

ON-LINE TRADING TERMS AND CONDITIONS

SILVAN AUSTRALIA PTY LTD ABN 48 099 851 144

1. INTERPRETATION

1.1 In these terms, unless the context otherwise requires:

Confidential Information means all information passing between the parties, including but not limited to any business or financial information and any information marked as 'commercial in confidence', 'confidential' or 'secret' which is not in the public domain.

Customer includes each person constituting the Customer named herein, and each of that person's successors or personal representatives, or any person to whom Silvan supplies Goods pursuant to a Silvan Log On ID.

Goods means all Goods supplied or to be supplied by Silvan to the Customer.

GST means a goods and services tax as defined in *A New Tax System (Goods and Services) Act 1999* as amended varied or replaced, or any subsequent or replacement tax.

Person includes an individual, a partnership, a body corporate, an association and any governmental or statutory body.

Silvan means Silvan Australia Pty Ltd ABN 48 099 851 144 and its successors and assigns.

Trading Site means the internet site accessed from the internet website www.silvan.com.au or any other website notified by Silvan to the Customer.

1.2 In these terms, singular includes the plural and vice versa and headings are used for ease of reference only and do not affect the interpretation of this document.

1.3 Where the Customer consists of two or more persons, the obligations on the part of the Customer bind each of those persons separately, all of them and any two or more of them together.

2. GENERAL

2.1 These terms and conditions apply to all dealings between Silvan and the Customer including all enquiries or requests for information that the Customer makes of the Trading Site.

2.2 Silvan has the power to cancel, amend or require the cancellation of any transaction entered into on the Trading Site.

2.3 These terms form part of all contracts (express or implied) for the supply of Goods to the Customer by Silvan and supersede all terms previously issued by Silvan.

2.4 No contract for the supply of Goods will exist between Silvan and the Customer except on these terms unless Silvan expressly agrees in writing to their exclusion or modification. Any order placed by the Customer is deemed to incorporate these terms despite any inconsistencies between the order and these terms and whether or not these terms are expressly incorporated in the order. The provision of these terms to the Customer does not oblige Silvan to continue to deal with the Customer.

- 2.5 If Silvan and the Customer enter into a further agreement in relation to "Trading Terms" then such Trading Terms shall apply in conjunction with these terms. In the case of any inconsistency, the Trading Terms shall prevail. Silvan, in its sole discretion, shall determine whether Trading Terms shall apply to the Customer.
- 2.6 Silvan may change these terms and conditions at any time by either written notice to the Customer or by publishing the amended terms and conditions on the Trading Site.

3. SECURITY IDENTIFICATION

- 3.1 The Customer acknowledges that any representatives of the Customer who wishes to enter the Trading Site must have a Silvan Identification Number (SIN) and a Silvan Identification Password (SIP) (collectively, Silvan Log-On ID) issued by Silvan.
- 3.2 To access the Trading Site each representative of the Customer must have a Silvan Log-On ID.
- 3.3 The Customer is solely responsible for the confidentiality and use of each Silvan Log-On ID relating to the Customer and its employees and representatives. The Customer must notify Silvan immediately if it becomes aware of theft or unauthorised use of any Silvan Log-On ID related to the Customer.
- 3.4 The Customer agrees that Silvan is entitled to assume that any instruction, request, order or agreement received:
- 3.4.1 via the Trading Site using a Silvan Log-On ID;
- 3.4.2 by telephone which quotes the Silvan Log-On ID,
- originates from the Customer and that such instruction, request, order or agreement is valid and authorised by the Customer.

4. CREDIT FACILITY TERMS

- 4.1 The Customer warrants that all information provided by it to Silvan or by virtue of this document is true and complete in every particular and that it will notify Silvan immediately of any change in any of that information.
- 4.2 The Customer agrees to Silvan obtaining an opinion about its commercial activity or commercial credit worthiness from any bank, business or other person.
- 4.3 The credit facility (**Facility**) commences on the date on which Silvan gives notice to the Customer that the Facility has been approved.
- 4.4 Silvan may cancel the Facility at any time for any reason whatever and will give notice of cancellation to the Customer.

5. PRIVACY

- 5.1 In respect of any personal information collected by Silvan, Silvan shall comply with the terms of the *Privacy Act 1988 (Act)* and the National Privacy Principles contained therein and its Privacy Policy as published from time to time on the Trading Site or any Silvan website. The Customer shall not do or omit to do anything which will cause Silvan to breach the Act.

- 5.2 The Customer (if an individual) authorises Silvan:
- 5.2.1 to obtain a credit report containing personal credit information about it in relation to personal or commercial credit or both or a report and other information in relation to its commercial credit activities from a credit reporting agency or a report containing information about its commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person in relation to commercial credit;
 - 5.2.2 to give personal information about it of the type referred to in section 18E(1) of the Act to a credit reporting agency; and
 - 5.2.3 to give to and obtain from credit providers names in its application for credit or in a credit report issued by a credit reporting agency such information about its credit worthiness, credit history, credit standing or credit capacity as may be given or received by or from credit providers under the Act.

6. CONFIDENTIALITY

Silvan and the Customer agree to maintain in confidence any Confidential Information shared in the course of conducting business, including the terms set out in this agreement and any other trading terms between the parties, and agree not to disclose any such Confidential Information to any other party other than where required by law or where necessary to fulfil obligations under the agreement.

7. MINIMUM ORDER

Silvan shall not be obliged to fill an order placed by the Customer if the nett dollar value of any individual consignment within that order (exclusive of GST) is less than \$100.00. Silvan reserves the right to change this limit by providing 30 days written notice to the Customer.

8. PAYMENT

- 8.1 The Customer must pay to Silvan (without any deduction or set-off) the amount stated in any invoice issued by Silvan to the Customer within thirty (30) days of the last day of the calendar month in which that invoice was issued.
- 8.2 Any payment made by cheque is deemed received by Silvan only when Silvan receives payment in cleared funds.
- 8.3 Silvan reserves the right to charge interest on any overdue amount. Interest will be computed at the rate of 2% above the current rate fixed by section 2 of the *Penalty Interest Rates Act 1983* (as amended), from the date Silvan gives written notice to the Customer detailing the overdue amount until payment in full of that overdue amount together with accrued interest. All accrued interest is immediately payable and any interest due but unpaid may at Silvan's option be capitalised at the end of each month and will itself bear interest in accordance with this clause as an overdue amount. The parties acknowledge that interest charged under this clause is a genuine pre-estimate of the loss and damage sustained by Silvan as a result of the failure by the Customer to pay any amounts under this document when due.
- 8.4 The Customer indemnifies and must keep indemnified Silvan for all costs and losses incurred by Silvan as a direct or indirect result of any default by the Customer under this document including, but not limited to, debt collection agency fees and all legal costs.

- 8.5 Silvan may cease dealing with any customer who does not comply with Silvan's payment terms which otherwise breaches these Terms and Conditions or the volume of purchases by which does not meet Silvan's minimum purchase level requirements.
- 8.6 All claims including, but not limited to claims in relation to markdown, pricing, co-operative advertising, promotional allowance, volume rebates, incentives, delivery, or warehouse allowance must be raised with Silvan and details provided within 6 months of the end of the relevant financial year. Claims will not be considered after this time.

9. DELIVERY

- 9.1 The price of Goods ordered are ex-warehouse from Silvan's nearest branch office unless Silvan has expressly agreed to supply Goods free into store.
- 9.2 Delivery dates whether provided by Silvan or requested by the Customer are approximate only and no liability is accepted by Silvan for delay from any cause whatsoever. Silvan may extend the time for delivery for any reason whatever and if Silvan is unable to deliver within a reasonable time the agreement to supply Goods shall voidable at Silvan's option and the Customer will not have any right to claim any damage, cost, loss or expense in respect thereof.
- 9.3 Silvan may sub-contract the supply or delivery, or both, of the Goods and, to the maximum extent permitted by law, Silvan will not be liable for any act or omission of any third party engaged in the supply and/or delivery of the Goods.
- 9.4 Any claim for non-delivery, shortage of supply or damage in respect of Goods must be made in writing to Silvan within seven (7) days of delivery of Goods except claims for non-delivery which must be made in writing to Silvan within 14 days from the date of invoice. Any claim must refer to the official invoice number and date and fully specify the reason for and circumstances of the claim.
- 9.5 A credit will only be given by Silvan in respect of Goods if they are returned undamaged and free into store at the Silvan warehouse within 14 days of delivery. Silvan may at its discretion charge a restocking levy in respect of returned Goods.

10. RISK

Risk in the Goods will pass to the Customer on despatch of the Goods from Silvan's warehouse.

11. TITLE

- 11.1 Title in Goods does not pass to the Customer until the Customer has paid in full to Silvan all amounts owed or remaining unpaid by it (including GST) in respect of the Goods. Until payment is made Silvan may at any time request the return of any Goods which have not been paid for and which are in the possession or control of the Customer and suspend delivery of any Goods. At all times until payment is made the Customer holds the Goods as Silvan's agent and bailee.
- 11.2 Until Silvan receives payment in full or the Goods are sold, whichever occurs first, the Customer must:
- 11.2.1 keep and store the Goods separately so as to enable them to be identifiable as Silvan's property and must not remove any marks identifying the Goods as such; and

- 11.2.2 keep the Goods in good merchantable condition and maintain full insurance in respect of them on Silvan's behalf in an amount not less than the price payable to Silvan for the Goods.
- 11.3 Until the Customer receives notice from Silvan under clause 12, the Customer may sell the Goods in the ordinary course of its business on the following terms:
 - 11.3.1 the Customer will be the principal in the sale and has no right or authority and must not hold itself out as having any right or authority to commit Silvan to any contractual relationship with the purchaser, but, as between Silvan and the Customer, the Customer sells as Silvan's fiduciary agent and bailee; and
 - 11.3.2 the Customer must pay the proceeds of any sale or of any insurance to Silvan immediately after receipt up to an amount equal to the price payable by the Customer to Silvan for those Goods and any accrued interest.

12. TERMINATION AND REPOSSESSION

Silvan may terminate any contract for the sale of Goods by written notice to the Customer, and may repossess the Goods to which Silvan still has title. For this purpose the Customer grants to Silvan and its agents an irrevocable licence to enter upon any of the Customer's premises to repossess those Goods; if:

- 12.1 any payment remains outstanding for more than seven (7) days after the due date (whether demanded or not);
- 12.2 the Customer breaches any of the terms of this document;
- 12.3 any Facility is cancelled;
- 12.4 Silvan considers that the Customer is unable to pay its debts or is bankrupt or is subject to any form of insolvency administration; or
- 12.5 distress or execution is levied against any of the Customer's assets or a judgment against the Customer remains unsatisfied for more than seven (7) days.

13. FITNESS FOR PURPOSE

Subject to clause 19, the Customer acknowledges that neither Silvan nor any person purporting to act on Silvan's behalf has made any representation or given any promise or undertaking as to the fitness for purpose or merchantable quality of the Goods for any particular purpose or any other matter. Any description of the Goods is for identification only and does not constitute a contract for the supply of the Goods by description.

14. LIABILITY

- 14.1 Unless the Goods supplied by Silvan are of a kind ordinarily acquired by the Customer for its personal, domestic or household use or consumption, the liability of Silvan for breach of any non-excludable condition or warranty is limited to any one or more of the following:
 - 14.1.1 replacement of the Goods or the supply of equivalent Goods;
 - 14.1.2 repair of the Goods;
 - 14.1.3 the lower of the payment of the cost:

14.1.3.1 replacing the Goods or of acquiring equivalent Goods; or

14.1.3.2 having the Goods repaired.

14.2 Silvan is not liable to the Customer for any personal injury or any indirect or consequential loss including, without limitation, loss of profits, opportunity cost or loss of good will incurred in connection with these terms and conditions, nor third party claims including any claims by persons who subsequently use the Goods against the Customer for losses, damages or expenses regardless of the form or cause of action, however the claim or liability arises in contract, tort (including, without limitation, negligence) or by misrepresentation or warranty or other statutory, legal or equitable grounds.

14.3 Subject to clause 19, Silvan's maximum aggregate liability arising under these terms shall be limited for all claims, causes of action and occurrences to the amount paid for the Goods giving rise to the liability.

15. INTELLECTUAL PROPERTY

15.1 The purchase by the Customer of any Goods does not confer on the Customer any licence or right under any copyright, patent, design or trade mark or any other intellectual property right in respect of the Goods or otherwise which is the property of Silvan or any company related to or associated with Silvan.

16. ASSIGNMENT AND WAIVER

16.1 The Customer may not assign any of its rights under these terms.

16.2 Failure by Silvan to insist on strict performance by the Customer of any of these terms will not constitute a waiver of either any of its rights under this document or of these terms on any subsequent occasion.

17. GST

17.1 Prices are GST exclusive amounts and all amounts expressed or described in this Agreement are GST exclusive amounts.

17.2 If any GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time, (**GST**)) is payable by any party (**Supplier**) in respect of the supply of any goods, services, real property or any other things to another party (**Recipient**), then the amount expressed or described in this Agreement (**Original Amount**) is to be increased so that the Supplier receives an amount (**Increased Amount**) which, after subtracting the GST liability of the Supplier on that Increased Amount, results in the Supplier retaining the Original Amount after payment of that GST liability.

17.3 The Supplier will do all things reasonably available to it to assist the Recipient to claim on a timely basis any input tax credits (if any) the Recipient may be entitled to claim for any acquisition of goods, services, real property or any other thing from the Supplier. This includes the Supplier maintaining its registered status for GST purposes, and issuing tax invoices for suppliers made under this Agreement on a timely basis as reasonably requested by the Recipient.

18. SEVERANCE

Each of these terms and conditions is deemed to be severable and independent and if a part of or any provision is judged invalid or unenforceable that part or that provision is deemed to be deleted and the validity or enforceability of the remaining provisions is unaffected.

19. STATUTORY RIGHTS OF THE CUSTOMER

These terms do not exclude, limit, restrict or modify the rights, entitlements and remedies conferred or the liabilities imposed on the Customer by any condition or warranty implied by any Commonwealth, State or Territory legislation rendering void or prohibiting that exclusion, limitation, restriction or modification. Except in so far as those rights, entitlements, remedies and liabilities cannot be excluded or limited, all warranties and conditions in relation to the Goods whether express or implied by statute, common law, trade custom or usage or otherwise, are expressly excluded.

20. LAW AND JURISDICTION

All on-line trading and transactions conducted between Silvan and the Customer on the Trading Site are governed by the laws of the State of Victoria, Australia and the Customer submits to the non-exclusive jurisdiction of the courts of that State.