

WURTH AUSTRALIA PTY LTD – TERMS & CONDITIONS (version effective from 1 September 2021)**1. Definitions**

1.1 In these Terms and Conditions:

ACL means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Consumer is as defined in the ACL;

Consumer Guarantee means the guarantees contained in sections 51 to 62 inclusive of the ACL;

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

Defective Goods means Goods that are defective in performance or workmanship;

Defective Services means services that are defective in performance;

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;

Insolvency Event means the happening of any of these events:

- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
- (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (d) a party goes bankrupt; or
- (e) a party ceases, or threatens to cease, to carry on a business;

Loss means all actions, claims, costs (including legal costs on an indemnity basis as well as collection agency costs, where relevant), damages, expenses, interest, liabilities and losses (whether direct, indirect, special, consequential or otherwise);

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 Building 5, 43-63 Princes Highway, Dandenong South, Victoria, 3175; and

Terms means these terms and conditions.

2. Basis of Agreement

2.1 The Customer will be deemed to have accepted and agreed to be bound to these Terms on the earlier of the date on which the Customer:

- (a) signs these Terms or otherwise notifies the Supplier that it agrees to them; and
- (b) requests the supply of any Goods or Services from the Supplier after receipt of these Terms.

2.2 Subject to clauses 2.4 and 13.2, these Terms apply exclusively to the supply of Goods and Services by the Supplier. No other terms, agreements or arrangements, including purchase order terms issued by the Customer or any other agreement between the Supplier and Customer, will apply to the sale and purchase of Goods and Services between the Customer and Supplier, unless agreed in writing by the parties.

2.3 Any quotation or Price List provided by the Supplier for the proposed supply of Goods or Services is:

- (a) an invitation to treat only; and
- (b) only valid if in writing.

2.4 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.

2.5 An offer by the Customer to acquire Goods or Services from the Supplier only becomes binding on the Supplier when the Supplier accepts the offer in writing.

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

2.7 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 notification of the variation (and not to any orders placed before that time).

3. Pricing

3.1 Unless expressly stated otherwise, prices quoted (for example, in a quotation or Price List) for the supply of Goods or Services 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 an order that has already been accepted by the Supplier, including but not limited to changes in the method of packaging or delivery, the Supplier may increase the price to account for the cost of the variation.

3.3 The Supplier may vary the price of any Goods and/or Services ordered by the Customer, by notice in writing to the Customer. The Customer may cancel the relevant order without liability by

written notice to the Supplier if it does not wish to proceed with the order on the basis of the varied price. 5.2

The Customer must provide notice to the Supplier of any Defective Goods or Defective Services within 14 days after delivery or supply of the Goods or Services.

4. Delivery

4.1 Subject to clause 4.6, the Supplier will arrange delivery of the Goods to the Customer's premises.

4.2 The Customer must pay for all costs and expenses associated with delivery (or collection, if applicable), including all applicable packaging or required crating, freight, insurance and other charges arising from the point of despatch of the Goods to the Customer's premises. The Customer will be notified in advance of such costs and expenses.

4.3 The Customer must provide reasonable and proper access to the Customer's premises to enable delivery of the Goods and provision of the Services by the Supplier.

4.4 The Supplier may make part delivery of Goods or Services and the Supplier may invoice the Customer for the Goods or Services provided (for example, where Goods are supplied in multiple deliveries). The Customer will not incur any additional delivery charges unless it requests the part or split delivery of Goods or Services. 6.2

4.5 If delivery is attempted and is unable to be completed due to a fault of the Customer, the Customer will be liable for any additional delivery charges as well as reasonable storage charges payable monthly on demand.

4.6 If agreed that the Customer will collect the Goods:

- (a) the Customer must collect the Goods within 7 days of being advised the Goods are ready for collection; and
- (b) if the Customer does not collect the Goods in accordance with clause 4.6(a), the Customer will be liable for any additional delivery charges as well as reasonable storage charges payable monthly on demand. 6.4

4.7 The Supplier will use all commercially reasonable efforts to deliver the Goods and supply the Services for which it has accepted an order by the delivery date specified in the order or otherwise agreed with the Customer.

4.8 Except where the Supplier's obligation is a Consumer Guarantee, the Supplier is not liable for any Loss whatever due to a failure by the Supplier to deliver the Goods or supply the Services (or any of them) promptly or at all. 6.5

4.9 Delivery of the Goods and supply of the Services to a third party nominated by the Customer is deemed to be delivery or supply to the Customer for the purposes of these Terms 6.7

5. Acceptance

5.1 The Customer must, as soon as possible after delivery of the Goods or the performance of the Services, check whether the Goods or Services are Defective Goods or Defective Services. 6.8

5.3

In relation to the delivery of Goods, if the Customer gives the Supplier notice under clause 5.2, it must:

- (a) preserve the Defective Goods in the state in which they were delivered for 14 days after it gives Supplier notice; and
- (b) at the Supplier's request, return the Defective Goods at the Supplier's cost within 14 days after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.

6.

Payment and Credit Terms

6.1

Only those Customers with a credit account approved by the Supplier will be entitled to receive the Goods or Services prior to payment. Otherwise, the Supplier will require payment in full on or prior to delivery of the Goods or provision of the Services.

6.2

Unless otherwise agreed in writing by the Supplier, the Supplier may withhold collection or delivery of Goods or provision of the Services until the Customer has paid for them in full, in which case payment must be made on or before the collection or delivery date.

6.3

Payment is deemed to be made:

- (a) if cash is tendered or payment is made by credit card or by EFT, on the date the payment is received by the Supplier; or
- (b) 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.
- (c) The time for payment is of the essence.

6.4

The Supplier may accept a credit application from a trade Customer in a form approved by the Supplier, in which case the Customer may purchase on the basis of the following clauses 6.5 - 6.9 and any conditions applicable to the Supplier's approval of credit, as notified to the Customer from time to time.

6.5

Payment for Goods or Services supplied on credit must be made within 30 days from the end of the month in which the relevant Goods or Services are invoiced.

6.6

In addition to the payment terms above, the Customer must not exceed its approved credit limit.

6.7

If a Customer exceeds its approved credit limit (as notified by the Supplier to the Customer from time to time), the Customer must pay to the Supplier such amount as the Supplier demands by written notice within 7 days of a request for payment, and the Supplier may refuse to complete any existing orders or to accept future orders until the Customer is under its credit limit.

6.8

If the Customer does not pay to the Supplier such amount as the Supplier demands under clause 6.7 by the due date, the Supplier may:

- (a) immediately cease providing credit to the Customer until the Customer repays such amount owed to the Supplier and is under the credit limit;
- (b) decrease the Customer's credit limit; or
- (c) indefinitely cease providing credit to the Customer.
- 6.9 The Supplier has the discretion to vary the Customer's credit limit:
- (a) upon providing reasonable notice to the Customer; or
- (b) if clause 6.8 applies, without providing reasonable notice to the Customer.

7. Termination

- 7.1 The Supplier may terminate:
- (a) the terms of credit provided to the Customer; and/or
- (b) any order placed by the Customer, by written notice to the Customer if the Customer:
- (i) breaches these Terms and, in the reasonable opinion of the Supplier, the breach cannot be remedied; or
- (ii) breaches these Terms and, in the reasonable opinion of the Supplier, the breach can be remedied but is not remedied by the Customer within 7 days after the Supplier gives the Customer notice of the breach; or
- (iii) suffers an Insolvency Event.
- 7.2 The Customer must, within 7 days after the date of expiry or termination:
- (a) pay the Supplier all amounts it owes the Supplier, whether due at that time or not; and
- (b) return all Confidential Information to the Supplier.
- 7.3 In addition to the above, if the Supplier fails to pay any amount owing under these Terms by the due date:
- (a) The Supplier may charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 4.5% per month from the date on which the payment default arose until the date of payment in full; and
- (b) 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.

8. Indemnity

- The Customer indemnifies the Supplier against any Loss which the Supplier suffers, incurs or is liable for in connection with these Terms and any order including, but no limited to:
- (a) any act or omission of the Customer;
- (b) any breach of these terms by the Customer; and

- (c) enforcing any security interest arising in connection with these Terms or any order.

9. Return of Goods

The Supplier's [Returns Policy](#), available on its website, applies to the return of any Goods.

10. Risk And Insurance

- 10.1 Goods supplied by the Supplier to the Customer are at the Customer's risk on delivery to the Customer, except where the Customer collects the Goods in which case risk will transfer on collection.
- 10.2 The Goods and Services 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 and Services.
- 10.3 Subject to clause 13.2, 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 once in the possession of the Customer.

11. Retention of Title

- 11.1 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:
- (a) title and property in all Goods remain vested in the Supplier and do not pass to the Customer;
- (b) the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
- (c) 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
- (d) 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 (except in the case of the Suppliers unlawful act or omission or negligence).

12. Personal Property Security Act

- 12.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 12.2 For the purposes of the PPSA:
- (a) terms used in clause 12 that are defined in the PPSA have the same meaning as in the PPSA;

- (b) 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;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) 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.
- 12.3 The security interest arising under this clause 12 attaches to the Goods when the Goods are collected or dispatched from the Supplier's premises and not at any later time.
- 12.4 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.
- 12.5 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.
- 12.6 To the extent permitted by the PPSA, the Customer agrees that:
- (a) 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
- (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 12.7 The Customer must immediately upon the Supplier's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
- (b) 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.
- 12.8 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.
- 13. Liability**
- 13.1 Subject to clause 13.2:
- (a) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and Services; and
- (b) the Customer releases the Supplier from any liability for legal costs and disbursements and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Customer under or in connection with these Terms;
- (c) the Supplier's liability for any Loss suffered or incurred by the Customer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under these Terms:
- (i) in the case of goods, is limited to (at the option of Supplier):
- (A) the replacement of the goods or the supply of equivalent goods;
- (B) the repair of the goods;
- (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (D) the payment of the cost of having the goods repaired; or
- (E) a credit note in the amount of the price paid for the goods;
- (ii) in the case of services, is limited to (as the option of the Supplier):
- (A) the resupply of the services; or
- (B) the payment of the cost of resupply of the services; and
- (C) a credit note in the amount of the price paid for the services.
- 13.2 The ACL provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply to the extent that they limit or exclude, such Consumer Guarantees applicable to consumers. However where the ACL permits the Supplier to limit the remedies available to it for a breach of a Consumer Guarantee, the Supplier hereby limits its remedies to such Consumers for a breach of a Consumer Guarantee, in the case of goods, to the repair or replacement of the goods, the supply of equivalent goods or the payment of the cost of having the goods repaired or replaced or having equivalent goods supplied and, in the case of services, to supplying the services again or paying the cost of having the services supplied again.
- 14. Acknowledgments**
- 14.1 As variations will occur in the colour and texture of materials used in the manufacture of Goods no warranty or guarantee is given by the Supplier that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the ACL.
- 14.2 No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, colour, merchantability, or

- fitness for purpose of the Goods, except as required under the ACL.
- 14.3 Subject to clause 13.2, the Customer acknowledges that:
- (a) 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 on their use or application;
 - (b) 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 and/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.
- 15. Privacy**
- All personal information provided in connection with these Terms will be handled by the Supplier in accordance with its [Privacy Policy](#) and its [Collection Statement](#).
- 16. Vienna Sales Convention**
- 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, viral outbreaks, epidemics or pandemics, 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.
- 17.2 For the avoidance of doubt, the Supplier may enact this clause in circumstances where it is unable to source or supply goods or services due to a force majeure 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. General Lien**
- In addition to any right of lien to which the Supplier may be entitled under the common law, the Supplier shall be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full for all Goods and Services supplied by the Supplier to the Customer. The Supplier may in its sole discretion sell any item that is subject to a lien, provided that the Supplier shall pay to the Customer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to the Supplier in respect of unpaid goods and all reasonable costs of sale incurred by the Supplier.
- 20. Confidential Information**
- 20.1 In this clause 20, Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Supplier's business.
- 20.2 The Customer is authorised to use the Confidential Information for the sole purpose of using or selling the goods or services supplied under these Terms and must not otherwise use or disclose any Confidential Information.
- 21. No Right to Offset**
- No amount owing, whether present or future, actual, contingent or prospective and on any account whatsoever, by the Customer to the Supplier may be offset against any amount owing whether present, future, actual, contingent or prospective to the Customer from the Supplier hereunder or on any other account whatsoever.
- 22. Intellectual Property**
- The purchase of Goods and/or Services under these Terms does not confer on the Customer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods and/or Services.
- 23. Miscellaneous**
- 23.1 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.
- 23.2 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.
- 23.3 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.