

1. SUPPLY OF GOODS AND/OR SERVICES

These Terms and Conditions of Sale shall apply to and form part of any contract for the supply of Goods and/or the performance of any Services by the Company.

2. OFFERS AND ACCEPTANCE

2.1 The Company reserves the right to correct any errors or omissions (including pricing) contained in any catalogue or publication issued by the Company and shall not be bound by any information contained therein

2.2 All quotations provided by the Company are for indicative purposes only and do not constitute a binding offer to sell.

2.3 Any purchase order placed by the Customer pursuant to a quotation is not binding on the Company unless and until accepted by the Company in writing and/or delivery of the Goods and/or performance of the Services is affected.

2.4 Lead times quoted are estimates only based on the information available at the time of quotation and are subject to confirmation by the Company at the time of order placement.

2.5 Any Price quoted by the company is exclusive of GST.

3. PURCHASE ORDERS

3.1 Upon order placement, an official purchase order is to be submitted by the Customer showing order number, certificate number (if applicable) and full description of the Goods and/or Services. Reference to the Company's quotation number should also be included (where applicable).

3.2 To the extent that the Customer's terms and conditions are supplied with the Customer's purchase order (or any other documents), those terms and conditions will be of no legal effect and will not constitute any part of this Agreement (even if any of representative of the Company sign those terms and conditions of annexes such terms and conditions to the purchase order or other document).

3.3 The Customer is not entitled to cancel any purchase order issued to the Company without the express written consent of the Company. In the event the Company consents to the cancellation of a Customer purchase order the Customer shall:

- a. Pay for the Goods delivered and/or Services performed by the Company in accordance with the purchase order prior to the date of cancellation;
- b. Reimburse the Company for the costs of materials the Company ordered prior to the date of cancellation for the purpose of providing the Goods and/or performing the Services for which the Company is legally liable to accept;
- c. Pay the Company for any other costs that the Company actually and reasonably incurred prior to the date of cancellation in the expectation of providing the Goods and/or performing the Services; and
- d. Pay the Company twenty percent (20%) of the Price as fair and reasonable compensation for loss of profits and revenue.

4. DELIVERY

4.1 Unless otherwise expressly stated in writing, all Goods sold by the Company are sold on an ex-works basis (Incoterms 2010).

4.2 The Company is deemed to have delivered the Goods when the Goods are made available for collection by the Customer (or its agent), or upon loading at the Company's premises where the Company has agreed and at the Customer's sole cost and risk to effect delivery and/or to arrange freight to an address specified by the Customer.

4.3 The Customer shall be responsible for unloading the Goods from the delivery vehicle.

4.4 Unless expressly agreed otherwise in writing the Company reserves the right to supply or deliver by instalments, and each instalment will be deemed to be sold under a separate contract. Failure to supply or deliver any instalment will not entitle the Customer to repudiate any contract.

4.5 The Company will use its best endeavours to deliver the Goods and/or perform the Services by the Date for Delivery.

4.6 The Company shall not be liable to the Customer for any loss or damage (including consequential loss or damage whether liquidated or otherwise) arising from delay in delivery or failure to deliver due to circumstances beyond its reasonable control. The Customer shall accept and pay for Goods notwithstanding late delivery.

5. ADDITIONAL CHARGES

The Company reserves the right to charge the Customer for any costs charges or expenses whatsoever that the Company may incur as a result of:

- a. Vehicle or wagon detention (to the extent the same is not cause or contributed to by the Company);
- b. Demurrage on ships in consequence of any act or omission of the Customer; or
- c. Any special requirements or stipulations of the Customer accepted by the Company but not expressly provided for under this Agreement.

6. STORAGE

If the Company notifies the Customer that the Goods are ready for delivery and the Customer requests the Company to hold the Goods on its behalf or refuses to accept delivery such Goods will be held by the Company accept delivery such Goods will be held by the Company at the Customer's sole cost and risk and the Company shall be entitled to charge a reasonable storage fee in respect of the Goods.

7. TITLE AND RISK

7.1 Title in Goods passed to the Customer upon payment of the Price by the Customer.

7.2 Risk in Goods passes to the Customer upon loading at the Company premises

8. RETURN OF STOCK ITEMS

8.1 Goods ordinarily sold as standard stock items by the Company may only be returned for credit to the Customer's account with fourteen (14) days of the date of delivery of the Goods; and then ONLY IF prior agreement is given by a duly authorized officer of the Company, the goods are undamaged, unused and in good and saleable condition.

8.2 Special order Goods or Goods not ordinarily sold as standard stock items by the Company are not returnable to the Company for credit under any circumstances whatsoever.

8.3 Goods accepted for credit by the Supplier will attract a restocking charge of thirty per cent (30%) of the Price to cover restocking and repacking charges. Such charges shall be deducted from the amount of credit allowed. The original invoice number and Customer purchase order number must accompany all Goods returned to the Company.

9. INTELLECTUAL PROPERTY

9.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Customer by the Company during tendering and at the time of establishing any contract will remain the exclusive property of the Company and are to be kept strictly confidential.

9.2 The Company warrants that:

- a. The Goods supplied and/or Services performed by the Company and the license granted by it to the Customer do not infringe any intellectual property rights of any third party; and
- b. The Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the third party that in any way restrict the rights of the Customer to use or sell the same

9.3 The Customer acknowledges that the Company remains the owner of all pre-existing Company intellectual property and furthermore agrees that subject to clause 9.4 title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under any contract created pursuant this Agreement, shall vest exclusively in the Company upon its creation (**Company IP**).

9.4 The Company acknowledges that the Customer remains the owner of all pre-existing Customer intellectual property (including any improvements, modifications or additions thereof), used in connection with the supply of the Goods and/or performance of the Services under any contract created pursuant to this Agreement (**Customer IP**).

9.5 The Company grants the Customer a non-exclusive, revocable, royalty free licence to use the Company IP to the extent necessary to enable the Customer to use, maintain, and/or repair the Goods supplied to the Customer by the Company under any contract created pursuant to this Agreement.

10. PERSONAL PROPERTIES SECURITIES ACT (CTH)

10.1 Defined terms in this clause 11 have the same meaning as those given to them in the PPSA.

10.2 The Customer and the Company acknowledge that this Agreement constitutes a Security Agreement for the purposes of s20 of the PPSA and gives rise to a Purchase Money Security Interest (**PMSI**) in favour of the Company over the Goods supplied to the Customer as Grantor pursuant to this Agreement.

10.3 The Goods supplied or to be supplied under this Agreement fall within the PPSA classification of Other Goods acquired by the Customer pursuant to the Agreement.

10.4 The Customer will execute such documents and do such further acts as may be required by the Company to perfect the Security Interest granted to the Company under this Agreement and the PPSA by registration and ensure that until all of the obligations of the Customer are discharged and fully satisfied the Company's Security Interest under this Agreement remains perfected and has priority over all other security interest in the Collateral (except for the Security Interests that the Company has expressly agreed to sub-ordinate).

10.5 The Customer undertakes that it will not, without the prior written consent of the Company (which it may grant in its sole discretion) change or permit the change of any of its details that are required to be included in the Financing Statement.

10.6 The Customer may not grant any Security Interest in all or any of the Goods except with the prior written consent of the Company (which may be withheld in its sole discretion).

10.7 The Customer agrees that the Company may apply to register its Security Interest in the Goods at any time before or after delivery of the Goods. The Customer Irrevocably waives its rights under s157 of the PPSA to receive a notice of any Verification Statement in respect of the Company's Security Interest under this Agreement.

10.8 The parties contract out of each provision of the PPSA which, under s115(1) of the PPSA, they are permitted to the contract out of.

10.9 Each party waives its rights to receive each notice which, under s157(3) of the PPSA, it is permitted to waive.

10.10 Each party waives its rights to receive anything from any other party under s275 of the PPSA.

10.11 The Customer acknowledges that 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 granted to the Company under this Agreement.

11. DEFAULT

11.1 Should the Customer fail to make due payment for any Goods and/or Services supplied by the Company, or being a natural person commit an act of bankruptcy, or being a corporation by act of omission enable the appointment of a scheme manager, trustee, official manager, receiver, receiver and manager, liquidator, administrator or any other person authorised to enter into possession of the assets of the Customer pursuant to a mortgage or other security (**Default**) the Company may, without prejudice to any other rights it may have, do any or all of the following:

- a. Withdraw any credit facilities which may have been extended to the Customer;
- b. Withhold any further deliveries of Goods and/or performance of any Services required under any contract;
- c. In respect of Goods already delivered, enter onto the Customer's premises to recover and resell same for its own benefit;
- d. Suspend and/or terminate the performance of any contract which the Company has with the Customer.

11.2 In the event the Company terminates any contract pursuant to sub-clause 12.1(d) the rights and remedies available to the Company shall be the same as if the Customer repudiated the contract as a whole and the Company shall be entitled to recover all loss (including consequential loss), costs, damages and liabilities incurred by the Company as a result of such termination.

12. INDEMNITY

Without prejudice to any other rights the Company may have, the Customer shall indemnify the Company for any loss, costs, damages or liabilities incurred by it should the Customer breach any term of this Agreement or commit a Default as defined under clause 11.

13. LIMITATION OF LIABILITY

13.1 Despite any other provision of these Terms and Conditions of Sale but subject to clause 13.2, and to the maximum extent permitted by law the Company's overall liability:

- a. Under, or arising out of, or in connection with these Terms and Conditions of Sale;
- b. Otherwise at law or in equity including:
 - i. By statute to the extent permitted by law;
 - ii. In tort for negligence or otherwise; or
 - iii. On any other basis whatsoever,

Shall not exceed 100% of the contract Price.

13.2 Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, the Company has no liability to the Customer nor will the Customer be entitled to make any claim against the Company in respect of any indirect or consequential loss incurred or sustained by the Customer (whether arising under these Terms and Conditions of Sale, any contract, in tort, at law, in equity or otherwise).

13.3 The provisions of this clause 13 shall survive termination of any contract.

14. FITNESS FOR PURPOSE

The Customer agrees that it does not rely in the skill or judgement of the Company in relation to the suitability of any Goods and/or Services for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged that the Goods and/or Services will be fit for that purpose.

15. WARRANTY AND CLAIMS

15.1 To the maximum extent permitted by law all terms and warranties which would otherwise be implied under the Competition and Consumer Act 2010 (Cth) or any other applicable statute, the common law, equity, trade, custom, usage or otherwise in relation to the Goods or in connection with the contract are expressly excluded.

15.2 The Customer shall inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in conformity with the contract relating to their supply, shall give written notice to the Company of the allegations and details in respect thereof within seven (7) days of delivery.

15.3 The Goods the subject of a notice referred to in clause 16.2 shall be preserved intact and made available for inspection by the Company. If the Goods are not so left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase Price thereof.

15.4 Within a reasonable period of receipt of the notice referred to in clause 16.2 the Company may, as its option:

- a. Replace the Goods or supply equivalent Goods;
- b. Pay the cost of replacing the Goods or purchasing equivalent Goods;
- c. Re-supply the Services; or
- d. Pay the cost of having the Services re-supplied.

15.5 On written request from the Company, Goods which have been replaced pursuant to clause 15.4 shall be made available to the Company and shall be the property of the Company.

15.6 No goods may be returned to the Company without the prior written consent of the Company. If goods are returned without the prior written consent of the Company, the Company may return those goods to the Customer at the Customer's cost and risk.

15.7 Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, the Company has no liability to the Customer nor will the Customer be entitled to make any claim against the Company for loss and damage incurred or sustained by the Customer arising out of or in connection with any defect, including the cost of rectification of defects, searching for the cause of any defect, dismantling, removal, transport, repair, reinstallation, retesting and similar costs (whether arising under these Terms and Conditions of Sale, any contract, in tort, at law, in equity or otherwise).

15.8 Clause 15.5 shall survive termination of the contract.

15.9 The Customer agrees that no warranty is given under clause 15.1 in respect of Defects caused by:

- c. Failure to handle, store, install, maintain or repair the Goods in an appropriate manner after delivery;
- d. Failure to use the Goods in the manner for which they were designed;
- e. Normal wear and tear; or
- f. Alterations to the Goods made without the prior written consent of the Company.

16. PAYMENT

16.1 The extension of credit shall be at the absolute discretion of the Company and where extended unless otherwise advised in writing shall require payment by net cash strictly within thirty (30) days from the date of invoice.

16.2 Time shall be strictly of the essence in relation to payment of invoices.

16.3 Without in any way limiting the Company's right to require payment in full on the due date, the Company may charge interest on overdue accounts at the rate of 12% per annum for each and every day that the account remains unpaid and overdue.

16.4 The Customer agrees that the Company shall be entitled to use the services of a credit agency from time to time to obtain information concerning the Customer (and where the Customer is a company, its Directors) in order to assess the Customer's credit worthiness.

16.5 Any expenses, costs or disbursements incurred by the Company in recovering or attempting to recover any outstanding monies including debt collection agency fees and solicitor's costs shall be paid by the Customer, providing that those fees do not exceed the scale charges as charged by that debt collection agency/solicitor and in any event the commission is not to exceed 18% of the debt value, plus out of pocket expenses.

16.6 The Directors/Shareholders of the applicant do hereby jointly and severally guarantee payment of the account and to enter into the Standard form of guarantee used by the Company should such guarantee be required.

16.7 The Customer hereby charges the land upon which the Goods are situated or the work carried out and other land owned or in the future acquired by the Customer from time to time and the Customer agrees immediately upon being required to do so by the Company to enter into a mortgage to be prepared by the Company's solicitors on the terms and conditions as the Company's solicitor shall think fit to secure any sum due hereunder and the Customer further agrees and permits and authorises the Customer to register a caveat over any land now owned by the Customer or in the future acquired by the Customer to secure any sum due hereunder at any time during the continuance of the agreement.

17. DISPUTES

Procedure for resolving disputes.

- a. The parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with this clause 17.
- b. If a dispute arises then either party may give notice to the other party that must:
 - i. Be in writing;
 - ii. State that it is a notice under subclause 17; and
 - iii. Include or be accompanied by reasonable particulars of the dispute.
- c. If a notice is given under subclause 17(b), then a senior management representative or equivalent of each of the parties (who must be capable of binding each party) must meet at least once within five (5) business days of receipt of the notice under subclause 17(b) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.
- d. If the dispute is not resolved by the senior management representatives within the period referred to in subclause 17(c), either party may commence proceedings for the resolution of the dispute.

18. CHANGE OF OWNERSHIP REGISTERED PARTICULARS

The Customer shall no later than 14 days prior to any proposed changes of ownership, change in Registered Particulars, alteration, addition to the shareholding or directorship, notify the Company of the proposed change, alteration or addition, to the Customer and the Customer shall be liable for any Goods supplied and/or Services performed by the Company after such change, alteration or addition unless the Company acknowledges in writing acceptance of the intending change, alteration or addition.

19. ASSIGNMENT

The Customer may not assign its rights or obligations under these Terms and Conditions of Sale without Company's prior written consent, which the Company may give or refuse in its sole discretion.

20. SEVERABILITY

Any part of these Terms and Conditions of Sale shall be capable of severance without affecting any other part.

21. DEFINITIONS

Agreement means this agreement comprising:

- a. The First Schedule;
- b. The Terms and Conditions of Trade;
- c. The Guarantee;
- d. Any purchase order accepted by the Company pursuant to these Terms and Conditions of Trade; and
- e. Subject to clause 3.2 any attachments or annexure specifically referenced in any written acceptance of a Customer purchase order.

Company means the David Moss Group Ply Ltd related body corporate as defined under the Corporations Act 2001 (Cth) being David Moss Corporation Ply Ltd or David Moss Queensland Ply Ltd, and as named in any written correspondence with the Customer in relation to any contract or tender.

Customer means the party identified as such in the First Schedule.

Date for Delivery means the date upon which the Goods are due to be made available for collection by, or delivered to, the Customer as confirmed by the Company in writing upon receipt of order placement by the Customer.

Goods means the goods, if any, described on the purchase order which has been accepted by the Company.

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

Price means the price set out in the purchase order as accepted by the Company in writing, and any and all other costs and charges not specifically referenced on the purchase order but which are incurred by the Company or incidental to the supply of the Goods and/or performance of the Services and, specified as additional and/or recoverable costs pursuant to these Terms and Conditions of Sale.

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

Services means the services, if any, described on a purchase order which has been accepted by the Company.