

1 Definitions and Interpretation

ACL means *Competition and Consumer Act 2010* (Cth)

Act of God means any act of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), pandemic, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or a telecommunications service and any other similar act which is beyond the reasonable control of a party, but does not include an obligation to pay money.

Application for Credit means an application for a credit account submitted by the Buyer to the Seller.

Business Day means Monday to Friday except public holidays in Victoria, Australia.

Buyer means the person so named in these Terms or otherwise on the Order Form or Quotation and includes all employees, officers, agents and contractors of the Buyer and/or any other person who orders or purchases any Goods from the Seller.

Carriage means vehicles and conveyances of all kinds including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport.

Carrier means any party involved in the Carriage of Goods whether by air, sea or land transport.

Credit Account means an account approved by the Seller for the provision of credit to the Buyer, after the Buyer submits a credit application to the Seller.

Goods mean the goods and services (including any inventory) as described in the Order.

GST has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law.

GST Law means the A New Tax System (Goods and Services Tax) Act 1999.

GST Rate means the rate of GST under the GST Law.

Guarantor means the person (or any persons) who agrees to be liable for debts and the obligations of the Buyer as guarantor.

Intellectual Property Rights means all intellectual property rights of any kind whatsoever throughout the world including all rights which subsist in copyright, patents, trade marks, designs, circuit layouts and plant breeders rights irrespective of whether such rights are registered or capable of being registered.

Order means any order placed by the Buyer with the Seller for the Goods which are described in the Order Form, Quotation or otherwise agreed between the parties.

Order Form means an order form or other document which describes the Goods to be supplied by the Seller.

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

Price means the price of the Goods as agreed between the Seller and the Buyer subject to clause 4 of these Terms.

Quotation or Quote means a quote provided by the Seller to the Buyer in respect of the supply of the Goods.

Reporting Obligations means the obligations to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities.

Seller means ePOL Pty Ltd (ACN 109 221 249) and its successors and assigns.

Sub-contractor means any third party appointed by the Seller to assist in the provision of services.

Supply means the same as in the GST Law.

Taxable Supply means any Supply under these Terms in respect of which the Seller is or may become liable to pay GST.

Terms means these terms and conditions of trade In the interpretation of these Terms unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of these Terms;
- (b) the words 'includes' or 'including' will not limit whatever follows;
- (c) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa; the singular includes the plural and vice versa; a reference to any gender includes a reference to all other genders;
- (d) a reference to any legislation includes a reference to any modification or re-enactment; and
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

2 Acceptance of these Terms

2.1 Without limiting the way in which the Buyer may become bound by these Terms, the Buyer will become bound by these Terms by:

- (a) signing a copy of these Terms;
- (b) placing an Order with the Seller for the supply of Goods;
- (c) signing a copy of the Order Form; or
- (d) accepting the Goods supplied by the Seller.

2.2 Where more than one Buyer has entered into these Terms, the Buyers shall be jointly and severally liable for their obligations under these Terms.

2.3 The Buyer undertakes to give the Seller not less than fourteen (14) days advance written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, email address or business practice).

2.4 No agent or employee of the Seller has the authority to waive or vary these Terms unless the Seller approves such waiver or variation in writing.

2.5 Each party acknowledges and agrees that these Terms may be executed and entered into using electronic means and to the extent a party executes using electronic means, it has received and reviewed an entire copy of this Agreement prior to applying its respective electronic signature.

2.6 If at any time these Terms are invalid or unenforceable or a party is not bound by them as a result of being executed and entered into using electronic means, then the parties agree to execute and exchange printed copies of these Terms and to take such other steps or provide such assurances as are reasonably necessary to ensure that these Terms are binding upon the parties and enforceable.

3 Order

3.1 The Seller may in its sole discretion refuse to accept any Order and/or to supply part or all of any Order.

4 Price And Payment

4.1 At the Seller's sole discretion the Price shall be either:

- (a) as indicated on the Order Form or any invoices provided by the Seller to the Buyer in relation to the Order; or
- (b) subject to clause 4.2, the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept in writing the Quote within thirty (30) days of the date of the Quote.

4.2 The Seller may by written notice to the Buyer at any time prior to delivery increase the Price of the Goods to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, changes to the Goods requested by the Buyer, delays caused by the Buyer, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs). The Buyer will have 3 Business Days from the receipt of such notice to cancel the Order by written notice to the Seller. If the Buyer fails to cancel then the Buyer is deemed to have accepted the Price increase.

4.3 Time for payment for the Goods shall be of the essence and will be stated on the Order Form, invoice, Quotation or in any other forms.

- 4.4 The Seller may in its sole discretion withhold delivery of the Goods until the Buyer has paid for them, in which event payment shall be due before the delivery date.
- 4.5 Payment will be made by cash, cheque, bank cheque, E.F.T, or credit card (subject to any applicable credit card surcharge as specified by the Seller from time to time) or by any other method as agreed to between the Buyer and the Seller.
- 4.6 Unless specified to the contrary on any Quote, invoice or Order Form, the Price shall be deemed to be exclusive of any GST and any other taxes, duties, levies, withholdings, government ordinances and related fines, penalties or interest payable by the Seller in respect of the supply of the Goods (**Taxes**). The Buyer will indemnify the Seller in respect of such Taxes and will at the same time as paying the Price to the Seller, pay the Seller the amount of such Taxes (if any).
- 4.7 The Buyer shall not set off against the Price any amounts separately due from the Seller to the Buyer.
- 5 Delivery Of Goods**
- 5.1 Delivery of the Goods shall be made to the place and point of delivery specified by the Buyer at the time of placing the Order or as subsequently specified prior to shipment of the Goods. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery at the nominated place and point of delivery.
- 5.2 Delivery of the Goods will be deemed to have occurred when the Seller delivers the Goods directly to the Buyer or its agent or representative, or when the Seller delivers the Goods to a carrier for subsequent delivery to the Buyer or its agent or representative.
- 5.3 The Seller may deliver the Goods by separate instalments (in accordance with any agreed delivery schedule).
- 5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of these Terms.
- 5.5 The Buyer shall be responsible for insuring the Goods from the earlier of their delivery to the Buyer or from the time that they are provided to a carrier for subsequent delivery to the Buyer.
- 5.6 The failure or delay of the Seller to deliver the Goods shall not entitle either party to treat these Terms as repudiated or breached by the Seller.
- 5.7 The Seller shall not be liable for any loss or damage whatsoever due to any failure or delay by the Seller to deliver the Goods (or any of them) promptly, by any particular due date, or at all.
- 6 Risk**
- 6.1 All risk for the Goods passes to the Buyer on delivery as determined under clause 5.
- 6.2 If any of the Goods are damaged or destroyed prior to title in them passing to the Buyer (as determined under clause 9), the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these Terms.
- 7 Liability and Representations**
- 7.1 The Buyer acknowledges that it has undertaken its own inspections and made its own independent enquiries in reaching its decision to purchase the Goods.
- 7.2 The Buyer agrees that it will not make any representations about the Goods or the Seller to the Buyer's customers or any other third party without obtaining the prior written consent of the Seller.
- 7.3 The Buyer acknowledges that the Seller has not made and will not make any express or implied warranties in relation to the Goods provided under these Terms. Subject to clauses 7.6 and 7.7 any term that would be implied into these Terms, including without limitation any condition or warranty is hereby excluded.
- 7.4 The Buyer agrees that the Seller shall not be liable in respect of any claim by the Buyer (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts or revenue or data arising out of or in connection with the provision of the Goods under these Terms and whether as a result of any breach, default, negligence or otherwise by the Seller.
- 7.5 Subject to clauses 7.6 and 7.7, the maximum liability of the Seller for any and all breaches of these Terms, or any negligent act or omission in relation to the supply of the Goods will be capped at the amount of the Price paid by the Buyer to the Seller under these Terms for the previous Order.
- 7.6 In the event that the *Competition and Consumer Act 2010* (Cth) (or analogous Australian legislation) applies to these Terms and permits the limitation of liability for breach of warranty implied by statute into these Terms, the liability of the Seller is limited, at the option of the Seller, to:
- (a) in the case of Goods, any one or more of the following:
- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods.
- 7.7 The Buyer holds harmless and indemnifies the Seller from and against all damages, costs, actions, claims, liabilities and demands resulting from dispatch times for Goods, accidental damage to Goods, warehouse delays, stock discrepancies and logistic delays.
- 7.8 Any of the terms and conditions contained herein which limit or exclude any term, condition or warranty, express or implied, or the liability of the Seller shall apply to the extent permitted by law and shall not be construed as excluding, qualifying or limiting the Buyer's statutory rights or remedies arising by virtue of the breach of any implied term of these Terms where such exclusion, qualification or limitation would be prohibited by legislation.
- 8 Defects>Returns**
- 8.1 The Goods will be deemed to have been delivered in accordance with these Terms unless the Buyer, within 7 days following delivery of the Goods (as determined by clause 5), notifies the Seller of any claimed defect, shortage in quantity, damage or failure to comply with the Buyer's Order. The Buyer shall provide the Seller an opportunity to inspect the Goods promptly after any such claim is notified.
- 8.2 Where the Seller agrees in writing that the Buyer is entitled to return Goods pursuant to clause 8.1, the Seller's liability, in addition to any limitation under clause 7, is limited to either (at the Seller's discretion) replacing the Goods or refunding the Price or crediting the credit account of the Buyer, provided that:
- (a) the Buyer has complied with the provisions of clause 8.1;
- (b) the Goods are returned in accordance with procedures specified by the Seller from time to time; and
- (c) the Goods are returned undamaged in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller is not obligated to accept the return of any undamaged Goods.
- 9 Title to Goods**
- 9.1 Property in the Goods shall not pass from the Seller to the Buyer unless and until:
- (a) the Buyer has paid to the Seller all amounts owing for the Goods under these Terms; and
- (b) the Buyer has met all other obligations of the Buyer to the Seller in respect of these Terms between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 9.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of

payment has been honoured, cleared or recognised and until then the Seller's ownership of the Goods shall continue.

10 Personal Property Securities Act

- 10.1 Unless otherwise stated, a term contained in these Terms that is defined in the PPSA (but not otherwise defined in these Terms) has the meaning given to it in the PPSA.
- 10.2 The Buyer acknowledges, agrees and grants the Seller a security interest for the purposes of the PPSA in:
- all Goods and any proceeds previously supplied by the Seller to the Buyer;
 - all Goods and any proceeds that will be supplied in the future by the Seller to the Buyer created under these Terms (as the accepted and adopted security agreement between the Parties); and
 - this security interest secures all moneys owing by the Buyer to the Seller under these Terms or otherwise.
- 10.3 The Buyer acknowledges and agrees the security interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 10.4 The Buyer acknowledges that the security interest over Goods or their proceeds arising, as and where applicable, will be a purchase money security interest (PMSI) to the extent that it secures payment of the amounts owing in relation to the Goods.
- 10.5 The Buyer will do everything reasonably required of it by the Seller to enable the Seller to register its security interest with the priority the Seller requires and to maintain any registrations including:
- signing any documents and/or providing any information which the Seller may reasonably require to register a financing statement or a financing change statement in relation to a security interest; or
 - to correct a defect in a financing statement.
- 10.6 The security interests arising under this clause 10 will be perfected by the Seller prior to the Buyer obtaining possession on delivery of the Goods and the parties confirm they have not agreed that any security interest arising under this clause 10 attaches at any later time.
- 10.7 The Seller does not need to give the Buyer any notice under the PPSA (including notice of the single financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded and if the Seller is required to give a notice to the Buyer under the PPSA, and the Buyer may, under the PPSA waive the Buyer's right to receive that notice, then the Buyer hereby waives that right.
- 10.8 For the avoidance of doubt and without prejudice to the Seller's rights under the PPSA, the Buyer:
- may process the Goods supplied by the Seller to the Buyer and accession or commingle them with other property in which case the Seller will have a security interest in any processed, accession and commingled goods;
 - may sell the goods to its Buyers and if it does so, then the Seller will have a security interest in any proceeds of sale;
 - will, where and when applicable and instructed by the Seller, implement, maintain and comply in all material respects, with procedures for the perfection of security interests, including taking all steps under the PPSA to perfect continuously any such security interest; and
 - acknowledges that the security interest will continue until all obligations owing to the Seller have been discharged in full at which time the Seller will discharge the financing statement.
- 10.9 Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with these Terms, the Seller may apply that payment:
- to satisfy an obligation that is not secured;

- to satisfy an obligation that is secured, but not by a PMSI;
- to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
- to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source; or
- despite the foregoing, any manner the secured party sees fit.

- 10.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under these Terms, the Buyer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of those security interests.
- 10.11 The Buyer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these Terms as the security agreement between the Buyer and the Seller.
- 10.12 The Buyer will notify the Seller immediately in writing if the Buyer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of these Terms.
- 10.13 The Buyer agrees to keep and maintain all Goods free of any charge, lien, or security interest except as created under these Terms and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of the Seller under these Terms or the PPSA.
- 10.14 The Buyer irrevocably grants to the Seller the right to enter any premises or property of the Buyer without notice, and without being in any way liable to the Buyer or any other person, if the Seller has cause to exercise any of its rights under the PPSA (in particular under section 123) and the Buyer agrees to indemnify the Seller against any such liability.

11 Cancellation

The Seller may terminate these Terms or any agreement or cancel delivery of Goods to the Buyer at any time before the Goods are delivered by giving written notice to the Buyer. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

12 Interest and Collection

- 12.1 If the Buyer does not pay in full the balance due under the Credit Account in accordance with these Terms of Trade, the Seller can do any of the following:
- Charge interest on the overdue balance from the time payment was due until payment of the overdue balance in full at the interest rate/rates prescribed from time to time under the Penalty Interest Rates Act (Vic) 1983 (Interest);
 - Take all reasonable steps to recover the overdue balance from the Buyer and interest payable thereon by employing mercantile agents and or legal practitioners and the Buyer shall pay to the Seller the Seller's reasonable costs incurred in doing so on a full indemnity basis (collection costs)
- 12.2 If the buyer is liable to pay Interest and/or collection costs pursuant to the provisions of clause 12.1, any payment by the Buyer to the Seller in respect of an overdue account shall be applied first as to collection costs, secondly as to Interest and thirdly as to the balance of the overdue account.

13 Obligations on Termination by the Buyer

- 13.1 Where an order has been accepted by the Seller, the Buyer will not be able to cancel the order without the express written consent by the Seller.
- 13.2 If the Buyer terminates the order without the express consent of the Seller, it shall be immediately liable for the full payment of the Price.



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- 13.3 The Buyer is required to collect any Goods that remain at the premises of the Seller within 14 days of termination.
- 13.4 Failure to comply with clause 0 will result in the Seller being authorised to destroy the Goods and raise an invoice against the Buyer for any costs associated with storing or destroying the Goods.

14 Tooling and Dies

- 14.1 Any patterns, dies, moulds or other tooling (tooling) that the Seller reasonably considers necessary to enable it to manufacture and/or supply the Goods to the Buyer shall be manufactured and/or obtained by the Seller at the sole cost of the Buyer who shall, on demand, pay the Seller the reasonable cost of the tools.
- 14.2 The Seller shall use reasonable endeavours to maintain the tools in good order and working condition and shall notify the Buyer when, in the Seller's reasonable opinion, the tools have reached the end of their effective working life.
- 14.3 The tools shall be the property of the Buyer and shall, at all times, be at the risk of the Buyer. The Seller shall not be responsible for any loss, damage or injury to the tools unless the same shall have been occasioned by the gross negligence of the Seller. Any compensation or loss, damage or injury to the tools shall be the cost of restoration to good working order and condition or replacement, whichever shall be the less.
- 14.4 The Seller shall deliver the tools to the Buyer after completion of manufacturer of the relevant Goods or when requested by the Buyer. If the Buyer does not request return of the Goods within 3 months after the Seller has ceased to use them, the Seller may dispose of them at the cost of the Buyer.
- 14.5 The Seller shall have a lien on the tools for the unpaid price of any Goods and any other monies owing by the Buyer to the Seller under these terms and conditions.

15 Notice

- 15.1 The Buyer or Seller or their nominated representative may give a notice in writing by:
- (a) post;
 - (b) facsimile; or
 - (c) delivery; or
 - (d) email
- 15.2 to the other party's last known address or registered office.
- 15.3 Posted notices will be taken to have been received seventy two (72) hours after posting unless proved otherwise.
- 15.4 Notices delivered or sent by facsimile after 5:00 p.m. will be taken to have been received at 9:00 a.m. on the next Business Day at the place where they have been delivered or sent.

16 General

- 16.1 If any provision of these Terms is found to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 The Seller may license or sub-contract all or any part of its rights and obligations under these Terms without the Buyer's consent.
- 16.3 The Seller reserves the right to review these Terms at any time and from time to time. After any such review, any change in these Terms will take effect from the date on which the Seller notifies the Buyer of such change.
- 16.4 Neither party shall be liable for any default due to any Act of God.
- 16.5 A waiver of any right or power under these Terms will only be valid if given in writing by the party granting the waiver.
- 16.6 These Terms supersede all prior representations, arrangements and agreements between the parties in relation to its subject matter and forms the entire agreement between the parties.
- 16.7 Each provision of these Terms capable of having effect after termination shall survive termination of these Terms and shall not merge on such termination.

- 16.8 These Terms shall be governed by the laws of the State of Victoria and the parties consent to the jurisdiction of the Courts of the State of Victoria and their Courts of appeal.

Signed by the person named below for and on behalf of the Buyer named below:

Signature

Name of Company Representative

Position (Director / Manager)

Company Name

ACN:

ABN:

Address

Date of signing: