

VICTORIAN SALES DIVISION

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N.S.W. SALES DIVISION

11 Verrell Street,
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QLD. SALES DIVISION

17 Terrence Road,
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S.A. SALES DIVISION

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W.A. SALES DIVISION

21 Belgravia Street,
Belmont, W.A. 6104
Phone: (08) 9277 9477
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CONDITIONS OF SALE

1. Definitions

In these conditions:

"Conditions" means these Conditions of Sale;

"Customer" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods from the Supplier, also referred to as the Applicant;

"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, including as amended; and

"Supplier" means Eurotred (Aust.) Pty Ltd ACN 005 108 056.

2. Basis of Contract

2.1 By placing an order the Customer makes an offer to the Supplier to purchase goods from the Supplier on the terms of these Conditions and upon the Supplier accepting the Customer's order (in whole or part) these Conditions apply to that order as a separate contract for the sale of goods by the Supplier to the Customer and cannot be varied or supplanted by any other condition unless otherwise agreed by the Supplier in writing. The Supplier may accept the order: (a) by giving notice of its acceptance to the Customer (whether verbally or in writing); or (b) by the Supplier commencing to process the order for the purpose of supplying the goods, in which case the Customer waives the need for the Supplier to give notice of its acceptance of the order.

2.2 The Supplier's prices and these Conditions (including terms of credit) are subject to change without notice and do not constitute an offer to supply.

2.3 The Supplier reserves the right to accept any order in part or in full. All accepted orders will be priced in accordance with clause 6 and the current price of the goods at the date of order (as published or provided by the Supplier). Credit terms are subject to change at the Supplier's discretion.

3. Payment

3.1 Subject to clause 3.2, payment for goods supplied by the Supplier is to be made in full before or upon delivery. Payment must be in cash via electronic funds transfer ("EFT") only.

3.2 If credit terms are extended by the Supplier, payment for goods must be made in full by the 14th day of the month following the month in which the Supplier's invoice is raised. Invoices will be raised on despatch of goods for delivery. Payment must be in cash via EFT.

3.3 Credit terms may be cancelled or suspended at the sole discretion of the Supplier at any time with or without notice, including without cause or if any amounts owing are not received by their due date or if less than \$2000 (ex GST) of goods are purchased in any month.

3.4 Payment by the Customer will be subject to the Supplier providing a tax invoice for GST purposes, unless GST is not applicable.

4. Payment Default

4.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, 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 other remedy available to it:-

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 3 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due; and

(c) cease or suspend for such period as the Supplier thinks fit, supply of any further goods or credit to the Customer or terminate any contract with the Customer;

without effect on the accrued rights of the Supplier under any contract.

4.2 The Supplier may also suspend supply of or terminate any contract to supply goods, at the option of the Supplier, where the Customer sells its business (or part thereof) or any of its shares are sold or where the Customer becomes bankrupt or insolvent or seeks to enter into any arrangement with or for the benefit of its creditors or has a liquidator, administrator or receiver (or similar) appointed or any action is taken to liquidate or wind up the Customer.

5. Passing of Property

5.1 Until full payment in cleared funds is received by the Supplier for all 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 and cannot claim any lien over the goods;

(c) the Customer must keep the Supplier's goods separate from other products and maintain the labelling and packaging of the Supplier;

(d) the Customer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation the Supplier owes to the Customer;

(e) the Customer will not create any absolute or defeasible security interest in the goods in relation to any third party except as may be authorised by the Supplier;

(f) where the Customer is in actual or constructive possession of the goods, the Customer will not deliver them or any document of title to

the goods to any person except in the ordinary course of its business or as otherwise directed by the Supplier;

(g) the Customer is required to hold the proceeds of any sale of the goods on trust for the Supplier (and in a separate bank account but failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee);

(h) the Supplier may through its agents, employees or appointees without notice, enter any premises where it suspects the goods may be and remove them, and for this purpose the Customer irrevocably licenses the Supplier, and will ensure the Supplier is at all times permitted, to enter such premises.

6. Pricing

6.1 Prices quoted for the supply of goods exclude:

(a) GST; and

(b) the cost of freight, and other charges arising from the point of dispatch of the goods to the Customer, to the point of delivery.

6.2 In addition to the price for goods, the Customer must pay to the Supplier any amounts specified in clauses 6.1(a) and (b).

6.3 Where there is any change in the costs incurred by the Supplier in relation to goods ordered, the Supplier may vary its price for goods on order to take account of any such change.

6.4 Any recommended retail prices on goods sold by the Supplier are suggested prices only. There is no obligation to comply with the recommended retail price.

7. Risk and Insurance

7.1 The risk in the goods and all insurance responsibility for theft, loss, damage or otherwise in respect of the goods will pass to the Customer immediately upon the goods leaving the Supplier's premises (including for deliveries by the Supplier or its agents or contractors).

7.2 The Customer is responsible for the organisation and payment of insurance for the goods from the time they leave the premises of the Supplier.

8. Performance of contract

8.1 Any period or date for delivery of goods stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will use reasonable endeavours to meet any estimated dates for delivery of the goods.

9. Liability and Indemnity

9.1 Except as specifically stated in these Conditions, or contained in any warranty statement provided with the goods, the Supplier excludes all conditions and warranties to the full extent permitted by law.

9.2 Replacement or repair of the goods or supply of equivalent goods (or payment of the cost thereof) is the absolute limit of the Supplier's liability howsoever arising whether under these Conditions, law of tort (including negligence), statute, in equity or otherwise (including in respect of any conditions or warranties implied by law that cannot be excluded or any other dealings with the goods by the Customer or any third party).

9.3 The Supplier is not liable for any indirect or consequential loss or damage suffered by the Customer or any third party, howsoever caused. The Supplier is not liable for any loss of turnover, profits, opportunity, business or goodwill or any liability to any other party, whether any such loss, damage or liability is direct or indirect or consequential.

9.4 The Supplier will not be liable for any loss or damage (whether direct or indirect) suffered by the Customer or any third party where the Supplier fails to meet any delivery date or cancels or suspends the supply of goods or delivers only some of the goods or terminates these Conditions.

9.5 The Customer irrevocably indemnifies and will keep indemnified the Supplier from and against all loss and damage (whether direct or indirect) the Supplier suffers or incurs arising from or in connection with: (a) the Customer's breach of these Conditions; (b) the Supplier seeking to regain possession of its goods (including by proceedings and/or entering any premises); (c) all claims, demands or actions by any third party in connection with the goods (including entry onto any premises to repossess the goods); and (d) any failure of the Supplier to regain possession of its goods. This indemnity continues after completion or termination of this agreement.

10. Cancellation

10.1 Supply of goods for accepted orders remains subject to availability and if, for any reason, goods are not or cease to be available or the Supplier is unable to effect delivery of some or all goods ordered, then the Supplier may by notice to the Customer at any time cancel any order in whole or in part without liability.

10.2 The Customer may not cancel or suspend an order or any part thereof after that order has been accepted by the Supplier.

11. Miscellaneous

11.1 The law of Victoria from time to time governs these Conditions and the parties agree to the nonexclusive jurisdiction of the courts of Victoria and of courts entitled to hear appeals from those courts.

11.2 These Conditions take precedence over any warranty statement or other document provided with or connected with the supply of the goods.

11.3 Unenforceable provisions may be severed from this agreement to the extent required to ensure the remaining provisions of this agreement remain on foot and enforceable.

11.4 Persons signing these Conditions warrant they have authority to do so.