

TERMS AND CONDITIONS

APPLYING TO THE SALE OF GOODS

INTERPRETATION

The following definitions shall apply:

- 1.1 "Seller" means Trio Group Australia Pty Ltd (ABN 95 133 087 198) of 494 Churchill Rd, Kilburn 5084, South Australia, which is the seller of the goods/services.
- 1.2 "Buyer" means the purchaser of the goods/services specified.
- 1.3 "Goods" means the products and, if any, services specified.
- 1.4 "Quotation" means the Seller's quotation.
- 1.5 "Invoice" means the Seller's invoice describing product descriptions, quantities supplied and prices as a result of supplier's purchase instructions.
- 1.6 "Trio" means Trio Group Australia Pty Ltd.
- 1.7 "Products" mean all products (including accessories and spare parts), services and equipment supplied or to be supplied by Trio to the Buyer.
- 1.8 "Contract" means an agreement between the Seller and the Buyer for the sales of goods and or services.

TERMS OF SALE

- 2.1 The goods and all other products sold by the Seller are sold on these terms and conditions.

DELIVERY

- 3.1 Whilst the Seller endeavours to effect deliveries or execute orders by the requested or estimated date, the Seller shall not be liable for any loss or damage whatsoever (including, without limitation, special or consequential loss or damage) caused directly or indirectly by any early delivery or delay or failure to deliver. The Seller reserves the right to make delivery in instalments and to invoice each instalment as a separate order.
- 3.2 The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is a written agreement to the effect that the Buyer will not take delivery by instalments.
- 3.3 If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
 - (a.) it is not a repudiation of these terms and conditions; and
 - (b.) the defective instalment is a severable breach that gives rise only to a claim for compensation in relation to these defective Goods (and not to other instalments or Goods).

TITLE AND RISK

- 4.1 Title in and to all Products delivered to the Buyer will remain with the Seller and will not pass to the Buyer until such time as the Products have been paid for in full.
- 4.2 Risk in and to Products will pass to the Seller upon delivery of the Products to the Seller.
- 4.3 Until the Seller has received payment in full for Products: (a) the Buyer holds the Products as bailee for the Seller; (b) the Buyer shall safely and securely store the Products separately from the other goods on the premises of the Buyer in such a manner as to show clearly that the Products are the property of the Seller; (c) the Seller has a security interest in the Products; (d) the Buyer shall, upon request from the Seller, deliver up such Products to the Seller (or as directed by the Seller); (e) representatives of the Seller 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 Seller is hereby appointed as the Buyer's agent. The Buyer agrees to indemnify the Seller and keep them indemnified against all costs incurred by the Seller in removing the Products and against losses, and liabilities incurred by, and any claims against, the Seller in removing the Products and arising from such removal; and (f) if the Products in part or in full are mixed with the Products that have been paid for, the Buyer 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 Buyer. If the Buyer is unable to prove, to the satisfaction of the Seller that the goods identified as the Seller's 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 Seller. The Seller 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.

SPECIFICATIONS

- 5.1 The Seller's policy is one of continuous improvement, and the Seller therefore reserves the right to improve, change, alter or discontinue specifications without prior notice. All illustrations and samples are intended as approximate representations only and are not binding in detail with regard to finishes, colour, shades, materials, design and other specifications. To the maximum extent permitted by law,

the Seller accepts no liability whatsoever for any loss or damage (including, without limitation, consequential loss or damage), directly or indirectly, arising out of or in connection with same.

- 5.2 The contents of (including descriptions and illustrations) catalogues, price lists and other advertising matter do not form part of this contract of sale of the Goods or of the description applied to the Goods.
- 5.3 Where specifications, drawings or other particulars are supplied by the Buyer, the Seller's price is made on estimates of quantities required. If there are any adjustments in quantities above or below the quantities estimated by the Seller and set out in a Quotation for the Goods, then any such increase or decreases are to be adjusted on a unit rate basis according to unit prices set out in the Seller's Quotation or as otherwise agreed by Seller in writing.

SELLER'S QUOTATIONS

- 6.1 Unless previously withdrawn, the Seller's Quotations are open for acceptance within the period stated in them or, when no period is so stated, within 14 days of its date. The Seller reserves the right to refuse any order based on this Quotation within 14 days after the receipt of the order.
- 6.2 The issue of a quotation and other publication of prices by the Seller do not constitute offers to supply, and are subject to changes in the costs of labour, materials, production, transport and duty, exchange rate fluctuations and other increases in the cost to the Seller of supplying the goods or services and any errors by the Seller in listing, determining or calculating the prices.
- 6.3 Quotations and orders placed by the Buyer on such quotations are based on the information and details provided by the Buyer to the Seller. Where exact specifications of the scope, nature or extent of the work are not available to the Seller at the time of providing a quotation, such quotations are estimates only.
- 6.4 In the event the cost to the Seller of supplying goods or services or the scope, nature or extent of the work required to be undertaken by the Seller to supply the goods or provide the services change or the Buyer requests any variations to be made (which may be consented to by the Seller in writing), the Buyer will be responsible for and pay for all extra costs and charges associated with such changes.

PERFORMANCE

- 7.1 Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages or failure of the Goods to attain such figures unless specifically guaranteed in writing in the Seller's Quotation.

SHORTAGE AND DEFICIENCIES

- 8.1 The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer. To the extent permitted by law, no claims for short delivery can be recognised after this time. An invoice number and date must be quoted on all claims.
- 8.2 Back orders will be held at the Seller's discretion unless advised otherwise and if under the minimum invoice value (\$200 plus GST), they will be forwarded with the next order placed.

EXCUSABLE DELAYS

- 9.1 The Seller shall not be liable for any failure to comply with a sale 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 Seller's suppliers; or (h) any other cause or event whatsoever which is beyond the control and without the fault or negligence of the Seller.

LOSS OR DAMAGE IN TRANSIT

- 10.1 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to goods after the Goods have been received by the Buyer, including any loss or damage caused by any event of any kind by any person (whether or not the Seller is otherwise legally responsible for the person who caused or contributed to that loss or damage).



INSTALLATION AND USE

- 11.1 Installation and fitting of goods by the Seller is not included unless otherwise specifically indicated by the Seller in writing. To the maximum extent permitted by law, the Seller takes no responsibility for the installation and fitting of goods other than goods, which are installed or fitted directly by the Seller.
- 11.2 To the maximum extent permitted by law, the Seller shall not be responsible or liable for any liability, whether in contract, tort or otherwise, for any injury, damage or loss whatsoever arising in any way in connection with the improper installation or fitting of goods or the use of such improperly installed or fitted goods (by the Buyer or any third party), including (without limitation) direct, indirect, special or consequential loss or damage arising from claims by the Buyer, third parties or otherwise, and the Buyer shall indemnify and keep the Seller fully indemnified from and against any and all suits, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Seller arising out of or in connection in any way as a result same.

SPECIAL ORDERS

- 12.1 Orders for specially ordered, made or customised goods or services may not be cancelled, deferred or varied by the Buyer without the prior written consent of the Seller.
- 12.2 The Buyer acknowledges and agrees that the Seller may require full or part payment with order, prior to production or delivery.
- 12.3 In the event the scope, nature or extent of the work required to be undertaken by the Seller to produce the goods or provide the services change (including, without limitation, as a result of the Buyer not providing required specifications or other information in the prescribed form or within the required time frame, requesting special freight, provision of mock-up of goods, ordering special material, etc.) the Buyer will be responsible for and pay for all extra costs and charges associated with the changes.
- 12.4 The Seller shall be entitled to increase the price for specially ordered, made or customised goods and services if there is an increase in the cost to the Seller of supplying the goods or services due to changes in the costs of labour, materials, production, transport, duty, exchange rate fluctuations or other increases in the cost to the Seller of supplying the goods or services.
- 12.5 In the event the Buyer provides the Seller with specifications for the supply of goods or services by the Seller for the Buyer, the Buyer warrants to the Seller that the specifications and any goods or services supplied by the Seller based on the said specifications will comply with all applicable laws relating to the supply of such goods and services and not infringe the trade mark, copyright, patent, design, other intellectual property rights or other rights of any third party, and the Buyer shall indemnify and keep the Seller fully indemnified from and against any and all suits, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Seller arising out of or in connection in any way with the use by the Seller of the said specifications or the manufacture and supply of goods or services based on the said specifications.

PAYMENT

- 13.1 Except to the extent otherwise agreed in writing, the purchase price in relation to Goods is payable on or before the 30th day of the month following the invoicing of the goods unless other terms of payment are expressly stated in these conditions in writing.
- 13.2 Should the Buyer default in the payment of any monies due to the Seller then all monies shall immediately become due and payable, shall be paid by the Buyer within seven (7) days of demand and shall attract interest at the rate of 2% flat per month to be calculated on all overdue amounts from the date of due payment until the date of actual payment. If it becomes necessary to institute legal proceedings to recover underpaid debts to this company, to the extent permitted by law, all discounts showing on unpaid invoices become null and void and the total list prices showing become payable.
- 13.3 Any expenses costs or disbursements incurred by the Seller in recovering any outstanding monies, including all reasonable debt collection fees and solicitors costs and legal disbursements shall be paid by the Buyer.
- 13.4 The Seller shall be entitled without notice to terminate any credit arrangement with the Buyer in the event of the Buyer defaulting in any of the terms and conditions contained in these terms and conditions or for any other reason which the Seller need not make known to the Buyer.
- 13.5 The Seller shall be entitled at any time to request such security or additional security as it shall in its discretion think fit and shall be entitled to withhold supply of the Goods or any credit arrangement until such security or additional security is provided.

- 13.6 The Seller may refuse to accept orders under this Agreement (or charge a surcharge for future orders) at the Seller's sole discretion, including if the Buyer's account is overdue, if the Buyer requests cash on delivery or cash sales, if the Buyer orders with a pre-tax value of under \$200.00.

TRUSTS AND COMPANIES

- 14.1 If the Buyer is a trustee of a trust, the Buyer agrees that these Conditions apply to, and all orders for goods and services placed by the Buyer with the Seller are placed by, the Buyer in its personal capacity and as trustee of the trust.
- 14.2 If the Buyer is a company or trustee of a trust it shall inform the Seller of any changes to the ownership of the company or of the trust and also of any changes to the ownership of the business conducted by the Buyer by forwarding a notice in writing of any such changes to the Seller immediately upon becoming aware of same. Until such notice is received by the Seller, the Buyer shall indemnify and keep the Seller fully indemnified from and against any and all suits, actions, claims, demands, losses, liabilities, damages, costs and expenses which may be made or brought against or suffered or incurred by the Seller arising out of or in connection in any way with the Seller accepting orders from any person or entity which may have acquired all or any part of the Buyer or its business and uses the Buyer's credit facility approved by the Seller in placing orders with the Seller.

BREACH AND INSOLVENCY

- 15.1 If: a) the Buyer 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 Buyer (other than a voluntary liquidation for the purpose of amalgamation or reconstruction); or c) the Buyer 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 Buyer or any part of its property, or a third party attempts to levy execution against the Buyer's property or the goods; e) the Buyer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business; f) the Buyer 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 Buyer being a natural person, the Buyer commits an act of bankruptcy; or h) the Seller is of the view, acting reasonably, that any of the above will or are likely to occur.
- 15.2 The Seller may (without limiting or otherwise prejudicing any other rights it may have) at any time terminate any and all Contracts between the Seller and the Buyer and refuse to supply any and all Products to the Buyer. The Buyer agrees to indemnify the Seller (and keep the Seller 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 Seller in connection with any breach of a Contract by the Buyer.

CUSTOMER WARRANTIES

- 16.1 The Buyer: a) warrants to the Seller that it has read and understood these Terms and Conditions; b) warrants to the Seller that all information supplied by or behalf of it to Trio 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 Trio in connection with the supply of Products that has not been clearly and expressly stated in the Contract; d) acknowledges that Trio 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 Trio to the Buyer, and the use of Products by the Buyer, will not make Trio liable to any prosecution, claim or other action under any applicable law.
- 16.2 The Buyer indemnifies Trio and holds Trio 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 Trio in connection with any breach of the warranties of the Buyer set out in these Terms and Conditions.
- 16.3 Without limiting the liability of the Buyer under the indemnity above, Trio may at its sole discretion by itself or in conjunction with the Buyer 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 Buyer under these Terms and Conditions and the Buyer agrees that the indemnity extends to any cost or expense incurred by Trio in conducting that defence or in settling or compounding the action, suit, proceeding, claim or demand.



- 16.4 Trio reserves the right to refuse to do or to omit to do anything, or to refuse to comply with any request or direction of the Buyer, which in the reasonable opinion of Trio would constitute or result in a breach of any warranty given by the Buyer under these Terms and Conditions or a breach by the Buyer of a Contract.

INTELLECTUAL PROPERTY

- 17.1 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 Buyer by Trio or otherwise subsisting in the Products and all rights therein (collectively Intellectual Property) will remain the property of Trio and will be kept confidential by the Buyer at all times. The Buyer shall have no claim to, nor ownership interest in, any Intellectual Property. The Buyer acknowledges that no license or rights of any sort are granted to the Buyer in respect of any Intellectual Property, other than the limited right to use Products purchased from Trio for the purpose they are supplied by Trio.
- 17.2 The Buyer warrants that any Products manufactured, constructed or supplied by Trio which are based in whole or in part upon designs, drawings, specifications or information supplied to Trio by or on behalf of the Buyer shall not infringe any letters, patents or registered designs or any other industrial or intellectual property rights of any person.

CONFIDENTIAL INFORMATION

- 18.1 All information furnished or made available by the Seller to the Buyer 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 Buyer. The Buyer agrees not to use such information or disclose such information to others without the Seller'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 Buyer of any obligation herein; b) the Buyer can show by written records was in the Buyer's possession prior to disclosure by the Seller; or c) is legally made available to the Buyer by or through a third party having no direct or indirect confidentiality obligation to the Seller with respect to such information.

LIMITATION OF LIABILITY

- 19.1 Except as expressly provided to the contrary in writing in a Contract: (a) Trio 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.
- 19.2 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 Trio for any breach of such a term, condition or warranty will be limited, if permitted by the statute, at the option of Trio, 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.
- 19.3 Trio will not be responsible for any failure to supply Products on the date agreed between the parties and the Buyer is not entitled to cancel any order as a result of that failure.
- 19.4 To the extent permitted by law, and except as otherwise expressly agreed in writing as part of a Contract, Trio 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 Trio's negligence or breach of a Contract.

PRICES

- 20.1 Unless otherwise stated all prices quoted by the Seller are net, exclusive of Goods and Services Tax (GST) and any other taxes related to the Goods.

- 20.2 Prices quoted are those ruling at the date of issue of quotation or invoice and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost ruling on the date.
- 20.3 If the Seller makes any alterations to the price of the Goods or to any of their inputs either before acceptance of or during the currency of these terms and conditions, these alterations are for the Buyer's account.
- 20.4 The Buyer will bear all liability for GST and other taxes related to the Goods and shall not require the Seller to pay to the Buyer any amount on account of GST and other taxes related to the Goods. In addition the Seller will be entitled to recover from the Buyer any GST and other taxes related to the Goods paid or payable by it in respect to the sale of the Goods.
- 20.5 Any "Suggested Retail" prices (including GST) act as a guide only. There is no obligation to use this price. The Buyer is free to quote (and use) this price or to set a retail price they wish.

SECURITY INTEREST

- 21.1 Trio and the Buyer agree for the purposes of Clauses 4.1, 4.3 and this Clause 21 Trio has a Personal Property Security Interest as defined pursuant to the Personal Property Securities Act 2009 (Cth) (PPSA), in the Product until Trio receive payment in full, and further the following provisions will apply to this agreement. Unless otherwise stated, a term contained in these Terms and Conditions that is defined in the PPSA (but not otherwise defined in these Terms and Conditions) has the meaning given to it in the PPSA.
- 21.2 In consideration for Trio supplying Products to the Buyer under these Terms and Conditions, the Buyer: 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 Trio 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 Buyer by Trio; 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 Trio under these Terms and Conditions or the PPSA.
- 21.3 Trio 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 Buyer.
- 21.4 The Buyer 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.
- 21.5 The Buyer irrevocably grants Trio the right to enter any premises or property (without notice) and without being in any way liable to the Buyer or any other person if Trio has cause to exercise any of its rights under the PPSA (and the Buyer will indemnify Trio against any such liability).
- 21.6 It is agreed that the Buyer 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).

STORAGE

- 22.1 The Seller reserves the right to make a reasonable charge for storage if the Buyer does not provide delivery instructions within 14 days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.



GOODS RETURN POLICY

- 23.1 The Seller is not under any duty to accept goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- 23.2 If the Seller agrees to accept returned Goods the Buyer must return the Goods to the Seller at the Seller's place of distribution. Any return of Goods shall be at the Buyer's entire risk as to loss or damage. Where the Seller agrees to accept Goods for return, the Seller may charge a pre-negotiated, or other reasonable restocking charge (usually 20% of the value of the Invoice).
- 23.3 Acceptance of Goods delivered by the Seller shall be deemed for all purposes to have taken place at the expiration of 7 days from the date of each delivery.
- 23.4 To the extent permitted by law, except to the extent agreed by the seller, no goods will be accepted without a return authority number from the seller (invoice number and date are required on all claims). If the invoice number cannot be quoted, goods will be credited at Trio's current lowest catalogue price, less 20%. To the extent permitted by law, Goods cannot be accepted back by the Seller unless the Seller has received prior notification, either by advising our office or our representative, and the returned Goods must be in their original packaging, not shop-soiled, and be current catalogue items. At that time the Seller will advise the mode of transport acceptable to the Seller. Except to the extent otherwise agreed to by the Seller, freight will not be paid by the Seller; (a) Goods returned by the Buyer by means other than those nominated by the Seller, (b) Goods returned in an unsaleable condition - cannot be accepted back for credit and will be returned "freight on" to the Buyer.

GOODS SOLD

- 24.1 The parties agree that all Goods that are required to be supplied by the Seller to the Buyer under this Agreement are as described in the Seller's Quotation, catalogue or on the Invoice (or as otherwise agreed in writing between the Seller and the Buyer). The parties agree that this description of the Goods prevails over any other requirements of the Buyer (including any descriptions of the Goods by the Buyer and any specification of, or enquiries by, the Buyer).

CANCELLATION

- 25.1 No order may be cancelled except with the Seller's consent in writing and on terms, which will indemnify the Seller against all losses.

GOVERNING LAW

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

PLACE OF CONTRACT

- 27.1 The parties agree that this Agreement is governed by the laws of South Australia, and agree to submit all disputes arising between them to the courts of South Australia.

