

# General Terms and Conditions and Security Agreement

**IN CONSIDERATION OF Landmark Operations Ltd (ACN 008 743 217) and Landmark (Qld) Limited (ACN 008 996 218), and their associated and related entities, (hereinafter referred to as “the Company”) providing commercial credit facilities to the party completing the application (hereinafter referred to as “the Customer”) annexed to these conditions:-**

- (i) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) The Customer hereby charges in favor of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest, to secure the payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

## TERMS

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

“Goods” and/or “Collateral” shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Company may intend to register a Security Interest.

“Price” shall mean the cost of the Goods as referred to in the Company’s price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.

### 1. Jurisdiction

- a. This agreement shall be construed in accordance with laws of the **State of Victoria** and, where applicable the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of **Victoria**.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

### 2. Personal Property Securities Act (2009)

- a. The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest in the Goods and the proceeds of those Goods arising under or in connection with or contemplated by these terms.
- b. The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register and any other notice required under the PPSA.
- c. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that any interest created under these terms is perfected and remains continuously perfected, has priority over any other security interests in the Goods or otherwise and any defect in the security interest, including its registration, is overcome.
- d. The Customer must not, without providing prior written notice to the Company, change its name, address, contact details or any other details that would cause any details in a financing statement to be different if the security interest was re-registered.
- e. The Customer must not, without the Company’s prior consent, allow any of the Goods to become an accession to, or commingled with, any property that is not subject to a security interest under these Terms.
- f. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant

any other security interest in the Goods.

g. The Customer will not register a financing change statement in respect of the security interest without the Company's prior written consent.

h. The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to the Company in such order as the Company may determine.

i. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); section 117 (security interests in personal property and land); section 118 (enforcement in accordance with land law); section 120 (enforcement of liquid assets - general); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession of collateral); section 127 (seizure by higher priority parties); section 128 (disposing of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134 (retention of collateral); section 135 (notice of retention); subsections 136(3) – 136(5) (retaining collateral free of interests); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).

j. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.

k. The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).

l. The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest, and for the enforcement of any rights arising out of the Company's security interest;

m. In these terms the following words have the respective meanings given to them in the PPSA: accession, commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

### **3. Retention of Title**

a. Property in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.

b. The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of the Company until title has passed to the Customer.

c. The Company may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.

d. In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

### **4. Payment Terms**

a. At the Company's sole discretion, a deposit may be required prior to any supply.

b. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, in line with agreed terms.

c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.

d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.

e. Amounts received by the Company may be applied first against interest, charges and expenses.

f. Interest on overdue amounts may be charged at a rate of 18% per annum calculated per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.

g. Any payment made by or on behalf of a Customer which is later avoided by the application of any

Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonored for whatever reason.

## **5. Delivery**

a. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.

## **6. Defects**

a. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries or any failure to fulfill any quotation or order.

b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.

c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

## **7. Warranty & Returns**

a. Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.

b. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

## **8. Risk**

a. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.

b. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

## **9. Cancellation**

a. The Company may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means.

b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.

c. The Customer may cancel the delivery of Goods at any time before delivery by giving notice to the Company by any means.

d. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

## **10. Limitation of Liability**

a. The Company acknowledges that if any Goods are: (i) PDH Goods; or (ii) Non PDH Goods, the purchase price for which is less than \$40,000 (or such other amount specified in or prescribed under section 3 of the Australian Consumer Law from time to time); then, subject to the provisions of the Australian Consumer Law (including, without limitation, section 3(2)), a number of Consumer Guarantees may apply in respect of the Goods .

b. Nothing in these General Terms and Conditions (including, without limitation, clauses, 7 or 10) should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law or the the Customer's right to make a claim in respect of any Consumer Guarantees or under any other provision of the Australian Consumer Law.

c. If the Goods are Non PDH Goods or the Australian Consumer Law does not apply to the Customer's purchase of the Goods, then (to the extent permitted by law) the Company expressly excludes all other

warranties or guarantees (whether express or implied) in respect of the Goods and the Company's liability to the Customer in relation to any claim relating to the Goods is limited, at the Company's option, to: (i) the replacement of the Goods; (ii) the supply of equivalent goods; (iii) the repair of the Goods; (iv) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or (v) the payment of the cost of having the Goods repaired.

**For the purposes of this clause 10:**

d. **Non PDH Goods** means any goods which are not **PDH Goods**; and PDH Goods means any goods which, for the purposes of section 3(1) of the Australian Consumer Law, are goods of a kind ordinarily acquired for personal, domestic or household use or consumption.

**11. General**

- a. The Company accepts no responsibility for changes in any law which may affect supply.
- b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.
- c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- d. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.
- e. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.



**12. Dangerous Goods**

The Customer agrees that:

- a. sales of Goods by the Company are made subject to the Company's obligations under relevant Commonwealth and State laws and regulations, and Licence conditions, relating to the transport, storage and handling of dangerous goods (DG Regulations); and
- b. the Company reserves the right to withhold supply of Goods to the Customer if the Company reasonably believes that to do so would result in a breach by the Company of any DG Regulation."