



SOUTHERN ELECTRONIC SERVICES P/L

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STANDARD TERMS & CONDITIONS

1. General

- 1.1 Unless otherwise agreed in writing by us, any Agreement for the sale or supply of any goods by us shall be subject to and shall incorporate these Terms of sale effective at the time the Agreement is made, to the exclusion of any terms or conditions stipulated in any manner by you whether at the time of ordering any goods, at the time of accepting any offer for any goods or accepting any goods, or otherwise.
- 1.2 We may refuse to accept any Order of goods made by you.
- 1.3 Each Order you place will be a separate Agreement. If you place consecutive and separate Orders, the Orders cannot be consolidated. A separate delivery fee, if applicable, will apply to each Order.

2. Formation of Contract

- 2.1 An Agreement for the sale of goods between us and you shall not come into existence if an Order placed by you for the goods is not accepted and confirmed by us. Any Order for any goods must be accompanied by sufficient information to enable us to proceed with the Order.

3. Description

- 3.1 You acknowledge and agree that any description we may provide of the goods in any document is provided by way of identification only, and does not amount to a contract of sale by description. Any description of any goods in any brochure, document or other sales literature used by us may be approximate and is for general information only and shall not, to the maximum extent permitted at law, form part of any Agreement between us and you. Any performance figures given by us are based on experience but to the maximum extent permitted at law are not a representation as to expected performance and we shall have no liability if those figures are not obtained, unless they are specifically guaranteed in writing by us.
- 3.2 All descriptions are accurate at the time of display, to the best of our knowledge.

4. Offers, Quotations and Tenders

- 4.1 Any offer, quotation or tender by us will be open for acceptance for not more than 90 days from the date of issue, except as otherwise specified in writing by us.
- 4.2 We retain the right to withdraw our offer early, notwithstanding that the offer, quotation or tender does not state this right elsewhere.
- 4.3 Goods displayed are strictly subject to availability. From time to time, goods may be out of stock or unavailable and we may not be able to fulfil all or part of your Order. In the case of non-availability of goods:
- (a) you may request the provision of substitute or similar goods; or
 - (b) you may cancel your Order; or
 - (c) you will make the appropriate adjustment to, or refund of the purchase price, or set off the payment made against any other debt owed by you to us.

- 4.4 We may withdraw or suspend from sale any goods displayed, either temporarily or permanently, at any time without notice.
- 4.5 All reasonable care will be taken to ensure that details, descriptions, images, and prices displayed are accurate, however errors, inaccuracies may occur and may not be complete or current. We reserve the right to correct any obvious errors, inaccuracies or omissions and to change or update information without prior notice.

5. Prices

- 5.1 The prices for any goods to you shall be as stated in a valid and current quotation from us (subject to clause 4), or if none, in our price list current on the date or dates that you have requested delivery of the Order.
- 5.2 GST is NOT included in the price quoted unless the quote states otherwise. Any other applicable taxes are not included in prices offered or quoted or in price lists but will be separately charged to you, unless not applicable.
- 5.3 The price and availability of goods are subject to change without notice. If we have already accepted an Order at a particular price, we will supply at that price.
- 5.4 All prices are in Australian Dollars.
- 5.5 Where there is a change in our costs of supplying the goods, we may notify you of our intention to vary our price to take account of any such change, and you may:
- (a) accept the proposed change to the price and continue with the Agreement; or
 - (b) reject the proposed change to the price and cancel the Agreement.
- 5.6 if you request any variation to the Agreement, we may notify you of any change to the price to account for the variation, and you may:
- (a) accept the change to the price; or
 - (b) withdraw your request for the variation.
- 5.7 We reserve the right to correct any obvious errors in its quotation, displayed price, order list or order confirmation.

6. Payment

- 6.1 Subject to the following provisions of this clause, all payments must be made strictly net cash, by EFT, VISA or MASTERCARD prior to despatch or pick-up of the goods.
- 6.2 Time shall be of the essence.
- 6.3 We may elect to allow you credit if you have completed a credit application and provide us with any information we require from time to time. Where credit is allowed, the maximum period of credit on any purchase is 30 days after the last day of the month of the invoice for that purchase, or as otherwise agreed in writing. Notwithstanding any granting of credit, we reserve the right at any time to withdraw credit or to require payment earlier than the time allowed in any credit arrangement or require cash on delivery.
- 6.4 All export sales are subject to the prompt provision by you of an irrevocable letter of credit satisfactory to us, in our favour. You may not set-off any amount you claim from us against any amount you owe us.

- 6.5 If you fail to make full payment by the due date, without prejudice to our other rights, we shall be entitled to:
- (a) charge you interest on any outstanding amount (before and after any judgment) at an annual rate of 2% above the *Penalty Interest Rate Act 1983 (Vic)* from time to time, accruing daily from the date the amount became due to the date of payment and shall be payable on demand, and
 - (b) suspend or discontinue further performance under any Agreement with you, and
 - (c) claim from you all the costs and expenses incurred in seeking to collect payment from you or otherwise enforcing our Agreement with you.
- 6.6 We shall have no liability to you arising out of or in connection with any suspended or discontinued performance. You shall be liable to us for any loss (including loss of profit) suffered by reason of your failure to pay any amount.
- 6.7 Payment terms may be revoked or amended at our discretion immediately upon giving you written notice.

7. Delivery

- 7.1 We will deliver the goods at our place of business. We will arrange for the delivery of goods to your nominated delivery address within Australia. You will be responsible for all costs associated with delivery, including postage or courier delivery, insurance and other charges arising from the point of despatch of the goods to the point of delivery.
- 7.2 Any delivery dates or periods stated, quoted or agreed by us shall be approximate or estimates only. However, time is not of the essence, and subject to the ACL, we shall not be liable to you for any consequences of any delays.
- 7.3 We reserve the right to deliver by instalments, if discussed with and agreed to by you. Each instalment shall be deemed to be sold under a separate agreement. Failure to deliver any instalment shall not entitle you to terminate any agreement with us.
- 7.4 You indemnify us against any loss or damage suffered by us as a result of delivery, except where you are a consumer and we have not used due care and skill.

8. Force Majeure

- 8.1 Neither party shall not be liable in respect of any loss or damage arising from any delayed performance or non-performance occasioned by a Force Majeure Event.
- 8.2 The affected party must promptly notify the other party of the existence of a Force Majeure Event and expected duration of one of these events occurring, take all reasonable steps to alleviate or remedy the effect of the event and resume performance of an obligation prevented by the Force Majeure Event as soon as practicable after the event ceases.
- 8.3 If the Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or cancel the Agreement by written notice.
- 8.4 Nothing in this clause operates to excuse you from any obligation to pay money owing to us.

9. Risk

- 9.1 All risk in relation to the goods shall pass to you and will be borne by you from the earlier of the time that the goods are placed at the disposal of you at our premises or the time that the goods leave our premises. This shall apply even if we agree at any time to transport or deliver the goods (or arrange for same) to you at any other place.

- 9.2 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to you immediately on dispatch of the goods to your delivery address.
- 9.3 You assume all risk and liability for loss, damage or injury to persons or to your property or the property of third parties, arising out of your use or possession of any of the goods sold to you by us, unless recoverable from us on the failure of any applicable statutory consumer guarantee under the ACL.

10. Property

- 10.1 We shall remain the sole and absolute owner of the goods until the price for the goods and all other goods in the same consignment has been received in full by us from you.
- 10.2 Until we have received the price for the goods and all other goods in the same consignment in full:
- (a) title and property remain vested in us and do not pass to you;
 - (b) you shall be bailee of the goods for us and shall at your own expense store them upon your premises in a safe and secure manner, enabling them to be readily identifiable as our goods;
 - (c) you must hold the proceeds of any sale of the goods on trust for us in a separate bank account with a bank whom you have not given security however failure to do so will not affect our obligation as trustee;
 - (d) Until full payment is made, in addition to our rights under the PPSA, we shall have the right at any time to enter your premises and retrieve the goods. You will indemnify us from and against all costs, claims, demands or actions by any party arising from us entering the premises and recovering the goods; and
 - (e) you must not destroy, imitate, dispose of (other than by sale in the usual course) or damage the goods.
- 10.3 Until full payment is made, when the goods have been installed or otherwise used in some way by you, including passing on to an end user:
- (a) notwithstanding that payment of the price for the goods would not otherwise have been due by you, you shall be immediately obliged to pay the price for the goods to us immediately you receive any payment from the end user;
 - (b) you shall hold all your rights against the end user and any proceeds you receive in trust for us;
 - (c) you agree that we shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until you pay the full price for the goods to us; and
 - (d) you shall at our request assign your claims against the end user and agree irrevocably to appoint us and each of our officers as your attorney to give effect to and complete that assignment.
- 10.4 Until the price for the goods and all other goods in the same consignment has been received by us in full from you, you shall act at all times in a fiduciary capacity of the utmost good faith toward us.

11. Packing

- 11.1 The price quoted includes our standard packing where applicable. The cost of any special packing required by you or any special or export packing which may be required, shall be an additional charge.

12. Purported Variation or Cancellation by Purchaser

- 12.1 If you cancel, vary or suspend any Order or offer or purport to do any of those things, you shall compensate and indemnify us for all our costs, losses and expenses incurred, suffered or anticipated including, but not limited to, loss of gross profits.

13. Personal Property and Securities Act

- 13.1 This clause 13, applies to you as you are acquiring the goods within Australia.
- 13.2 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 13.3 For the purposes of the PPSA:
- (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and we have a Purchase Money Security Interest (**PMSI**) in all present and future goods supplied by us to you and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by you at any particular time; and
 - (d) you must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by us on the Personal Property Securities Register.
- 13.4 the security interest arising under this clause attaches to the goods when the goods are collected or dispatched from our premises and not at any later time.
- 13.5 Where permitted by the PPSA, you waive any rights to receive the notifications, verifications, disclosures or other documentation specified under section 95 (Secured party must give notice of removal of accession), 118 (Enforcing security interests in accordance with land law decisions), 121(4) (A secured party must give a written notice to the grantor of any action the secured party takes in accordance with subsection 120(2)), 130 (Notice of disposal of collateral), 132(3)(d) (any amounts to be paid to other secured parties), 132(4) (A secured party who has not disposed of collateral before the end of 6 months after the day the collateral is seized must, in accordance with subsections (5) and (6), give a written statement of account for each period of 6 months after seizing the collateral, until the collateral is disposed of), 135 (notice of retention of collateral) and 157 (verification statements) of the PPSA.
- 13.6 We and you agree to contract out of and nothing in the provisions of sections 96 (When person with an interest in the whole may retain accession), 125 (Obligation to dispose of or retain collateral), 129 (Disposal by purchase), 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement) of the PPSA will apply to these Terms.
- 13.7 To the extent permitted by the PPSA, you agree that:

- (a) (a) the provisions of Chapter 4 of the PPSA which are for the benefit of you or which place obligations on us will apply only to the extent that they are mandatory or we agree to their application in writing; and
 - (b) (b) where we have rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 13.8 You must immediately upon our request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by us to be relevant to our security position such agreements and waivers (including as equivalent to those above) as we may at any time require.
- 13.9 We may allocate amounts received from you in any manner we determine, including in any manner required to preserve any PMSI we have in the goods supplied.
- 13.10 for the purposes of section 275(6) (when a secured party is not required to respond to a request) 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, except as otherwise required by law or that is already in the public domain.

14. Returns

We will not accept any returns unless they have been authorised by us and are returned in the same condition as that in which they were despatched. Any authorised returns must be sent to us at our address on the invoice with freight pre-paid by you and will be subject to a restocking fee. If the freight on authorised returns has not been pre-paid by you, we reserve the right to refuse the returns or the right to pay the freight and charge you for the freight and an administration fee.

15. Entire Terms

Except only to the extent that additional terms have been agreed by us in writing, these terms of sale constitute the entire terms and conditions of the Agreement of sale between us and you. All representations, conditions or warranties (whether expressed or implied) not contained herein are expressly excluded. All terms, conditions, warranties and obligations otherwise implied or included in the Agreement between us and you by any legislation or statute or rule is excluded to the fullest extent allowable by law. The Agreement between us and you shall not be varied except in writing by us.

16. Warranty, Claims and Limitation of Liability

- 16.1 We warrant goods sold to you against manufacturing defects for the terms as set out in our express warranty statement.
- 16.2 Nothing in these terms and conditions shall exclude, restrict or modify rights and remedies you have under any applicable legislation in Australia which, pursuant to that legislation, cannot be excluded, restricted or modified by agreement (“preserved rights and remedies”).
- 16.3 Except as these Terms specifically state or contained in any warranty statement provided with the goods, the Agreement does not include by implication any term, condition, or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design, application or performance of the goods, or any contractual remedy for their failure.

- 16.4 If you are a consumer nothing in these Terms restricts, limits, or modifies your rights or remedies against us for failure of a statutory guarantee under the ACL.
- 16.5 If you supply the goods to a consumer:
- (a) if the goods 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 our liability to you; or
 - (b) if the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of our liability to you.
- Howsoever arising under or in connection with the sale, installation, use of, storage or any other dealing with goods by you or any third party.
- 16.6 If clauses 16.4 and 16.5 do not apply, then other than as stated in the Terms or any written warranty statement, We are not liable to you in any way arising under or in connection with the sale, installation, use of, storage, application or any other dealing with the goods by you or any third party.
- 16.7 We are not liable for any indirect or consequential losses or expenses suffered by you 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.
- 16.8 You acknowledge that:
- (a) it is your responsibility to ensure the goods are suitable use fit for the purpose as you intend, that we make no representation that the goods are suitable for use or fit for the intended purpose by you.
 - (b) it has not relied on any service involving skill and judgement, or on any advice, assistance, information, or recommendation provided by us in relation to the goods or their use or application; and
 - (c) it has not made known, expressly or by implication, to us any purpose for which it requires the goods, and it has the sole responsibility of satisfying itself that the goods are suitable for the use by you.
- 16.9 We will not be liable for any loss or damage suffered by you where we have failed to deliver goods or fails to meet any delivery date or cancels or suspends the supply of goods, except to the extent of any liability imposed by the ACL.
- 16.10 Nothing in these Terms is to be interpreted as excluding, restricting, or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be so excluded, restricted or modified.
- 16.11 Goods supplied by us may be subject to specific warranty terms, limitations and exclusions that are supplied with the goods and that are otherwise available from us upon request.
- 16.12 All requests for returns of faulty or defective goods should be made in accordance with these Terms and the terms of any applicable express warranty statement.

17. Licences And Permits

All goods are sold on the understanding that all licences and permits under all relevant statutes, regulations ordinances and rules have been obtained by you.

18. Disclaimers

We do not hold ourselves out as consultants in relation to the use of the goods. All advice and information contained in our published literature and given by our staff is compiled from the best information available to us, but we accept no responsibility whatsoever for their accuracy or for any results which may be obtained by you. If you rely upon any such advice or information you do so entirely at your own risk and we will not be liable for any loss or damage thereby suffered notwithstanding any want of care on our part or our staff in compiling or giving any advice or information.

19. Termination

19.1 We may terminate this Agreement if you fail to:

- (a) make any payment promptly as required by these terms or as specifically agreed by us, or
- (b) otherwise fail to carry out the terms of the Agreement between you and us, or
- (c) subject to statutory stay of proceedings you become
 - (i) insolvent or bankrupt or commit any act of insolvency or bankruptcy, or
 - (ii) stop payments of your debts, or
 - (iii) call a meeting of or enter into any composition with or make any assignment for the benefit of your creditors, or
 - (iv) have a receiver, receiver and manager, administrator or provisional liquidator appointed to your undertaking or assets or any part thereof, or
 - (v) a petition for your winding up is presented or any resolution is passed for the appointment of an administrator or for your winding up, or
 - (vi) you breach or commit any default under any mortgage, charge or other encumbrance by which you are bound, or
 - (vii) if any mortgagee, chargee or other encumbrancee of you becomes entitled to enforce a mortgage, charge or other encumbrance, or you fail to pay promptly any judgment debt, or you default under any other agreement with us or under any other agreement.

20. Miscellaneous

20.1 A notice must be in writing and handed personally or sent by email 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 email are deemed to be received upon confirmation of successful transmission.

20.2 Any failure by us to enforce at any time or for any period any one or more of the provisions of these terms and conditions shall not be a waiver of those provisions or of our right at any time subsequently to enforce these terms and conditions.

- 20.3 We may at any time assign our interest in and rights under these terms and conditions, including the benefit of any security interest created under these terms and conditions and any associated financing statement.
- 20.4 If any of these terms and conditions are unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from these terms and conditions without affecting the enforceability of the remaining terms.

21. Governing Law and Jurisdiction

The Agreement between us and you shall be governed by the laws of Victoria (excluding the whole of the United Nations Convention on Contracts for the International Sale of Goods, where it would otherwise have applied) notwithstanding the place in which the goods or any of them are to be delivered. You submit to the exclusive jurisdiction of the courts in that State, the Federal Court of Australia, and courts entitled to hear appeals from those courts..

22. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its relevant state-based equivalent;

Agreement means any agreement for the provision of goods by us to you;

consumer is as defined in the ACL and in determining if you are a consumer, the determination is made if you are a consumer under the Agreement;

Customer (you, or your) means the person and/or company, jointly and severally if more than one, acquiring goods from us;

Force Majeure Event means an event beyond the reasonable control of a party including without limitation, accident, act of God, act or threat of terrorism or war, breakdown, epidemic, pandemic, natural disaster, restrictions on import or export, restrictions on travel or transport, industrial dispute, lockout or strike;

goods means goods supplied by us to you;

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

Order means an offer from you to us to provide goods;

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

Price means the purchase price for the goods as specified on the website and/or on the Order;

SES (us, our) means Southern Electronic Services Pty Ltd (ABN 66 005 276 817); and

Terms means these Terms and Conditions