

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and associated Regulations as amended;

Order means any agreement for the provision of Goods or Services by AMPD to the Customer;

AMPD means AMPD Developments Pty Ltd ACN 602 163 315 ATF the AMPD Trust ABN 94 701 528 735 t/as AMPD Electronics;

Customer means the person, jointly and severally if more than one, acquiring Goods or Services from AMPD;

Goods means goods supplied by AMPD to the Customer;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated Regulations as amended;

PPSA means the *Personal Property Securities Act 2009* (Cth) and associated Regulations as amended;

Services means services supplied by AMPD to the Customer; and

Terms means these Terms and Conditions of Trade.

2. Basis of Order

2.1 Unless otherwise agreed by AMPD in writing, the Terms apply exclusively to every Order and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by AMPD to the Customer for the proposed supply of Goods or Services is:

- (a) valid for 14 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 If the Customer wishes to accept a quotation provided by AMPD, that acceptance is considered an offer from the Customer to AMPD which may then be accepted by AMPD in accordance with clause 2.5.

2.4 If there is any inconsistency between terms in a quotation provided by AMPD, and these Terms, then the terms in the quotation will apply to the extent of the inconsistency.

2.5 An Order is accepted by AMPD when AMPD accepts, in writing or electronic means (including by issuing and invoice) an offer from the Customer, or provides the Customer with the Goods or Services.

2.6 AMPD has absolute discretion to refuse to accept any offer.

2.7 The Customer must provide AMPD with its specific requirements, if any, in relation to the Goods and Services.

2.8 AMPD may vary or amend these Terms with reasonable notice to the Customer, including by posting the updated Terms on AMPD's website, or otherwise providing a copy (including electronically) to the Customer. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties imposed on or in relation to the Goods and Services (unless otherwise stated).

3.2 If the Customer requests any variation to the Order, AMPD may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by AMPD in relation to Goods or Services, AMPD may vary its price to take account of any such change, by notifying the Customer. If the variation in price amounts to a material change, the Customer may within 7 days of notice of the variation elect to terminate the Order, but only if Goods or Services have not at that time been delivered in whole or in part.

4. Payment

4.1 Unless otherwise specified in AMPD's invoice, the terms

of the Order, or agreed in writing:

- (a) Deposits (if any) specified in the Order must be paid before supply of the Goods or Services will be made;
- (b) Subject to 4.1(c), full payment for the Goods or Services must be made in accordance with the payment terms specified in the Order, or if none, within 14 days of the date of AMPD's invoice.
- (c) AMPD reserves the right to require payment in full on delivery of the Goods or completion of the Services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at AMPD's sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to AMPD, then all money which would become payable by the Customer to AMPD at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and AMPD may, without prejudice to any of its other accrued or contingent right :

- (a) charge the Customer interest on any sum due at the prevailing rate for post-judgement interest pursuant to the *Civil Proceedings Act 2011* (Qld) for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify AMPD from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Order or to recover any Goods;
- (c) cease or suspend supply of any further Goods or Services to the Customer; and/or
- (d) by written notice to the Customer, terminate any uncompleted Order with the Customer.

5.2 Clauses 5.1(c) and 5.1(d) may also be relied upon, at AMPD's option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. Performance of Order

6.1 Any period or date for delivery of Goods or provision of Services stated by AMPD is an estimate only and not a contractual commitment.

6.2 AMPD will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date, unless required by law.

6.3 If AMPD cannot complete the Services by any estimated date, it will complete the Services within a reasonable time.

7. Passing of Property

- 7.1 Until AMPD receives full payment in cleared funds for all Goods and Services supplied by it to the Customer:
- (a) title and property in all Goods remain vested in AMPD and do not pass to the Customer;
 - (b) the Customer must hold the Goods as fiduciary bailee and agent for AMPD;
 - (c) the Customer must keep the Goods separate from its Goods and maintain AMPD's labelling and packaging;
 - (d) the Customer must hold the proceeds of sale of the Goods on trust for AMPD in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
 - (e) in addition to its rights under the PPSA, AMPD may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other Goods not the property of AMPD, and for this purpose the Customer irrevocably licences AMPD to enter such premises and also indemnifies AMPD from and against all costs, claims, demands or actions by any party arising from such action.
- 8. Personal Property Securities Act**
- 8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 8.2 For the purposes of the PPSA:
- (a) terms used in clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and AMPD has a Purchase Money Security Interest in all present and future Goods supplied by AMPD to the Customer and the proceeds of the Goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
 - (d) the Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by AMPD on the Personal Property Securities Register.
- 8.3 The security interest arising under this clause 8 attaches to the Goods when the Goods are collected or dispatched from AMPD's premises and not at any later time.
- 8.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 8.5 AMPD and the Customer agree to contact out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA shall apply to these Terms.
- 8.6 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on AMPD will apply only to the extent that they are mandatory or AMPD agrees to their application in writing; and
 - (b) where AMPD has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 8.7 The Customer must immediately upon AMPD's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Order; and
 - (b) procure from any person considered by AMPD to be relevant to its security position such agreements and waivers (including as equivalent to those above) as AMPD may at any time require.
- 8.8 AMPD may allocate amounts received from the Customer in any manner AMPD determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by AMPD.
- 8.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods or Services, except as otherwise required by law or that is already in the public domain.
- 9. Risk and Insurance**
- 9.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the Goods being delivered to the Customer or dispatched from AMPD's premises.
- 9.2 The Goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.
- 9.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the Goods sold by AMPD, unless recoverable from AMPD on the failure of any statutory guarantee under the ACL or otherwise required by law.
- 10. Delivery**
- 10.1 Subject to clause 10.6, AMPD will arrange for the delivery of the Goods to the Customer.
- 10.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer to the point of delivery.
- 10.3 AMPD may make part delivery of Goods or provision of Services and AMPD may invoice the Customer for the Goods or Services provided.
- 10.4 The Customer indemnifies AMPD against any loss or damage suffered by AMPD, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer under the ACL and AMPD has not used due care and skill.
- 10.5 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the Goods. The Customer is liable for storage charges payable monthly on demand.
- 10.6 If agreed that the Customer will collect the Goods:
- (a) the Customer must collect the Goods with 7 days of being advised they are ready; and
 - (b) if the Customer does not collect the Goods within this time, the Customer is deemed to have taken delivery of the Goods and is liable for storage charges payable monthly on demand.
- 11. Liability**
- 11.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services, the Order does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.
- 11.2 If the Customer is a consumer under the ACL nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against AMPD for failure of a statutory guarantee under the ACL.
- 11.3 If the Customer on-supplies the Goods to consumer under the ACL:
- (a) if the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use

- or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of AMPD's liability to the Customer;
- (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of AMPD's liability to the Customer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 11.4 If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement AMPD is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods or Services by the Customer or any third party.
- 11.5 AMPD is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 11.6 The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by AMPD in relation to the Goods or Services or their use or application; and
- (b) it has not made known, either expressly or by implication, to AMPD any purpose for which it requires the Goods or Services and it has the sole responsibility of satisfying itself that the Goods or Services are suitable for the use of the Customer.
- 11.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of Services which cannot be excluded, restricted or modified.
- 12. Cancellation**
- 12.1 If AMPD is unable to deliver or provide the Goods or Services, then it may cancel the Order (even if it has been accepted) by written notice to the Customer.
- 12.2 No purported cancellation or suspension of an Order or any part of it by the Customer is binding on AMPD once the Order has been accepted.
- 13. Shortages and Exchanges**
- 13.1 Subject to clause 13.2 and 13.4, AMPD will not be liable for any shortages, damage or non-compliance with the specifications in the Order unless the Customer notifies AMPD with full details and description within 10 days of delivery otherwise the Customer is deemed to have accepted the Goods.
- 13.2 When any shortages, claim for damaged Goods or non-compliance with the Order specifications is accepted by AMPD, AMPD may, at its option, replace the Goods, or refund the price of the Goods.
- 13.3 Subject to clause 13.4, AMPD will not under any circumstances accept Goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Order;
- (b) are discontinued Goods or no longer stocked by AMPD;
- (c) have been altered in any way;
- (d) have been used; or
- (e) are not in their original condition and packaging.
- 13.4 If the Customer is a consumer under the ACL, nothing in this clause 13 limits any remedy available for a failure of the consumer guarantees in the ACL.
- 14. Force Majeure**
- 14.1 AMPD is not liable in any way howsoever arising under the Order to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, AMPD may suspend or terminate the Order by written notice to the Customer.
- 15. Miscellaneous**
- 15.1 The law of Queensland, Australia from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2 AMPD's failure to enforce any of these Terms shall not be construed as a waiver of any of AMPD's rights.
- 15.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 15.4 A notice must be in writing and handed personally or sent by email, fax or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by fax or email are deemed received on confirmation of successful transmission.
- 15.5 The Customer must comply with the Australian Privacy Principles in connection with any personal information supplied to it in connection with this Order.