

# FIBRISOL SERVICES AUSTRALIA PTY LTD

## TERMS AND CONDITIONS OF TRADE

### 1. Definitions

In these Terms and Conditions of Trade:-

“**Customer**” means any person or entity who orders or who is deemed to have ordered pursuant to these Terms, Goods from FSA and shall include all persons or entities described as “the Customer” in an Application for Credit submitted to FSA.

“**FSA**” means Fibrisol Service Australia Pty Ltd ACN 063 405 121; ABN 57 063 405 121.

“**Goods**” means goods or services ordered from FSA to be provided by FSA.

“**Order**” means a request for Goods and includes the Customer's forecast of Goods required by the Customer.

“**PMSI**” means a purchase money security interest, as defined in the PPSA.

“**PPSA**” means the Personal Property Securities Act 2009 (Cth).

“**Proceeds**” has the meaning given to it in section 31 of the PPSA.

“**Terms**” means these Terms and Conditions of Trade.

### 2. General

The Customer agrees to be bound by these Terms with respect to all Goods ordered by it, Goods supplied or agreed to be supplied by FSA and for the provision of credit by FSA in relation to such Orders and Goods. The Customer acknowledges that any terms and conditions provided or produced by the Customer at any time are expressly negated and do not form part of the contract between the parties unless accepted in writing by FSA.

The Customer acknowledges that by placing an Order for Goods the Customer agrees to be bound by these Terms.

### 3. Payment Terms

- a) With respect to the Customer's obligation to make payment for Goods ordered from FSA, time shall be of the essence.
- b) In the event that FSA approves credit terms for the Customer, payment for Goods ordered from FSA shall be made in accordance with the credit terms notified by FSA to the Customer, and if no credit terms have been notified, terms will cash on delivery.
- c) FSA is entitled to vary, amend or revoke any credit terms extended to the Customer in its absolute discretion and any such variation, amendment or revocation shall take effect upon notification to the Customer.
- d) If a cheque or other negotiable instrument is tendered as payment, payment shall be deemed to have been made on the date on which such cheque or negotiable instrument is negotiated and cleared by FSA's bank.

### 4. Application of Payments

Payments made by or on behalf of the Customer shall be applied as follows:-

- a) Firstly, towards any costs and disbursements incurred under clause 10(b)(ii);
- b) Secondly, towards interest charged to the Customer's account under clause 10(b)(i); and
- c) Thirdly, in satisfaction or part satisfaction of sums owing for the supply of Goods by FSA to the Customer starting with the oldest portion of the Customer's account.

### 5. Orders

- a) Until such time as FSA accepts in writing an Order submitted by the Customer, FSA shall not be obligated to supply to the Customer the Goods ordered.
- b) The Customer's forecast of Goods required by the Customer shall be deemed to constitute an Order 7 days after a forecast is notified to FSA.
- c) If at any time the Customer is in default of its payment obligations under these Terms, FSA may cancel or suspend any Order that has been accepted by FSA, without being liable to the Customer in any way whatsoever.
- d) FSA shall not under any circumstances be responsible to the Customer for supplying Goods pursuant to an Order that it has accepted, which failure to supply is caused by a failure to obtain any necessary government or other legally required authorisation including an Export Licence, Import Licence, Exchange Permit or any other authorization, even though such authorisation could have or may have been made by FSA, any matters beyond FSA's reasonable control, including but not limited to, acts of any government, acts of God, war or other hostility, national or international disasters, equipment failure, strikes or lockouts, inability to obtain necessary supplies and the like and other force majeure occurrences.
- e) In relation to Goods the subject of an Order, the Customer warrants that the Goods are to be used only for the purpose or purposes described in the Order as approved by FSA and such Order shall prevail over all other purpose descriptions and specifications.

### 6. Delivery of Goods, Charges & Dates

- a) The means of delivery of the Goods shall be at FSA's absolute discretion.
- b) FSA shall be permitted to deliver any of the Goods in an Order by part deliveries and shall be entitled to invoice each part delivery and be paid for each part delivery in accordance with these Terms. The Customer shall not refuse to accept delivery on the basis that the Goods are delivered by part deliveries.
- c) Unless otherwise agreed by FSA in writing, FSA shall not be liable for loss or damage suffered to the Goods during carriage, handling and/or storage. The Customer acknowledges that it is responsible for arranging insurance and payment of any insurance premiums, in addition to the purchase price of the Goods.
- d) In the event that a delivery date is specified by the Customer and FSA agrees that it will deliver the Goods, FSA will use its reasonable endeavors to comply with the Customer's request. However, in no circumstances will FSA be liable for any loss or damage of any kind whatsoever, including but not limited to, consequential loss or loss of profits, for any delay in delivery. The Customer acknowledges and agrees that it will not make any claim against FSA for any loss or damage incurred as a result of any delay in delivery or failure to fulfill any part of any Order.
- e) No delay or failure to fulfill any part of any Order shall entitle the Customer to cancel or vary the Order or to reduce any payment.

### 7. Quotations, Pricing & Specifications

- a) Any quotation made by FSA to the Customer from time to time shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only. FSA reserves the right to accept or reject, in its absolute discretion, any Order which may be received by it.
- b) Unless otherwise agreed, FSA reserves the right to charge prices prevailing at the time of delivery and all prices quoted and/or charged by FSA are subject to vary at any time without notice.

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- c) Unless otherwise agreed to in writing, prices quoted by FSA will be quoted excluding GST.
- d) Containers or other items used to package and deliver Goods which are noted on FSA's invoice as being supplied on loan are and remain the property of FSA and must be returned in good order and condition to FSA at the Customer's expense within 3 months, or other period as advised by FSA, from the date of FSA's invoice. If such containers or other items are not returned to FSA in good order and condition within the stated period, the Customer will be charged for the cost of the container or item as determined by FSA and such charge must be paid for in accordance with these Terms.
- e) The Customer shall do all things necessary to promptly return to CHEP all CHEP pallets and containers supplied by FSA and notify CHEP of FSA's interest in such pallets and containers. The Customer shall be responsible for all costs incurred by FSA to CHEP for the return or replacement of such pallets and containers and will indemnify FSA in full against any such costs and charges.
- f) The Customer shall do all things necessary to promptly return to Loscam all Loscam pallets and containers supplied by FSA and notify Loscam of FSA's interest in such pallets and containers. The Customer shall be responsible for all costs incurred by FSA to Loscam for the return or replacement of such pallets and containers and will indemnify FSA in full against any such costs and charges.
- g) Notwithstanding anything contained herein, FSA reserves its rights to vary at any time and without notice, Goods specifications, the range of Goods, packed quantities and the prices set out in its price lists and price catalogues from time to time and any such variation will be effective from the date of such variation.
- h) These Terms shall apply to all samples and specifications associated with those samples supplied by FSA to the Customer.

**8. Defects & Guarantee of Quality**

- a) To the extent that the Customer acquires Goods from FSA as a consumer (as that term is defined in the Australian Consumer Law), the Customer may have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.
- b) Nothing in this clause 8 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, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would:
  - i. contravene that statute; or
  - ii. cause any term of these Terms to be void, ("Non-excludable Obligation").
- c) Except in relation to Non-excludable Obligations, FSA shall not be responsible or liable to the Customer for any or all defects in items comprising a component(s) of Goods that have not been manufactured by FSA and that have been supplied to FSA by a third party. These Terms apply to such items supplied to FSA in the same manner and effect that these Terms apply to Goods.
- d) The Customer shall inspect all Goods delivered by FSA immediately upon delivery.
- e) Any claim by the Customer relating to any defect in the manufacture of the Goods or any shortage or other non-conformity to an Order shall be made in writing and received by FSA within 14 days of the delivery of the Goods. Unless such claim is received by FSA within the specified period, the Customer shall be deemed to have accepted the Goods. Any such claim

made by the Customer must be accompanied by the relevant FSA invoice, delivery docket and, where relevant, a specimen of the Goods showing the alleged defect.

- f) Subject to any express written warranty otherwise given by FSA, and except in relation to Non-excludable Obligations, all warranties, conditions and representations (including samples and specifications supplied by FSA), whether express or implied or whether in writing or oral, are expressly negated and do not form part of these Terms.
- g) The maximum liability of FSA to the Customer arising under or in connection with Goods or these Terms, (except for a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer law and except for liability arising under or in connection with goods of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which FSA's liability is not so limited under these Terms), whether such liability arises from any claim based on breach of repudiation of contract, breach of warranty, negligence, tort, statutory duty or other, shall in no case exceed one or more of the following at the election of FSA:
  - i. Replacement of Goods or supply of equivalent Goods;
  - ii. Repair of Goods;
  - iii. Payment of the cost of replacing the Goods or acquiring equivalent Goods; or
  - iv. Payment of the cost of having the Goods repaired.
- h) Except in relation to Non-excludable Obligations, in no event will FSA be liable to the Customer (including in negligence) under or in connection with these Terms for any loss of revenue, goodwill or profit or any indirect, consequential, punitive special or exemplary loss, damage, cost or expense or indirect damages of any type or kind.

**9. Warranty**

The Customer warrants and declares that all information supplied by the Customer as part of these Terms is true and correct in all respects. Any credit account approved by FSA for the Customer is granted by FSA on the basis of information supplied by and representations made on behalf of the Customer and in particular, on the information disclosed by the Customer in relation to ownership of the Customer as set out in the credit application for that credit account.

**10. Default**

If the Customer defaults in making payment to FSA in accordance with these Terms or, being a corporation, has a Receiver, Receiver and Manager, Administrator, Liquidator (provisional or otherwise) or Controller appointed, or being a natural person, commits an act of bankruptcy, dies or becomes of unsound mind:-

- a) The whole of the amounts owing by the Customer to FSA shall immediately become due and payable and the Customer shall not thereafter be entitled to purchase Goods on credit from FSA, unless FSA has agreed in writing, and the payment obligations under these Terms shall apply; and
- b) FSA, in its absolute discretion, may do any one or more of the following:
  - i. Charge and debit to the Customer's account, interest on the outstanding balance from the due date for payment until the date of payment at the rate of 18% per annum;
  - ii. Engage a debt collection agency or legal representative to commence debt recovery proceedings and charge and debit to the Customer's account all costs and disbursements incurred in so doing on a full indemnity basis;

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- iii. Revoke, suspend or vary any credit account and require any further transactions with the Customer to be on a cash before delivery basis;
  - iv. Require that all amounts owing to FSA become immediately due and payable without deduction or adjustment, notwithstanding any previous deduction or adjustment previously offered;
  - v. Rescind all discounted quotations or rates and recalculate outstanding charges;
  - vi. Exercise its right to repossess Goods in accordance with clause 11;
  - vii. Withhold delivery of Goods that have been ordered but not delivered to the Customer; and/or
  - viii. Cancel any Orders for Goods that have been ordered but not delivered to the Customer and recover from the Customer any or all losses, damages, costs, interest, fees, charges (including handling charges payable to FSA and its suppliers) and all expenses incurred by FSA as a result of the Customer's default.
- j) Until title to Goods passes to the Customer under clause 11b), the Customer must not give to FSA a written demand, or allow any other person to give to FSA a written demand, requiring FSA to register a financing change statement under the PPSA in respect of the Customer or the Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of the Goods.
  - k) The Customer will be responsible for payment of any fees (and any other costs) that FSA incur in relation to investigating, perfecting or registering our security interest in the Goods, and those fees and costs may be added as a charge on invoices issued by FSA to the Customer.
  - l) Money that FSA receives from the Customer or on the Customer's account may be applied by FSA in any order that FSA may determine in its absolute discretion.
  - m) The Customer may not assign or factor their right and interest in any debt owed by a customer of theirs to the Customer on account of the proceeds of sale of any Goods by the Customer on credit or deferred payment terms without FSA's prior written consent.

**11. Retention of Title and PPSA**

- a) All Goods supplied by FSA to the Customer shall be at the risk of the Customer upon the Goods being dispatched to the Customer by FSA.
- b) Despite the risk having passed to the Customer, property and title in the Goods shall remain with FSA until all amounts owing by the Customer to FSA have been paid in full, notwithstanding that payments may be made for the settlement of specific claims and Orders.
- c) The Customer agrees that these Terms and, in particular, clause 11b), create a security interest (including, where applicable, a PMSI) in Goods (and their Proceeds) supplied by FSA to the Customer from time to time.
- d) The Customer irrevocably consents to FSA registering its security interest on the Personal Property Securities Register to register its interest.
- e) The Customer agrees to do all things necessary and execute all documents reasonably required by FSA to register the PMSI and each other security interest granted by the Customer under these Terms and ensure that FSA acquires a perfected security interest in the Goods under the PPSA.
- f) Until title in the Goods passes to the Customer, the Customer will keep and maintain all Goods free of any charge, lien or security interest except as created under these Terms and not otherwise, deal with the Goods in a way that will or may prejudice the rights of FSA under these Terms or the PPSA.
- g) Until title to Goods passes to the Customer under clause 11b), the Customer waives their rights under sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 143, 157(1) and 157(3) of the PPSA, to the extent that it is permitted by law. FSA may also contract out of any other provision of the PPSA not specified in this this clause as determined by FSA from time to time, provided that is also permitted under the PPSA.
- h) Where FSA has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.
- i) The Customer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Customer to FSA as is equivalent to its estimation of the market value of the Goods as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest you have in the Goods.

- n) The rights and powers conferred on FSA by these Terms or the law are in addition to any rights and powers conferred by the PPSA.
- o) For the avoidance of doubt, in addition to the powers under section 125 of the PPSA, FSA may take any action after default authorised by the Terms or the law, including delaying any disposal, leasing or action to retain any secured property.
- p) Until title to Goods passes to the Customer under clause 11b), the Customer must maintain the Goods in a safe and marketable condition and in a manner so that the Goods are readily identifiable.

**12. Customer Details and Changes**

- a) The Customer warrants and represents to FSA that within the last five years that neither it nor any of its directors or shareholders have been subject to bankruptcy proceedings or been associated as a director, shareholder, or manager of a business subjected to a form of insolvency, including receivership, voluntary administration, administrator or controller appointed, or liquidation. Should this not be the case the Customer agrees to supply full details to FSA.
- b) The Customer must inform FSA of any change of address, telephone number, facsimile numbers, email address or address for delivery to the Customer.
- c) The Customer must inform FSA of any changes in ownership of the Customer by forwarding written notice to FSA. Until such notice is received by FSA and until the new owners are approved by FSA, the Customer shall hold FSA indemnified, against all losses, unpaid accounts, interest, damages, costs, charges, fees and expenses incurred by FSA in trading with any person, company (including the same company but with a different shareholder or shareholders) or other entity (including a trust) which may have purchased the Customer's business or any interest therein or any of the shares in the Customer who use the Customer's previously approved credit account for trading. If there is any change in the ownership of the Customer then FSA may take any of the steps referred to in clause 11 and/or require the Customer to make a further application for credit.

**13. Privacy Act Authority**

- a) The Customer acknowledges that it has been informed by FSA that personal information about it may be disclosed to, or acquired from, a credit reporting agency.

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- b) The Customer agrees that FSA may contact any trade references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.
- c) The Customer agrees to FSA obtaining an opinion from the Bank nominated in any credit application for the purpose of assessing the credit worthiness of the Customer.
- d) The Customer agrees to FSA receiving from any other credit provider or providing to any other credit provider from time to time, any credit information whether by way of report, record or otherwise relating to credit worthiness for the purpose of assessing the Customer's credit worthiness and notification of default at any time.
- e) The Customer agrees that in the event of default of payment of its debts that FSA may disclose all information relating to the Customer's account to its collection agency for the purpose of receiving any or all amounts outstanding.
- e) None of the following circumstances will preclude FSA from insisting upon strict compliance with the provisions of these Terms:
  - i. Failure to take advantage of any Customer's default or breach of these Terms;
  - ii. Any custom or practice which may develop between the parties;
  - iii. The waiver of a particular default or breach; or
  - iv. Acceptance of money, when there has been a breach of these Terms.
- f) An attempt by FSA to mitigate its loss will not surrender any of its rights or be considered a waiver of any default or breach.
- g) Any notice given under these Terms shall be deemed to have been properly given if such notice is either:
  - i. Posted by pre-paid postage to the last known business address of the Customer (in which case receipt of the notice shall be deemed to be within two business days after the posting by FSA); or
  - ii. Transmitted by facsimile to the last known facsimile number of the Customer (in which case receipt of the notice shall be deemed to be on the date of such transmission); or
  - iii. Personally delivered to the last known address of the Customer (in which case receipt of the notice shall be deemed to be on the date of such delivery).

**14. Entire Agreement**

These terms and any warranties implied by law that are not capable of being excluded or modified, embody the entire agreement between the parties and, subject to the express terms contained on any Order and written acceptance by FSA which shall apply only to that particular Order, all previous negotiations, representations, warranties, specifications, arrangements or statements whether expressed or implied are hereby excluded.

**15. Cancellation**

- a) A binding contract will come into effect once an Order is accepted by FSA and such Order cannot then be cancelled or varied without the written approval of FSA.
- b) In the event that FSA accepts the cancellation or variation of any Order, it will be entitled to charge a reasonable fee for any work done on behalf of the Customer to the date of the cancellation or variation including a fee for the processing and acceptance of the Customer's Order and request for cancellation or variation.
- c) In the event that the Customer purports to cancel or vary any Order, such attempt may at FSA's election be construed as a repudiation of the contract between the parties and the Customer shall pay to FSA all losses, damages, costs, interest, fees, charges and expenses incurred by FSA resulting from the repudiation.
- d) FSA may vary or withdraw the Customer's credit account at any time. Cancellation of any credit account by FSA may be done orally or in writing.

**16. Miscellaneous**

- a) The supply of Goods by FSA to the Customer shall not confer any right on the Customer to use FSA's trade mark(s), any FSA patent or any indemnity against infringement of third party patents, without FSA's prior written consent.
- b) By approval of a credit application by FSA and execution of these Terms, the Customer indemnifies FSA in respect of any failure by the Customer to pay any amount due and payable to FSA.
- c) If any terms or conditions in these Terms are found to be void, voidable or unenforceable, they shall be severed and the validity and enforceability of the remaining terms and conditions shall not in any way be affected or impaired.
- d) These Terms shall be governed by and construed in accordance with the laws of the State of Victoria and any dispute that may arise will be dealt with by the Courts of that State.

**17. Confidentiality**

- a) "Information" means all information, whether oral, visual or electronic or in writing or consisting of drawings, specifications or graphs or contained on tape, disk, CD, computer program, slide, film or any other medium (including any documents) supplied by FSA to the Customer or made known to the Customer in the course of trade between FSA and the Customer .
- b) The Customer undertakes to preserve and maintain confidentiality in all Information disclosed to it by FSA in consequence of any contract entered into between the Customer and FSA for the purchase of Goods or the provision of credit in relation to the purchase of Goods.
- c) The Customer undertakes not to disclose the Information to any third party without the prior knowledge and written approval of FSA.
- d) The Customer undertakes not to reverse-engineer, decompile or disassemble any process or tangible items including Goods, and shall refrain from activities, examination, performance of analyses or other investigations that seek to discover the contents, algorithms, compositions or manufacturing formulae of the Goods or Information.
- e) The Customer agrees not to discredit or criticise FSA to any third party in relation to any Goods or Services provided by FSA to the Customer, the provision of credit by FSA to the Customer, all Information supplied by FSA to the Customer or made known to the Customer in the course of trade between FSA and the Customer or in relation to these Terms.

**Customer:** \_\_\_\_\_

Pty Ltd

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**ABN/ACN:**

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**Signature:**

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**Signed by:**

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**Capacity:**

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