

Terms and Conditions of Trading

Unless otherwise agreed in writing with Wilson & Bradley Pty Ltd (ABN 56 630 675 375) (**W&B**), its agents, assigns or related entities, these Terms and Conditions of Trading, (**Terms**) apply to all quotations, Orders, Order Confirmations and deliveries of the Goods and Services by W&B to the Customer. The rights and obligations of W&B and the Customer under the Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, employees, heirs, executors, and administrators.

1. DEFINITIONS

Unless the context otherwise requires:

ACL means the Australian Consumer Law contained in the *Competition & Consumer Act 2010* (Cth);

W&B means Wilson & Bradley Pty Ltd (ABN 56 630 675 375);

Business Day means any day that is not a Saturday or Sunday or a public holiday in Melbourne, Victoria;

Credit Account means that W&B has agreed to sell Goods and Services to the Customer upon credit up to a specified amount as approved by W&B in the Credit Application;

Contract means the contract between W&B and the Customer for the provision of Goods and Services comprising any or all of the Terms, any Credit Application, Deed of Guarantee, Order and Order Confirmation;

Customer means the person shown on the relevant Credit Application and Order, as the person or entity purchasing the Goods and Services ;

Credit Application means a credit application submitted to W&B by the Customer and approved by W&B;

Force Majeure Event means any circumstance beyond the reasonable control of a party which results in a party being unable to observe or perform on time an obligation under the Contract;

Goods means the goods supplied by W&B pursuant to any Order accepted by W&B by way of Order Confirmation;

GST means the goods and services tax imposed by or under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means failing or being unable to pay debts as they become due; becoming bankrupt or insolvent; being subject to liquidation or winding up; suffering the appointment of a manager, receiver, receiver and manager, administrative receiver or administrator (or any person carrying out an equivalent function); making any arrangement with or seeking protection from creditors; or being subject to any application or process giving rise to the above;

Invoice means the invoice for the Goods supplied to the Customer by W&B;

IPR means patents, rights and inventions, copyright and related rights, trademarks, trade and domain names, rights in get-up, rights in goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual or industrial property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which now or in the future, subsist anywhere in the world;

Order means any order for Goods and/or Services placed by the Customer in accordance with clause 3;

Order Confirmation has the meaning given to it in clause 3.4;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Security Agreement means the security agreement under the PPSA created between the Customer and W&B by these Terms;

Security Interest has the meaning as defined under the PPSA;

Services means any services including advice accompanying the supply of, or provided in relation to, Goods; and

Website means www.wilbrad.com.au.

2. TERMS

2.1. All the Terms form part of the Contract between W&B and the Customer. All prior negotiations, representations, understandings, and arrangements (whether oral and/or in writing), are superseded by the Terms.

2.2. The Terms cover each and every, and all supply of Goods and Services from W&B to the Customer.

- 2.3. W&B may vary the Terms from time to time by notice to the Customer. Any Orders placed after the variation date will be deemed an acceptance of such varied Terms.
- 2.4. In the event of any inconsistency between the Terms and any other terms and conditions (of the Customer or otherwise), the W&B Terms prevail.

3. SUPPLY OF GOODS

- 3.1. If W&B provides the Customer with a quotation with respect of Goods, that quotation is an invitation to treat only, only valid in writing and valid for 30 days from the date of the quotation.
- 3.2. The Customer may order Goods by submitting an Order to W&B via phone, email or through the Website through a designated password. All Orders made by the Customer must include the following information:
- (a) description of the Goods/Services;
 - (b) quantity and volume of the Goods;
 - (c) delivery address; and
 - (d) requested date for delivery.
- 3.3. Any Order from the Customer to W&B for the supply of Goods or Services will constitute acceptance of the Terms.
- 3.4. Any Orders placed by the Customer are not binding on W&B unless and until W&B provides the Customer with a written confirmation of the Order (**Order Confirmation**). W&B has sole discretion to accept or reject any Order, any part of an Order, or any variation of an Order.
- 3.5. W&B will, prior to or upon supplying the Goods to the Customer, provide the Customer with an invoice in respect of the Goods ordered.

4. PRICING AND PAYMENT

- 4.1. The price for the supply of Goods is the price specified in the quote, invoice or statement or account provided to the Customer by W&B. Subject to clause 4.3, any other price indications may be subject to alteration up until Order Confirmation.
- 4.2. Unless otherwise stated, the price for the supply of Goods as stated on an invoice excludes GST.
- 4.3. W&B may vary the purchase price in the Contract for Goods if:
- (a) the Customer requests an Order variation; or
 - (b) there are any changes of the freight costs incurred by W&B in relation to the delivery of the Goods.
- 4.4. All prices are quoted in Australian dollars and all credit cards are charged in Australian dollars. W&B may charge the Customer a credit card fee.
- 4.5. Orders that are shipped to countries outside Australia may be subject to import taxes, customs duties and fees levied by the destination country (**Import Charges**). The payment of any Import Charges are the Customer's responsibility.
- 4.6. If the Customer has a Credit Account, the Customer must pay the price for the supply of Goods in accordance with the terms of the Credit Account.
- 4.7. At W&B's sole discretion, a deposit may be required to be provided by the Customer prior to the supply of any Goods.
- 4.8. Payment for the supply of Goods and Services will be made by the Customer to W&B as set out in the relevant invoice or Credit Application, and otherwise within 30 days of the end-of-month (EOM) in which the Goods and Services were supplied.

5. DEFAULT

- 5.1. If W&B gives notice to the Customer that the Customer has defaulted in payment by the due date of any amount payable to W&B, then all money which would become payable by the Customer to W&B at a later date on any account, becomes immediately due and, and W&B may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Customer interest on the amounts outstanding at 12% per annum, calculated monthly from the due payment date and/or other extension of credit until payment in full;
 - (b) charge the Customer for, and the Customer must indemnify W&B from, all costs and expenses

(including without limitation all legal costs and expenses, collection costs, dishonour fees and stamp duty) incurred by W&B resulting from the default or in taking action to enforce W&B's rights under the Contract;

- (c) withhold for such period as W&B thinks fit, any further deliveries of Goods/Services to the Customer; and
- (d) by written notice to the Customer, terminate any Credit Account and any Contract.

5.2. W&B is entitled to set off against any money owing to the Customer by amounts owed to W&B.

6. DELIVERY

- 6.1. W&B's delivery terms and conditions are available on the Website under 'Delivery & Returns' (**Delivery Terms and Conditions**). The Customer will be taken to have accepted the Delivery Terms and Conditions.
- 6.2. W&B is authorised to deliver the Goods at the address nominated by the Customer.
- 6.3. W&B will make all reasonable efforts to deliver the Goods to the Customer by the date agreed between the parties. However, any times quoted for delivery are estimates only and W&B will not be liable for:
 - (a) any failure to deliver, or delay in delivery, of Goods;
 - (b) any damage or loss due to the unloading or packaging of Goods; or
 - (c) any damage to property caused upon entering premises to deliver Goods.
- 6.4. The Goods will be deemed delivered in accordance with the Delivery Terms and Conditions.
- 6.5. Upon delivery or collection and prior to use of any Goods, the Customer will inspect the Goods as appropriate as to the type, quantity, quality, and any other characteristic of the Goods.
- 6.6. W&B reserves the right to deliver Goods by instalments as agreed with the Customer.
- 6.7. The Customer indemnifies W&B against any loss or damage incurred by W&B, its sub-contractors, or employees as a result of delivery, except where excluded by law.
- 6.8. The Customer will indemnify W&B against any losses, costs or expenses incurred by W&B due to any failure by the Customer to accept the Goods at the time of delivery or collection.
- 6.9. W&B will not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver goods, either whole or in part, due to Force Majeure Event.
- 6.10. The failure of W&B to deliver will not entitle the Customer to treat the Contract as terminated.

7. PRODUCT AVAILABILITY

- 7.1. W&B will make reasonable endeavours to complete the Customer's Order in accordance with the product range presented and by the delivery date as requested by the Customer, but without W&B incurring any obligation or liability to do so without further subjecting itself to any liability to meet requested delivery dates or to deliver Goods ordered.
- 7.2. In the event such delays become unreasonable or W&B cannot fulfil the Customer's order at all, for whatever reason, the Customer may elect to terminate the Contract by written notice to W&B and W&B will fully refund any money the Customer has paid for the Goods that were not delivered.

8. CANCELLATION

- 8.1. W&B reserves the right to cancel, at any time before delivery and for whatever reason, an Order that W&B has previously accepted by Order Confirmation (**W&B Cancellation**).
- 8.2. If W&B cancels an Order under clause 8.1, W&B will give the Customer reasonable notice by sending the Customer an email notifying the W&B Cancellation.
- 8.3. Cancellations by the Customer of any Orders confirmed by Order Confirmation, but not yet delivered, must be approved by W&B. This clause does not affect any rights the Customer may have under the ACL.
- 8.4. In the event that the Customer cancels delivery of Goods and

W&B approves such cancellation, the Customer will be liable for any costs incurred by W&B up to receiving such notice from the Customer including, but not limited to, any restocking fees incurred by W&B.

8.5. Except to the extent otherwise required by law (including, without limitation, the ACL) or as expressly set out in these Terms, W&B will not be liable to the Customer, or any other person, for any loss, damage, cost or expense suffered as a direct or indirect result of a W&B Cancellation.

9. ACCOUNT TERMS

- 9.1. The Customer must pay for all Goods delivered in accordance with the terms of the Contract, including the relevant invoice, or otherwise as specified by W&B, and acknowledges that time is of the essence in respect of any amounts to be paid to W&B by the Customer.
- 9.2. Credit extended to the Customer for Goods sold will be made in accordance with the Credit Account, or as otherwise agreed in writing with W&B.
- 9.3. W&B may withdraw the Customer's Credit Account at any time or vary the Customer's credit limit, by giving written notice to the Customer.
- 9.4. W&B may allow the Customer to purchase and continue to purchase Goods as long as the total of the Customer's Credit Account does not exceed its pre-approved account limit.

10. RETURN OF GOODS

- 10.1. The return of Goods is subject to the return provisions set out in the Delivery Terms and Conditions.
- 10.2. Subject to any rights that the Customer may have under the ACL, the Customer will be deemed to have accepted the Goods as being in accordance with the Order unless the Customer notifies W&B in accordance with the Delivery Terms and Conditions.
- 10.3. All Goods returned by the Customer are subject to assessment by W&B, and W&B may, subject to the Customer's rights under the ACL, refuse to accept the return of the Goods at its sole discretion.
- 10.4. Unless W&B and the Customer otherwise agree in writing, or unless otherwise required under the ACL, the Customer will bear the costs of delivery when returning Goods.
- 10.5. Subject to the Customer's rights under the ACL, the following Goods cannot be returned by the Customer to W&B under any circumstances:
 - (a) those that were used, damaged or altered in any way by the Customer;
 - (b) those that were on-sold by the Customer;
 - (c) those that are no longer in stock by W&B or have been discontinued; or
 - (d) special orders not stocked generally by W&B.
- 10.6. Any return requests due to change of mind must be submitted via email to sales@willbrad.com.au. All change of mind return requests will be evaluated on a case-by-case basis. W&B is not obliged to provide a refund or replacement for return requests due to change of mind.

11. PROPERTY AND RISK

- 11.1. The Goods will be at the sole risk of the Customer from the time they are delivered or deemed to be delivered.
- 11.2. Subject to any rights which the Customer has under the ACL, the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties, arising out of the use or possession of the Goods sold by W&B,
- 11.3. Until W&B receives full payment in cleared funds for all Goods supplied by it to the Customer, as well as all other amounts owing to W&B by the Customer:
 - (a) property in and title to the Goods remains vested in W&B and will not pass to the Customer and the Customer holds the Goods as bailee for W&B;
 - (b) the Customer must store the Goods separately from its own Goods and retain W&B's labelling and packaging;

- (c) the Customer must hold the proceeds of sale of the Goods on trust for W&B, however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee; and
- (d) W&B may, without notice, enter any premises where it suspects the Goods are and remove them, and for this purpose the Customer irrevocably licenses W&B to enter such premises and indemnifies W&B from and against all costs, claims, demands or actions by any party arising from such action.
- 11.4. The Customer acknowledges that it grants W&B a Security Interest in the Goods and their proceeds by virtue of W&B retention of title under clause 11.3.
- 12. PERSONAL PROPERTY SECURITIES ACT**
- 12.1. Unless the context requires otherwise, terms used in this clause 12 have the meaning given to them by the PPSA.
- 12.2. The Customer acknowledges and agrees that these Terms are an accepted and adopted Security Agreement between W&B and the Customer for the purposes of the PPSA and that as a result of the retention of title under clause 11.3 a Security Interest exists in each and all Goods supplied to the Customer (and their proceeds).
- 12.3. To secure payment of the secured money and performance of the Customer's obligations to W&B, the Customer charges all of its legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all property in favour of W&B.
- 12.4. The Customer acknowledges, agrees and grants to W&B, a Security Interest in:
- (a) all Goods and any proceeds previously supplied by W&B to the Customer;
- (b) all Goods and any proceeds that will be supplied in the future by W&B to the Customer; and
- (c) all present and after acquired property (ALPAAP) of the Customer.
- 12.5. The above Security Interest secures all moneys owing by the Customer to W&B under the Contractor.
- 12.6. The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- 12.7. The Customer waives any right to receive a verification statement in respect of the Security Interest created by the Contract.
- 12.8. For the avoidance of doubt and without prejudice to W&B's rights under the PPSA, the Customer:
- (a) may on sell the Goods to its customers, and
- (b) will, where and when applicable and instructed by W&B, implement, maintain and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- 12.9. The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- 12.10. The Customer will notify W&B immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required to be notified to the PPSR under the PPSA .
- 12.11. The Customer agrees to keep and maintain all Goods free of any charge, lien, or Security Interest except as created under these Terms and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of W&B under these Terms or the PPSA.
- 12.12. The Customer's right to possession of Goods still owned by W&B under these Terms will cease if:
- (a) the Customer being an individual, commits an act of bankruptcy; or,
- (b) the Customer being a corporation, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enter into a deed or scheme of arrangement; or
- (c) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
- (d) the Customer fails to comply with any demand for payment issued by W&B; or
- (e) the Customer is in breach of the Contract or is in default of any other agreement with W&B.
- 12.13. The Customer agrees that W&B is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by W&B are still unpaid for, repossess and sell such Goods. The Customer agrees to indemnify and keep W&B indemnified in respect of any claims, actions and costs that may arise against W&B in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- 13. WARRANTY**
- 13.1. W&B's Goods come with guarantees that cannot be excluded under the ACL.** To the extent that the Customer is a 'consumer' within the meaning of the ACL, the following applies:
- Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*
1. to cancel your service contract with us; and
 2. to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*
- 13.2. W&B warrants that all Goods supplied are of merchantable quality, reasonably fit for purpose, and match the sample and any description provided on the Website.
- 13.3. Should any Goods not be of merchantable quality, W&B will replace the Goods at no cost to the Customer or provide the Customer with a full refund at the Customer's preference. To make a warranty claim under this clause, please contact our online customer service team via email at sales@wilbrad.com.au.
- 14. INDEMNITY**
- The Customer will indemnify and keep indemnified and hold W&B harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by W&B, and from and against all actions, proceedings, claims or demands made against W&B, arising from one or more of the following:
- (a) the Customer breaches the Contract;
- (b) the Customer's failure to comply with any laws, rules, standards, regulations, or instructions applicable in relation to the Goods or the use of the Goods; and
- (c) any negligence or breach of duty by the Customer and its employees, agents, or contractors in relation to the Goods or the use of the Goods.
- 15. LIABILITY**
- 15.1. Nothing in these Terms excludes, restricts, or modifies the application of the ACL and any rights which the Customer may have thereunder. Any provision of these Terms that excludes any terms, conditions or warranties, or limits the liability of a party will apply only to the extent permitted by law and these Terms will be construed subject to such terms, conditions, warranties and limitations.
- 15.2. To the extent permitted by law, W&B excludes all implied terms, conditions, and warranties.
- 15.3. Except as expressly provided in these Terms, to the extent permitted by law, W&B will have no liability to the Customer,

however arising and under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity.

16. FORCE MAJEURE

- 16.1. Neither party will be liable for any delay or failure to perform its obligations under the Contract (other than payment obligations) if such delay is due to a Force Majeure Event.
- 16.2. If a delay of a party to perform its obligations is caused by a Force Majeure Event, the performance of that party's obligations will be suspended for the duration of the Force Majeure Event.
- 16.3. If the Force Majeure Event has lasted for more than one (1) month, either party may terminate all or part of the Contract.
- 16.4. W&B will inform the Customer as soon as possible of any potential or actual Force Majeure Event.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. W&B for and on behalf of itself, its related bodies corporate and licensors reserves ownership in any IPR, relating to the quotations, specifications, technical drawings, price lists, tender documentation and Goods (including any associated software) (**Protected Items**). Nothing in these Terms operates or is intended to deny W&B or its related bodies corporate, or confer on the Customer, the IPR or any other intellectual property rights in the Protected Items.
- 17.2. The Customer must not use or make the Protected Items available to third parties without the prior written consent of W&B. The Customer must only use the Protected Items and any associated IPR in accordance with the terms of the Contract.
- 17.3. The Customer must not use, reproduce, or copy any software associated with the Product, without the prior written consent of W&B.
- 17.4. If the Customer becomes aware of any actual, threatened, or suspected infringement of the Intellectual Property, the Customer must inform W&B promptly of the actual, threatened, or suspected infringement.
- 17.5. The Customer shall indemnify W&B for and in respect of claims by any third party in relation to Goods where such claims arise from, or can be attributed to, the special requirements or specifications of the Customer.

18. PRIVACY

W&B's collection, use, and disclosure of the Customer's information is set out in the Privacy Policy, which is available on the Website.

19. TERMINATION

- 19.1. Either Party may terminate the Contract at any time with immediate effect by giving the other Party written notice of termination if:
 - (a) the other Party commits a material breach of the Contract which is not remediable; or
 - (b) the other Party, having breached a term of the Contract which is remediable and having been given written notice which specifies the breach that has occurred and requires rectification, fails to remedy the breach within the time specified.
- 19.2. Notwithstanding the provisions in clause 19.1, either party may terminate the Contract upon giving twenty (20) Business Days' written notice of termination to the other.
- 19.3. Upon termination of the Contract under clause 19.1 or 19.2, the Customer must immediately pay all outstanding invoices in full.

20. PROVISIONS SEVERABLE

The Parties acknowledge and agree that if any provision or part of any provision of these Terms is unenforceable, it will be read down to be enforceable or, if it cannot be read down, the term will be severed from the Terms without affecting the

enforceability of any part of such provision or any other provision.

21. DISPUTE RESOLUTION

- 21.1. This clause 21 applies if the Customer has a Credit Account. Before instituting legal proceedings, any dispute between W&B and the Customer in relation to the Terms may be referred to mediation administered by the Australian Commercial Disputes Centre (ACDC) and held in Melbourne, Victoria.
- 21.2. If the dispute has not been resolved within 28 days of the appointment of a mediator, W&B or the Customer may commence legal proceedings.
- 21.3. Nothing prevents either W&B or the Customer from seeking urgent injunctive relief from a court of appropriate jurisdiction.

22. GENERAL

- 22.1. All rights under these Terms are in addition to and do not abrogate, limit or reduce any other rights that W&B may have.
- 22.2. These Terms are governed by the laws of Victoria, Australia and the parties submit to the non-exclusive courts exercising jurisdiction in that State.
- 22.3. W&B's failure to enforce any of these Terms will not be construed as a waiver of any of W&B's rights. W&B is not bound by any agreement purporting to waive or vary these Terms unless such agreement is in writing and signed by a duly authorised representative.
- 22.4. W&B accepts no responsibility for changes in any law which may affect the supply of Goods.
- 22.5. In placing any order with W&B, the Customer expressly represents that the Customer:
 - (a) is solvent; and
 - (b) has not committed an Insolvency Event; and
 - (c) knows of no circumstances which would entitle any secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Customer or exercise any other rights over or against the Customer's assets.
- 22.6. A notice given under these Terms must be in writing and handed personally or sent by email or prepaid mail to the addressee. Notices sent by mail are deemed to be received three (3) days after posting. Notices sent by fax or email are deemed received on confirmation of transmission or otherwise in accordance with applicable laws.
- 22.7. Where the Customer uses or authorises the use of his or her signature in whatever form, including approving an authorised person (including any employee) to apply his or her signature or company authorisation to a document including any Order, or leaving a person (employee or otherwise) with his or her email address and / or password (as provided through the Website), the Customer agrees that they:
 - (a) have full knowledge of these Terms and all material circumstances and obligations related to any agreement between the Customer and W&B;
 - (b) have provided the requisite authority in whatever form for the use of their signature for the express purpose of the Customer entering into legally binding arrangement(s) with W&B;
 - (c) acknowledge that W&B has relied on any signature and / or passwords as being applied with full and complete authority (express, implied or ostensible) by the Customer or person whose signature is used whether or not the Customer or person has granted authority; and
 - (d) understand the nature and full effect and obligations set out in these Terms.
- 22.8. W&B and the Customer consent to the Contract being produced, signed, and retained solely in an electronic form, provided that the production, signing and retention complies with the requirements of the relevant Electronic Transactions Act