

## 1. DEFINITIONS

- 1.1 "Agreement" means the agreement between the Parties for the supply of Goods which incorporates the terms of the Seller's quotation and these terms and conditions.
- 1.2 "Confidential Information" means all information acquired or created by either Party relating to each Party's business or Intellectual Property that is not in the public domain (or, if in the public domain, is not in the public domain by reason of a breach of this Agreement), including but not limited to:
- information about products, processes, systems, equipment, dealings, transactions, policies, finances, organisation or personnel, or about clients or customers or anyone associated with either Party;
  - any information regarding the Parties' business methods, business policies, product designs, stock information, related suppliers, procedures, techniques, research or development, projects or results, sales information of any kind, financial information of any kind, intellectual knowledge, Intellectual Property, know-how, trade secrets, customer lists or other customer information, sales strategy, tactics or methods, marketing research strategy, information pertaining to products or services under development, marketing, advertising, artwork ideas, concepts, promotions or strategies, supplier information, hardware types, product lists and ranges, items purchased or under consideration of purchase, prices, passwords, purchasing agreements, and security; and
  - information relating to any and all of the Parties' involvement with each other under the Agreement.
- 1.3 "Goods" means goods supplied by the Seller to the Purchaser and are as described on the quotation, invoices or any other forms provided by the Seller to the Purchaser.
- 1.4 "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
- 1.5 "GST" has the meaning given to this term by the GST Act;
- 1.6 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Purchaser on a principal debtor basis.
- 1.7 "Intellectual Property" includes but is not limited to all trademarks, patents, copyrights, processes, source codes, know-how, registered designs, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings and data or other like property or rights owned or held by the Seller. These rights include:
- marks, logos, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
  - all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, the look and feel, layouts, trade secrets or data whether or not protectable by

patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

- 1.8 "Parties" means the Seller, the Purchaser and the Guarantor.
- 1.9 "Price" means the price payable for the Goods as agreed between the Seller and the Purchaser in accordance with clause 3 of this contract.
- 1.10 "Purchaser" means the purchaser (or any person acting on behalf of and with the authority of the purchaser) as described on any quotation, credit application or other form as provided by the Seller to the Purchaser.
- 1.11 "Seller" means Kwik-Zip Marketing Pty Ltd (ACN 098 124 559), its successors and assigns or any person acting on behalf of and with the authority of Kwik-Zip Marketing Pty Ltd (ACN 098 124 559).

## 2. ACCEPTANCE

- 2.1 Any instructions received by the Seller from the Purchaser for the supply of Goods or the Purchaser's acceptance of Goods supplied by the Seller shall constitute acceptance of these terms and conditions.
- 2.2 Upon acceptance of these terms and conditions by the Purchaser the terms and conditions are binding and can only be amended with the written consent of the Seller.

## 3. PRICE AND PAYMENT

- 3.1 At the Seller's sole discretion, the Price shall be either:
- as indicated on invoices provided by the Seller to the Purchaser in respect of Goods supplied; or
  - the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Purchaser accepts the Seller's quotation in writing within thirty (30) days.
- 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 3.3 At the Seller's sole discretion a deposit may be required.
- 3.4 At the Seller's sole discretion:
- payment shall be due on or before the due date indicated on the Seller's invoice; or
  - If no payment date is stated then payment shall be due thirty (30) days following the last date of the month when the invoice was issued.
- 3.5 Payment will be made by cash, by direct deposit, credit card, or by any other method as agreed to between the Purchaser and the Seller.
- 3.6 If the Purchaser pays by credit card, the Seller reserves the right to charge a payment surcharge which reflects the cost of processing the payment in relation to which the payment surcharge is charged.
- 3.7 The Seller reserves the absolute right to vary, withdraw or put on hold the Purchaser's credit facilities immediately in the event that the Purchaser is in breach of the Agreement or these terms and conditions, and at any time upon 30 days' notice. The Seller shall have no liability for any losses or damage that the Purchaser incurs as a result of credit being withheld.
- 3.8 The Purchaser must ensure that all details provided in the credit facility application are up to date at all times and notify the Seller of any changes.

- 3.9 GST and other taxes, duties and charges that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.10 Where the Purchaser is a Trustee:
- (a) The Purchaser warrants that it has full power and authority for the benefit purposes and objects of the trust to make this Deed on behalf of the trust and that it shall be bound by the terms of this Deed both personally and as trustee; and
  - (b) The Purchaser confirms that the Trustees shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the account.
- 4. DELIVERY OF GOODS**
- 4.1 Delivery of the Goods shall take place when the Purchaser takes possession of the Goods at the Purchaser's specified delivery address. The Purchaser shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 4.2 The Seller may charge a delivery fee as agreed with the Purchaser.
- 4.3 The Seller may deliver the Goods by separate instalments. The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 4.4 The Seller shall not be liable for any loss or damage whatsoever due to any failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5. RISK**
- 5.1 All risk for the Goods passes to the Purchaser on delivery. The Purchaser must insure the Goods for full replacement value at all times.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Purchaser, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6. TITLE**
- 6.1 The Seller and Purchaser agree that ownership of the Goods shall not pass until:
- (a) the Purchaser has paid the Seller all amounts owing for all Goods; and
  - (b) the Purchaser has met all other obligations due by the Purchaser to the Seller in respect of all contracts between the Seller and the Purchaser.
- 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Purchaser are met;
  - (b) until such time as ownership of the Goods shall pass from the Seller to the Purchaser the Seller may give notice in writing to the Purchaser to return the Goods or any of them to the Seller. Upon such notice the rights of the Purchaser to obtain ownership or any other interest in the Goods shall cease;
  - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Purchaser fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Purchaser, or any premises as the invitee of the Purchaser, where the Goods are situated and take possession of the Goods;
  - (e) the Purchaser is only a bailee of the Goods and shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller until such time as the Seller has received payment in full for the Goods;
  - (f) the Purchaser shall not deal with the money of the Seller in any way which may be adverse to the Seller and shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold as the beneficial property of the Seller;
  - (g) the Purchaser shall not charge or encumber the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
  - (h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Purchaser.
- 7. PURCHASER'S DISCLAIMER**
- 7.1 The Purchaser hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Purchaser by the Seller and the Purchaser acknowledges that the Goods are bought relying solely upon the Purchaser's skill and judgement.
- 8. DEFECTS**
- 8.1 The Purchaser must inspect the Goods packaging for defects or shortage in quantity upon delivery and immediately report any damage to the Seller. In case of damage, the Purchaser must do all things the Seller reasonably requires to claim damages from the delivery company.
- 8.2 The Parties acknowledge the fragile nature of many of the Goods. No Goods must be sold to a third party without the Purchaser inspecting them thoroughly. If the Purchaser discovers damage to the Goods they must immediately inform the Seller providing photographic evidence of the Goods damage and the damaged packaging of the particular Good.
- 8.3 If the Purchaser fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage upon delivery. For defective Goods, which the Seller has agreed in writing that the Purchaser is entitled to reject, the Seller's liability is limited to, at the Seller's discretion, either replacing the Goods or providing a refund. Nothing in these terms and conditions shall limit or reduce any obligation of the Seller under such law.

**9. RETURNS**

- 9.1 Damaged or defective goods will not be accepted for return other than in accordance with 8.1 above.
- 9.2 Replacement for Goods which are damaged post-delivery will be at the sole discretion of the Seller. In all cases delivery and return costs will be the responsibility of the Purchaser.
- 9.3 The Seller has absolute discretion to refuse a request for return or an exchange of Goods other than under clause 8.1.
- 9.4 If the Seller accepts the return or exchange of undamaged Goods:
  - (a) the Goods must be unopened and in their original packaging; and
  - (b) the Seller reserves the right to charge a restocking fee.
- 9.5 A return request or allegation of defective Goods by the Purchaser shall not entitle the Purchaser to withhold payment of any sum payable to the Seller and shall not give rise to any right of set-off without the written consent of the Seller.

**10. WARRANTY**

- 10.1 The Seller gives no warranty as to the fitness, quality or suitability of the Goods except such warranties imposed and required to be binding by statute. The Purchaser acknowledges that no other warranty, condition or representation has been given or made by the Seller.

**11. LIMITATION OF LIABILITY**

- 11.1 To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of the conditions or warranties referred to in clause 10 is, at the option of the Seller, limited and completely discharged by either:
  - (a) the refund of the price of the Goods; or
  - (b) the replacement of the Goods with goods of a similar quality and style.
- 11.2 The Purchaser acknowledges that it is in the nature of the Goods that if defective they may not be able to be repaired and may not be reproduced identically in subsequent production runs.
- 11.3 The Purchaser releases the Seller from any liability for consequential loss, including but not limited to loss of profits, arising from any claim under this Agreement, negligence or any other basis.

**12. CONFIDENTIAL INFORMATION**

- 12.1 A Party ("the Receiving Party") will not, without the prior written approval of the other Party, disclose the other Party's ("the Disclosing Party") Confidential Information.
- 12.2 The Receiving Party will not be in breach of clause 12.1 in circumstances where it is legally compelled to disclose the Disclosing Party's Confidential Information.
- 12.3 The Receiving Party will ensure that its employees, agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the Disclosing Party's Confidential Information.
- 12.4 The Disclosing Party may at any time require the Receiving Party to arrange for its employees, agents, or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed at the Disclosing Party's expense.

- 12.5 The Receiving Party will on demand return to the Disclosing Party any Confidential Information supplied by the Disclosing Party to the Receiving Party in connection with this Agreement.

- 12.6 Notwithstanding any other provision of this clause 12, the Parties may disclose the terms of this Agreement to its employees, related companies, solicitors, auditors, insurers or accountants, and will ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Parties.

**13. INTELLECTUAL PROPERTY**

- 13.1 The Purchaser expressly agrees and acknowledges that:
  - (a) any Intellectual Property in the Seller's Goods (whether unregistered, registered or registrable) is the property of the Seller; and
  - (b) nothing in this Agreement is intended to provide the Purchaser with any interest in the Intellectual Property in the Seller's Goods.

**14. DEFAULT & CONSEQUENCES OF DEFAULT**

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at ten percent (10%) per calendar year and such interest shall compound daily at such a rate after as well as before any judgement.
- 14.2 If the Purchaser defaults in payment of any invoice when due, the Purchaser shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 14.3 Without prejudice to any other remedies the Seller may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under the terms and conditions. The Seller will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Seller has exercised its rights under this clause.
- 14.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Purchaser which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Purchaser will be unable to meet its payments as they fall due; or
  - (b) the Purchaser becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Purchaser or any asset of the Purchaser.

- 15.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
  - (a) where the Purchaser and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the

**15. SECURITY AND GUARANTEE**

- 15.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
  - (a) where the Purchaser and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the



- Purchaser and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Purchaser and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate an absolute caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Purchaser and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Purchaser basis.
- (c) the Purchaser and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Purchaser's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 15.2 The Guarantor guarantees to the Seller the due and punctual payment of all moneys and performance by the Purchaser of all of its obligations under the Agreement. This guarantee shall be continuing and shall not be discharged by the winding up of the Purchaser and shall bind the successors and legal personal representatives of the Guarantor.
- 16. THE PERSONAL PROPERTY SECURITIES ACT**
- 16.1 Defined terms in the Personal Property Securities Act 2009 (Cth) have the same meaning as the equivalent defined terms in this clause.
- 16.2 The Purchaser acknowledges that these terms and conditions constitute a registrable Security Agreement which creates the following Security Interests in favour of the Seller in the following Collateral for the purpose of securing the Seller's Goods and payments due to the Seller under this Agreement:
- (a) a Purchase Money Security Interest in all Goods supplied by the Seller to the Purchaser from time to time; and
- (b) a Security Interest in All of Purchaser's Present and After Acquired Personal Property.
- 16.3 The Purchaser accepts, acknowledges and agrees that:
- (a) the Purchaser waives its rights to receive notification of a Registration by the Seller;
- (b) Pursuant to section 275(6) of the PPSA, the Purchaser agrees the Seller is not required to disclose to an interested person information pertaining to the Seller's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- 16.4 The Purchaser will:
- (a) sign any documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) and/or assistance which the Seller may reasonably require to register or amend its Security Interest on the PPSR;
- (b) indemnify the Seller against any costs the Seller incurs in perfecting, maintaining and enforcing its Security Interests, its rights under this Agreement or at law generally;
- (c) procure from any persons considered by the Seller to be relevant to its security position, such agreement and waivers as the Seller may at any time reasonably require; and
- (d) not register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement in its own favour or in favour of a third party without the Seller's prior written consent.
- 16.5 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Purchaser agrees, to the extent that s 115(1) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) s 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Purchaser;
- (b) s 96 (when a person with an interest in the whole may retain an accession);
- (c) s 121(4) (enforcement of liquid assets – notice to grantor);
- (d) s 125 (obligation to dispose of or retain collateral);
- (e) s 130 (notice of disposal of collateral), to the extent that it requires the Seller to give a notice to the Purchaser;
- (f) s 132(3)(d) (contents of statement of account after disposal);
- (g) s 132(4) (statement of account if no disposal);
- (h) s 135 (notice of retention of collateral);
- (i) s 142 (redemption of collateral); and
- (j) s 143 (reinstatement of security agreement).
- 16.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Purchaser agrees, to the extent that s 115(7) allows this, that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) s 127 (seizure by higher priority parties – notice);
- (b) s 129(2) and (3) (disposal by purchase);
- (c) s 132 (secured party to give statement of account);
- (d) s 134(2) (proposal of secured party to retain collateral);
- (e) s 135 (notice of retention of collateral);
- (f) s 136(3), (4) and (5) (retaining collateral free of interest); and
- (g) s 137 (persons entitled to notice may object to proposal).
- 17. CANCELLATION**
- 17.1 The Seller may cancel any agreement to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice the Seller shall repay to the Purchaser any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage arising from such cancellation.

- 17.2 The Purchaser must not cancel or vary an order without the written consent of the Seller.
- 17.3 In the event that the Purchaser cancels delivery of Goods without the consent of the Seller, the Purchaser shall be liable for the full Price together with all delivery costs and any losses or costs incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation. Any deposit paid by the Purchaser will not be refundable upon cancellation by the Purchaser.
- 18. PRIVACY ACT 1988**
- 18.1 The Purchaser and the Guarantor agree to the Seller using Purchaser information for the purpose of obtaining from a credit reporting agency a credit report containing personal credit information about the Purchaser and Guarantor/s in relation to credit provided by the Seller.
- 18.2 The Purchaser and the Guarantor agree that the Seller may exchange information about the Purchaser and the Guarantor with those credit providers either named as trade referees by the Purchaser or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Purchaser;
  - (b) to notify other credit providers of a default by the Purchaser;
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
  - (d) to assess the credit worthiness of Purchaser and/or Guarantor.
- 18.3 The Purchaser expressly consents to the Seller being given a consumer credit report for a commercial credit related purpose and/or for a credit guarantee purpose (Section 20F(1)(Items 2 and 3) Privacy Act 1988 (Cth)).
- 19. DISPUTE RESOLUTION**
- 19.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (“**Dispute**”), a Party cannot commence any court proceedings relating to a dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.
- 19.2 A Party claiming that a Dispute has arisen under or in relation to the Agreement must give notice in writing to the other party specifying the nature of the Dispute.
- 19.3 On receipt of that notice by the other Party, all of the Parties must use all reasonable efforts to expeditiously resolve the Dispute.
- 19.4 If the Parties have not resolved the dispute within thirty (30) days of receipt of the notice referred to in clause 19.2, or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 19.5 and 19.6.
- 19.5 The arbitrator appointed to resolve the dispute will be:
- (a) either as agreed in writing by the Parties or failing agreement within seven (7) days of a request by any Party to do so, then;
  - (b) as appointed by the President for the time being of the Law Society of Western Australia, or his nominee.
- 19.6 The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.
- 19.7 Any legal action between the Parties must be commenced in the jurisdiction of Western Australian.
- 19.8 Despite any other provisions in this Agreement, the Purchaser agrees that if it disputes the amount in the Seller’s invoice(s) the dispute may be referred a court of competent jurisdiction for determination without further demand or notice to the Purchaser. If the court finds in the Seller’s favour, the Purchaser agrees to pay the Seller interest up to the date of judgement. The Purchaser also agrees to pay the Seller’s legal costs (on a solicitor and own client basis) and debt recovery costs (if applicable).
- 20. GENERAL**
- 20.1 If any provision of these terms and conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 20.3 The Seller shall be under no liability whatever to the Purchaser for any indirect loss and/or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Seller of these terms and conditions.
- 20.4 In the event of any breach of this Agreement by the Seller the remedies of the Purchaser shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 20.5 The Purchaser shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Purchaser by the Seller.
- 20.6 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Purchaser of such change.
- 20.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, hurricane or other event beyond the reasonable control of either party.
- 20.8 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller’s right to subsequently enforce that provision.

Signed by, or on behalf of, the Purchaser		Date ___/___/___
(Duly Authorised Person) PRINT NAME:		

Accepted, without alteration to the terms, by Kwik-Zip Marketing Pty Ltd (ACN 098 124 559).

.....