

## TERMS AND CONDITIONS OF TRADE

### 1. DEFINITIONS

In these Terms of Trade, unless the context otherwise requires:

**Application for Credit** means any application for credit signed by the Customer and approved by the Company;

**Agreement** means an agreement formed in accordance with clause 3.1 or 3.2;

**Company** means LB Wire Ropes Pty Ltd (ACN 000 706 785);

**Consumer Legislation** means the *Competition and Consumer Act 2010* (Cth) (as amended) or equivalent State legislation;

**Customer** means the person or entity acquiring the Goods or Services from the Company or, if agent for another, the agent and the other person or entity jointly and severally;

**Goods** means any or all of the Goods supplied by the Company to the Customer as identified in a Quotation or an Order or otherwise described in an invoice;

**Order** means any written or verbal order provided by the Customer to the Company in respect of Goods or Services;

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

**Purchase Money Security Interest** has the meaning given to that term in section 14 of the PPSA;

**Quotation** means any written or verbal quotation provided by the Company to the Customer in respect of Goods or Services;

**Register** has the meaning given to that term in section 10 of the PPSA;

**RGA** means returned goods authorisation;

**Security Agreement** has the meaning given to that term in section 10 of the PPSA.

**Security Interest** has the meaning given to that term in section 12 of the PPSA;

**Services** means any or all of the services provided by the Company to the Customer as identified in a Quotation or an Order or otherwise described in an invoice, and any technical advice given by or on behalf of the Company in connection with the Goods, whether being specific advice given to the Customer or whether in any of the Company's technical literature,

including any advice given by any technical representative of the Company made available by the Company at the Customer's site or at any third party premises;

**Terms of Trade** means these terms and conditions of trade, and includes any variation or revision to these terms; and

**Verification Statement** has the meaning given to that term in section 155 of the PPSA.

## **2. APPLICATION**

- 2.1 These Terms of Trade apply to all Goods and Services supplied by the Company to the Customer and may only be modified or supplemented by separate written agreement between the Company and the Customer.
- 2.2 All other terms and conditions, express or implied, present or historic (including any statements made in any brochure, website or advertising literature of the Company) are excluded, save in the case of fraud.
- 2.3 The Company may vary these Terms of Trade at any time by providing written notice of the variation to the Customer. Any variation will apply to all Agreements created after receipt of the notice of variation by the Customer.

## **3. QUOTATIONS AND ORDERS**

- 3.1 Where the Company provides a Quotation to the Customer:
  - (a) the Quotation will remain open for a maximum of 30 days from the date of the Quotation; and
  - (b) a binding agreement for sale of Goods or Services in accordance with the Quotation, these Terms of Trade and any Application for Credit comes into existence on receipt by the Company of the Customer's written or verbal acceptance of the Quotation.

The Company may withdraw a Quotation at any time prior to acceptance by the Customer.

- 3.2 Where the Customer delivers an Order to the Company, a binding agreement for sale of Goods or Services in accordance with the Order, these Terms of Trade and any Application for Credit comes into existence upon the earlier of:
  - (a) acceptance in writing of the Order by the Company; or
  - (b) the Company commencing the necessary actions on its part to supply Goods or Services ordered by the Customer.

In the event of any inconsistency between the Order and these Terms of Trade, these Terms of Trade will prevail.

- 3.3 Cancellation of, or variation to, an Order will be accepted at the sole discretion of the Company, on such terms as the Company may specify.

#### **4. DELIVERY AND RISK**

- 4.1 Risk in the Goods passes to the Customer on delivery.
- 4.2 The Company will endeavour to meet any agreed or stated delivery dates, but will not be liable for any delay or failure to deliver.
- 4.3 Delivery shall be to such place as the Company may agree or reasonably specify prior to delivery. Any delivery charge will be at cost or as otherwise agreed by the Company and the Customer in writing. The Company reserves the right to charge the Customer for any costs incurred by the Company in meeting any urgent Orders of the Customer, including costs in relation to delivery of Goods to the Company.
- 4.4 Each delivery of Goods or performance of Services shall be treated as a separate agreement. Unless otherwise agreed in writing, the Company may deliver Goods or perform Services in part and any failure to deliver or perform or any related breach of agreement by the Company shall not affect any other delivery.
- 4.5 The Customer shall take delivery of the Products on any day up to the date quoted or agreed by the Company or, if none, within a reasonable time. If the Customer delays, fails or refuses to take delivery of the Goods, and without affecting any other rights the Company may have, the Company may charge the Customer for any expenses or additional costs incurred by the Company as a result of the delay, failure or refusal.
- 4.6 All claims for delivery of the wrong Goods, the incorrect quantity of Goods or Goods damaged in transit must be made within 7 days of delivery and in accordance with any procedures advised by the Company to the Customer from time to time.

#### **5. RETURNS**

- 5.1 Except in the situations set out in clause 10 or as required by law, the Company is not obliged to accept Goods returned by the Customer.
- 5.2 If the Customer wishes to return Goods, the Customer must first contact the Company and obtain an RGA number (which may be granted at the Company's discretion). All Goods are returned at the Customer's risk and expense and should be undamaged by the Customer and in

their original packaging. The Customer is responsible for returning Goods to the Company and for providing proof of delivery of such return.

- 5.3 If the Company agrees to the return of Goods, Goods must be returned in their original condition for receipt by the Company within 7 days of delivery clearly quoting the Customer's account number, Quotation or Order number (if applicable) and RGA number.
- 5.4 Any returned Goods may be subject to a restocking fee of 20% of the invoice value of the Goods.
- 5.5 Any delivery charge paid by the Customer in accordance with clause 4 in relation to any returned Goods will not be refunded by the Company.
- 5.6 Goods specially cut, manufactured or procured for the Customer by the Company are non-returnable.

## **6. PRICE**

- 6.1 Prices are quoted exclusive of GST and all other applicable taxes, duties or fees, which will be paid by the Customer in addition to those prices.
- 6.2 Minimum invoice value is \$10 (before GST).
- 6.3 Unless specifically stated otherwise, all prices are in Australian dollars.
- 6.4 Unless an Agreement states price(s) to be fixed, the Company may increase prices for undelivered balances or unperformed Services in accordance with increases in the Company's costs or general price list increases occurring after the date of acceptance of an Order or a Quotation, but before dispatch of Goods or performance of Services. The Customer shall pay any increases in delivery costs after the date of acceptance of an Order or a Quotation.

## **7. PAYMENT**

- 7.1 Where credit terms have been approved and unless otherwise agreed in writing, payment is due by the end of the month following the month of invoice. The Company may require security for payment before dispatch of Goods or performance of Services.
- 7.2 Time of payment is of the essence of each Agreement. Without prejudice to any other right or remedy it may have, the Company reserves the right to charge interest at 3% above the Commonwealth Bank of Australia's Overdraft Index Rate per annum (to accrue from day to day) on any amount which is not paid by the due date.
- 7.3 The Company may appropriate sums received from the Customer against any debt whatsoever due to the Company from the Customer (irrespective of any purported appropriation by the

Customer). In no circumstances may the Customer withhold payment or make any set-off on any account. The Customer shall on demand indemnify the Company against all costs, charges, expenses and legal costs incurred by the Company in recovering sums owing by the Customer.

## **8. OWNERSHIP**

8.1 Notwithstanding that risk in the Goods shall pass to the Customer on delivery in accordance with clause 4.1, the Company shall retain ownership of the Goods until the Company has received payment in full for the Goods and for all other Goods supplied by the Company to the Customer.

8.2 Until ownership passes to the Customer:

- (a) the Customer may sell or otherwise dispose of the Goods in the ordinary course of the Customer's business, provided that where the Customer disposes of the Goods before payment of the full purchase price to the Company, the sale proceeds of such disposal are the property of the Company and the Customer holds the proceeds on trust for the Company. Further, the Customer, in disposing of the Goods before payment to the Company, does so as the Company's fiduciary agent. In the circumstances described in clause 14.2, the Customer's right to sell, use or part with possession of the Goods shall terminate immediately;
- (b) the Customer must insure the Goods against all usual risks to full replacement value until ownership passes to the Customer. Any insurance monies received by the Customer in respect of the Goods owned by the Company, shall be held on trust for the Company;
- (c) the Customer must use its best endeavours to keep each delivery separate and clearly identified as the Company's property; and
- (d) where the Customer processes or commingles the Goods into other property, the Customer acknowledges that the Company takes title to that other property as well.

8.3 In the event that the Customer fails to make payment within the due time as stipulated by the Company, without prejudice to the Company's other remedies, the Company has the right to enter the premises of the Customer and to regain possession of the said Goods and the Customer waives the right to receive any notice under the PPSA.

## **9. PPSA**

- 9.1 The Customer acknowledges and agrees that each Agreement for supply on credit terms is subject to the Security Agreement for the purposes of the PPSA and that the Company may register its Security Interest in the Goods and in the proceeds of sale of the Goods as a Purchase Money Security Interest on the Register.
- 9.2 The Customer undertakes to promptly sign any further documents and to provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may require to make relevant registrations on the Register.
- 9.3 Where the PPSA applies to action taken by the Company in relation to the Goods, the Customer:
- (a) agrees that sections 120, 125, 142 and 143 of the PPSA will not apply; and
  - (b) waives its right to receive any notices under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA and any right to receive a Verification Statement under the PPSA.

## **10. LIMITATION OF LIABILITY**

- 10.1 Subject to clause 10.2, to the extent permitted by law, all other representations, warranties, descriptions and conditions, whether express or implied by law and/or oral or written, as to the state, quality or fitness of the Goods and the standard of the Services are expressly excluded.
- 10.2 Nothing in these Terms of Trade will affect any rights the Customer or any other person may have under the Consumer Legislation. However where the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use and consumption, then the liability of the Company to the Customer is limited in accordance with clause 10.3.
- 10.3 Except where any Consumer Legislation expressly requires otherwise, the Company's total aggregate liability under any proceedings or law in connection with the Goods, the Services or the Agreement is limited to the cost of the Goods and/or Services about which the claim is made, provided however that this clause will not affect any written performance guarantee given to the Customer by the Company.

## **11. INTELLECTUAL PROPERTY**

- 11.1 The Customer shall not use any trade marks or trade names applied to or used by the Company in relation to the Goods in any manner not approved by the Company.

- 11.2 The Customer warrants that no designs or instructions furnished to the Company will cause the Company to infringe or use without authorisation any third party's patent, trade mark, design or copyright in the execution of the Customer's Order.
- 11.3 The Customer agrees to indemnify the Company against any claim of a third party for infringement or unauthorised use of any patent, trade mark, design or copyright arising out of the Company's incorporation of a design provided by the Customer or compliance with an instruction of the Customer.
- 11.4 The Company and the Customer agree that the sale and purchase of the Goods does not confer on the Customer any licence or rights in respect of any patent, design, trade mark or copyright which is the property of the Company.
- 11.5 The Customer shall indemnify the Company against any liability incurred by the Company:
- (a) from incorporating property of the Customer in the Goods or complying with any specification or other instruction of the Customer relating to Goods; and
  - (b) arising from the use of or dealings in the Goods by or on behalf of the Customer, except as provided in clause 10.2 or if arising from the Company's wilful default.
- 11.6 Each party shall promptly notify the other of any relevant third party claim under these Terms of Trade or an Agreement (including, without limitation, under clause 10.2), shall on request comply with the other's reasonable requirements to minimise or avoid further liability and shall allow the other conduct of any action or settlement negotiations, on reasonable terms.

## **12. INFORMATION AND COMPLIANCE WITH LAWS**

- 12.1 The Customer must promptly supply to the Company all information and assistance required for the Company to execute the Customer's Order.
- 12.2 The Customer shall ensure that all Goods are safely and lawfully received, stored, maintained, used or applied by the Customer and shall have regard to any information provided by the Company concerning those matters.
- 12.3 The Customer shall ensure that all appropriate safety information (whether supplied by the Company, Customer or another) is distributed and drawn to the attention of customers and all others (including the Customer's employees and contractors) who require it for the safe handling or use of the Goods.

- 12.4 The Customer agrees for the Company to meet its obligations to disclose Customer contact details to the original equipment manufacturer for medical equipment or in the event of product recall or safety concern.

### **13. HEALTH AND SAFETY**

The Customer agrees to provide, or ensure provision of, such occupational health and safety induction as is required by law to the Company's employees, agents, consultants and sub-contractors performing Services at the Customer's site or at any third party premises on behalf of the Customer.

### **14. TERMINATION AND SUSPENSION**

- 14.1 Except where the Customer has caused or contributed to any delay, the Customer may (as Customer's sole remedy) terminate an Agreement by notice to the Company in respect of any instalment of Goods which is not despatched by any date stated in writing to be "guaranteed" by the Company or within 60 days after any date indicated by the Company or quoted on the Company's written quotation unless the Goods have been specially manufactured or adapted for the Customer.
- 14.2 The Company may (without prejudice to its other rights or remedies) terminate or suspend the Company's performance of the whole or any outstanding part of an Agreement and require immediate payment of all unpaid amounts owing to the Company in the following circumstances:
- (a) the Customer failing to take delivery of or to pay for Goods or Services (if any) by the due date;
  - (b) the Customer becoming bankrupt or insolvent or a receiver, insolvency administrator or encumbrancer taking possession of any material part of the Customer's assets;
  - (c) the Company having reasonable grounds for suspecting that an event in clause 14.2(b) has occurred or will occur, and so notifies the Customer; or
  - (d) where the Agreement is for a fixed price, there has been a substantial increase in the Company's costs of manufacture and supply of Goods or Services between the date of the Agreement and date of dispatch arising from circumstances beyond the Company's reasonable control and the Company and the Customer have failed within 30 days of the Company notifying the Customer of such increase, to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognise such increase.



**15. FORCE MAJEURE**

The Company shall not be liable for any failure to comply with an Agreement related to any circumstances whatever (whether or not involving the Company's negligence) which are beyond the Company's reasonable control and which prevent or restrict the Company from complying with the Agreement. However, the Company may where reasonable and without liability suspend or terminate all or some of its obligations under the Agreement if the Company's ability to fulfil such obligations is materially impaired.

**16. GENERAL**

- 16.1 Notices must be in writing to the address as notified by the Company or the Customer (as applicable) and are deemed delivered on the day of delivery by hand, (subject to confirmation of transmission) by facsimile, or (subject to the sender not receiving an error message) by email.
- 16.2 No failure by the Company to enforce any provision of an Agreement will be construed as a release of its rights relating to that provision or to sanction any further breach.
- 16.3 Each Agreement shall be governed by and construed in accordance with the laws of New South Wales and the parties submit to the jurisdiction of the Courts of that State and the Federal Court of Australia. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to an Agreement or the transactions contemplated by an Agreement.