

PITTELLA IMPORTS PTY LTD TERMS AND CONDITIONS OF SALE

1. Exclusive Application

These Terms and Conditions of Sale (**Terms**) apply to all sales made by Pittella Imports Pty Ltd (**Pittella**) of products (**Goods**). Conflicting or additional terms of sale will be valid only if they have been expressly agreed in writing and signed by both parties, Pittella and the Purchaser.

2. Quotations & RRP

All quotations for Products are indicative only, are not binding on Pittella, are not to be regarded as an offer by Pittella and do not include freight charges unless expressly stated. No order is binding until confirmed in writing by Pittella. Any delivery times, dates or timeframes are approximate and non-binding and based on conditions at the time the quotation is prepared. Pittella may amend a quotation for any reason at any time. Where the Purchaser is acting as distributor for Pittella, it agrees not to on-sell any Product for a price greater than the Pittella recommended retail price (**RRP**). Pittella reserves the right to change the RRP at any time.

3. Terms of Payment

Unless otherwise specified, quoted prices are exclusive of all taxes, duties, levies, imposts or other charges payable in respect of the Goods. GST must be paid by Purchaser to Pittella. Invoices are to be paid in full prior to pick up / delivery of Goods or, if the Purchaser has an account with Pittella, within the sooner of 30 days after the date of issue of invoice or the timeframe specified in the Credit Terms. Where payment is made by cheque, payment shall only be regarded as having been made when funds are cleared and stand to the credit of Pittella. The Purchaser must pay default interest on overdue amounts, which will accrue daily (on the basis of a 365 day year) from (and including) the due date for payment until (but not including) the date of actual payment at the rate of 2% above the Business Lending Base Rate of the National Australia Bank as published on its website from time to time.

4. Delivery

Delivery occurs when the Goods are notified as ready for despatch at Pittella's premises. The Purchaser is responsible for arranging and paying for collection and carriage of the Goods to their final destination unless otherwise agreed with Pittella in writing. Risk in the Goods passes to the Purchaser on delivery. Collection and carriage are at the Purchaser's cost and risk. Any delivery dates indicated by Pittella are non-binding and based on the conditions prevailing at the time the order is accepted and on the assumption of normal supply and manufacturing conditions. Pittella is not liable for any loss caused by delay and Purchaser is not relieved of any obligation to pay in the event of any delay. All Goods and pricing must be checked by the Purchaser immediately on receipt and any discrepancies from the order must be advised by the Purchaser to Pittella in writing as soon as possible. All Goods delivered will be deemed to have been accepted by the Purchaser as fully compliant and of acceptable quality if they are not rejected and returned to Pittella within 7 days (subject to Consumer Guarantees). Pittella reserves the right to deliver part only of an order as stock levels, delivery schedules or other operational matters dictate or allow and Purchaser may request partial delivery (additional freight charges may apply). Purchaser must collect any order within 3 months, Pittella reserves the right to charge a storage fee for delivered Goods where the Purchaser has been notified that delivery has occurred and the Goods have not been collected within 3 months of the date of notification.

5. Force Majeure

Pittella will not be liable for any non-performance of its obligations resulting from any cause outside Pittella's control, including any: act of God, flood, fire, war, terrorism, labour dispute, unavailability of equipment, stock, raw materials or transport.

6. Title and Risk

Title to Goods will be deemed to have passed to the Purchaser only after it has paid all monies owing to Pittella (including in full for the Goods). Until such payment has been made, the Purchaser is only authorised to sell the Goods as agent for Pittella and will: (a) hold the Goods, and any products into which the Goods are incorporated, as Pittella's bailee; (b) store the Goods in such a manner as to make them clearly identifiable as Pittella's property; (c) hold the book debt and proceeds of on-sale of the Goods as Pittella's fiduciary; and (d) allow Pittella personnel or agents to enter any premises occupied by the Purchaser for the purpose of removing the Goods in the event that: (i) the Purchaser fails to pay for the Goods, or any amounts due to Pittella, in full in accordance with these Terms; (ii) an application is made, or a resolution is passed, that the Purchaser be wound up or, if the Purchaser is an individual, a bankruptcy notice is issued in respect of the

Purchaser; (iii) a liquidator, provisional liquidator, receiver or similar controller is appointed to or takes possession of any of the Purchaser's assets; (iv) an administrator is appointed to the Purchaser; (v) the Purchaser enters into, or resolves to enter into, an arrangement, compromise or composition with any of its creditors or shareholders; or (vi) the Purchaser is presumed to be insolvent under any applicable law. Risk in the Goods will be deemed to have passed to the Purchaser upon delivery in accordance with clause 4.

7. Warranty and Liability

Unless specified otherwise, and in addition to any rights the Purchaser may have under statute, Pittella warrants to the Purchaser, and to any end-customer that buys the Goods as new from the Purchaser (**Customer**), that the Goods will remain free of any material defects in workmanship or materials for a period of 25 years from the date of Delivery (**Product Guarantee**). Pittella's liability under the Product Guarantee is limited to the lower of the cost of replacement or repair of the defective Goods or supplying equivalent Goods (whichever is most appropriate in the circumstances in Pittella's sole discretion). Pittella will not be liable for products that become defective, or stop working, as a result of: any unforeseeable, unauthorised, improper, negligent or reckless installation; any failure to follow fitting and/or care instructions; any improper use, maintenance; fair wear and tear; for any defect caused by the incorrect or improper handling of the Goods; or where the Goods have been repaired or modified by the Purchaser, Customer or any third party. Customer and Purchaser Product Guarantee claims (other than under a Consumer Guarantee) must be submitted in writing directly to Pittella. The person making the claim must bear the costs and expenses of making such claim such as the cost of removal or replacement; installation of replacement products; postage, freight or travel time. Pittella's liability for any claim in connection with the Goods will not extend to any indirect, special or consequential loss or damage, nor to any loss or damage in the nature of loss of: (a) actual or anticipated revenue, profits or savings; (b) opportunity, interest, goodwill, business reputation, data, production or raw materials; or (c) amounts payable to idle or stood-down personnel; even if the potential for such loss or damage has been made known to Pittella. Under no circumstances (but subject always to clause 8) will Pittella's maximum aggregate liability for any claim in connection with the Goods exceed the purchase price of the relevant Goods.

8. Terms Implied by Legislation

Any limitation on Pittella's liability under these Terms, including under the Product Guarantee, only operates to the extent permitted by law, and nothing in these Terms purports to exclude, restrict or modify, or have the effect of excluding, restricting or modifying, any condition or warranty implied by legislation (including the *Competition and Consumer Act 2010* and any State or Territory legislation concerning consumer protection, fair trading or the sale of goods or services) (**Implied Term**) where to do so would have the effect of rendering the relevant provision in these Terms void or otherwise unenforceable. Subject to the previous sentence: (a) all Implied Terms, and any other conditions or warranties otherwise implied by law, are excluded from these Terms; and (b) Pittella's liability for a breach of any Implied Term of the kind referred to in the first sentence of this clause will be limited to the full extent expressly allowed for in the relevant legislation. In the case of supply to a consumer, the Goods come with guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). The consumer is entitled to a replacement or refund for a major failure. The consumer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. Any Purchaser that has sold Goods to a Customer (**Distributor**) is responsible for: managing the Customer's rights in a timely and efficient manner; ensuring that it provides the Customer with its full rights under Consumer Guarantees; ensuring that all loss is mitigated. The Distributor will advise Pittella of any claim under a Consumer Guarantee and will work with Pittella to ensure that all loss is minimised and that the Customer's claim is managed effectively within 7 business days.

9. Advice and Purchaser's Use

All advice provided by Pittella is provided in good faith, however, the Purchaser must satisfy itself that the Goods are suitable for the Purchaser's intended purpose relying on its own knowledge and expertise. The Purchaser indemnifies Pittella against any claim (including for the infringement of third party intellectual property rights) which arises out of the Purchaser's particular use of the Goods. No advice may be relied upon unless and until it has been confirmed in writing and duly signed by or on behalf of Pittella. This includes responsibility for correct ordering and Pittella bears no responsibility for short-ordering or over-ordering.

10. Changes to Order & Samples

Goods not being defective or delivered in error may not be returned unless by Pittella's prior written consent. Where such consent is given, the Goods must be returned (at the Purchaser's cost) within 7 business days in undamaged, unused and in resalable condition, in the original packaging, with a copy of the original invoice and with an "authorisation for return" letter. The Goods must be current stock, complete as per invoice

and must not have been fixed, installed, changed or damaged in any way. Subject to approval by Pittella, the Customer will be given a Pittella credit note, valid for 12 months from date of issue, to the value of the duly returned Goods less an administration fee of 25% of the invoiced price of the Goods. This clause 10 will not apply to Goods that have been custom made, specially ordered or manufactured pursuant to the Customer's specification or that have a product code of "special". Where samples have been provided on credit the Goods must be returned within 3 months of the invoice date, (at the Purchaser's cost) undamaged, unused and in resalable condition, in their original packaging and together with a copy of the original invoice. If these conditions are not met Pittella reserves the right to charge the Purchaser the fee as stipulated on the invoice.

11. Brochures and Discontinued Goods

If the Purchaser orders, or Pittella gives any information in relation to, any Goods by reference to any technical brochure, catalogue, price list or other information or publication of Pittella (or the manufacturer of the Goods), such reference will be regarded as being to the most recent version of that material. Pittella reserves the right to supply equivalent Goods to those specified in a confirmed order where the specified Goods have been discontinued or are not otherwise available from the manufacturer. In the interests of continuously enhancing its products, Pittella reserves the right to alter product dimensions, material and designs without notice.

12. Intellectual Property

All materials and drawings, documents or other information which Pittella or the manufacturer generates and delivers to the Purchaser in the course of its dealings with the Purchaser remain the property of, and all intellectual property rights in them belong to, Pittella or the manufacturer respectively. The Purchaser agrees to keep them confidential and not to disclose them to any third party without the written consent of Pittella and on such terms as Pittella shall think fit, unless such disclosure is required by law.

13. Fitting Instructions and Purchaser's Indemnity

The Purchaser agrees to comply fully, carefully and completely in every respect with the relevant fitting and care instructions for the Goods supplied. If the Purchaser is not the end-user of the Goods, the Purchaser undertakes to ensure that its Customer or any other end-user complies with this requirement. Goods may not be used or fitted inconsistently with the appropriate fitting instructions, any manual, or any other technical information or advice provided. No liability will be accepted by Pittella for any type of loss or damage caused by failure by the end-user to comply with this paragraph 13. The Purchaser indemnifies Pittella against any liability it may incur for any loss or damage of whatsoever nature arising out of a breach by the Purchaser of any of its obligations under these Terms, as well as any negligent or unlawful act or omission or willful misconduct of the Purchaser or any personnel employed or engaged by the Purchaser in relation to these Terms and any Goods or sale of Goods they govern.

14. Personal Property Securities Act

14.1 The Purchaser agrees and undertakes to do anything Pittella requires (such as obtaining consents and signing and producing documents) in connection with the registration of this document or any other document on any register established pursuant to the *Personal Property Securities Act 2009 (Cth)* ("PPSA"). In the event the Purchaser neglects or fails to deliver such document(s), the Purchaser hereby appoints Pittella to be the Purchaser's lawful attorney for the purpose of executing and registering such document(s).

14.2 The Purchaser agrees and acknowledges that:

- (a) these Terms 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 Pittella to the Purchaser (if any) and in all in future Goods (and their proceeds);
- (b) where the Purchaser is paid in respect of the Goods so delivered, the Purchaser must, as Pittella's fiduciary, keep any such proceeds in a separate account and account to Pittella in respect of those proceeds;

(c) the Purchaser contracts out of and waives its rights under the following provisions of Chapter 4 of the PPSA:

- (i) to receive a notice of intention of removal of accession (section 95)
- (ii) to receive a notice that Pittella decides to enforce its security interest in accordance with land law (section 118);
- (iii) to receive notice on enforcement of security interests in liquid assets (section 120);
- (iv) to receive a notice of enforcement action against liquid assets (section 121(4));
- (v) to receive a notice to seize collateral (section 123);
- (vi) to receive notice on enforcement of security interests in liquid assets (section 125);
- (vii) to receive a notice of disposal of Goods by Pittella purchasing the Goods (section 129);
- (viii) to receive a notice to dispose of Goods (section 130);
- (ix) to reinstate the security agreement (section 143); and
- (x) to receive a notice of any verification statement (see section 157(1) and section 157(3)).

(d) where Pittella has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.

(e) until ownership of the Goods passes, the Purchaser must not give Pittella a written demand or allow any other person to give Pittella a written demand requiring Pittella to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the Act.

(f) it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to Pittella under these TERMS.

(g) The Purchaser irrevocably grants to Pittella the right to enter upon the Purchaser's property or premises, without notice, and without being in any way liable to the Purchaser or to any third party, if Pittella has cause to exercise any of Pittella's rights under section 123 and/or 128 of the PPSA, and the Purchaser agrees to indemnify Pittella from any claims made by any third party as a result of Pittella exercising such right.

15. Confidentiality

(a) Except as required by law, this Agreement and subject to the PPSA, Pittella and the Purchaser agree to treat these Terms as confidential.

(b) Pittella and the Purchaser acknowledge and agree that sub-clauses 15(a), 15(c) and this sub-clause 15(b) constitute a confidentiality agreement pursuant to section 275(6) of the PPSA.

(c) Neither Pittella nor the Purchaser will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these Terms and subject to the PPSA.

16. General

These Terms are governed by the laws of Victoria and the Purchaser submits to the non-exclusive jurisdiction of the courts of that State. The United Nations Convention on the International Sale of Goods will not apply to these Terms. The Purchaser may not assign, create an interest in, or in any other way deal with, any of its rights or obligations under these Terms without the prior written consent of Pittella. If a provision of these Terms is invalid or unenforceable: (a) it is to be read down or severed to the extent of the invalidity or unenforceability; and (b) it does not affect the validity or enforceability of the remaining provisions of these Terms.