

AGREEMENT TERMS OF TRADE

KINCROME

These Terms are the only basis upon which the Goods will be supplied by Kincrome to a Purchaser. By placing an Order with Kincrome, the Purchaser agrees to accept, and comply with, each of these Terms.

1. Definitions and Interpretation

1.1. In these Terms, unless the context otherwise requires:

- "Business Day" means a day other than a Saturday, Sunday or public holiday in Victoria, Australia.
- "Cash Sales" means sales of the Goods, payment for which is made at, or before, the delivery of the Goods.
- "Credit Sales" means sales of the Goods, payment for which is due or made after the Delivery.
- "Delivery" means delivery of the Goods to the Purchaser pursuant to the Order.
- "Goods" means products and any services supplied or to be supplied by Kincrome to the Purchaser from time to time pursuant to the Order.
- "Loss" means any delay, loss, liability, damage, expense or cost whatsoever and includes (without limitation) direct or consequential loss or damage.
- "Order" means any order or request for the Goods or services irrespective of whether or not the Order is in writing and includes an order by email, facsimile or telephone.
- "PPSA" means the Personal Property Securities Act 2009 (Cth) and all regulations made under that Act.
- "Purchaser" means any person who places the Order with Kincrome and includes such person's agents, employees, executors, administrators, successors and permitted assigns.
- "Quotation" means a quotation as to the price of specified Goods given by Kincrome to the Purchaser.
- "Terms" means these terms of trade; and
- "Kincrome" means Kincrome Australia Pty Limited (ABN 41 007 185 006), its successors and assigns of the address appearing on the invoice issued in respect of the Goods supplied.

1.2. In the interpretation of these Terms, unless specified to the contrary:

- time is of the essence;
- words importing the singular include the plural and vice versa;
- words importing any gender include all other genders;
- a reference to a person includes a company or other corporate body and vice versa;
- a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- the obligations on the part of a Purchaser who is a natural person includes his/her heirs, executors, administrators and assigns;
- the obligations on the part of a Purchaser which is a company or other corporate body includes its successors and assigns; and
- unless otherwise stated, monetary amounts are expressed in Australian dollars.

1.3. Any obligation imposed by these Terms on a Purchaser comprised of two or more persons (whether natural, corporate or a combination of the two) binds them jointly and each of them severally.

1.4. Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Terms.

1.5. If the time for performing any obligation under these Terms expires on a non-business day, then time is extended until the next business day.

1.6. Subject to any express consent in writing of the parties, no waiver, delay, omission, relaxation, indulgence or forbearance on the part of any party in respect of any right or power conferred upon such party by the terms of this Agreement shall operate as a waiver of such power or right, nor shall any single or partial exercise of any such power or right preclude such party of future exercise of such power or right, or the exercise of any other power or right under this Agreement. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

1.7. In the event that any part of these Terms is held to be unenforceable, the unenforceable part shall be severed and the remainder of the Terms shall remain in full force and effect.

1.8. These Terms embody the entire agreement and understanding between the parties concerning its subject matter and succeed and cancel all other (written or oral) agreements, understandings and representations concerning the subject matter of these Terms.

1.9. These Terms can be varied by Kincrome at any time, provided written notice of the variation is given to the Purchaser, with such variation to apply to all Orders and Quotations after the date of notification.

1.10. These Terms are to be governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the state and federal courts located in Victoria.

2. Formation of a contract

2.1. Quotations (whether in writing or by email, facsimile or telephone), catalogues, or price lists issued by Kincrome shall not constitute an offer to sell specified Goods at a specified price, but rather will constitute an invitation to the Purchaser to make an offer to purchase the specified Goods at the quoted price by placing an Order. A contract for the supply of Goods by Kincrome to the Purchaser is formed when Kincrome accepts the Order by delivering or providing all or some of the Goods ordered or by sending a written acceptance of the Order to the Purchaser. Kincrome reserves the right to refuse any Order.

2.2. These Terms apply to and form part of any contract for the supply of the Goods by Kincrome to the Purchaser. The Order is only accepted upon and subject to these Terms.

2.3. Any qualification, addition, variation or provision which conflicts with these Terms which appears in the Order shall not form part of the contract between Kincrome and the Purchaser unless such change appears on the face of the Order duly accepted by an authorised person of Kincrome or is otherwise confirmed by Kincrome in writing.

3. Price and Payment

3.1. Unless otherwise stated, all prices quoted by Kincrome are net and exclusive of all taxes (including GST), duties, and any other costs payable in respect of the supply of the Goods. The Purchaser agrees to pay Kincrome GST in addition to the price.

3.2. Normal Delivery costs are included in all prices quoted by Kincrome. However the Purchaser will pay any additional costs for express delivery.

3.3. The Purchaser acknowledges and agrees that the prices for the Goods quoted in price lists may be varied at any time without notice and the Goods will be invoiced at the then current price for those Goods as at the date of the Order. In the event that there are back orders on the Purchaser's account that were ordered prior to an increase in the price lists, Kincrome will honour the price that was relevant at the time that those Orders were first placed, however if an Order is placed on the day an increase comes into effect, the Order will be subject to the new pricing.

3.4. Kincrome has the right, in its absolute discretion, to charge a surcharge on any Goods pursuant to the Order for the Goods to the total value of less than \$250.00 (calculated pre-GST).

3.5. Unless otherwise agreed by Kincrome in writing, the Purchaser must pay for all Goods in cleared funds to Kincrome without deduction before the Order is released to the Purchaser.

3.6. Subject to the provisions of any Credit Sales arrangement in writing between the parties, Kincrome reserves the right at any time to require immediate payment for all Goods supplied or provided. Payment for those Goods will be due immediately upon receipt by the Purchaser of a notice from Kincrome that it requires immediate payment.

3.7. Kincrome reserves the right to make a reasonable charge for storage if the Delivery instructions are not provided by the Purchaser within seven (7) days of a request by Kincrome for such instructions. The parties agree that Kincrome may charge the Purchaser for storage from the first day after Kincrome requests the Purchaser to provide the Delivery instructions.

4. Delivery

4.1. Kincrome shall arrange delivery of the Goods to the location agreed by Kincrome and the Purchaser at the Purchaser's cost unless the Purchaser has arranged to collect Goods from Kincrome or delivery is included in the price of the Goods.

4.2. Kincrome will not be liable for any loss or damage which may be suffered by the Purchaser (including consequential loss or damage) arising out of a delay in the delivery of Goods, a failure to deliver Goods or from delivery of defective Goods.

4.3. Without limiting the operation of the previous clause, the Purchaser must accept and pay for Ordered Goods notwithstanding a delay in the delivery of Goods, a failure to deliver Goods or delivery of defective Goods.

4.4. Kincrome reserves the right to deliver any one or more consignments as part delivery with each consignment to be paid for in accordance with these Terms of Trade.

4.5. The Purchaser must notify Kincrome of any damage to the Goods, defective Goods or short Delivery by phone or in writing within 14 business days after the Delivery, failing which the Purchaser will cease to have a claim for the damage, defects or short Delivery.

4.6. If Kincrome determines (at its absolute and unfettered discretion) that the Delivery contained a shortfall or damaged or defective Goods, then Kincrome will arrange for any missing or damaged or defective items to be dispatched to the Purchaser.

4.7. Risk for any Loss to the Goods from whatever cause shall be borne by the Purchaser from the time the Goods are delivered to the location agreed to by Kincrome and the Purchaser, or if collected from Kincrome's premises by the purchaser or its agent, when the Purchaser or its agent signs a pick up book confirming receipt of the Goods.

4.8. The Purchaser will be responsible for and indemnifies Kincrome for Loss to the Goods from the time of the Delivery.

4.9. The Delivery will be carried out by a contractor engaged for that purpose by Kincrome. The Purchaser will be required to sign an acknowledgement that the Delivery contains the type and quantity of Goods described on the delivery documents.

5. Default

5.1. The Purchaser is in default if:

- it fails to make a payment to Kincrome by its due date;
- being a natural person it commits an act of bankruptcy;
- being a corporation it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets; or
- it has any execution levied against its property.

5.2. In the event of a default, Kincrome will be entitled, without the obligation to give any notice to the Purchaser and in addition to any other rights, to:

- payment of interest on all overdue accounts at the rate of 2% above the prevailing rate imposed by the Penalty Interest Rate Act;
- the commission it may have to pay to any recovery agent arising from such default or in recovering overdue amounts;
- its actual legal costs on an indemnity basis incurred in relation to such default or in recovering overdue amounts or in otherwise seeking compliance with these Terms;
- immediate payment for Goods and/or services, the payment for which would otherwise not have been due and payable;
- disallow any discounts otherwise claimable by the Purchaser;
- terminate or suspend Delivery of any order which is the subject of any other sale between Kincrome and the Purchaser; and
- treat the Purchaser's default as repudiation or any existing contract for the purchase of Goods and recover any unpaid sum plus the interest, recovery agent's, and legal costs referred to in (a), (b) and (c) above from the Purchaser by way of liquidated damages.

6. Retention of title and security

6.1. Notwithstanding delivery of the Goods to the Purchaser, all right title and interest in the Goods remains with Kincrome until the Purchaser has made full payment to Kincrome of all and any amounts due and payable to Kincrome by the Purchaser ("Outstanding Amount").

6.2. As security for the Outstanding Amount from time to time Purchaser grants to Kincrome a security interest in all the Goods.

6.3. The Purchaser acknowledges and agrees with Kincrome that:

- these Terms constitute a security agreement for the purposes of PPSA; and
- Kincrome may at its discretion register a financing statement in respect of any security interest created by these Terms.

6.4. The Purchaser undertakes to:

- sign any and all further documents and provide any and all further information, such information to be complete, accurate and up to date in all respects, which Kincrome may reasonably require to register a financing statement or a financing change statement on the Personal Property Securities Register established under the PPSA;
- not register a financing change statement or an amendment demand in relation to any security interest created by this Agreement without the prior written consent of Kincrome; and
- give Kincrome not less than fourteen (14) days prior written notice of any proposed changes in Purchaser's name or any other change in Purchaser's details

6.5. If the Goods are re-sold prior to payment to Kincrome of the Outstanding Amount, Purchaser holds the proceeds from the sale of the Goods on trust for Kincrome. Where Purchaser has mixed or used the Goods and other materials to create other goods, all right title and interest in those other goods shall immediately pass to Kincrome until Purchaser has made full payment to Kincrome of the Outstanding Amount.

6.6. The Purchaser shall keep the Goods or goods constructed from the Goods in a fiduciary capacity as bailee for Kincrome.

6.7. Until the date of full payment of the Outstanding Amount, Purchaser must store the Goods clearly identified as the property of Kincrome and if requested, must supply, within the time specified by Kincrome, an inventory of all Goods in Purchaser's possession. Purchaser must allow any representative of Kincrome access to its premises to conduct any stocktake of the Product without notice.

6.8. In the event of a default by Purchaser in respect of any of these Terms including the payment of any Outstanding Amount under these Terms, Kincrome has the right (without giving notice) to retake possession of the Goods and the Purchaser authorises Kincrome or its representative, servant, agent or employee to enter Purchaser's premises upon which the Goods are housed or stored for the purpose of retaking possession of same. The freight of any stock to be returned to Kincrome to reduce any outstanding amount owed to Kincrome is to be arranged and paid for by the Purchaser. Kincrome is not liable for any cost, losses, damages, expenses or other monies incurred or lost by the Purchaser as a result directly or indirectly of Kincrome retaking possession of the Goods. In the event Kincrome retakes possession of the Product Kincrome is entitled to sell the Goods free of any claim from the Purchaser.

6.9. If the Purchaser defaults under these Terms all of the Purchaser's rights, including the right to be paid any money, under any contract pursuant to which the Purchaser has hired, sold or otherwise provided the Goods or any part of them, whether separately or together with other things, to third parties are automatically assigned to Kincrome with effect from the date of the default, but only to the extent necessary to enable Kincrome to recover the amount owed to it by the Purchaser.

6.10. Until the Purchaser pays the Outstanding Amount it owes to Kincrome:

- the Purchaser must keep all Goods insured against theft, damage and destruction on behalf of Kincrome (and the Purchaser fails to insure the Goods, Kincrome may do so and invoice the Purchaser for the cost of insurance); and
- Kincrome may enter premises where the Goods are stored to inspect them and conduct any stocktake on the Goods on reasonable notice; and
- the Purchaser may on-sell the Goods prior to payment in full of the purchase price as agent for Kincrome provided that the proceeds received from the on-sale are held on trust for Kincrome until full payment in full of the purchase price and are not mixed with other funds of the Purchaser until the purchase price is paid to Kincrome. The Purchaser agrees to indemnify

Kincrome on a full indemnity basis and hold Kincrome harmless from liability for any loss damage or cost arising from any inaccurate or incomplete representations to third parties.

6.11. The Purchaser acknowledges that the Goods constitute commercial property and hereby waives its right to receive notification from Kincrome of the registration of the security interest pursuant to section 157(3) of the PPSA.

7. Returns

7.1. Kincrome may, at its absolute and unfettered discretion, accept any Goods submitted for return by the Purchaser and subject to any conditions Kincrome wishes to impose on such a return. No returns of the Goods will be accepted by Kincrome unless those Goods are returned unused and in a re-sealable condition and within seven (7) days of the Delivery.

7.2. If Kincrome agrees to accept the returned Goods from the Purchaser, the Purchaser accepts that it shall be responsible for payment of all transportation and freight costs in having the Goods returned to Kincrome.

7.3. The Purchaser agrees that Kincrome is entitled to charge a re-stocking fee equal to 20% of the invoice value of any Goods returned to and accepted by Kincrome.

8. Fitness for purpose

8.1. The Purchaser acknowledges that it has made due inquiry and relies on its own skill and judgment when deciding whether the Goods are fit for purpose.

8.2. It is the Purchaser's responsibility to satisfy itself that the Goods are of a description, quality and character suitable for the purpose for which they are purchased and, to the extent permitted by law, Kincrome shall not be liable in any way for any Loss arising from the failure of the Purchaser to so satisfy itself.

9. Information

9.1. All specifications, drawings, samples and particulars of weights and dimensions submitted to the Purchaser by Kincrome are approximate only and any variation from any of these things does not vitiate any contract with Kincrome or form grounds for any claim against Kincrome.

9.2. Any performance figures in relation to the Goods given by Kincrome are estimates only. Kincrome has no liability for any Loss caused by the failure of the Goods to obtain such figures.

9.3. The descriptions, illustrations and performance information contained in catalogues, price lists and other advertising matters do not form part of the contract of sale of the Goods or the description applied to the Goods.

9.4. Information published by Kincrome about the Goods has either been supplied by the manufacturer of those Goods, obtained from the manufacturer's brochures and advertising material or supplied or otherwise obtained from that manufacturer. Kincrome is not liable for any Loss, either directly or indirectly incurred by the use of, or reliance upon the information provided therein or for any errors, omissions or inaccuracies in the information provided. All information referring to such Goods should be specifically confirmed with the manufacturer.

10. Limitation of liability

10.1. Subject to these Terms, to the extent permitted by law, Kincrome excludes all statutory or implied conditions and warranties and any other liability it may have to the Purchaser (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.

10.2. Subject to these Terms, to the extent permitted by law, Kincrome limits its liability under any condition or warranty which cannot be legally excluded in relation to the supply of the Goods to whichever of the following Kincrome chooses:

- replacing the Goods or supplying equivalent Goods again;
- repairing the Goods;
- paying the cost of replacing the Goods or of acquiring equivalent Goods again; or
- paying the cost of repairing the Goods.

11. Matters beyond the control of Kincrome

Kincrome will not be liable for any Loss suffered by the Purchaser as a result of a failure to observe any of these Terms or as a result of any delay in performance of any obligations due to any cause or circumstances beyond Kincrome's control including but not limited to any failure or delay in performance caused by any strikes, lock-outs, labour disputes, fires, acts of God or public enemy, delays in transport, breakdown in machinery, restrictions or prohibitions by any government or any semi-government authorities, Kincrome's suppliers failing to supply the Goods or raw materials, embargos or any other events beyond Kincrome's control wherever and whenever they occur.

12. Assignment of the Purchaser's rights

The Purchaser may not assign, transfer or otherwise dispose of any of the rights or obligations of this or any other contract with Kincrome that is subject to these Terms without the prior written consent of Kincrome.

13. Notices

13.1. Any notice given under these Terms must be:

- in writing;
- appropriately addressed to the Purchaser at the Purchaser's address; and
- be delivered by hand, pre-paid post or email to the Purchaser's email address.

13.2. Notices given in accordance with this clause 13 will be deemed to have been received:

- if delivered by hand, on the day of delivery;
- if delivered by pre-paid post, in 5 Business Days when sent from within Australia and in 10 Business Days when sent by air mail from one country to another; and
- if delivered by email, and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if a Business Day, otherwise on the next Business Day.

14. Intellectual Property

14.1. All intellectual property (including without limitation any trademarks (registered or unregistered), designs, layouts and confidential information copyright in all plans, drawings, designs and text) which are disclosed to the Purchaser by Kincrome shall be solely owned by Kincrome and shall be delivered up to Kincrome by the Purchaser immediately on Kincrome's request. The Purchaser acknowledges that no intellectual property license is granted by these Terms.

14.2. The Purchaser acknowledges and agrees that it shall not reverse engineer any of the Goods.

14.3. The Purchaser will immediately notify Kincrome of any actual or potential infringement of Kincrome's intellectual property rights which comes to the Purchaser's attention.

15. Confidential Information

The Purchaser shall treat all information disclosed to it by or on behalf of Kincrome, or acquired by the Purchaser concerning Kincrome or the Goods as Kincrome's confidential information and shall not use or disclose the same except:

- to the extent necessary in order to make effective use of the Goods;
- to obtain professional advice concerning these Terms and Conditions;
- to the extent disclosure is required by any State or Federal legislation; or
- to the extent any relevant information shall become public knowledge other than through the Purchaser's act or omission.

16. Purchaser Warranty

The Purchaser warrants that it has acted reasonably and in good faith to Kincrome in disclosing to Kincrome, prior to the Order, all information which may have materially affected Kincrome's agreement to supply the Goods to the Purchaser under these Terms.

17. Online Trading Policy

The Purchaser acknowledges and accepts the terms of the Kincrome Online Trading Policy. The Kincrome Online Trading Policy can be referenced at www.kincrome.com.au