

SPA-CRAFT PTY LTD
TRADING TERMS AND CONDITIONS

SECTION 1: GENERAL

- 1.1 In these terms and conditions “the company stands for Spa-Craft Pty Ltd ABN: 48 600 353 713.
- 1.2 The following terms and conditions apply to all goods sold by the company.
- 1.3 These terms and conditions override any other terms and conditions previously published by the company.
- 1.4 The Contract overrides all prior negotiations, representations, proposals, understandings and agreements whether in writing or not.

SECTION 2: PRICING

- 2.1 The Prices contained in the price list are based upon current costs at the time of publication. Prices are not firm and may be subject to alteration in accordance with the company’s current price list in effect at time of delivery.
- 2.2 Unless subject to prior quotation, any prices quoted for supply of goods will only be valid for a period of 30 days from effective date.
- 2.3 Prices quoted (unless otherwise stated) are exclusive of goods and services taxes (GST). GST will be charged at the appropriate rates, to the purchaser, at time of sale in accordance within the Australian tax office guidelines.
- 2.4 There will be no GST charged for export sales to New Zealand.

SECTION 3: PAYMENT

- 3.1 Invoices are payable in full prior to dispatch of goods, or by arrangement, unless a credit account has been formally issued in which case payment in full is due within 30 days of statement date.
- 3.2 Unless otherwise agreed to by a duly authorised employee of the Company, if payments are not received within 45 days of statement date, credit facilities may be suspended without notice.
- 3.3 Unless otherwise agreed to by a Company Director, if payment is not received within 60 days of statement date, credit facilities may be withdrawn until the entire account is paid.
- 3.4 Unless otherwise agreed to by a Company Director, if payment is not received within 90 days of statement date, credit facilities will be withdrawn and legal proceedings will commence to recover all monies owing the company.
- 3.5 Any expenses, including commissions, solicitors letters, disbursements, debt collection agency costs and any out of pocket expenses incurred by the company in recovering monies in breach of these trading terms, shall be paid by the customer.
- 3.6 Any expenses charged to the company for dishonoured cheques, shall be in turn charged accordingly to customer’s account for reimbursement to the company. The company at this point in time reserves the right to suspend and or cancel the customer’s line of credit until further notice.
- 3.7 Orders for special production times (including assemblies) may require a deposit to be made and held until delivery of such goods has been provided. Special production orders (including assemblies) cannot be cancelled once production has commenced and the customer is committed to receiving and providing full payment on goods. Estimated delivery dates on special production items are to be taken as a guide only and cannot be guaranteed. The company does not accept any liability for late delivery under these circumstances and the original customer order will be binding unless otherwise advised in writing by an authorised company representative.

SECTION 4: CREDIT CLAIMS & RETURNS

- 4.1 Any goods sent back for return will not be accepted unless prior contact with a company representative has been made and a return authorisation (R.A.) number has been issued. This R.A. number must then be displayed on ALL paperwork accompanying the goods for return.
- 4.2 Claims will not be recognised unless invoice number and date is quoted on all returns or requests for credit.
- 4.3 Claims for shortages or incorrect deliveries will not be recognised unless made within five (5) business days of receipt of goods.
- 4.4 Claims for non-delivery must be made within seven (7) business days of receipt of invoice(s).
- 4.5 Goods specially manufactured or assembled to customer specifications will not be accepted for credit.
- 4.6 Goods specially cut to length or modified by request will not be accepted for credit.
- 4.7 Goods returned must in in good resalable condition to be considered for credit. The company will not accept returns which have been damaged or shop soiled whilst in the possession of the purchaser or damaged on return transport.
- 4.8 Goods accepted by the Company as faulty will be repaired, replaced or credited at the invoiced value.
- 4.9 Freight charges on goods returned will be prepaid by the Purchaser unless otherwise agreed to by the Company prior to the return.
- 4.10 Any goods returned for credit, other than faulty or incorrectly delivered items, may at the Company’s discretion, be subject to a restocking fee of no less than 15% of the items invoiced value.
- 4.11 Any goods returned does not automatically signify that the Company will grant a credit note. Such a credit note will only be issued after the relevant goods have been inspected by a company representative (and or

manufacturer of the goods in question) and the reason for return has been deemed both satisfactory and legitimate by the company.

SECTION 5: RISK IN GOODS

- 5.1 Risk in the goods will pass to the purchaser on dispatch to the delivery address specified by the purchaser.

SECTION 6: RETENTION OF TITLE

- 6.1 Ownership of all goods supplied will not transfer until all monies owed are received in full by the Company.
- 6.2 Should Payment not be received by the company by the specified date agreed to in these terms and conditions, the company will have the authority to enter the purchaser's premises where the goods are being stored, and use reasonable force to take possession of the goods, without liability of trespass, negligence or payment of compensation to the customer whatsoever.
- 6.3 The company is entitled to retake possession of any unpaid goods or paid goods belonging to the purchaser in the event the purchaser commits an act of bankruptcy, or a receiver is appointed, or the purchaser goes into liquidation or some other form of insolvency or administration whether formal or informal, or the purchaser ceases to carry on business, or the purchaser makes a scheme or compromise with his creditors, without prejudice to any other rights of the company. The company has the right of resale of the goods in the event that he retakes possession of them.

SECTION 7: PERSONAL PROPERTY SECURITIES ACT 2009 ('PPSA')

- 7.1 In this clause:
- (a) A "Financing Statement" has the meaning given to it by the PPSA;
 - (b) A "Financing Change Statement" has the meaning given to it by the PPSA;
 - (c) "Security Agreement" means the "Security Agreement" under the PPSA created between the purchaser and the company by these terms and conditions; and
 - (d) "Security Interest" has the meaning given to it by the PPSA.
- 7.2 Upon agreeing to these terms and conditions either in writing or by previous dealings the purchaser acknowledges and agrees that these terms and conditions:
- (a) Represent a "Security Agreement" for the purposes of the PPSA;
 - (b) Creates a "Security Interest" in all goods, whether previously supplied or supplied in the future by the company to the purchaser.
- 7.3 The Purchaser undertakes to:
- 7.3.1 Promptly sign any further documents and/or provide any further information (such information must be complete, accurate and up-to-date in all respects) which the company may reasonably require to:
- (a) Register a "Financing Statement" or "Financing Change Statement" in relation to a "Security Interest" of the Personal Properties Security Registrar;
 - (b) Register any other documents required to be registered by the PPSA; or
 - (c) Correct a defect in the statement referred to in section 7.3.1 (a) or 7.3.1 (b).
- 7.3.2 Indemnify, and upon demand, reimburse the company for all expenses incurred in registering a "Financing Change Statement" on the Personal Properties Security Register ("PPSR") established by the PPSA or releasing any good's charges;
- 7.3.3 Not register a "Financing Change Statement" in respect of security interest without the prior written consent of the company;
- 7.3.4 Not register, or permit to be registered, a "Financing Statement" or a "Financing Change Statement" in relation to the goods in favour of a third party without the prior written consent of the company; and
- 7.3.5 Immediately advise the company of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 7.4 The company and the purchaser agree that Sections: 96, 115 and 125 of the PPSA are not applicable to the "Security Agreement" created by these terms and conditions.
- 7.5 The purchaser hereby waives its right to receive notices pursuant to Sections: 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 7.6 The purchaser waives its rights as a Grantor and/or Debtor pursuant to Sections: 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed to in writing by the company; the purchaser waives its rights to receive a "Verification Statement" in accordance with Section 157 of the PPSA.
- 7.8 The purchaser shall unconditionally ratify any actions taken by the company under Sections: 7.3 and 7.4 of these terms and conditions.

SECTION 8: WARRANTY & LIABILITY

- 8.1 Where it is agreed that goods are faulty due to manufacture or materials, the liability (if any) of the Company shall, to the extent allowed by the Competition and Consumer Act 2010 (Cth) ("CCA") be limited to the replacement or repair of the goods, or a refund of the purchase price and shall not extend to any consequential loss or damage incurred by any person.
- 8.2 Where it is agreed that goods are faulty due to manufacture or materials the company will not be liable for any damage if the purchaser has: altered, changed or modified the goods from the form in which they were supplied by the company or the purchaser has used them for a different purpose to which they were supplied by the company.

- 8.3 The company is not liable for any damages in relation to: repair, labour, expense, or consequential loss as the company has no control over the way a product supplied is used. The company cannot be held liable for the fitness of these products for any particular application, whether such an application is made known to the company or not. Goods supplied are backed in accordance with the manufactures warranty existing at the time of purchase. Details of such warranties will be made available on application to the company.
- 8.4 You acknowledge that you have not relied on any predictions, forecasts, advice or statements of opinion by the company or any of its employees, contractors or agents.
- 8.5 Nothing in these terms and conditions excludes, restricts or modifies any condition or warranty that the law does not allow us to exclude, restrict or modify. However, all other conditions and warranties, whether or not implied by the law, are excluded.

SECTION 9: DELIVERY

- 9.1 Unless otherwise agreed in writing from an authorised company representative, a freight charge will be made on each delivery unless the goods are dispatched on the purchaser's carrier or picked up from the company's warehouse.
- 9.2 No responsibility will be accepted for breakage, damage or loss in transit.
- 9.3 Should damage or loss occur in transit and the purchaser has notified the company and the carrier in writing immediately after goods have been received; the company will provide assistance in pressing any claims against the carrier.

SECTION 10: PRODUCT INFORMATION

- 10.1 Product information in relation to any products is considered to be reliable. This information is a guide only and specifications are not guaranteed. Any information is subject to change without notice by the company. The company cannot be held responsible for any such change of information or specifications.

SECTION 11: ABANDONMENT OF WORKSHOP REPAIRS & ITEMS RECEIVED BY COMPANY FOR IDENTIFICATION

- 11.1 If any amounts outstanding have not been paid within three calendar months of us providing notice to you, and if we do not hear from you after making reasonable attempts to contact you, we may sell and/ or dispose of your goods in accordance with any applicable legislation relating to the disposal of uncollected goods.

SECTION 12: JURISDICTION

- 12.1 These terms and conditions are governed by and construed in accordance with the laws of the State of NSW, Australia. The company and the purchaser hereby submit to the exclusive jurisdiction of the courts of that State and none other.

SECTION 13: PRIVACY ACT 1988

- 13.1 The Customer agrees for Spa-Craft to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Spa-Craft.
- 13.2 The Customer agrees that Spa-Craft may exchange information about the Customer with those credit providers and with related body corporate for the following purposes:
- (a) to assess an application by the Customer; and /or
 - (b) to notify other credit providers of a default by the customer; and/or
 - (c) to exchange information with other credit provider as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 13.3 The Customer consents to Spa-Craft being given a consumer credit report to collect overdue payment on commercial credit.
- 13.4 The Customer agrees that personal credit information provided may be used and retained by Spa-Craft for the following purposes (and for other agreed purposes or required by):
- (a) The provision of Products; and/or
 - (b) Analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Products; and/or
 - (c) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) Enabling the collection of amounts outstanding in relation to the Products.
- 13.5 Spa-Craft may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 13.6 The information given to the CRB may include:
- (a) personal information as outlined in 13.1 above;
 - (b) name of the credit provider and that Spa-Craft is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the customer no longer has any overdue accounts and Spa-Craft has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Spa-Craft, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 13.7 The Customer shall have the right to request (by email) from Spa-Craft:
- (a) a copy of the information about the Customer retained by Spa-Craft and the right to request that Spa-Craft correct any incorrect information; and
 - (b) that Spa-Craft does not disclose any personal information about the Customer for the purpose of direct marketing.
- 13.8 Spa-Craft will destroy personal information upon the Customer's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 13.9 The Customer can make a privacy complaint by contacting Spa-Craft via email. Spa-Craft will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.