

General Terms and Conditions of Trade



1. General

- 1.1 All quotations made by PRS Productions Pty Ltd and J and J Enterprises Pty Ltd, trading as "Swann Agencies" ("**SA**") and all orders for goods and/or services by the customer are accepted subject to these general terms and conditions of trade together with any special terms and conditions which may be agreed to by SA in writing.
- 1.2 No further terms and conditions not included in the general terms and conditions of trade will be deemed to form part of the agreement between SA and the customer unless those further terms and conditions are agreed to by SA in writing.

2. Payment for Goods

- 2.1 Subject to Clause 2.2, payment for goods or services purchased from SA by the customer must be made by cleared funds to SA with placement of the order unless otherwise agreed by SA.
- 2.2 If SA has agreed to provide a credit account to the customer, the customer must pay SA by way of cleared funds within its payment terms which are 30 days from the date of the issue of a Statement or Tax Invoice.

3. Price

- 3.1 The price charged by SA for products will be the current price as at the date of delivery to the customer unless SA agrees in writing at the customer's request to charge another price.
- 3.2 If the goods and services tax ("**GST**") has application to any supply made under this contract, the customer will pay to SA the price of the goods or services supplied together with the amount payable for GST. SA will show the GST on its invoices in accordance with the requirements of the relevant taxation legislation.

4. Title

- 4.1 SA shall retain both the legal and equitable ownership of any goods supplied to the customer until the purchase price in respect of such goods has been received in full by SA by way of cleared funds.
- 4.2 If the customer fails to make payment of the purchase price by the due date or action is commenced to place the customer into voluntary administration, liquidation, receivership or external management, or if SA has reasonable grounds to believe that for whatever reason, the customer may be unable to pay for the goods then, the customer by accepting delivery of the goods, agrees to a representative or agent of SA entering upon any premises in the customer's control to take possession of the goods and agrees to deliver up on demand by SA, the goods in good and merchantable condition. Further, the customer indemnifies SA against any action, claim or other demand which may arise out of any lawful act done by SA or its representative or agent in exercise of its rights pursuant to this clause. Further, SA shall be entitled to resell any goods which it has taken into possession pursuant to this clause and it shall be released from all its obligations under the contract of sale with the customer.
- 4.3 Until payment in full is made to SA, the customer may resell the goods only as a fiduciary agent of SA. The customer does not have any right to bind SA by contract or otherwise to any third party.
- 4.4 The customer will keep the goods insured whilst the goods remain in its possession or control until payment in full is made to SA and the customer will note SA as the beneficiary on the contract of insurance until the goods are paid for in full.
- 4.5 All proceeds (whether tangible or not) with respect to any dealing with the goods will be held by the customer on trust for SA and the customer will keep such proceeds in a separate account and will further keep such records to enable identification of those proceeds and identification of the goods to which those proceeds relate and will make available to SA those records on demand, until such time as SA has been paid in full for the goods.
- 4.6 If the customer alters the goods or uses them in a manufacturing or construction process or allows the goods to be altered or used in a manufacturing or construction process then the customer will hold such part of the proceeds received with respect to that manufacturing or construction process on trust for SA as relates to the purchase price of those goods. The customer will keep those monies in trust in a separate account together with such records necessary to identify the goods the subject of that trust relationship and the proceeds relating to those goods and will make available those records to SA on request until payment to SA for those goods has been made in full.

5. Default

- 5.1 Where the customer is in default in the performance of any of its obligations under the terms and conditions of trade, SA may at its election and without prejudice to any of its other rights, refuse to supply or deliver further goods or services to the customer.
- 5.2 All costs and expenses incurred by SA in recovering monies due to it from the customer (including legal, administrative or other collection costs) will be payable by the customer within seven (7) days of written demand being made to it by or on behalf of SA.

6. Warranties and Liabilities

- 6.1 Subject to the terms of any written warranty which may be provided by SA and the provisions of any legislation dealing with the rights of SA to limit its liability (for example, the *Trade Practices Act (C'th)*), where the goods provided by SA to the customer are demonstrated to SA's reasonable satisfaction to be defective, the liability of SA for breach of any express or implied condition, warranty as to quality, description, fitness for purpose or condition is limited to the following as determined by SA:-
1. The payment of the repair costs for the goods;
 2. The payment of the replacement cost of the goods or equivalent goods;
 3. The replacement of the goods or equivalent goods;
 4. The repair of the goods.
- 6.2 Subject to Clause 6.1 above and to any applicable legislation affecting the right of SA to limit its liability, SA shall not be liable in any way whatsoever to the customer or to any other person or entity for any loss or damage howsoever caused which the customer or any other person may suffer whether or not such loss or damage arises as a result of the goods or any defect in those goods or from the failure or omission on the part of SA (or any of its representatives, agents or employees) to comply with any obligation at law save that SA's liability will be limited to the replacement or repair as detailed in Clause 6.1.

7. Delivery

- 7.1 SA will not be liable for any loss or damage arising due to delay in delivery of goods to the customer.
- 7.2 The goods are at the customer's risk from the time they leave SA's warehouse at Coorparoo in Queensland, Australia and SA will not be responsible for any loss or damage caused to the goods once they have left its Coorparoo warehouse.
- 7.3 Dates and times quoted for delivery are estimates only and any delay in delivery will not entitle the customer to seek damages or any other remedy.
- 7.4 No alleged defect in the goods or claim in respect of the goods delivered will entitle the customer to refuse to accept delivery of any other part of the goods ordered from SA.

8. Force Majeure

- 8.1 SA shall be entitled to give notice to the customer to either extend the time for delivery of the goods for a reasonable period or to terminate this contract if SA is prevented from performing any of its obligations including (without limitation) making a delivery of goods by reason of force majeure. Without limitation, the following events shall constitute force majeure:-
- 8.2 Breakdown of plant or machinery, war, terrorist attack, strike, industrial dispute, government interference, transport delay, act of God, flood, accident, non delivery or shortage of supplies or any other cause not under SA's control.

9. Damage or Defects

- 9.1 Immediately upon receipt of delivery of the goods, the customer shall check the goods and notify SA of any damage, defects or other Statement or Tax Invoice inaccuracies including any short supply of goods, within seven (7) days of the date of delivery, such notice to be in writing. SA will endeavour to replace any damaged goods or remedy any inaccuracies as soon as reasonably practicable but will not be liable for any loss or damage which arises or results from any inaccuracy, damage or short supply save for its liability as set out in Clause 6 herein.
- 9.2 Failure to notify SA in accordance with Clause 9.1 above will preclude the customer from taking any issue with respect to the items shown on the Tax Invoice/Statement or object to the price for the goods as listed on the Tax Invoice/Statement.

10. Identification

- 10.1 If SA describes goods in its price list or elsewhere, this description shall be by way of identification only and the use of such description shall not create a sale by description (for example, as defined in the Queensland *Sale of Goods Act* or the Commonwealth's *Trade Practices Act*).

11. Goods Ordered for Collection

- 11.1 SA will hold goods ordered for collection for a maximum period of fourteen (14) working days after the collection date agreed with the customer. If the goods are not collected within such time, SA may at its election terminate the sale agreement without giving notice to the customer or affirm the sale agreement by delivering the goods to the customer. If SA elects to deliver the goods to the customer, all costs incurred by SA in relation to transport costs and other delivery fees shall be payable by the customer.