and
 - 8.1.5. revoke any credit facility provided to the Customer and require that all further sales be on a cash on or before delivery basis.

9. Supply and Delivery

- 9.1. The Customer is liable to pay MooreAir any charges for delivery, freight and transportation, and such payment shall be made in accordance with the payment terms set out at clause 6 above.
- 9.2. Unless otherwise instructed in writing by the Customer, MooreAir will insure goods in transit and the premium will be payable by the Customer.
- 9.3. MooreAir may deliver Goods by instalments or partial shipment and the Customer shall accept each such delivery.
- 9.4. MooreAir shall be under no liability for either direct or consequential loss or damage to Buyer arising from delay or postponement in delivery.

10. Ownership and Risk

- 10.1. Notwithstanding anything herein contained:
 - 10.1.1. Property in and legal title to any Goods supplied by MooreAir to the Customer shall not pass to the Customer until payment for those Goods and all debts owing to MooreAir by the Customer have been paid in full; and

- 10.1.2. These terms and conditions constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all Goods (and their proceeds previously supplied by MooreAir to the Customer (if any) and in all future Goods (and their proceeds);
 - 10.1.3. Unless otherwise characterised, MooreAir's security interest in those Goods shall be deemed to be a "Purchase Money Security Interest" for the purposes of the PPSA; and
 - 10.1.4. The Customer hereby authorises MooreAir to perfect any such security interests in the Goods by registration pursuant to the PPSA.
- 10.2. Until the payments are received by MooreAir and title to the Goods has passed to the Customer in accordance with clause 10.1 above:
 - 10.2.1. the Customer has custody of the Goods and holds them as fiduciary, agent and bailee of MooreAir;
 - 10.2.2. the Customer must store the Goods securely and must not allow the Goods to be intermingled or otherwise dealt with in such a way that the Goods are not identifiable as MooreAir's property;
 - 10.2.3. the Customer must not encumber the Goods in any way;
 - 10.2.4. the Customer may sell the Goods but only at arm's length, in the ordinary course of business, on market terms, and only as the fiduciary, agent and bailee of MooreAir (and in that regard, the Customer has no right to bind MooreAir to any liability to a third party by contract or otherwise) and the Customer must, as MooreAir's fiduciary keep any such proceeds in a separate account and account to MooreAir in respect of those proceeds;
 - 10.2.5. MooreAir may inspect the Goods;
 - 10.2.6. If an Event of Default occurs, MooreAir may repossess the Goods and resell them and apply the proceeds of sale to any amount owing or payable by the Customer to MooreAir on any account and return any excess proceeds of sale to the Customer (without prejudice to any other rights of MooreAir).
- 10.3. MooreAir shall be entitled to re-take possession of all goods delivered until all debts owing to MooreAir by the Customer have been paid in full. MooreAir shall not exercise such right unless any such payment is overdue.
- 10.4. For the purposes of enabling MooreAir to inspect the Goods or retake possession of the Goods, MooreAir and its representatives are irrevocably authorised to enter (forcibly, if necessary) into any premises owned or occupied by the Customer on or in which the

Goods may be located from time to time, and to recover and do all things necessary to recover the Goods, the Customer appoints MooreAir as its agent to enter any premises not owned by the Customer and on or in which the Goods may be located from time to time, and the Customer agrees to indemnify MooreAir from any claims made by any third party as a result of MooreAir exercising such right.

- 10.5. The Customer waives any rights to receive notices and statements under sections 95, 118, 120, 121, 123, 125, 129, 130, 132, 134, 135, 137, 142, 143 and 157 of the PPSA.

11. Returns and Faulty Goods

- 11.1. Unless the Customer otherwise provides notice in writing to MooreAir within seven (7) days of the date of delivery of Goods, the Customer will be deemed to have accepted all such Goods at the time of delivery. No claim may be made outside this period.
- 11.2. All claims by the Customer must refer to the invoice number and date and state the reason for the claim.
- 11.3. Where MooreAir makes Goods to the Customer's specification, the Customer acknowledges that:
- 11.3.1. MooreAir makes no representation to the Customer in relation to the suitability of the specification or the Goods or Services for any disclosed purpose; and
- 11.3.2. The Customer will indemnify MooreAir in respect of any loss or damage where that loss or damage is caused by the Customer's specifications; and
- 11.3.3. The Customer will indemnify MooreAir in respect of any loss or damage if MooreAir infringes a third party's rights in using the specification.
- 11.4. The following Goods cannot be returned for credit:
- 11.4.1. Goods specially cut to length;
- 11.4.2. Goods specially made, plated or otherwise treated or purchased for the Customer;
- 11.4.3. Goods damaged or altered by the Customer or the Customer's customer.
- 11.5. If MooreAir elects to accept any of the returned Goods, the acceptance is on such terms as MooreAir may determine (which may or may not involve a credit), and a re-stocking fee of not less than 10% of the invoice value (inclusive of GST) shall apply. MooreAir may refuse to accept any returns or replace unused Goods.
- 11.6. Goods returned are at the Customer's expense, and the Customer must pay all freight charges for the return of the Goods.

- 11.7. Goods returned must have been purchased from MooreAir, be in original packaging and saleable condition and the relevant invoice number supplied.

12. Exclusion and Limitation of Liability

- 12.1. Nothing in these terms and conditions operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- 12.1.1. Contravene that statute;
 - 12.1.2. Cause any term of these terms and conditions or a contract to be void (“Non-excludable Obligation”)
- 12.2. Except in relation to Non-excludable Obligations, MooreAir expressly excludes all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied by custom, under the general law or by statute.
- 12.3. Except in relation to Non-excludable Obligations:
- 12.3.1. MooreAir is not liable to the Customer or any other person for any direct or indirect loss, including without limitation consequential loss, damage to persons or property, and death or injury, caused by any act or omission, including without limitation negligent acts or omissions of MooreAir or of MooreAir’s employees, servants or agents except for any liability which cannot be excluded by law. In this clause, “consequential loss” includes, without limitation, loss of profit or goodwill (or similar financial loss), any payment made or due to any third party and any loss or damage caused by delay in the supply of Goods or Services. The Customer indemnifies MooreAir against any claims made against MooreAir by any third party in respect of any such loss; and
 - 12.3.2. MooreAir’s total liability to the Customer is limited to the lowest of:
 - (a.) the total price paid by the Customer for the Goods or Services the subject of the claim;
 - (b.) the price payable by the Customer for the Goods or Services the subject of the claim;
 - (c.) the price paid by the Customer in the 14 days preceding the relevant cause of action arising.

- 12.4. In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which MooreAir's liability is not limited under these terms and conditions), MooreAir's liability to the Customer for failure to comply with any Non-excludable Obligation is limited to:
- 12.4.1. In the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
- 12.4.2. In the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- 12.5. Every exclusion or exemption from liability and every right, defence and immunity of whatsoever nature applicable to MooreAir or to which MooreAir is entitled under this clause 12 is also available and extends to protect every employee or agent of MooreAir (including every independent contractor from time to time engaged by MooreAir) while acting in the course of or in connection with his or her employment or engagement.

13. Repairs

- 13.1. Goods returned by the Customer to MooreAir for repair will be free of all charges to MooreAir and at the Customer's risk.
- 13.2. The Customer agrees to comply with MooreAir's reasonable directions as to the method by which the Goods shall be returned for repair, including but not limited to the location to which the Goods shall be returned.
- 13.3. The Customer acknowledges that in circumstances where it is impractical or impossible to return the Goods to MooreAir's premises for repair, MooreAir may conduct mobile repairs . In these circumstances, the Customer agrees to grant MooreAir access to the premises where the Goods are situated to enable MooreAir to conduct such repairs.

14. Force Majeure

MooreAir shall not be liable for any loss sustained by the Customer through delay in delivering the Goods or Services caused by circumstances outside of the reasonable control of MooreAir. Should this occur, MooreAir may, at its option:

- 14.1. perform the contract or unfulfilled portion thereof within a reasonable time from the removal of the cause preventing or delaying performance; or

14.2. rescind unconditionally and without liability, this contract or the unfulfilled portion thereof.

15. Clerical Errors

Clerical errors, typing or otherwise in computations, Catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note or specification of MooreAir shall be subject to correction.

16. Variation

All variations and amendments to these terms and conditions or approvals hereunder shall be in writing by a duly authorised signatory of MooreAir and if otherwise shall not be binding upon MooreAir.

17. Severance

Any provision in these Terms & Conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable.

18. Governing Law and Jurisdiction

These Terms & Conditions and each contract formed between MooreAir and the Customer shall in all respects be governed by and constructed and interpreted in accordance with the laws of the State of South Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of South Australia.