

Terms and Conditions

To the fullest extent legally possible, any and all contracts, dealings, or arrangements made between MPAC Equipment Pty Ltd ABN 79 688 149 493 ("MPAC") and the Customer are subject to the following terms and conditions of trade ("Terms") unless agreed otherwise in writing.

These Terms apply to every Contract. Any of the Customer's own terms and conditions are expressly excluded and do not form part of any Contract unless MPAC agrees in writing. MPAC may amend these Terms at any time by notice to the Customer or by publication on its website; amendments apply to Orders placed after the effective date of the amendment. The Customer is encouraged to check MPAC's website from time to time to ensure it is aware of any amendments to these Terms.

1. Definitions

In these Terms, unless the context requires otherwise:

- (a) **Accession** means any of the Products installed in, or affixed to, other goods.
- (b) **ACL** means the Australian Consumer Law as scheduled in the Competition and Consumer Act 2010 (Cth).
- (c) **Business Days** means a day on which banks are open for business in Melbourne, Australia, other than a Saturday, Sunday or public holiday in that city.
- (d) **Customer** means the person, company, or entity placing an Order with MPAC or on whose behalf an Order is placed.
- (e) **Full Payment** means receipt by MPAC of the entire Outstanding Amount in cleared funds.
- (f) **Order** means a purchase order, request, or instruction from the Customer for the supply of Products, whether written, oral, or electronic.
- (g) **Outstanding Amount** means all amounts outstanding and payable to MPAC by the Customer at any time whether in connection with the Products or any Contract.
- (h) **PPSA** means the Personal Property Securities Act 2009 (Cth).
- (i) **Processed Products** means Products which, after delivery, have been processed, assembled, commingled, or otherwise dealt with so that their original identity is lost or cannot be readily ascertained.
- (j) **Products** means any products, goods, services and/or material supplied, or to be supplied, by MPAC to Customer.
- (k) **Quotation** means any written quotation, estimate, or proposal issued by MPAC for the supply of the Products.
- (l) **Warranty Period** means, in respect of the Products, the relevant warranty period provided by the original manufacturer of the Products (as extended to MPAC).

2. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) References to parties are references to parties to these Terms.
- (c) If any act required to be performed under these Terms on or before a specified day and that day is not a Business Day, the act must be performed on the next Business Day.

3. Acceptance of Terms

The Customer agrees to be bound by these Terms on the earlier to occur of any of the following:

- (a) placing an Order with MPAC;
- (b) accepting a Quotation issued by MPAC in writing or by conduct;
- (c) taking delivery of, or collecting, any Products;
- (d) making any payment of an Outstanding Amount or in connection to the Products;
- (e) clicking the "I accept" option (or similar, if any, on MPAC's website); or
- (f) checking any box corresponding with the acceptance option, and a contract is formed when MPAC accepts the Customer's Order (**Contract**)

4. Purchase Price

- (a) All prices quoted by MPAC are an invitation to treat.
- (b) All sales are made by MPAC at its ruling price at the time of delivery unless otherwise agreed in writing by MPAC in a quotation, invoice, or otherwise. MPAC will use its best

endeavours to notify the Customer of any price changes notified to it by its suppliers prior to delivery to the Customer.

- (c) Prices for Products are in Australian Dollars ("**AUD**") and, unless stated otherwise, are exclusive of GST, freight, insurance, installation, and any other duties or taxes.
- (d) The Customer must pay GST (at the prevailing rate) on all taxable supplies. MPAC will issue valid tax invoices.
- (e) Payment must be made:
 - (i) In accordance with any quote provided by MPAC;
 - (ii) in full and prior to delivery (unless alternative payment terms have been agreed in writing by MPAC); and
 - (iii) in cleared funds without any deduction or set-off.
- (f) MPAC may apply any payment received to any part of the Outstanding Amount in such order as MPAC determines.
- (g) MPAC may pass through to the Customer:
 - (i) actual credit card surcharges it incurs on credit card payments; and
 - (ii) a dishonour fee of \$100 (plus GST and any bank fees) for any dishonoured payment(s).
- (h) Prices quoted or agreed for Products are based on the prevailing exchange rate(s) between AUD and the relevant foreign currency(ies) at the date of the quotation or acceptance of an Order. MPAC reserves the right to adjust the price payable by the Customer prior to delivery to reflect any material change in the applicable currency exchange rate(s). Any:
 - (i) increase in the price of the Products due to an adverse foreign exchange movement will be passed on to the Customer in full (by way of a corresponding increase in the price payable); and
 - (ii) decrease in the price of the Products due to a favourable foreign exchange movement will be passed on to the Customer in full (by way of a corresponding reduction in the price payable).

5. Title & Risk

- (a) Title to any Product delivered to the Customer shall remain the sole and absolute property of MPAC as legal and beneficial owner until Full Payment has been received by MPAC. Title shall pass to the Customer upon receipt by MPAC of Full Payment.
- (b) The Customer accepts all risk and liability in the Products (including loss, damage, or destruction) immediately upon delivery regardless of whether title has passed.
- (c) Legal and beneficial title to the Products remains with MPAC until Full Payment is received. Until then, the Customer holds the Products as bailee for MPAC and must store them separately, clearly identified as MPAC's property and ensure they are kept in good condition.
- (d) If the Customer resells the Products in the ordinary course of business, it must hold the proceeds of such sale on trust for MPAC and account to MPAC for such proceeds on demand. The Customer must not grant any security interest over the Products to any third party without MPAC's prior written consent.
- (e) The Customer must, at its own cost, insure the Products for their full replacement value against loss, damage, or destruction from the time of delivery. MPAC must be noted as an interested party on the insurance policy if so requested by MPAC.

6. Delivery

- (a) MPAC will use reasonable endeavours to ensure the Products are delivered to the address specified by the Customer in the Order by the estimated delivery date indicated by MPAC. Delivery dates are estimate only and are not binding on MPAC. All freight and customs charges will be dealt with as set out in the Contract.
- (b) The Customer must:
 - (i) accept delivery of the Products at the nominated time and place;
 - (ii) provide safe, suitable, and unobstructed access to the nominated delivery location and adequate facilities for unloading; and
 - (iii) ensure that an authorised and responsible representative is present to accept delivery and sign any documentation.

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- (c) If the Customer fails to take delivery during commercially reasonable or anticipated hours, MPAC may charge the Customer reasonable storage fees and/or the cost or redelivery.
- (d) The Customer must inspect the Products immediately upon delivery and notify MPAC in writing of any visible damage or defects within [2] Business Days of any given delivery. Failure to comply with this clause 6(d) constitutes deemed acceptance of the Products in their delivered condition (subject to any rights under the ACL that cannot be excluded).

7. Installation

- (a) Unless set out in an MPAC quote, or as otherwise agreed in writing, the Customer is responsible for installation of any Products ordered.
- (b) The Customer acknowledges that MPAC has no responsibility or liability for any 3rd party installer suggested or recommended by MPAC to the Customer. Any installation charges are in addition to the price of the Products and must be paid for by the Customer.

8. Product Warranties

- (a) MPAC passes on to the Customer the benefit of any warranty provided by the manufacturer of the Products. The terms, duration, and conditions of such warranty are as specified by the manufacturer. To the extent permitted by law, MPAC's sole responsibility under any such warranty claim is to facilitate the claim with the manufacturer or, at MPAC's discretion, to repair any defective products.
- (b) The Customer must complete and return any manufacturer warranty registration form where applicable.
- (c) MPAC makes no additional representations or warranties beyond those in the manufacturer's policy and these Terms.
- (d) Any warranties in this clause do not apply, and MPAC will have no liability, where any defect, damage, or failure arises from or is contributed to by:
 - (i) accident, misuse, abuse, neglect, or improper storage by the Customer;
 - (ii) unauthorised modification, repair, or alteration;
 - (iii) failure to install, operate, or maintain the Products strictly in accordance with the manufacturer's instructions, manuals, and recommendations;
 - (iv) use in adverse marine environments (such as salt water, high humidity, vibration, or extreme temperatures) without appropriate protective measures or maintenance;
 - (v) attachment of non-genuine parts or accessories;
 - (vi) normal wear and tear and tear or consumables (such as, but not limited to, filters, belts, batteries, and lubricants); or
 - (vii) any act or omission of the Customer or third parties.
- (e) Warranty claims must be made by notice in writing to MPAC within the Warranty Period, including full details and evidence of the defect. If so directed by MPAC, the Customer must return the Products (or relevant part of the Products) to MPAC or an authorised service centre at the Customer's expense, unless otherwise agreed. MPAC's sole obligation is, at its option, to repair or replace defective Products (or refund a pro-rata portion of the price). MPAC does not cover labour, freight, travel, or consequential costs unless required by the ACL.
- (f) Nothing in these Terms excludes, restricts, or modifies any guarantee, right, or remedy conferred by the ACL or any other applicable law that cannot be excluded, restricted, or modified. Where the Customer is a "consumer" as defined by the ACL, the Products come with guarantees that cannot be excluded. In such circumstances, the Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

9. Returns, Cancellations and Order Variations

- (a) Returns of Products are accepted only at MPAC's sole discretion and subject to the following conditions:
 - (i) the Products must be in new, unused, undamaged conditions and in original packaging;

- (ii) where requested by MPAC, the Customer must provide proof of purchase;
 - (iii) returns must be made within [14] days of delivery;
 - (iv) a restocking fee of up to [25]% of the Product value (plus GST and freight) may be set off against any refund or credit issued; and
 - (v) custom ordered, modified, or non-standard Products are non-refundable.
- (b) The Customer cannot cancel or vary an accepted Order without MPAC's prior written consent. If such consent is given, the Customer must pay MPAC for all costs, expenses, and losses incurred as a result of the cancellation or variation plus a reasonable administration fee.

10. Liability, Indemnity and Exclusions

- (a) To the maximum extent permitted by law (including the ACL), MPAC's total aggregate liability to the Customer under or in connection with these Terms or any Contract, whether in contract, tort, statute, or otherwise, is limited to the amount paid by the Customer to MPAC for the specific Products giving rise to the claim.
- (b) MPAC is not liable for any indirect, incidental, special, consequential, or punitive damages, or for any loss of profits, revenue, business, goodwill, data, or anticipated savings.
- (c) The Customer indemnifies and holds harmless MPAC, its officers, employees, and agents from and against all claims, losses, damages, costs (including legal costs on a full indemnity basis), and expenses arising out of or in connection with: (i) any breach of these Terms or any Contract by the Customer; (ii) any negligent or wrongful act or omission of the Customer or its personnel; (iii) any injury to persons or damage to property caused by the Products after delivery (except to the extent caused by MPAC's negligence); (iv) any claim by a third party relating to the Products or their use; or (v) any failure by the Customer to comply with applicable laws, standards, or safety requirements.
- (d) Any claim by the Customer must be made in writing within [10] Business Days of delivery and in any event within the Warranty Period or applicable limitation period. Failure to do so constitutes a waiver of the claim to the extent permitted by law.

11. Intellectual Property

- (a) All intellectual property rights (including patents, designs, trademarks, copyright, and know-how) in the Products, specifications, manuals, drawings, software, and any materials provided by MPAC remain the exclusive property of MPAC or its licensors.
- (b) The Customer must not copy, reverse-engineer, modify, or disclose any such materials to third parties without MPAC's prior written consent.
- (c) The Customer receives a non-exclusive, non-transferable licence to use such materials solely for the purpose of operating and maintaining the Products purchased by it.

12. Security

- (a) These Terms constitute a security agreement under the PPSA.
- (b) The Customer grants MPAC a purchase money security interest ("PMSI") in all Products supplied (and their proceeds) to secure the Outstanding Amount. The security interest attaches to the Products upon delivery and extends to any Accession or Processed Products.
- (c) MPAC may register its security interest on the PPSA register at any time. The Customer must do all things reasonably necessary (including signing documents and providing information) to enable MPAC to perfect and maintain its security interest, including providing serial numbers or other details required for registration.
- (d) To the maximum extent permitted by the PPSA, the Customer waives any right to receive any verification statement or notice in relation to any registration or enforcement action.
- (e) If the Customer defaults in payment, the Customer irrevocably authorises MPAC to, without notice, enter any premises where the Products are located and take possession of the Products. MPAC may sell or otherwise deal with such Products at its discretion.

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- (f) The Customer agrees that it must not hinder or obstruct MPAC in exercising any rights under this clause 12.
- (g) Until Full Payment occurs, the Customer must not remove, alter, or deface any identification marks on the Products and must notify MPAC immediately of any change in location of the Products or threatened seizure or any encumbrance.

13. Privacy

MPAC collects, uses, and discloses personal information in accordance with the Australian Privacy Principles (as set out in the Privacy Act 1988 (Cth)) and its Privacy Policy. By placing an Order, the Customer acknowledges the Privacy Policy and consents to the collection, use and disclosure of personal information as reasonably required by MPAC to perform the Contract.

14. Guarantee

If Full Payment has not been received by MPAC within [10] Business Days of being due and payable, and if the Customer is a corporation, then each of its directors personally guarantees and indemnifies in favour of MPAC full payment of any Outstanding Amount. MPAC must discharge any personal guarantee and indemnity given by the Customer's directors within [5] Business Days of receiving Full Payment.

15. Default and Termination

- (a) The Customer is in default if it:
 - (i) fails to pay any Outstanding Amount when due;
 - (ii) breaches the provisions of these Terms or of any Contract;
 - (iii) becomes insolvent, enters administration, liquidation, or receivership, or makes an arrangement with creditors; or
 - (iv) ceases to carry on business or threatens to do so.
- (b) Upon default, MPAC may (without affecting other rights):
 - (i) suspend or terminate any Contract;
 - (ii) declare all Outstanding Amounts immediately due;
 - (iii) exercise all rights under the PPSA or at common law;
 - (iv) recover all costs of enforcement on a full indemnity basis (including legal costs); and
 - (v) exercise any other rights available at law or equity.

16. Force Majeure

- (a) MPAC will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by any act or event beyond MPAC's reasonable control including, but not limited to acts of God, war, terrorism, riot, embargo, pandemic, government action or inaction, natural disasters, strikes or labour disputes, sustained power failures, breakdown of machinery, shortages of materials or transport, or any other cause preventing or delaying performance (a "**Force Majeure Event**").
- (b) If a Force Majeure Event occurs that affects MPAC's performance of its obligations under these Terms:
 - (i) MPAC will notify the Customer as soon as reasonably possible; and
 - (ii) MPAC's obligations under these Terms will be suspended and the time for performance of MPAC's obligations will be extended for the duration of the Force Majeure Event. MPAC will arrange a new date for delivery of the Products with the Customer after the Force Majeure Event is over.
- (c) Either party may cancel an Order affected by a Force Majeure Event that has continued for more than [60] days by providing the other party with notice of its intention to cancel its order.
- (d) MPAC must, within [10] Business Days of receiving a notice under clause 16(c), refund the Customer for any Products that have not been delivered (minus the expenses reasonably and actually incurred by MPAC in arranging delivery of the Products up to the date of the occurrence of the Force Majeure Event).

17. General Provisions

- (a) (**Entire agreement**) These Terms constitute the entire agreement between the parties and supersede all prior negotiations, representations, warranties, and agreements relating to the subject matter.
- (b) (**Governing Law**) These Terms are governed by the law in force in Victoria, Australia. Each party: (i) irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria;

and (ii) waives any right it has to object to the venue of any legal process in those courts on the basis that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

- (c) (**Severability**) If the whole or any part of a provision of these Terms is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- (d) (**No waiver**) Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- (e) (**Survival**) Clauses relating to payment, retention of title, the PPSA, warranties, liability, indemnity, governing law, and any other provisions in these Terms that by their nature should survive, survive termination or expiry of any Contract.
- (f) (**Relationship**) Nothing in these Terms or any Contract creates a partnership, joint venture, employment, or agency relationship between the parties.
- (g) (**Assignment**) The Customer must not assign or transfer any rights or obligations under these Terms without MPAC's prior written consent. MPAC may assign its rights without consent.