

Terms and Conditions of Sale

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"Agreement" means the agreement for supply of goods and/or services between BRIGHTPOINT AUSTRALIA PTY LTD ABN 32 075 244 870 ("Supplier") and Customer, which shall include that person's servants, agents, and permitted assigns.

INTERPRETATION:

In these terms and conditions of sale,

- (a) the singular shall include the plural and vice versa; and
- (b) words importing any gender shall include the other gender;

The parties undertake and agree is follows:

- 1) Upon approval of this application, Supplier, in its sole discretion, will assign Customer a maximum credit line and shall have the right to increase, decrease, or terminate Customer's credit privileges under this Agreement at any time without prior notice to Customer, except as otherwise provided by law. All orders are subject to acceptance and approval of credit by Supplier. Supplier may at any time or from time to time without assigning any reason therefore refuse to extend any further credit. Supplier may, from time to time and in its sole discretion, disclose credit information relative to Customer to third parties for informational purposes only, and as permitted by the Privacy Act 1988 (Cth).
- 2) All sales of goods are made and services are provided to Customer by Supplier only upon the terms contained in Supplier's terms and conditions of sale, until altered conditions are notified. All purchase orders placed by or on behalf of Customer form a binding contract and, unless otherwise agreed in writing, are irrevocable and shall incorporate the terms and conditions of this Agreement. Any other terms and conditions (whether contained in the purchase order or otherwise) are hereby expressly excluded.
- 3) The Customer will pay for all goods sold and delivered or services provided by Supplier within 30 days of the Date of Invoice, or as may be notified by Supplier from time to time. Should payment not be received within this period Supplier reserves the right to institute collection procedures and cease delivery of goods and services. Customer shall pay Supplier a late payment charge equal to 2% above the above the cash rate quoted by the Reserve Bank of Australia, or equivalent rate from time to time, to be calculated on a daily basis on any outstanding payments from the date on which the payment was due until paid.
- 4) Where any claim or dispute arises, the amount claimed or disputed may be deducted, but the balance of the account must be paid in accordance with clause 3 above.
- 5) A certificate signed by the manager, accountant, secretary, credit manager or credit officer for the time being of Supplier in respect of any sale or delivery or price of any goods or the provision or price of any services by Supplier or the amount due owing or payable from time to time to Supplier in respect of the sale of goods, the provision of services or on any account whatsoever as at the date or dates set out in such certificate shall in all courts and at all times be prima facie evidence of the facts therein stated.
- 6) The Customer shall indemnify Supplier in respect of, and must pay, any taxes or stamp duties which are or may become payable in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of, or otherwise in respect of, any guarantee, charge, mortgage or other security granted by the Customer or a third party, or by reason of or subsequent to any default in making payment in accordance with the terms of payment applicable from time to time. If GST is payable as a consequence of any supply made (or deemed to be made) by one party to the other party in connection with this Agreement, the party receiving the supply must pay to the party making the supply an amount equal to the GST payable in respect of the supply ("GST Amount"), in addition to the amounts otherwise payable. Notwithstanding any other provision of this Agreement, if either party is required to reimburse or indemnify the other party for any cost, expenses or other amounts, the amount to be reimbursed or indemnified must be reduced by any part which is recoverable as an input tax credit by the party which incurred it (or representative member of that party's GST group). Each party must ensure that each invoice it presents to the other party under this Agreement in respect of any GST Amount is a valid tax invoice. Terms used in this clause 6 have the same meaning as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

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- 7) The parties agree that on Supplier providing written notice, Supplier is permitted to issue recipient created tax invoices ("RCTIs") for the supply of services provided by Customer to Supplier, the consideration for which is the reimbursement or credit of any amount (for example by way of reimbursement of agreed co-operative advertising costs). For the purposes of this Agreement, the parties agree that:
 - a) Customer will not issue a tax invoice in respect of these supplies;
 - b) each party acknowledges and warrants that at the time of entering into this Agreement, it is registered for GST; and
 - c) each party must notify the other if, if at any time, it ceases to be registered for GST or it ceases to comply with any requirement of a taxation ruling or determination issued by the Australian Taxation Office or Commissioner of Taxation relating to the issuing of RCTIs.
- 8) The Customer will indemnify Supplier against and agree to reimburse it for any costs and expenses it may reasonably incur in the execution, registration, performance, release, discharge, variation, contemplated, attempted or actual enforcement of, or preservation of its rights, powers and remedies under, any guarantee, charge, mortgage or other security granted by the Customer or a third party, or in recovering or attempting to recover payment from Customer of the amounts which may from time to time be overdue, including but not limited to collection costs, court fees and reasonable legal fees and expenses. Customer shall also defend, indemnify, and hold harmless Supplier, its affiliates and subsidiaries and each of their respective officers, directors, employees and agents from and against any and all claims, demands, proceedings, actions, liabilities, losses, damages, costs or expenses of any kind (including reasonable attorneys' fees and disbursements) incurred or sustained as a result of, or arising out of, or relating to any actions taken by Supplier regarding the goods at the request of, and consistent with, instructions provided by Customer, any breach of this Agreement or acts or omissions of Customer or its employees, affiliates or agents, the manner in which Customer markets and sells the goods, supply by Customer of any goods or services for use in conjunction with or in relation to the goods, or any breach or alleged breach of any applicable laws or regulations relating to the storage, marketing or sale by Customer of the goods.
- 9) Supplier may at any time and from time to time alter its conditions of sale or the terms of payment and such altered conditions or terms shall apply in respect of all transactions taking place after notification of such altered conditions of sale or terms of payment.
- 10) Where there is more than one customer each customer shall be jointly and severally liable hereunder and in this application and all terms here of the singular shall be read and construed as including the plural.
- 11) Ownership of the goods contained in each delivery shall remain with Supplier who reserves the right to dispose of the goods until payment has been received in full. Customer hereby acknowledges that until payment in full for the goods has been received by Supplier, Customer is under an obligation to Supplier to account to Supplier for the proceeds of the sale of the goods sold in the normal course of business.
- 12) Customer agrees forthwith to insure the goods for their full insurable value against loss or damage by fire, theft, accident and other such risk.
- 13) Returns will only be accepted if they comply strictly with Supplier's returns policy and process as notified from time to time. Supplier reserves the right to refuse claims not received in writing within 14 days of the date of dispatch of the goods.
- 14) The Customer acknowledges that, unless agreed in writing, all orders are dispatched FOB from Supplier's Sydney warehouse and Customer will accept all freight charges applicable to the delivery of orders. The Customer may request Supplier to send goods via Supplier's nominated carrier and agrees to pay the freight charged on invoices from Supplier.
- 15) Supplier shall, to the extent permitted, pass through to Customer such warranties as are provided to Supplier for such goods, for goods purchased by Customer pursuant to this Agreement. To the full extent permitted by law and subject always to clause 18, the manufacturer's warranty passed through by Supplier to Customer hereunder, if any, shall be in lieu of any other warranties, conditions, terms, representations and undertakings, express or implied, including without limitation, any implied warranty of merchantability or fitness for a particular purpose.

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- 16) Supplier shall not be responsible for delays in deliveries due to events of force majeure, including, but not limited to, fire, flood, tornado, earthquake, war, riot, insurrection, strike, lockout, slowdown, epidemic, quarantine restriction, delay in transportation, labor shortage or strikes, materials or manufacturing facility shortage, accidents, boycott, embargo or any act or regulation of government or governmental authority and other contingencies beyond Supplier's control resulting in impossibility or delay of performance of Supplier.
- 17) To the fullest extent permitted by law but subject always to clause 18, Supplier shall have no liability for (i) failure to deliver goods or services within a specified time period, (ii) availability and/or delays in delivery of goods or services, (iii) discontinuation of products, product lines, or any part thereof; or (iv) cancellation of any orders. To the fullest extent permitted by law but subject always to clause 18, Supplier shall have no duty to defend, indemnify or hold harmless Customer, its affiliates or their respective customers from and against any claim, demand or cause of action, including any damages, costs or expenses incurred by Customer, its affiliates or their respective customers in connection with, arising from or relating to the actual or alleged product liability or violation or infringement of any patent, trademark, copyright or other intellectual property belonging to a third-party by the goods. To the fullest extent permitted by law but subject always to clause 18, Customer's, its affiliates' and their respective customers' sole and exclusive remedy relating to this Agreement and/or goods and services shall be the remedy, if any, afforded by the manufacturer of such goods to such parties. To the fullest extent permitted by law, but subject always to clause 18, Customer waives any claims, demands, causes of action or recoveries for punitive, exemplary, indirect or consequential damages arising under this Agreement or otherwise with respect to the sale of the goods or services, or, without limitation, for any lost revenues or profits, consequential or incidental damages, injury to persons or property, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based, and even if Supplier has been advised of the possibility of such damages, including any tort or statutory causes of action. To the full extent permitted by law but subject always to clause 18 the only liability Supplier will have with respect to any damaged goods, defective goods, and/or goods erroneously shipped will be the return rights described herein. Even if this Agreement fails of its essential purpose, in no event will Supplier's entire liability (in tort (including negligence), contract, warranty, infringement or otherwise) to Customer exceed the purchase price actually paid by Customer for the goods or services that give rise to the dispute, or any defective portion thereof, whichever is the lesser amount. To the full extent permitted by law, Supplier's liability to Customer in contract, tort, negligence, strict liability in tort, under statute or otherwise will be reduced by the extent, if any, to which Customer contributed to the loss or damage. This provision shall survive this Agreement.
- 18) Certain legislation, including the Trade Practices Act 1974 (Cth), may imply warranties or conditions or impose obligations upon Supplier which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Agreement must be read subject to these statutory provisions. If these statutory provisions apply, to the extent to which Supplier is entitled to do so, Supplier limits its liability in respect of any claim under those provisions to: (a) in the case of goods, at Supplier's option: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and (b) in the case of services, at Supplier's option: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.
- 19) All goods supplied by Supplier may only be sold by Customer within Australia unless otherwise agreed in writing.
- 20) It is a breach of this Agreement by Customer and Supplier may in its discretion and without prejudice to its other rights immediately terminate this Agreement if, following receipt of the Supplier's request, the Customer does not promptly, or in any case, within 14 days of the Supplier's request, deliver to the Supplier the following:
 - a) executed security document(s) (including, without limitation, charge(s) and/or mortgage(s)) granted by the Customer to the Supplier; and/or
 - b) executed guarantee(s) and/or security document(s) (including, without limitation, charge(s) and/or mortgage(s)) granted by a third party or third parties to the Supplier, in each case in such terms and form required by the Supplier to secure or assume responsibility for the payment, repayment or satisfaction of all or any part of money, obligations and liabilities of any kind that are or may in the future become due, owing or payable, whether actually or contingently, by the Customer to or for the account of the Supplier on any account.

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- 21) If any provision or any part of provision of this Agreement shall be invalid or unenforceable, such provision or part shall be severed and the invalidity or unenforceability shall not invalidate or render unenforceable any other portion of this Agreement.

The Law of the State of New South Wales shall govern these terms and conditions.

If making payment by credit card our company policy requires that the following documents accompany your order:

A clear copy of:

- the front and back of the credit card**
- the front and back of photo identification of the credit card holder (ie Driver's Licence or passport)**
- cardholder's latest statement (for address details)**

Credit card payments will not be accepted without this information. Please note, for subsequent orders using the same credit card there is no need to resend this information. This policy was implemented for the protection and security of Brightpoint Australia and our valued customers.