



TERMS AND CONDITIONS OF SUPPLY

1 DEFINITIONS

- 1.1 **Customer** means the person or entity acquiring or ordering Products from the Aware Group
- 1.2 **the Aware Group** means Aware Environmental Pty Ltd (ACN 134 677 955), its Related Bodies Corporate.
- 1.3 **Products** mean all products to be supplied by the Aware Group to the Customer.
- 1.4 **Customer Supplied Raw Materials**, means Raw Materials supplied by the customer and stored at the Aware Group's premises.
- 1.5 **Raw Materials** in respect of any Products means the parts, ingredients, packaging and other materials that the customers specify to be incorporated into those Products.
- 1.6 **Terms and Conditions** means these terms and conditions of sale, as may be amended from time to time by the Aware Group.

2 QUOTATIONS AND ORDERS

- 2.1 Any quotation made by the Aware Group is not an offer to sell Products. Prices quoted by the Aware Group are subject to changes necessary to correct errors and are otherwise valid for a period of 7 days only.
- 2.2 No order for Products is binding on the Aware Group until the Aware Group accepts it in writing. the Aware Group's written acceptance of an order and these Terms and Conditions alone will constitute the entire agreement of the parties (**Contract**) in relation to the supply of Products and may only be varied in writing, signed by the parties.
- 2.3 The Contract sets out the entire agreement and understanding between the Aware Group and Customer in respect of the relevant Products and supersedes all prior agreements, understandings, representations and warranties (whether express or implied). The Aware Group is not bound by any terms or conditions in any document issued by a Customer.
- 2.4 No order may be cancelled after acceptance by the Aware Group without the Aware Group's consent. The Customer indemnifies the Aware Group in respect of all direct and indirect costs, expenses and losses incurred as a result of the cancellation of an order.
- 2.5 The Customer agrees to accept a permissible variation of quantity provided the variation does not exceed + or – 10% of the quantity ordered. b) The Customer will not make a claim against the Aware Group for quantifiable variation if applicable.

3 PRICES

- 3.1 Unless otherwise agreed by the Aware Group in writing, the price to be paid by the Customer for Products will be: (a) the Aware Group's then prevailing price for the supply of such Products to the Customer; and (b) any applicable taxes or charges (including any goods and services or similar taxes) levied by any governmental authority upon the supply or use of the Products.
- 3.2 Unless otherwise specified, prices do not include transportation costs and are exclusive of goods and services tax. Products are supplied ex-works.
- 3.3 If: (a) a raw material, component, or service provider raises its prices, or imposes a surcharge on the Aware Group; or (b) any tax is imposed or increased in connection with the supply of any Products by the Aware Group (including any carbon or emissions related tax); or (c) the Aware Group otherwise incurs an increase in costs in supplying Products to the Customer, the Aware Group reserves the right to increase applicable prices and the Customer agrees to accept such price increase.

4 PAYMENT

- 4.1 Payment must be in a form acceptable to the Aware Group and without any deduction, withholding, set-off or counter claim of any nature. Customer payment terms are assessed based on customers

credit history and jurisdiction. For Australian based Customers, payment must be paid within 30 days from the date of invoice for those Products, subject to credit approval.

- 4.2 Should the Customer default in payment of any amount due to the Aware Group, then all amounts due to the Aware Group become immediately due and payable and must be paid within 7 days from the date of demand. If the Customer is in default in payments, the Customer consents to the Aware Group or its representatives entering the Customer's premises to effect recovery of any Products in the possession of the Customer and to use reasonable force to effect recovery without liability for trespass or damage.
- 4.3 The Aware Group reserves the right to charge interest at its banker's current bank overdraft rate on all overdue amounts from the date of invoice to the date of payment.
- 4.4 Should payment remain outstanding beyond the Aware Group's payment terms as outlined above the customer is liable for all out-of-pocket expenses and all other reasonable expenses including debt collection commission (as if the account had been collected) and any other contingent expenses and legal costs on a solicitor/own basis incurred by Aware Group for enforcement of obligations and recovery of moneys due from the customer to Aware Group.

5 DELIVERY

- 5.1 The Aware Group will make all reasonable efforts to deliver the Products to the Customer on the date(s) applicable under a Contract, but shall be under no obligation or liability to the Customer for failing to do so.
- 5.2 Delivery shall be affected upon:
- physical delivery of the Products to the address requested by the Customer; or
 - pick up by Customer; or
 - physical delivery to the Customer's nominated carrier.
- 5.3 Notation by the Aware Group's carrier on the delivery docket shall be conclusive evidence of delivery. The Customer shall be responsible for any loss or damage occurring during unloading of the Products at the Customer's premises.
- 5.4 If the Customer refuses to accept delivery of Products then the risk in the Products shall pass to the Customer from the time of such refusal. In such event, the Aware Group may (without limiting any of its other rights) arrange to store the Products at the Customer's expense.

6 TITLE AND RISK

- 6.1 Title in and to all Products delivered to the Customer will remain with the Aware Group and will not pass to the Customer until such time as the Products have been paid for in full.
- 6.2 Risk in and to the Products will pass to the Customer upon delivery of the Products to the Customer.
- 6.3 Until the Aware Group has received payment in full for the Products:
- the Customer holds the Products as bailee for the Aware Group;
 - the Customer shall safely and securely store the Products separately from the other goods on the premises of the Customer in such a manner as to show clearly that the Products are the property of the Aware Group;
 - The Aware Group has a security interest in the Products;
 - the Customer shall, upon request from the Aware Group, deliver up such Products to the Aware Group (or as directed by the Aware Group);
 - representatives of the Aware Group will be entitled and permitted at any time to enter any place where the Products are situated to repossess the Products, and to remove the Products from any vessel or vehicle, and for this purpose the Aware Group is hereby appointed as the Customer's agent. The Customer agrees to indemnify the Aware Group and keep the Aware Group indemnified against all costs incurred by the Aware Group in removing the Products and against losses, and liabilities incurred by, and any claims against, the Aware Group in removing the Products and arising from such removal; and
 - if the Products in part or in full are mixed with the Products that have been paid for, the Customer bears the onus of proving that the Products in its possession (whether mixed with other goods or

not) have been paid for in full by the Customer. If the Customer is unable to prove, to the satisfaction of the Aware Group that the goods identified as the Aware Group goods have been paid for in full, then those goods shall be deemed to relate to unpaid invoices outstanding from time to time and are deemed to be the property of the Aware Group. the Aware Group reserves the right to repossess those goods without having to prove that the goods relate to specific unpaid invoices outstanding at the time of repossession.

7 SECURITY INTEREST

- 7.1 Unless otherwise stated, a term contained in these Terms and Conditions that is defined in the Personal Property Securities Act 2009 (Cth) (**PPSA**) (but not otherwise defined in these Terms and Conditions) has the meaning given to it in the PPSA.
- 7.2 In consideration for the Aware Group supplying Products to the Customer under these Terms and Conditions, the Customer:
- (a) agrees to treat the security interest created under these Terms and Conditions as a continuing and subsisting security interest in the relevant Products with priority over any registered or unregistered general (or other) security and any unsecured creditor (even if the Products become fixtures before paid for in full);
 - (b) grants to the Aware Group a purchase money security interest (**PMSI**);
 - (c) agrees that the PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of Products or goods coming into existence;
 - (d) agrees that the PMSI has attached to all Products now or in the future supplied to the Customer by the Aware Group; and
 - (e) agrees, until title in the Products pass to it, to keep all Products free and ensure all Products are kept free of any charge, lien or security interest except as created under these Terms and Conditions, and not otherwise deal with Products in a way that will or may prejudice any rights of the Aware Group under these Terms and Conditions or the PPSA.
- 7.3 the Aware Group reserves the right to register a financing statement under the PPSA in respect of the Products. Costs of registering a financing statement (or a financing change statement) will be paid by the Customer.
- 7.4 The Customer waives its right to receive a copy of any financing statement, financing change statement or verification statement that is or may be registered, issued or received at any time.
- 7.5 The Customer irrevocably grants the Aware Group the right to enter any premises or property (without notice) and without being in any way liable to the Customer or any other person if the Aware Group has cause to exercise any of its rights under the PPSA (and the Customer will indemnify the Aware Group against any such liability).
- 7.6 It is agreed that the Customer hereby waives its rights under such sections of the PPSA as are able to be waived or excluded by agreement, including the following sections of the PPSA: section 95 (notice of removal of an accession) to the extent that it requires the secured party to give a notice to the grantor; section 96 (when a grantor may retain an accession); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give notice to the grantor; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

8 BREACH AND INSOLVENCY

If:

- (a) the Customer fails to comply strictly with the terms of a Contract;
- (b) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for the purpose of amalgamation or reconstruction);
- (c) the Customer enters into any arrangement, compromise or composition or assignment for the benefits of its creditors or any class of them;
- (d) a receiver, a receiver and manager, administrator or other officer is appointed to the Customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the goods;
- (e) the Customer ceases, suspends or threatens to cease or suspend the conduct of its business or

- (f) disposes of or threatens to dispose of its assets other than in the ordinary course of business;
- (f) the Customer is or is deemed (including under any applicable law) unable to pay its debts as and when they fall due, or stops or suspends the payments of its debts;
- (g) in the case of the Customer being a natural person, the Customer commits an act of bankruptcy; or
- (h) the Aware Group is of the view, acting reasonably, that any of the above will or are likely to occur, the Aware Group may (without limiting or otherwise prejudicing any other rights it may have) at any time terminate any and all Contracts between the Aware Group and the Customer and refuse to supply any and all Products to the Customer. The Customer agrees to indemnify the Aware Group (and keep the Aware Group indemnified) against loss, cost or expense and other liability (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by the Aware Group in connection with any breach of a Contract by the Customer.

9 CUSTOMER WARRANTIES

- 9.1 The Customer:
- (a) warrants to the Aware Group that it has read and understood these Terms and Conditions;
 - (b) warrants to the Aware Group that all information supplied by or behalf of it to the Aware Group in connection with the supply of Products is true and accurate and not misleading;
 - (c) warrants that it has not relied on any representation or statement made by or on behalf of the Aware Group in connection with the supply of Products that has not been clearly and expressly stated in the Contract;
 - (d) acknowledges that the Aware Group has relied on the information supplied by or on behalf of the Customer to it in supplying the Products; and
 - (e) warrants that the supply of the Products by the Aware Group to the Customer, and the use of Products by the Customer, will not make the Aware Group liable to any prosecution, claim or other action under any applicable law.
- 9.2 The Customer indemnifies the Aware Group and holds the Aware Group harmless against all fines, penalties, damages, loss, costs or expenses (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by the Aware Group in connection with any breach of the warranties of the Customer set out in these Terms and Conditions.
- 9.3 Without limiting the liability of the Customer under the indemnity above, the Aware Group may at its sole discretion by itself or in conjunction with the Customer defend, settle or compound any action, suit, proceeding, claim or demand brought or made against it by any person in connection with any breach of the warranties given by the Customer under these Terms and Conditions and the Customer agrees that the indemnity extends to any cost or expense incurred by the Aware Group in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.
- 9.4 the Aware Group reserves the right to refuse to do or to omit to do any thing, or to refuse to comply with any request or direction of the Customer, which in the reasonable opinion of the Aware Group would constitute or result in a breach of any warranty given by the Customer under these Terms and Conditions or a breach by the Customer of a Contract.

10 INTELLECTUAL PROPERTY

- 10.1 All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or industrial or intellectual property disclosed or otherwise provided to the Customer by the Aware Group or otherwise subsisting in the Products and all rights therein (collectively Intellectual Property) will remain the property of the Aware Group and will be kept confidential by the Customer. The Customer shall have no claim to, nor ownership interest in, any Intellectual Property. The Customer acknowledges that no license or rights of any sort are granted to the Customer in respect of any Intellectual Property, other than the limited right to use Products purchased from the Aware Group for the purpose they are supplied by the Aware Group.
- 10.2 The Customer warrants that any Products manufactured, constructed or supplied by the Aware Group which are based in whole or in part upon designs, drawings, specifications or information supplied to

the Aware Group by or on behalf of the Customer shall not infringe any letters, patents or registered designs or any other industrial or intellectual property rights of any person.

11 CONFIDENTIAL INFORMATION

All information furnished or made available by the Aware Group to the Customer in connection with the subject matter of these Terms and Conditions or the supply of Products shall be held in the strictest confidence by the Customer. The Customer agrees not to use such information or disclose such information to others without the Aware Group's prior written consent. The obligations in this paragraph will not apply to any information which:

- (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer of any obligation herein;
- (b) the Customer can show by written records was in the Customer's possession prior to disclosure by the Aware Group; or
- (c) is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to the Aware Group with respect to such information.

12 CLAIMS AND RETURNS

- (a) Examination of the Products shall be made by or on behalf of the Customer, and unless within 72 hours of delivery of the Products, the Customer gives written notice that the Products do not comply with the applicable Contract, the Products shall be deemed to have been in all respects supplied in accordance with the relevant Contract, and the Customer shall be bound to accept and pay for the Products accordingly.
- (b) Claims by the Customer in respect of Products which have not been supplied in accordance with the relevant Contract will only be considered by the Aware Group if: (a) the claim is made within 72 hours of the date of delivery of the Products; (b) representatives of the Aware Group have been afforded a reasonable opportunity to inspect the Products; and (c) the Products are subsequently returned to the Aware Group as directed by the Aware Group.
- (c) the Aware Group is not obliged to accept any return of Products that have been supplied (or are deemed to have been supplied) in accordance with the relevant Contract. Even if the Aware Group determines that it will accept a return of Products in those circumstances: (a) the Aware Group is not obliged to accept any Products which have been used, damaged or altered in any way; (b) all Products must be returned in their original packaging; (c) Products returned will be subject to a rehandling charge as determined by the Aware Group; and (d) Products are to be returned at the Customer's expense.

13 LIMITATION OF LIABILITY

- 13.1 Except as expressly provided to the contrary in writing in a Contract: (a) the Aware Group gives and makes no warranty in respect of the Products; and (b) all conditions and warranties implied at law (whether by statute, common law, equity or otherwise) are (to the extent permitted by law) expressly excluded from the Contract.
- 13.2 If any statute implies any term, condition or warranty into a Contract, and that statute prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under, such a term, condition or warranty, then that term, condition or warranty will be taken to be included in the Contract. However, the liability of the Aware Group for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of the Aware Group, to any one or more of the following:
 - (a) if the breach relates to goods:
 - (i) the replacement of the goods, the supply of equivalent goods or the repair of the goods; or
 - (ii) to the extent required by the relevant statute, the payment of the cost of replacing the goods or of acquiring equivalent goods or the cost of having the goods repaired; and
 - (b) if the breach relates to services:
 - (i) the supplying of the services again; or

- (ii) to the extent required by the relevant statute, the payment of the cost of having the services supplied again.

- 13.3 the Aware Group will not be responsible for any failure to supply Products on the date agreed between the parties and the Customer is not entitled to cancel any order as a result of that failure.
- 13.4 If Products are supplied by the Aware Group in packaging that is designed or specified by the Customer (including containers that bear the name or trade mark of the Customer or a person specified by the Customer) (**Customer Packaging**), the Customer:
 - (a) is solely responsible for the design of, and information included on, the Customer Packaging;
 - (b) must ensure that the Customer Packaging complies with all relevant laws of any jurisdiction in which the Products are sold and does not contain any information, statement or representation that is false or misleading;
 - (c) must ensure that the Products, if manufactured in accordance with any specifications agreed by the Aware Group under the relevant Contract, complies with all relevant laws of any jurisdiction in which the Products are sold;
 - (d) must not use the Aware Group's name or any other trademark or intellectual property of the Aware Group on any Customer Packaging or in connection with the promotion or sale of the Products without the prior written consent of the Aware Group; and
 - (e) indemnifies the Aware Group (and must keep the Aware Group indemnified) against loss, cost or expense and other liability (including but not only legal expenses of any nature and payable to or on behalf of any person) suffered or incurred by the Aware Group in connection with a breach of any obligation of the Customer under this paragraph 13.4.

- 13.5 To the extent permitted by law, and except as otherwise expressly agreed in writing as part of a Contract, the Aware Group will not be liable for any personal injury, incidental damages, consequential losses, loss of profit, costs of business interruption, loss of opportunities or any other loss, damage, cost, expense or liability whatsoever arising from any use of, or incidental to, the Products or their use, or arising out of the Aware Group's negligence or breach of a Contract.

14 CUSTOMER UNIQUE RAW MATERIALS, CUSTOMER SUPPLIED RAW MATERIALS AND PRODUCTS

- 14.1 At the end of three (3) months after last order for the Product, the customer must purchase from the Aware Group all Raw Materials and Products specific to the customer being stored on the Aware Group's premises and other storage facilities for longer than three (3) months provided that those Raw materials and Products purchased and/or manufactured respectively in quantities set out in the customer's forecasts or orders.
- 14.2 The Aware Group will be responsible for ensuring that all Raw Materials and Products stored at the Aware Group's premises and other storage facilities are stored in a manner that is suitable to preserve the quality of raw materials and products.
- 14.3 The Aware Group will endeavour to return, sell or find alternative customers for all Raw Materials purchased by the Aware Group to satisfy the customer's forecasts or orders and use all reasonable commercial efforts to mitigate any losses arising from such materials remaining unused.
- 14.4 Should the Raw Materials, customer supplied Raw Materials and Products remain on the Aware Group's premises and other storage facilities for more than one (1) month from the date of the invoice to the customer for excess Raw Materials, customer supplied Raw Materials and Products, the specified items on the invoice can be disposed of by the Aware Group and any disposal costs will be on charged to customer.
- 14.5 if the Customer or the Aware Group terminates for reason of the unremedied breaches, the Customer will purchase and remove from the Aware Group's premises and other storage facilities all:
 - (a) completed Products (or Products subsequently completed in accordance with any order) for the Purchase Price of those Products; and
 - (b) any Raw Materials that the Supplier has purchased or committed to purchase to complete an accepted order for the cost price of such Raw Materials.

- (c) Should the Raw Materials, Customer Supplied Raw Materials and Products remain on the Aware Group's premises for more than one (1) month from the date of the invoice to the Customer, the specified items on the invoice can be disposed of by the Aware Group and any disposal costs will be on charged to customer.

15 EXCUSABLE DELAYS

- (a) the Aware Group shall not be liable for any failure to comply with a Contract when such failure is caused by or arises out of any of the following: (a) fire, storm, tempest, earthquake, inevitable accident or other act of God; (b) any act of public enemy; (c) any act of any government or any government authority or instrumentality; (d) any act of any person engaged in subversive activity or sabotage; (e) epidemics or quarantine restrictions; (f) strikes, slow-downs, lockouts or labour stoppages or disputes of any kind or freight embargoes; (g) any shortfall, delay or failure to supply by any of the Aware Group's suppliers; (h) severe or prolonged inclement weather conditions (including drought or flood); (i) contamination or destruction of any raw materials used in connection with the Products; or (j) any other cause or event whatsoever which is beyond the control and without the fault or negligence of the Aware Group.
- (B) In the event of a failure by the Aware Group to comply with a Contract, unless the Aware Group advises the Customer that it is able to make alternative arrangements, the Customer shall be entitled to obtain the Products contracted for supply elsewhere for the duration of such failure.

16 OTHER POLICIES

The Customer acknowledges that it has read and understood the Aware Group's: **Credit Information and Privacy Policy (which can be located at www.awaregroup.com.au)** each of which are incorporated into and form part of these Terms and Conditions.

17 CREDIT APPLICATION

An Australian Customer wishing to purchase Products from the Aware Group on credit must submit an application to the Aware Group in accordance with its standard credit application form from time to time (which can be located at www.awaregroup.com.au). Customers outside of Australia should contact their sales contact to arrange payment terms.

18 GOVERNING LAW

These Terms and Conditions are governed by and construed in accordance with the laws of the State of Victoria, Australia (regardless of the place in which the Products are to be delivered). The Customer submits to the jurisdiction of the courts of the State of Victoria and of the courts competent to hear appeals from the courts of that State.

19 ACCEPTANCE

- (a) The Customer declares that the information provided by it in support of or in connection with the Contract is true and correct and not misleading.
- (b) The Customer agrees to be bound solely by the Contract and further agrees that any terms or conditions of purchase that may be incorporated in any order, acceptance of quotation or other document issued by the Customer shall, unless expressly agreed to in writing by the Aware Group's duly authorised representative, have no legal force or effect.
- (c) The Customer agrees that any legal costs incurred by the Aware Group (on a solicitor and own client basis) in the recovery of any monies due by the Customer shall be recoverable in full from the Customer.
- (d) The Customer acknowledges that these Terms and Conditions, or any other policy of the Aware Group referred to in these Terms and Conditions, can change without notice.