

**WURTH AUSTRALIA PTY LTD – TERMS & CONDITIONS** (version effective from 1 November 2023)**1. Definitions**

1.1 In these Terms and Conditions:

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

**Confidential Information** means:

- (a) these Terms; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with these Terms,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);
- (d) information rightfully received by the other party from a third person who is under no obligation of confidentiality in relation to the information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party;

**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);

**Order** has the meaning given in clause 2.5;

**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 (such as article or unit numbers, quantities, prices, validity periods of quotes and shipping costs) 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 (**Order**) only becomes binding on the Supplier when the Supplier accepts and/or confirms the Order (which acceptance and/or confirmation may be provided in writing, verbally, or by the processing of the Order by the Supplier).
- 2.6 The Supplier has absolute discretion to refuse to accept any Order.
- 2.7 The Supplier may vary these Terms by written notice to the Customer at any time. Any variations will apply to Orders accepted and/or confirmed by the Supplier after the date of notification of the variation (and not to any Orders accepted and/or confirmed by the Supplier before that time). The Customer has the discretion not to place any further Orders if it does not accept the varied Terms.

### 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 reflect the additional costs incurred by the Supplier in respect of the variation. The Customer may cancel the Order if it does not agree to pay the increased price, unless if to do so will result in Loss to the Supplier (for example, if work has been carried out already to fulfil the Order by the Supplier). The Supplier will use its best endeavours to mitigate its Loss in respect of such cancelled Order.

### 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. The Customer may cancel the Order if it does not wish to proceed with the Order based on the notified 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.

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 incurred by the Supplier as a consequence of the failed delivery attempt, as well as any storage costs incurred by the Supplier as a consequence of the failed delivery attempt, payable monthly on demand.

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 storage costs incurred by the Supplier as a consequence of the failure by the Customer to collect the Goods, payable monthly on demand.

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.

The Customer acknowledges that the Supplier uses third party freight companies to deliver Goods, and that such companies may not guarantee a particular delivery date or time. Except where clause 13.2 applies, 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, other than to refund the price paid by the Customer where the Goods or Services are not supplied or delivered at all.

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

### 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.
- 5.2 Subject to any rights the Customer may have under the ACL as outlined in clause 13.2, 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.
- 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 of all undisputed amounts 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 of all undisputed amounts must be made on or before the collection or delivery date.
- 6.3 Payment is deemed to be made:
- 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
  - 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.
- 6.5 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 6.6 - 6.10 and any conditions applicable to the Supplier's approval of credit, as notified to the Customer from time to time.
- 6.6 Payment of all undisputed amounts 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.
- 6.7 In addition to the payment terms above, the Customer must not exceed its approved credit limit.
- 6.8 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 reasonably 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.
- 6.9 If the Customer does not pay to the Supplier such amount as the Supplier demands under clause 6.8 by the due date, the Supplier may:
- immediately cease providing credit to the Customer until the Customer repays such amount owed to the Supplier and is under the credit limit;
  - decrease the Customer's credit limit; or
  - indefinitely cease providing credit to the Customer.
- 6.10 The Supplier may vary the Customer's credit limit by providing written notice to the Customer. Except where clause 6.9 applies, reasonable notice will be provided to the Customer and the variation will only apply to Orders placed after the notice is given to the Customer (and not any existing Orders already being processed).
- 6.11 If the Customer disputes any amount payable under this clause 6, the Customer must pay the undisputed amount to the Supplier in accordance with these Terms, and the parties must deal with the disputed amount in accordance with clause 18.

## 7. Termination

- 7.1 The Supplier may terminate any Order that has been placed by the Customer and accepted by the Supplier, by written notice to the Customer, if the Customer:
- breaches these Terms and, in the reasonable opinion of the Supplier, the breach cannot be remedied; or
  - 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
  - suffers an Insolvency Event.
- 7.2 The Customer may terminate any Order that it has placed that has been accepted by the Supplier, by written notice to the Supplier, if the Supplier:
- breaches these Terms and, in the reasonable opinion of the Customer, the breach cannot be remedied; or
  - breaches these Terms and, in the reasonable opinion of the Customer, the breach can be remedied but is not remedied by the Supplier within 7 days after the Customer gives the Supplier notice of the breach; or
  - suffers an Insolvency Event.
- 7.3 Within 7 days after the date of expiry or termination:
- the Supplier must deliver to the Customer any Goods and/or Services that the Customer has paid for but not yet received (or refund the Customer any amounts that the Customer has paid for such Goods and/or Services);
  - the Customer must pay the Supplier all amounts it owes the Supplier, whether due at that time or not, in respect of Goods and/or Services supplied as at the date of termination; and
  - each party must return to the other any Confidential Information that it holds in respect of the other.
- 7.4 In addition to the above, if the Customer fails to pay any amount owing under these Terms by the due date (other than an amount the subject of a dispute under clause 6.11):
- the Supplier may charge the Customer interest calculated on all overdue and undisputed amounts calculated with reference to the Reserve Bank of Australia's official cash rate + 4% per month from the date on which the payment default arose until the date of payment in full; and
  - the Customer must indemnify the Supplier from, all losses, damages, claims, demands, costs and expenses (including without limitation all reasonable 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, except to the extent such loss, damage, claim, demand, cost or expense is caused by the Supplier.

## 8. Indemnity

Except to the extent caused or contributed to by the Supplier, 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 not 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 misuse of any of the Goods, a failure by the Customer to use the Goods for their intended and/or specified purposes, or a failure by the Customer to use the Goods in accordance with any instructions and/or recommendations provided with the Goods.

## 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, by providing reasonable prior written notice,

enter any premises where the Goods are located and remove them, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and indemnifies the Supplier for any loss or damage it suffers or incurs in connection with such action (except to the extent caused or contributed to by the Supplier).

## 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 all things reasonably 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 as soon as reasonably practicable upon the Supplier's reasonable 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) each party releases the other party from 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 that party under or in connection with these Terms;
- (c) each party's liability for any Loss arising under these Terms is limited to the total value of the Goods and Services supplied under these Terms.

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. Disputes

18.1 Except for interim or urgent interlocutory relief which may be sought at any time, before court or arbitration proceedings are commenced, the parties must endeavour to settle any dispute that arises out of or in connection with these Terms in accordance with this clause 18.

18.2 A party claiming that a dispute has arisen must give notice in writing to the other party setting out the nature of the dispute (Notice).

18.3 Within 7 days after receipt of a Notice (or such other period agreed by the parties), the dispute must be referred to the senior representatives nominated by each of the parties, who must meet and use their reasonable endeavours to resolve the dispute.

18.4 If the dispute is not resolved within 14 days after receipt of the Notice (or such other period agreed by the parties), the parties must refer the dispute to the Victorian Bar Expedited Mediation Scheme, before a mediator appointed by the President of the Victorian Bar.

18.5 Pending resolution of any dispute, the parties must continue to perform their obligations under these Terms without prejudice to their respective rights and remedies (except where such obligations are the subject of the dispute).

18.6 If the dispute is not resolved by the mediation within 14 days after receipt of the Notice, either party may commence court or arbitration proceedings as the case may be.

## **19. Waiver**

19.1 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.

19.2 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.

## **20. 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.

## **21. Confidential Information**

21.1 Other than as set out in this clause 21, neither party may disclose to any person the Confidential Information.

21.2 A party (Disclosing Party) may disclose the Confidential Information of the other party:

- (a) where such disclosure is required to enable the Disclosing Party to exercise its rights or perform its obligations under these Terms;
- (b) to those of its representatives, personnel or advisors who need to know the Confidential Information for the purposes of performing under these Terms; or
- (c) which is required to be disclosed by law.

## **22. No Right to Offset**

22.1 The Supplier may set off from any amounts it owes to the Customer any proven and undisputed amounts the Customer owes to the Supplier under or in connection with these Terms.

22.2 The Customer must not set off from any amounts it owes to the Supplier under or in connection with these Terms.

## **23. 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.

## **24. Miscellaneous**

24.1 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.

24.2 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.

24.3 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.

24.4 Without limiting or impacting on the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of these Terms, clauses 6, 7.3, 7.4, 8, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23 and this clause 24 survive the termination or expiry of these Terms.