

WURTH AUSTRALIA PTY LTD TERMS & CONDITIONS

1. Definitions

1.1 In these Terms and Conditions of Sale:

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"Agreement" means any agreement for the provision of goods or services by the Supplier to the Customer;

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

"Customer" means the person, firm or corporation, jointly or severally if more than one, acquiring goods or services from the Supplier;

"goods" means goods supplied by the Supplier to the Customer;

"GST" means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"PPSA" means the Personal Property Securities Act 2009 and Personal Property Securities Regulations 2009, as amended;

"Price List" means the price list distributed by the Supplier from time to time;

'services' means services supplied by the Supplier to the Customer;

"Supplier" means Wurth Australia Pty. Ltd. (ABN 48 002 487 096) of 2/1 Healey Rd., Dandenong South, Victoria, 3175; and

"Terms" means these Terms and Conditions of Sale.

2. Basis Of Agreement

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

2.2 The Price List and any quotation provided by the Supplier for the proposed supply of goods or services is:

(1) an invitation to treat only; and

(2) only valid if in writing.

2.3 Any terms in the Supplier's quotations form part of the Terms, and if inconsistent with the Terms, the terms of the quotation will prevail.

2.4 An Agreement is accepted by the Supplier when the Supplier accepts in writing, fax or by electronic means an offer from the Customer or provides the Customer with the goods or services.

2.5 The Supplier has absolute discretion to refuse to accept any offer.

2.6 The Supplier may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed after the date of notice.

3. Pricing

3.1 Prices quoted for the supply of goods or services, whether in a Price List, by written quotation, verbally or on the Supplier's website exclude GST and any other taxes or duties imposed on or in relation to the goods or services. In addition to payment of the price of goods or services, the Customer must pay any GST and any other taxes or duties imposed on the goods or services.

3.2 If the Customer requests any variation to the Agreement, including but not limited to changes in the method of packaging, the Supplier may increase the price to account for the variation.

3.3 If there is any change in the costs incurred by the Supplier in relation to the goods or services, the Supplier may vary its price to take account of the change, by notifying the Customer.

4. Delivery

4.1 Subject to clause 4.7, the Supplier will arrange delivery of the goods to the Customer's premises.

4.2 The Customer must pay for all costs associated with delivery (or pick up, if applicable), including all packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer's premises.

4.3 The Customer must provide reasonable and proper access to the Customer's premises.

4.4 The Supplier may make part delivery of goods or provision of services and the Supplier may invoice the Customer for the goods or services provided.

4.5 The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.

4.6 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.

4.7 If agreed that the Customer will collect the goods;

(1) the Customer must collect the goods within 7 days of being advised they are ready;

(2) 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.

4.8 Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.

4.9 If the Supplier is unable to supply the Customer's total order, these Terms continue to apply to the goods or services supplied.

4.10 The Supplier 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.

4.11 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

4.12 A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

5. Acceptance

5.1 The Customer must inspect the goods immediately upon delivery. If the goods are not in accordance with the Agreement, the Customer must, within 10 business days, after delivery give written notice to the Supplier, with full particulars.

5.2 If the Customer fails to give that notice, then, to the extent permitted by statute, the goods are deemed to have been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of these Terms.

6. Payment

6.1 Subject to clause 6.2, payment for goods or services provided must be made within 30 days from the date of which the goods are invoiced.

6.2 The Supplier may require payment in full on delivery of the goods or provision of the services.

6.3 Payment is deemed to be made:

(1) if cash is tendered, on the date it is received by the Supplier; and

(2) if a cheque (bank or otherwise) or other negotiable instrument is tendered, on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers.

6.4 The time for payment is of the essence.

7. Default

7.1 If the Customer defaults in making payment to the Supplier in accordance with these Terms, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent rights:

(1) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 2% per month from the date on which the default arose until the date of payment in full; and

(2) charge the Customer for, and the Customer must indemnify the Supplier from, all losses, damages, claims, demands, costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;

(3) cease or suspend supply of any further goods or services to the Customer; and

(4) by written notice to the Customer, terminate any uncompleted contract with the Customer.

7.2 Clauses 7.1(1) to (4) may also be relied upon, at the Supplier's option, where the Customer has otherwise breached the Terms.

7.3 Clauses 7.1(3) and (4) may also be relied upon, at the Supplier's option:

(1) 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

(2) 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.

8. Returns

8.1 Subject to the remainder of this clause 8, if any shortages, claims for damaged goods or non-compliance with the Agreement specifications is notified to and accepted by the Supplier, the Supplier, may at its option provide credit for the returned goods equal to the price charged by the Supplier.

8.2 Prior to returning any goods, the Customer must obtain the Supplier's written approval.

8.3 The Customer must return the goods to the Supplier with handling costs, freight and cartage prepaid by the Customer.

8.4 Subject to clause 8.7, if the Supplier has given its written approval for the return of goods the Supplier will only give credit for the goods returned if:

(1) the goods are in a saleable condition,

(2) the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of the Supplier; and

(3) the goods are accompanied by a copy of the original delivery docket or copy of invoice.

8.5 Subject to clause 8.7, the Supplier may charge a handling charge equivalent to 15% of the price of the goods returned.

8.6 If the Supplier has given its written approval for the return of goods which are not deemed to have been accepted by the Customer under clause 8.1, the Supplier must refund the freight and cartage to the Customer if the Supplier agrees that the goods are not in accordance with the Agreement.

8.7 If the Customer is a consumer, nothing in this clause 8 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

9. Risk And Insurance

9.1 Goods supplied by the Supplier to the Customer are at the Customer's risk as and from the time that they are in transit from the Supplier to the Customer. The Customer must insure the goods at its own cost from the time of transit from the Supplier to the Customer and until they are paid for in full, against such risks as are prudent for the circumstances, including but not limited to theft and damage, and must note the interest of the Supplier on the policy and produce a certificate to this effect to the Supplier on request.

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 or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

10. Retention Of Title

10.1 Until the Supplier receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

- (1) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
- (2) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
- (3) the Customer must hold the proceeds of any sale of the goods on trust for the Supplier 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
- (4) in addition to its rights under the PPSA, the Supplier 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 the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

11. Personal Property Security Act

11.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

11.2 For the purposes of the PPSA:

- (1) terms used in clause 11 that are defined in the PPSA have the same meaning as in the PPSA;
- (2) these Terms are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
- (3) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (4) the Customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Supplier on the Personal Property Securities Register.

11.3 The security interest arising under this clause 11 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.

11.4 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.

11.5 The Supplier and Customer agree to contract out of and nothing in sections 95, 125, 129, 142 and 143 of the PPSA shall apply to these Terms.

11.6 To the extent permitted by the PPSA, the Customer agrees that:

- (1) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
- (2) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

11.7 The Customer must immediately upon the Supplier's request:

- (1) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (2) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

11.8 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.

12. Liability

12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

12.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

12.3 If the Customer on-supplies the goods to consumer and:

- (1) 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 the Supplier's liability to the Customer;
- (2) the goods or services 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 the Supplier's liability to the Customer;
- (3) howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.

12.4 If clause 12.2 or 12.3 do not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.

12.5 The Supplier 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.

12.6 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.

13. Acknowledgments

13.1 The Customer acknowledges that:

- (1) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application;
- (2) it has not made known, either expressly or by implication, to the Supplier any purposes 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 or any contemplated use by the Customer, whether or not such use is known by the Supplier.

14. Privacy

14.1 The Supplier is bound by the Privacy Act 1988 and the Privacy Amendment (Enhancing Privacy Protection) Act 2012. All personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the Australian Privacy Principles ("APP").

14.2 The Supplier requires that the Customer comply with the APP's in connection with any personal information supplied to it by the Supplier in connection with this Agreement.

15. Cancellations

15.1 If the Supplier is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.

15.2 No purported cancellation or suspension of any order or any part thereof by the Customer is binding on the Supplier once the order has been accepted.

15.3 The Supplier, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.

16. Vienna Sales Convention

16.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention 1980 is excluded.

17. Force Majeure

17.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event 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, performance by the party of that obligation is suspended during the time, but only to the extent that compliance is prevented or delayed by the event.

18. Waiver

18.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

18.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

19. Miscellaneous

19.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

19.2 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.

19.3 A notice must be in writing and handed personally or sent by email, facsimile 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 facsimile or email are deemed received on confirmation of successful transmission.