



TERMS AND CONDITIONS

DEFINITIONS

“Seller’s Order” means the seller’s approval and confirmation of order or order.

“Services” means any services performed by the Seller relating to Goods.

“Buyer” means the person, firm, company or other entity purchasing Goods or Services from the Seller pursuant to the Contract.

“Seller” means Absolute Essential Limited.

“Contract” means these conditions of sale themselves together with any and every Invoice or other document evidencing or describing, whether by item or kind or otherwise, any Goods or Services. “Goods” means: all other goods or other property which in each case, are supplied by the Seller to the Buyer and, for the avoidance of doubt, in each case includes all such goods and property so supplied;

whether or not described by item or kind that enables them to be identified;

which are or may comprise inventory of the Buyer.

“PPSA” means Personal Property Security Act 1999.

APPLICATION

This Contract forms the basis on which the Seller supplies and sells goods and services to the Buyer.

The conditions as outlined in this contract apply to all goods sold and services supplied by Absolute Essential Limited (“Seller”) to the purchaser of such goods and services (“Buyer”) and the terms of this contract are to be paramount and to the extent that there may be any conflict as between any provision(s) in this contract and any invoice or other document evidencing or describing any goods, the terms of this contract will prevail.

Each and every supply and sale of goods and services is affected pursuant to the terms of this Contract (unless specifically agreed in writing otherwise).

Any invoice or other document evidencing or describing any Goods is incorporated into and forms part of this Contract.

Any standard conditions of purchase usually invoked by the buyer shall not apply unless specifically accepted in advance in writing by the Seller.

ORDERS

The seller reserves the right to approve and accept in whole or in part any order or decline any order AND any order or part order not approved and accepted is deemed cancelled prior to delivery.

PRICE

The purchase price shall be as shown on the Seller’s invoice, packing note, dispatch docket or other like documents.

The Seller reserves the right to increase the price to recover any increase in cost of labour, materials and Government taxes and charges after the date of the Seller’s Order.

The Buyer shall pay all Goods & Services Tax charged on the supply of Goods and Services to the Buyer together with any such tax charged on amounts payable pursuant to this Contract.

PAYMENT

Payment in full is due on the date stated on the invoice unless otherwise specified.

Payments received may be accepted and applied by the Seller in respect of any



indebtedness of the Buyer as the Seller shall think fit and the Seller shall not be bound by any conditions or qualifications attaching to such payments.

No payment may be withheld except for the particular goods or services or payment amounts in respect of which a claim has been made in accordance with clause 20.

DEFAULT

A finance charge shall be payable on all amounts not paid when due for the period from due date until actual payment is received. The finance rate will be charged at 3% per month on late payment. This finance charge shall be payable upon demand being made by the Seller provided that the imposition of the finance charge does not imply the extension of the granting of credit.

The Buyer will be in default in relation to all Goods and Services if any Goods are at Risk. If the Buyer defaults in the due payment of any moneys payable to the Seller, whether under this Contract or otherwise or if the buyer is in default in the performance of its obligations under the Contract or any other contract as between the Buyer and the Seller or if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Buyer or if a receiver shall be appointed over any or all of its assets, the Seller, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and Services rendered up to the date of such suspension or termination and any other moneys payable by the Buyer to the Seller shall immediately become due and payable.

At any time after a default occurs, the Seller may (whether or not the Seller has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the Receiver has absolute ownership of the Goods.

The Buyer will pay to the Seller upon demand the Seller's solicitors costs (as between solicitor and client), debt recovery company & other associated costs for:
legal services arising from or relating to any default under this contract or the enforcement or exercise or attempted enforcement or exercise of any of the Seller's rights, remedies and powers under this contract;
dealing with any request or requirement made of the Seller by any person having or claiming any security interest in the Goods;
dealing with any request from the Buyer for a variation of or a waiver or a concession in regard to the security interest in the Goods;
legal services related to protecting the Seller's security interest in the Goods (including the investigation of any claim related to the Goods that might affect the Seller's security interest) and other debt recovery costs including disbursements and other administration fees.

DELIVERY

If the Seller has agreed to deliver Goods to the Seller or to arrange for Goods to be delivered to the Seller, then the Seller will use its best endeavours to make delivery of Goods at the time specified in the Buyer's documentation as supplied to the Seller (if a time is specified) but shall not be in default by reason of any failure to deliver Goods or delay in delivery caused by events beyond the Seller's control. Any delivery dates are estimated dates only and the Seller shall not be responsible for any loss or damage



sustained by the Buyer or any other person, firm or corporation by reason of any delay howsoever caused.

If the Seller has agreed to provide Services to the Seller, then the Seller will use its best endeavours to provide the Services at the time specified in the Seller and/or Buyer's documentation as supplied to the Seller (if a time is specified) but shall not be in default by reason of any failure to provide Services at the time specified caused by events beyond the Sellers control. Any Service delivery dates are estimated dates only and the Seller shall not be responsible for any loss or damage sustained by the Buyer or any other person, firm or corporation by reason of any delay howsoever caused.

Delivery shall be deemed to be effected upon the Goods arriving at the location specified by the Buyer or in the case of Goods purchased from a warehouse, or business premises of the Seller, or a sales representative of the Seller, upon the Buyer taking physical possession of the Goods.

CLAIMS

So far as may be permitted by law it is expressly agreed by the Seller and Buyer:

- (i) That all representations or terms (including any conditions or warranty and whether express or implied by law or otherwise) not expressly included in these conditions are hereby excluded;
- (ii) The Seller shall be under no liability to the Buyer for or in respect of any representations or terms not expressly set out in this Contract and not effectively excluded under (i);
- (iii) Insofar as the Buyer may, notwithstanding the preceding provisions of this clause, have any claim for damages against the seller at law (it being the intention hereof that no such damages may be recovered) the same shall not include damages for indirect or consequential loss of any kind and shall be limited to the purchase price of the goods sold or services supplied (as the case may be) or the actual loss or damage suffered (determined in accordance with the principles of the Common Law) whichever shall be the lesser. The seller will at its option replace or give credit for all Goods sold which are established to contain a manufacturing defect but only if the following conditions are met:
 - (i) Claims must be received or dispatched by mail to the Seller within 7 days after delivery of the Goods or the Services being provided. Where applicable the dispatch number and or invoice number must be quoted.
 - (ii) Claims must specifically identify the manufacturing defect.
 - (iii) No goods may be returned without the prior consent of the Seller.
 - (iv) If any item or amount of any invoice or statement of the Seller is disputed by the Buyer, claims in respect thereof must be received or dispatched by mail within 30 days after the date of the Seller's invoice to be recognized by the Seller. If claims are not received as aforesaid the Buyer will conclusively deemed to have accepted the Seller's invoice or statement.

RISK AND SECURITY INTEREST

The risk in the Goods shall pass to the Buyer upon delivery.

The Buyer grants a security interest to the Seller in each and every part of the Goods as security for payment of that part or parts of the Goods and for any other amounts owing by the Buyer to the Seller from time to time, and for performance by the buyer of all the Buyer's other obligations to the Seller from time to time ("Buyers indebtedness and obligations"). For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for the Seller by virtue of section 36(1)(b)(iii) of the PPSA, the Buyer



confirms and agrees that the Buyer intends to and does grant to the Seller, as security for the Buyer's indebtedness and obligations a security interest in all of the Buyer's present and after acquired property except only for such property which is or comprises items or kinds of personal property ("excepted property"):

- (a) in or to which the buyer has rights;
 - (b) which has not been supplied by the Seller to the Buyer;
 - (c) other than any excepted property which is or comprises proceeds of any of that present or after acquired property which has been supplied by the Seller to the Buyer.
- The Seller may allocate amounts received from the buyer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in any Goods.

The Buyer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the contract.

The Buyer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this contract, and waives the Buyer's rights under sections 121, 125, 129, 131, and 132 of the PPSA.

TITLE

Ownership in the goods shall not pass to the Buyer until the Buyer has discharged all outstanding indebtedness to the seller whatsoever.

Until payment in full of such indebtedness has been made, the Buyer acknowledges and agrees that:

- (a) The Goods supplied are held by the Buyer as bailee to be sold by it as agent or on behalf of the Seller;
- (b) The Buyer shall if directed by the Seller store the Goods supplied in such a way that it is clear that they are the property of the Seller;
- (c) The Buyer hereby irrevocably gives the seller, its agents and servants, licence without the necessity of giving any notice to enter on and into any premises occupied by the Buyer to search for and remove any of the goods to/or in which the Seller has ownership as aforesaid without in any way being liable to the Buyer or any person or company claiming through the Buyer and if the goods or any of them are wholly or partially attached to or incorporated in any other goods, the Seller may where practicable disconnect or sever in any way whatsoever as may be necessary to remove to Goods
- (d) If the Goods have been resold by the Buyer prior to payment in full of the outstanding indebtedness of the Buyer, then the proceeds of such resale shall be the property of the Seller but for an amount of no more than such indebtedness;

Clauses 26 & 27 are intended to protect the seller in the event default by the Buyer in terms of clauses 12, 13, 14, 15 & 16 above.

The provisions of clauses 21-25 (inclusive) are not intended to be contradictory to clauses 26-28 (inclusive) to the extent that this Contract is to be modified to the extent necessary to give effect to this intention.

CONSUMER GUARANTEES ACT 1993

If the Goods are acquired by the Buyer for business purposes, the Buyer agrees that the Consumer Guarantees Act 1993 does not apply.

Where the Buyer supplies the Goods to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.

The Buyer shall not, in relation to the supply by the Buyer of the Goods, give or make any



undertaking, assertion or representation in relation to the Goods without the prior approval in writing of the Seller.

The Buyer agrees to indemnify the Seller against any liability or cost incurred by the Seller under the Consumer Guarantees Act 1993 as a result of any breach by the Buyer of the obligations contained in this Contract.

Nothing in this Contract is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act and this Contract is to be modified to the extent necessary to give effect to that intention.

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WAIVER

35. It is expressly understood that in the event either party shall fail to perform any of the terms herein and the other party shall not enforce that term, the failure to enforce on that occasion shall not prevent enforcement of any other occasion or constitute a waiver of any of the terms and conditions of this Contract.