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GENERAL TERMS AND CONDITIONS OF QUOTATION AND SALE

1 DEFINITIONS

In these Terms:

Accepted Order means an order by the Buyer as accepted by the Seller by way of issuing an order acknowledgment form or otherwise.

Buyer means the company or person to whom the Seller has submitted the Quotation, or who buys the Goods or Services from the Seller.

Contract means a contract between the Buyer and the Seller for the sale and purchase of Goods and/or Services.

Goods means all goods referred to in an Accepted Order and supplied, or to be supplied, by the Seller to the Buyer.

GST has the meaning given to that term in the *A New Tax System* (Goods and Services Tax) Act 1999 (Cth).

Guarantee means, where applicable, legally any binding guarantee to the Seller by any person other than the Buyer including in the form of a deed of guarantee.

Price means all fees, rates and prices, including packaging and delivery costs as set out in the Accepted Order.

Quotation means a sales quote given by the Seller to the Buyer for the proposed supply of Goods and/or Services.

Seller means Sell and Parker Pty Limited ACN 000 101 315.

Services means all services referred to in an Accepted Order and supplied, or to be supplied, by the Seller to the Buyer.

Terms means these General Terms and Conditions of Quotation and Sale.

2 FORMATION AND SCOPE OF CONTRACT

2.1 Any Quotation submitted to the Buyer by the Seller is not binding and may be changed or withdrawn by the Seller at any time without reason.

2.2 The Buyer may place an order with the Seller by referring to the Quotation

2.3 A Contract will be formed upon the Seller accepting an order by the Buyer by way of generating an order acknowledgment form or otherwise. The acceptance does not need to be communicated to the Buyer to be effective.

2.3 Any cancellation or variation of the Contract is only effective if agreed by both parties in writing.

- 2.4 Upon the formation of the Contract, the Accepted Order and these Terms constitute the entire agreement between the Buyer and the Seller for the supply of the Goods or Services and override and supersede any agreement or understanding between the parties and any other documents, including any terms and conditions contained in a Buyer order.

3 PRICE AND PAYMENT

- 3.1 The Seller will invoice the Buyer at the date of delivery of the Goods or the provision of the Services.
- 3.2 The Seller reserves the right to vary the Price if:
- (a) the Buyer requests, and the parties agree to, any variation to the Goods and Services;
 - (b) the cost to the Seller is increased due to a request by the Buyer that the Goods and/or Services be provided outside normal working hours or delivered to an address other than that originally specified by the Buyer;
 - (c) any additional charges, fees or taxes apply to the Goods and Services at delivery.
- 3.3 Unless the Accepted Order specifically states otherwise, the Price of the Goods does not include freight or delivery charges, which are payable by the Buyer in addition to the Price.
- 3.4 Unless the Accepted Order specifically states otherwise, all invoices must be paid in full in cash on delivery.
- 3.5 If the Buyer has a credit account with the Seller, then the Buyer must pay the Price for the Goods and Services within 30 days after the date of the invoice without deduction or set-off.
- 3.6 If the Buyer orders custom-made Goods, or if the Goods or Services are to be delivered more than 90 days after the Buyer's order, then the Seller may require part-payment of the Price before delivery.
- 3.7 If requested by the Buyer, the Seller may deliver the Goods by instalments, in which case each instalment will be deemed to be the subject of a separate contract governed by these Terms for which the Buyer must separately pay.
- 3.8 If an invoice is not paid in full by the due date, interest will accrue from day to day on the outstanding amount of 2% per calendar month and is payable on demand by the Seller. The Seller may also withhold delivery of Goods and Services ordered by the Buyer if any of the Seller's invoices remain unpaid.

4 GST

Unless the Accepted Order specifically states otherwise, the Price for the Goods and Services is exclusive of GST. If a party makes a taxable supply under or in connection with these Terms, then the recipient of the supply must pay to the supplier, in addition to the GST-exclusive consideration, an amount equal to the GST payable on the supply, upon receiving a tax invoice from the supplier.

5 DELIVERY

- 5.1 The Goods will be delivered by the Seller to the Buyer at those premises of the Seller referred to in the Quotation, unless the Seller and the Buyer have agreed that the Seller is to deliver the Goods to another place specified in writing by the Buyer. If the Buyer requests delivery of the Goods to a particular place and the Seller agrees to deliver to that destination, then the Seller will act as agent for the Buyer to arrange for the delivery of the Goods to the Buyer at that destination at the cost of the Buyer.
- 5.2 Unless the Accepted Order specifically states otherwise, the Goods will be packed in the Seller's normal packaging used for similar goods. The Seller is not liable for damage to or deterioration of the Goods while in transit.

- 5.3 Any time or date of delivery specified by the Seller in the Accepted Order is the best estimate of the Seller at the date of the Accepted Order as to when the Goods or Services will be available. The Seller will not be liable for failure or delay to deliver the Goods or to perform the Services, or for any loss or damage resulting directly or indirectly from any failure or delay to deliver the Goods or to perform the Services, except where such failure or delay is solely due to a breach or non-observance of these Terms by the Seller.
- 5.4 The Buyer must accept delivery of, and pay for, the Goods and Services if and when supplied, regardless of any failure or delay to deliver the Goods or to perform the Services by the date specified in the Accepted Order. If the Buyer is not able to take delivery of the Goods when ready, the Seller is entitled to store the Goods at the Buyers cost and risk.

6 TITLE AND RISK

- 6.1 The Buyer assumes all risk of loss, theft or damage to the Goods upon delivery of the Goods by the Seller in accordance with clause 5.1.
- 6.2 Notwithstanding any other provision of these Terms or that the Buyer has possession of the Goods, title to the Goods remains with the Seller and no legal or equitable interest or property in the Goods will pass to the Buyer, or any other party, until the full amount due for the Goods has been received by the Seller.
- 6.3 Until title passes to the Buyer, the Buyer:
- (a) is a bailee of the Goods;
 - (b) will not remove or change the manner in which the Goods have been labelled by the Seller;
 - (c) will store the Goods in a manner which shows clearly that they are the property of the Seller;
 - (d) will not modify, change, intermix or attach the Goods to any other goods or property in any way that cannot be promptly reversed without causing damage to the Goods;
 - (e) holds the benefit of any insurance of the Goods on trust for the Seller and in the event the Goods are lost, damaged or destroyed, will pay the proceeds of such insurance to the Seller up to any outstanding amount owed by the Buyer under the Terms;
 - (f) will not sell, dispose or otherwise part with possession of the Goods;
 - (g) irrevocably authorises the Seller to enter any premises where the Goods are kept to inspect and/or recover possession of the Goods; and
 - (h) will not encumber or grant any interest in the Goods, by means of security or otherwise, in breach of this clause or the Personal Properties Security Act clause.
- 6.4 Subject to prior written consent of the Seller, the Buyer may sell the Goods before title passes to the Buyer, in which case any proceeds resulting from such sale will be held by the Buyer in a separate account on trust for the Seller until any outstanding amount owed by the Buyer under this Agreement has been fully paid to the Seller.
- 6.5 In the event of a default by the Buyer, the Seller may without limiting any other rights of the Seller, demand the immediate return of the Goods to the Seller at the Buyer's expense.

7 SECURITY FOR PAYMENT

The Buyer charges all real property or interests in real property of which the Buyer is the registered proprietor from time to time as security for the payment to the Seller of the Price of the Goods, GST and any other moneys payable to the Seller under these Terms and the Buyer agrees that the Seller may lodge a caveat on the title to any such real property to protect the interest of the Seller in that real property created by these Terms.

8. PERSONAL PROPERTY SECURITIES ACT

- 8.1 This clause is to be interpreted and applied in accordance with the Personal Property Securities Act 2000 (Cth) (**PPSA**).
- 8.2 The Buyer acknowledges and agrees that:
- (a) these Terms constitute a security agreement for the purposes of the PPSA, and as such, create a security interest in the nature of a purchase money security interest to the benefit of the Seller as a secured party in all Goods provided or to be provided to the Buyer under the Terms, to secure the payment of the Price and of any other monies which may become due and owing as a result of the supply of Goods by the Seller to the Buyer from time to time; and
 - (b) the Seller has given value for the security interest, and the Seller's security interest is effective and attaches to the Goods (including future Goods supplied by the Seller to the Buyer) immediately upon the Buyer taking delivery of the Goods.
- 8.3 The Seller is entitled to take all steps necessary to protect and register the purchase money security interest in the Goods under the PPSA.
- 8.4 Upon request by the Seller, the Buyer will promptly sign any documents and provide any information which the Seller may request, including agreement or waivers from third parties, as necessary to register, perfect or otherwise protect and enforce the Seller's security interest in the Goods.
- 8.5 The Buyer will:
- (a) not register, or permit to be registered, any security interest in the Goods without the prior written consent of the Seller;
 - (b) at its own cost, do anything which the Buyer considers reasonably necessary to ensure that the Seller's security interest attaches to the Goods, is enforceable, perfected and otherwise effective and has the priority required by the Seller;
 - (c) perform any of its obligations under the PPSA, and enable the Seller to exercise or enforce any of its rights in relation to its security interest and/or proceeds resulting from the Goods;
 - (d) give the Seller not less than fifteen (15) days written notice of any proposed change in the Buyer's name or any other changes in the Buyer's details (including changes in the Buyer's address, facsimile number, email address, trading name or business practice); and
 - (e) be responsible for the full costs incurred by the Seller (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 8.6 To the extent permitted under the PPSA:
- (a) Sections 96 and 125 of the PPSA do not apply to the Agreement;
 - (b) the Buyer waives its rights to receive notices, including a financing statement or financing change statement, under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA;
 - (c) for purposes of section 157(7) of the PPSA, the Seller need not comply with sections 132 and 137(3); and
 - (d) neither the Seller nor the Buyer will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Buyer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

9 INSPECTION

The Buyer may inspect the Goods before delivery by the Seller only if specifically agreed by the parties in writing. The Seller will give the Buyer access to its premises for the purposes of facilitating such inspections, provided the Buyer has given at least 2 working days' notice of its requirements.

10 RETURNS

10.1 In preparing the Quotation, accepting an order and delivering the Goods and Services the Seller has relied on information provided by the Buyer (including but not limited to performance requirements, operational conditions and site limitations). The Buyer may not reject Goods or Services where those Goods or Services are supplied to the Buyer in accordance with the Buyer's requirements as communicated to the Seller.

10.2 The Buyer may return the Goods to the Seller if the Goods have been wrongly supplied or oversupplied or if the Goods are not in accordance with the Accepted Order and these Terms. The Seller is not required to accept the return of Goods in these circumstances unless the Buyer notifies the Seller in writing within 5 working days of delivery of its reasons for returning the Goods.

11 ADVERTISING

The Buyer gives the Seller (or the Seller's representatives) permission to take pictures of the Goods, for use by the Seller for advertising or promotional purposes.

12 LIMITATION OF LIABILITY

12.1 Subject and except to the extent that sub-clauses 12.5 and 12.6 apply, the Seller's total aggregate liability for claims relating to the provision of the Goods or Services, whether based on contract, statute, tort (including negligence) or otherwise, will not exceed the amount paid by the Buyer for the Services and/or Goods in relation to which liability arose;

12.2 The Seller's liability is reduced to the extent that the Buyer causes or contributes to any loss or damage.

12.3 The Seller is not liable for any advice given by its employees, contractors or agents in respect of the design, suitability or fitness for purpose of the Goods or Services and the Buyer must rely solely upon its own knowledge, expertise and experience.

12.4 The Seller is not liable to the Buyer in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any:

(a) indirect or consequential loss or damage; or

(b) loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, or loss under, or in relation to, any other contract; in each case, whether of a direct, indirect or consequential nature,

suffered by the Buyer or any other person and arising out of any breach or other act or omission in connection with these Terms.

12.5 The *Competition and Consumer Act 2010* (Cth) and similar State legislation establish consumer guarantees or warranties which cannot be excluded. Nothing in these Terms operates to exclude those guarantees or warranties, but all other warranties, express or implied, are excluded.

12.6 Where the Seller cannot exclude a consumer guarantee or warranty imposed by legislation in relation to these Terms, and the Seller is able to limit the Buyer's remedy for a breach of a consumer guarantee or warranty, the Seller's liability for any breach of consumer guarantees or warranties is limited, at the Seller's option:

(a) in case of Goods, the repair or replacement of the Goods or the supply of substitute Goods, or the cost of doing so; and

(b) in case of Services, to supplying of the Services again, or pay the cost of doing so.

13 FORCE MAJEURE

The Seller will not be liable for any failure to observe its obligations under these Terms where the failure is due to any cause beyond its control, including but not limited to strikes, industrial action, breakdown of plant, machinery or delivery vehicles, war, blockades or governmental interference or any act of God, provided that in any of these circumstances the Seller must use reasonable efforts to put itself in a position where it is able to meet its obligations under these Terms as quickly as practicable.

14 TERMINATION

- 14.1 Without limiting any of its other rights or remedies, the Seller may suspend or terminate any Contract if:
- (a) any debt payable by the Buyer to the Seller remains unpaid for 14 days or more;
 - (b) the Buyer fails to provide a Guarantee when requested by the Seller;
 - (c) the Buyer fails to take delivery of any Goods or Services other than in accordance with the Buyers rights under these Terms;
 - (d) the Buyer otherwise defaults in or fails to observe an obligation under these Terms and does not rectify that default or failure within 30 days after notice in writing from the Seller requiring it to do so;
 - (e) the Buyer becomes insolvent, enters into any arrangement with its creditors, a receiver, receiver and manager or administrator is appointed in respect of the Buyers assets, or an undertaking or an order is made or a resolution is passed for the Buyer's winding up.
- 14.2 Termination of a Contract in accordance with clause 14.1, will not prejudice the rights and liabilities of the parties which existed prior to termination.
- 14.3 If any Contract is suspended, then, as a condition of resuming delivery, the Seller is entitled to require full payment of all outstanding invoices or the provision of a Guarantee or other form of security.

15 NOTICES

Any notice from one party to the other will be in writing and delivered personally or sent by pre-paid post, transmitted by facsimile to that party's address or facsimile number as set out in the invoice or order form, sent by email to that party's nominated email address, or otherwise notified by that party. If mailed, the notice will be deemed delivered on the expiration of two business days after posting and if faxed, on confirmation of despatch if transmitted on a working day, or if not, then at 9.00 am. on the next working day.

16 VARIATION

The Seller may vary these Terms from time to time upon written notice to the Buyer and such variations will apply to the Buyer from the effective date of the notice.

17 ASSIGNMENT

Neither the Seller nor the Buyer is entitled to assign the benefit of or its obligations under these Terms without the prior written approval of the other party, which shall not be unreasonably withheld.

18 GOVERNING LAW

These Terms shall be governed by and interpreted in accordance with the laws of New South Wales.