



Terms and Conditions

Effective date: 1st Oct 2020

The following terms and conditions ("the Conditions") form part of any quotation by Winthrop Development Consultants Pty Ltd trading as Winthrop Development Consultants ("Winthrop") for the supply of goods or services ("Goods") to the customer ("the Purchaser"). All quotations given, orders accepted and credit extended by Winthrop shall, unless otherwise specifically agreed between Winthrop and the Purchaser, be subject to these Conditions. Any terms or conditions put forward by the Purchaser shall not be binding on Winthrop insofar as they purport to amend, annul, or add to any of these Conditions unless specifically agreed to in writing by Winthrop.

1. Prices

- 1.a) The price for Goods is the price shown on the invoice as the price.
- 1.b) All prices stated or quoted exclude freight, delivery, and insurance costs and all other expenses, taxes or other governmental charges or duties (including sales tax) which, if payable, shall be to the Purchaser's account.
- 1.c) Prices charged shall be those prevailing at the time of dispatch of goods unless otherwise agreed in writing by Winthrop.
- 1.d) Any suggested or recommended retail or resale price set out in any Winthrop price list or other document is a recommended price only, and there is no obligation upon the Purchaser to comply with the recommendation.
- 1.e) Unless otherwise agreed by Winthrop in writing:
 - (i) Transportation of all Goods from the premises of Winthrop is the sole responsibility of the Purchaser and the cost of such transportation shall be borne by the Purchaser. The Purchaser at its own discretion may either arrange for transportation of the Goods itself or use the services provided by Winthrop, in which case the cost of such transportation shall be paid by the Purchaser in addition to the price for Goods.
 - (ii) Prices and charges for transport services provided by Winthrop are subject to change by Winthrop without notice.

2. Delivery

- 2.a) Physical delivery of Goods to the Purchaser or to a carrier nominated by the Purchaser or Winthrop (as the case may be), whichever is the earlier, shall constitute delivery to the Purchaser for the purpose of these Conditions.

- 2.b) Except where otherwise agreed in writing, stated delivery times are estimates only and are not binding on Winthrop. Winthrop will endeavour to complete the delivery of Goods within the time agreed (if any) but shall not be liable for any loss or damage of any kind (including consequential loss) caused directly or indirectly by any delay in completion of the contract or delivery. Delays in delivery do not entitle the Purchaser to cancel an order.

- 2.c) It is the Purchaser's responsibility to inspect Goods promptly upon delivery. Winthrop shall not be liable for any obvious defects, short delivery or non-compliance of Goods with specifications unless the Purchaser submits a written notice to Winthrop within seven (7) days of delivery quoting invoice number and date. Failure by the Purchaser to give such notice shall be deemed acceptance of Goods, and the Purchaser shall be bound to pay for the same accordingly. Upon receipt of notice by the Purchaser, Winthrop shall have the right, at its option, either to replace the Goods or to refund or credit that portion of the price applicable thereto.

- 2.d) Winthrop reserves the right to deliver any order by instalments unless otherwise expressly agreed in writing, and each instalment shall be deemed to be supplied under a separate contract. All instalments, when separately invoiced, shall be paid for when due per invoice without regard to subsequent deliveries. Failure by Winthrop to deliver any instalment by the due date shall not entitle the Purchaser to repudiate the entire order.

3. Payment

- 3.a) Unless otherwise expressly agreed, the Purchaser shall make cash payment to Winthrop for Goods on or before any purchase and/or delivery.

- 3.b) Where Goods are supplied on credit, the Purchaser shall make payment to Winthrop within seven (7) days from the date of invoice. Minimum order value required for supply on credit is A\$100.00. Winthrop reserves the right to withdraw credit at any time.

- 3.c) Winthrop reserves the right to require payment prior to delivery of any Goods if it reasonably appears to Winthrop that the Purchaser may be unable for any reason to effect the payment promptly in accordance with the terms of this Clause 3.

- 3.d) No discount is allowed and interest may be charged on all overdue accounts at an annual rate equal to five per cent above the rate notified by the National Australia Bank from time to time as being the bank's indicator lending rate, such interest calculation to run from the due date for payment until receipt by Winthrop of the full amount, whether or not after judgement.

- 3.e) The Purchaser shall indemnify Winthrop in respect of all losses or damage incurred or suffered by Winthrop as a result of late or non-payment. The granting of credit by Winthrop in respect of late payment does not affect Winthrop's right to treat the late payment as a repudiation of contract and accordingly to recover possession of goods.
- 3.f) Failure or delay on the Purchaser's part to pay in accordance the terms of this Clause 3 shall entitle Winthrop to withhold further deliveries in respect of any contract for supply of Goods to the Purchaser until such payment has been made. Winthrop shall have no liability or obligation to the Purchaser for any loss or damage whatsoever suffered by the Purchaser as a result of such withholding. If supply is withheld pursuant to this paragraph, Winthrop shall be entitled to bill the Purchaser, for the period up to the date of the withholding, for the cost of all material and work incurred by Winthrop for the purpose of future deliveries to the Purchaser. Any such progress bill shall be paid by the Purchaser in cash seven (7) days from date of invoice. If the Purchaser shall fail to pay such accounts, Winthrop shall be entitled to terminate the contract and recover such amounts as a debt due, less an allowance for the value of the goods as realised or as utilised by Winthrop for other purposes.
- 3.g) Winthrop reserves the right to vary the method and terms of payment described in this Clause 3 at any time without notice to the Purchaser.
- 4. Risk**
- The Purchaser accepts the risk of loss or damage to the goods as soon as physical possession of the goods has been given to a carrier (or if none, the Purchaser) for delivery to the Purchaser.
- 5. Title**
- 5.a) It is expressly agreed that title in any goods supplied by Winthrop shall not pass to the Purchaser until the full purchase price thereof and all other amounts owing to Winthrop in respect of the Goods supplied by it to the Purchaser have been paid in full to Winthrop. For these purposes, the Purchaser will not be treated as having paid for the goods until all cheques and other instruments of payment have been cleared and honoured and the full amount has been irrevocably credited to Winthrop's bank account.
- 5.b) While title to the goods remains in Winthrop, the Purchaser shall have no ownership, property or rights in the goods, and shall, while possessed of the goods, hold them only as bailee for Winthrop upon the following terms:
- (i) Goods belonging to Winthrop shall be stored by the Purchaser in such a way that they are identifiable as Winthrop's property;
 - (ii) The Purchaser may sell the Goods to independent third parties in the ordinary course of business. Winthrop may revoke such power of sale at any time if, in its absolute discretion, it considers the Purchaser insolvent or a credit risk;
 - (iii) The Purchaser shall keep the Goods in a fiduciary capacity for Winthrop in a proper and marketable condition having regard to their condition upon delivery;
- (iv) The Purchaser shall maintain records of Goods owned by Winthrop identifying them as Winthrop's property, of the persons to whom it sells or disposes of such Goods, and of the payments made by such persons for such Goods. The Purchaser shall allow Winthrop to inspect these records and the Goods themselves on request.
- 5.c) Winthrop may terminate the bailment described in this Clause 5 at any time. Upon such termination, Winthrop may require the Purchaser to return the Goods immediately or may enter the Purchaser's premises to recover the Goods in accordance with Clause 10.d) hereof.
- 5.d) If the price is due and payable and remains unpaid, Winthrop shall be entitled to repossess Goods belonging to it in accordance with Clause 10.d). If not due and payable, the price shall become due and payable immediately prior to the commencement of any act or proceeding in which the Purchaser's solvency is involved.
- 5.e) The goods shall, once risk has passed to the Purchaser in accordance with Clause 4 or otherwise, be and remain at the Purchaser's risk at all times unless and until Winthrop has retaken possession of the Goods, and the Purchaser shall insure accordingly.
- 5.f) Winthrop may sue for the price of Goods at any time after payment is due whether or not it has demanded the return of Goods. Until property and legal title of the Goods has passed to the Purchaser or the possession of the goods has been recovered by Winthrop, the Purchaser is liable to Winthrop for all loss or damage suffered by Winthrop as the result of loss or damage to the Goods after the risk has passed to the Purchaser.
- 5.g) Winthrop's right to retain title shall not affect its rights as an unpaid seller.
- 5.h) Winthrop shall be entitled to trace the proceeds of sale and any insurance proceeds received in respect of Goods which were owned by Winthrop immediately prior to their disposal by the Purchaser. Such proceeds shall be held by the Purchaser on trust for Winthrop.
- 6. Returns**
- 6.a) The Purchaser may return Goods of current specification for credit, provided the following conditions are satisfied:
- (i) Winthrop's prior written approval has been obtained, and the original invoice and date have been quoted for reference;
 - (ii) Goods have not been used and are received by Winthrop in unopened (as new) original shipping carton condition in a unsoiled, undamaged, and resaleable condition;
 - (iii) the Purchaser agrees to pay all freight and other charges payable upon return of the Goods;
 - (iv) the Purchaser agrees to pay a restocking charge of 15% of the invoice price of the Goods.
- 6.b) Goods may not be returned for credit more than thirty (30) days after the date of the applicable invoice.
- 6.c) Winthrop reserves the right to refuse credit for any Goods returned if the claim is considered on inspection to be unjustified.

6.d) Goods returned without Winthrop's prior approval are at the risk of the Purchaser. Winthrop shall be under no obligation to accept for credit Goods returned without its prior approval, but may, in its sole discretion, accept such Goods for credit at a price deemed by it to be appropriate, and the Purchaser acknowledges that Winthrop shall have the right to sue the Purchaser to recover the difference between the credited price and the invoice price of the Goods returned.

6.e) Goods considered by Winthrop to be obsolete or of a wasting nature may not be returned in any circumstances.

7. Warranty

7.a) The warranty provided by Winthrop shall be as detailed on the warranty and/or license form provided by Winthrop that is applicable to the Goods purchased by the Purchaser.

7.b) The liability of Winthrop referred to above shall not be extended to Goods rendered defective due to accident, fair wear and tear, negligent use, tampering, improper handling, improper use, improper operation, improper storage or any other default on the part of the Purchaser or its agents or any other person or by factors beyond Winthrop's control.

7.c) To the extent permitted by law, the warranty set out in Clause 7.a) above is in substitution of all other terms, conditions, warranties and representations, express or implied, by statute or otherwise, as to the description, merchantable quality or fitness for the purpose of the goods, and all such terms, conditions, warranties and representations are hereby excluded.

7.d) Certain legislation, including, without limitation, the Trade Practices Act 1974 (as amended), may imply conditions or warranties or obligations on Winthrop, which conditions, warranties or obligations cannot be excluded, restricted or modified by agreement between the Purchaser and Winthrop, or which cannot be excluded, restricted or modified except to a limited extent ("the Consumer Warranties"). In such circumstances, the Purchaser shall have the benefit of both the Consumer Warranties and the warranty in Clause 7.a) above. To the extent that such legislation is applicable, these Conditions shall be read subject thereto, and the extent to which it is entitled to do so. Winthrop hereby limits its liability in the event of any loss or damage or claim arising out of a breach of the Consumer Warranties at its option to:

- (i) the replacement of or supply of equivalent Goods; or
- (ii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (iii) the payment of the cost of having the Goods repaired; or
- (iv) the repair of the Goods.

7.e) In no event shall Winthrop be liable for consequential loss, or special, indirect or consequential damages, however arising, even if due to the negligence of Winthrop, its servants, agents, sub-contractors or suppliers.

8. Cancellation or Variation

8.a) The Purchaser shall not be permitted to cancel any contract except with Winthrop's prior written consent and, unless Winthrop agrees otherwise, upon the Purchaser fully compensating Winthrop for Winthrop's loss of profit occasioned thereby.

8.b) Variation of orders by the Purchaser will not be permitted unless approved by Winthrop in writing, and then subject to such terms as Winthrop may require.

The Purchaser shall be liable for Winthrop's charges, costs and expenses incurred both prior to and as a result of accepting such variation. Estimated delivery dates shall be extended by a reasonable time to allow for any extra work involved.

8.c) If Winthrop accepts cancellation by the Purchaser after part delivery, and payment for Goods delivered is not received by Winthrop by the due date, Winthrop shall have the right to enter the Purchaser's premises to re-take possession of the Goods in accordance with Clause 10.a) hereof.

9. Intellectual Property

Nothing herein shall confer or be deemed to confer on the Purchaser any licence, right or other interest in any intellectual or industrial property comprised in the Goods, which at all times remain the property of Winthrop or its Licensors.

10. Termination

10.a) Winthrop may cancel any order or terminate any contract for sale and/or delivery of the goods without incurring liability to the Purchaser, and withhold deliveries to the Purchaser and retain any payments already made in the event of:

- (i) The Purchaser defaulting in any of these Conditions in respect of any Goods;
- (ii) The Purchaser being unable to pay its debts as they fall due, or becoming bankrupt or committing any act of bankruptcy, or having judgement entered against it in any Court or entering into any scheme of arrangement with its creditors or entering into liquidation, whether voluntary or otherwise, or having a receiver / receiver and manager appointed for all or part of its assets;
- (iii) the performance of Winthrop's obligations hereunder being adversely affected by operation of events beyond its reasonable control.

10.b) For so long as the events referred to in paragraph 10.a)(iii) operate, Winthrop shall not be deemed to be in breach of these Conditions.

10.c) Termination shall be without prejudice to Winthrop's right to recover payment from the Purchaser for Goods delivered prior to termination.

10.d) Upon termination for any reason, Winthrop shall be entitled, and the Purchaser hereby grants a licence to Winthrop, to enter any premises of the Purchaser where the Goods are situated with or without notice and to re-take possession of and remove at the Purchaser's cost and expense, and without obligation to the Purchaser, the Goods in respect of which title has not passed to the Purchaser at that date. Winthrop shall be entitled to use the Purchaser's name and to act on its behalf in exercising such rights. The Purchaser shall be liable for Winthrop's costs and expenses of re-possession, storing, preparing for resale, selling and the like, including legal costs of any Goods so removed.

11. Miscellaneous

- 11.a) These Conditions and the terms and conditions of the most recent agreement signed by both parties constitute the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect. Except for the Consumer Warranties and the warranty provided in clause 7.a), no written or oral or implied condition, warranty or term of any description whether under statute or by implication of law, custom, or usage will have any operation or affect the rights of the parties under any contract in connection with the supply of goods. In the event of any inconsistency between these conditions and the agreement, the terms of the agreement shall prevail to the extent of the inconsistency.
- 11.b) These Conditions and any contract entered into between Winthrop and the Purchaser shall be governed by and construed in accordance with the laws of the State of Western Australia and the Purchaser and Winthrop hereby submit to the exclusive jurisdiction of the Courts of that State and or any Courts which may hear appeals therefrom.

- 11.c) The failure of Winthrop to enforce or exercise at any time or for any period of time any term of any contract incorporating these Conditions shall not constitute or be construed as a waiver of such term and shall in no way affect Winthrop's right thereafter to enforce or exercise the same.
- 11.d) These Conditions are subject to variation by Winthrop without notice to the Purchaser.
- 11.e) The Purchaser shall not assign any benefit under those Conditions without the prior consent of Winthrop.
- 11.f) The provisions of these Conditions shall be construed and have effect as if they were a number of separate and several provisions, each severable from the others if found to be invalid or unenforceable for any reason, and such invalidity or unenforceability of any of the remaining provisions.
- 11.g) These Conditions are to be read subject to any special or other conditions agreed to in writing by Winthrop and the Purchaser.

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| Dated this | day of | , 20 |
| Signed on behalf of Winthrop Development Consultants: | | |
| Signed: |  | |
| Name: | David Musgrave | |
| Position: | Managing Director | |
| Signed on behalf of the Purchaser: | | |
| Signed: | | |
| Name: | | |
| Position: | | |

** End of document - WinthropDC Terms & Conditions.docx - DM - 28 September 2020 **