

AAC WRISTBANDS AUSTRALIA PTY LTD TERMS AND CONDITIONS OF TRADE

1. Definitions

- 1.1 "Seller" shall mean AAC Wristbands Australia Pty Ltd and its successors and assigns
1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Client.
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis.
1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of goods as defined above).
1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the clients acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
2.2 When more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
2.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.

3. Goods

- 3.1 The Goods are described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

4. Price and Payment

- 4.1 At the Seller's sole discretion the Price shall be either
(a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied.
(b) The Seller's quoted price (subject to clause 4.2) shall be valid for fourteen (14) days.
4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
4.3 At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
4.4 The Seller may withhold the delivery of Goods until the buyer has paid for them, in which event payment shall be made before the delivery date.

5. Delivery of Goods/Services

- 5.1 Delivery of the Goods shall be made to the Buyers shipping address. The buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
5.3 The cost of carriage and any insurance which the Buyer reasonably directs the seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
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 this agreement.
5.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
5.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price of Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Client's Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages, or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement.

8. Defects/Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of the delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
8.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods provided that:
(a) the Buyer has complied with the provisions of clause 8.1
(b) the Goods are returned at the Seller's cost within seven (7) days of the delivery date;
(c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
(d) the Goods are returned in the condition in which they were delivered.
8.3 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

9. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 9.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

10. Intellectual Property

- 10.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

11. Default and Consequences of Default

- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
11.2 If the Buyer defaults in payment of an invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those related to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
11.4 If any amount remains unpaid at the end of sixty (60) days, an administration fee of the greater of \$20.00 or 10% of the overdue amount shall be levied which sum shall become immediately due and payable. The total overdue amount will be referred to the Seller's Debt Collection Agency for recovery without notice to the Buyer.
11.5 The Buyer shall become liable for all fees (including legal) incurred in the recovery of the monies owed to the Seller.
11.6 In the event that:
(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
(i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.

12. Title

- 12.1 It is the intention of the Seller and agreed by the Buyer that property in the Goods shall not pass until:
(a) The Buyer has paid all amounts owing for the particular Goods, and
(b) The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts 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.
12.2 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 rights in respect of the Goods shall continue.
12.3 It is further agreed that:
(a) Until such time as ownership of the Goods shall pass from the Seller to the buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the client to obtain ownership or any other interest in the Goods shall cease.

- (b) The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (c) If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.
- (d) The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
- (e) The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
- (f) The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- (g) The Seller may require part payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- (i) Until such time that ownership in the Goods passes to the Buyer, if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.

13. Security and Charge

13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- (a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions.
- (b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [13.1(a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

14. Cancellation

14.1 At the Seller's sole discretion the Buyer may cancel delivery of Goods. In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation.

15. Privacy Act 1988

15.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and the Guarantor/s in relation to credit provided by the Seller.

15.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and/or Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by the Buyer
- (b) To notify other credit providers of a default by the Buyer
- (c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
- (d) To assess the credit worthiness of Buyers and/or Guarantor/s.

15.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and the Seller or required by law from time to time:

- (a) provision of Service and Goods;
- (b) marketing of Services and/or Goods by the Seller, its agents or distributors in relation to provision of Goods and Services;
- (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods/Services;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and
- (e) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.

15.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Buyer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file about the Buyer

16. General

16.1 If any provision of these terms and conditions shall 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 All Goods supplied by the Seller are subject to the laws of Queensland and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

16.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising from a breach by the Seller of these terms and conditions.

16.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the price of the Goods.

16.5 The Buyer shall not set off against the Price amounts due from the Seller.

16.6 The Seller may licence or sub-contract all or any part of its rights and obligations without the Buyer's consent.

16.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any such change in such terms and conditions, that change will take effect from the date the Seller notifies the Buyer of such change.

16.8 The Seller shall not be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of the Seller.