

Australian Plastic Profiles Standard Terms and Conditions of Purchase

1 Interpretation and definitions

1.1 Definitions

In these terms and conditions:

- (a) **“Agreement”** means the agreement between the Seller and APP set out in the Order and these terms and conditions. In the event of any conflict or inconsistency, the terms of this Agreement will prevail over any terms or conditions provided or otherwise sought to be imposed by the Seller, whether before or after the date of this Agreement.
- (b) **“APP”** means Australian Plastic Profiles Pty Ltd (ABN 77 001 414 759) and wholly owned subsidiary Pipe King Pty Ltd (ABN 54 082 877 610).
- (c) **“APP Data”** means any Personal Information, confidential information or any other data or information provided by or on behalf of APP to the Seller in connection with an Order or this Agreement.
- (d) **“Australian Consumer Law”** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- (e) **“Business Day”** means a day that is not a Saturday, Sunday or public holiday in New South Wales, Australia.
- (f) **“Data breach”** means in relation to this Agreement and any Order:
- (i) any unauthorised (whether under this Agreement or otherwise) or unlawful use of, loss of, access to, alteration of, or disclosure of APP Data within the Seller’s possession or control (including any data and information stored on a party’s systems, equipment or in the facilities used by that party in the performance of its obligations under this Agreement);
 - (ii) any notifiable data breach under Privacy Law;
 - (iii) any successful denial of service attack;
 - (iv) any similar events relating to APP Data which trigger, or are likely to trigger, contractual reporting obligations or legal reporting obligations to a government authority, regulator or agency or which would require a response or action under this Agreement or under applicable law; or
 - (v) any alleged or suspected occurrence of any of the above events or circumstances
- (g) **“Goods”** means the products and including any Software ordered by APP from the Seller under this Agreement.
- (h) **“Intellectual Property Rights”** means any intellectual property right, including but not limited to:
- (i) patents, copyright, rights under the Circuit Layout act 1989 (Cth) (and equivalent right outside Australia in circuit layouts), registered designs, trade marks, know-how,
- trade secrets and any rights to have any confidential information kept confidential; and
- (ii) any licence or other application or right to use, or grant the use of or apply for registration of, any of the rights referred to in paragraph (i).
- (i) **“IT System”** means the information technology system used by the Seller in connection with this Agreement.
- (j) **“Law”** means all legislation, regulation or other subordinate legislation and other than in civil law jurisdiction common law.
- (k) **“Order”** means a purchase order for Goods and/or Services placed by APP with the Seller, whether verbal or in writing, in such form as determined by APP from time to time, and which is accepted by the Seller in accordance with clause 2.5.
- (l) **“Personal Information”** has the meaning given in the *Privacy Act 1988* (Cth).
- (m) **“Personnel”** means the officers, employees, agents, subcontractors and contractors of the Seller.
- (n) **“Privacy Law”** means the *Privacy Act 1988* (Cth) and any other privacy legislation in the Seller’s jurisdiction or otherwise to which the parties are subject.
- (o) **“Seller”** means the seller of the Goods and/or the provider of the Services.
- (p) **“Services”** means the services ordered by APP from the Seller under this Agreement.
- (q) **“Services Location”** means the location for performance of the Services as specified in the Order (if any).
- (r) **“Software”** includes but is not limited to software programmes, source code, object code, scripts, executables, files, libraries and any related documents.

1.2 Interpretation

In these terms and conditions, headings are inserted for convenience only and do not affect the interpretation of these terms and conditions, and unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) if words or phrases are defined, their other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by ‘includes’ or ‘including’ or similar expressions;
- (d) a reference to a party is to a party to these terms and conditions and includes the party’s successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (e) a reference to legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

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- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not), a government and a government authority or agency; and
- (g) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

2 General

- 2.1 Nothing in these terms and conditions excludes, restricts, modifies or limits the application of the Australian Consumer Law to the extent it applies to any transaction arising under this Agreement.
- 2.2 In consideration of APP agreeing to place a Order with the Seller for the Goods and/or Services, the Seller agrees that these terms and conditions will apply to and be incorporated into the Order. To the extent permitted by Law, other than these terms and conditions, any conditions or other terms which are set out in any offer, purchase order or other document submitted by or on behalf of the Seller are expressly excluded. Modification of these terms and conditions expressed in any document of the Seller does not apply to a Order unless expressly accepted in writing by APP.
- 2.3 Each Order, if in writing, must be signed by an authorised person of APP.
- 2.4 Each Order, if not in writing, must be approved by an authorised person of APP.
- 2.5 A contract will be formed between APP and the Seller in respect of each Order upon the Seller notifying APP that it accepts the Order. The Seller is not bound to accept any Order, however if the Seller has not accepted the Order within five Business Days or receipt of the Order then the Seller will be deemed to have rejected the Order.

3 Alterations

- 3.1 No changes to an Order are to be made by a party without the written agreement of the other party.
- 3.2 If a party wishes to make a change to an Order it must provide a notice in writing to the other party specifying the proposed change. That notice must include any changes (up or down) to the price for the Goods or Services arising from the variation (**Variation Notice**).
- 3.3 If, as a result of the Variation Notice, the delivery dates for the Order need to be revised, the Seller must notify APP within five Business Days of the date of the Variation Notice (**Delay Notice**). If the Seller issues a Delay Notice APP may elect to withdraw the Variation Notice. If APP withdraws the Variation Notice in accordance with clause 20, the Seller must continue to comply with the requirements of the original Order unless notified otherwise by APP.

4 Price

- 4.1 Each Order is placed on a firm price basis and the price specified in an Order (as accepted by the Seller in accordance with clause 2.5) is not subject to increases in price without APP's prior approval

in writing and unless the Order expressly provides otherwise includes all charges, Taxes (including GST, VAT, sales tax, use tax or any tax analogous thereto), excises, duties, all amounts payable by APP for the use or enjoyment of any patents, copyright, registered design, trademarks and other Intellectual Property Rights and in relation to:

- (a) an Order for Goods, includes insurance, freight and delivery costs to the delivery address stated in this Order and the off-loading of the Goods by the Seller at delivery address; and
- (b) an Order for Services, includes insurance and travel costs of the Seller.
- 4.2 All invoices for the Goods and/or Services must meet the requirement of a valid tax invoice under the applicable Law and must include APP's company details, the Order number (if applicable), delivery date, detailed description of the Goods and/ or Services, the price broken down to reflect the same price components on the Order and set out the amount of any applicable Tax. All invoices must be provided to accountspayable@app.net.au
- 4.3 Unless otherwise agreed in writing by APP, the Seller's tax invoice for the Goods and/or Services is payable within the period stipulated on the Order (as accepted by the Seller in accordance with clause 2.5) or if no period is stipulated, within 30 days from the end of the month in which the tax invoice was received by APP except where APP is required by the applicable Law to pay within a shorter time frame.
- 4.4 Payment will not constitute an acceptance by APP that the Goods and/ or Services are not defective and will not in any way affect APP's rights under these terms and conditions or at Law.
- 4.5 In the event that any Goods are not delivered, do not conform to the Order or the requirements of these terms and conditions or are otherwise defective, APP may withhold payment for those Goods until the relevant Goods are delivered or the defect or non-conformance is rectified.

5 Tariff Concessions

- 5.1 If the Goods and/or Services are being imported into Australia and a tariff concession is available to the Seller, the Seller must take all reasonable steps to obtain the tariff concession in respect of the Goods and/or Services. If a tariff concession is available to APP, the Seller must supply all documentation and do all acts, matter and things reasonably requested by APP to assist it in obtaining a tariff concession in respect of the Goods and/or Services.

6 Warranties for Goods

- 6.1 The Seller warrants and represents to APP that the Goods:
- (a) match the description of the Goods in the Order.
- (b) are fit for the purpose for which goods of the same kind are commonly supplied and any other purpose made known to the Seller by APP at the time of, or prior to, submitting the relevant Order;
- (c) are of merchantable quality and to be free from defect in material and workmanship;

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- (d) comply to any sample of the Goods provided by the Seller to APP;
- (e) are in accordance with and conform to any specifications, drawings, samples or other description (if any) furnished by APP to the Seller at the time of, or prior to, submitting the relevant Order. Any in-progress inspection by APP's employees or agents or other representative does not affect this requirement;
- (f) are made with new high quality materials and are free from any hazardous substances;
- (g) will have spare parts available and provide maintenance for a period of 10 years;
- (h) comply with all applicable standards, safety standards, Laws and regulations of Australia and any other country to which the Goods are being delivered;
- (i) are made with a high level of care, skill and diligence and in accordance with industry best practices;
- (j) are free from any lien, charge or encumbrance of any kind, third party rights or claims;
- (k) do not infringe any Intellectual Property Rights and that the promotion, sale and distribution of the Goods by APP or the Seller will not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by APP or any other person of any royalty to any third party or to any liability to pay compensation in respect of any such Intellectual Property Rights; and
- (l) if the manufacturer of the Goods has provided a warranty in respect of the Goods, that warranty complies with all applicable Laws and the benefit of the warranty will be passed on to APP and to its customers without liability to APP. The Seller must assign to APP at the request of APP the benefit of any warranty or guarantee that the Seller has received from any supplier (whether under contract or by implication or operation of Law).
- 7 Warranties for Services**
- 7.1 The Seller warrants and represents to APP that:
- (a) the Services match the description of the Services in the Order;
- (b) the performance of the Services complies with all applicable Laws, regulations and other governmental requirements of Australia and any other country to which the Services are being delivered;
- (c) the Services comply with any requirements specified by APP to the Seller at the time of, or prior to, submitting the relevant Order;
- (d) the Services do not infringe any Intellectual Property Rights and will not infringe any trade mark, patent, registered design, copyright or similar or other industrial commercial property rights of any person, nor give rise to payment by APP or any other person of any royalty to any third party or to any liability to pay compensation in respect of any such Intellectual Property Rights; and
- (e) the Services are fit for the purposes for which they would ordinarily be required and any other purposes notified by APP to the Seller at the time of, or prior to, submitting the relevant Order and will achieve any results specified in the Order;
- 8 General warranties**
- 8.1 The Seller warrants and represents to APP:
- (a) the Seller, its officers, employees, agents and contractors have the necessary skill, experience and ability to properly fulfil the Seller's obligations under each Order;
- (b) all services provided by the Seller will be performed with a high level of skill, care and diligence and in accordance with industry best practices and in accordance with all relevant standards, Laws and regulations;
- (c) the Seller has all consents, licences or permits required for the supply of the Goods and/or Services to APP.
- (d) The Seller acknowledges that APP is relying on the Seller's skill, care and diligence in carrying out such services; and
- 8.2 The warranties given by the Seller under clauses 6, 7 and 8 (as applicable), are in addition to and will not derogate from any conditions or warranties of the Seller implied by any relevant Law.
- 8.3 The Seller acknowledges that APP has entered into these terms and conditions in reliance of the representations and warranties in clause clauses 6, 7 and 8. For the avoidance of doubt a breach of any of the warranties set out in clauses 6, 7 and 8 will be a material breach of these terms and conditions.
- 9 Delivery, Inspection and return of Goods**
- 9.1 The Seller must deliver the Goods to the delivery address and within any time specified in the Order (as accepted by the Seller in accordance with clause 2.5) or as otherwise agreed between the Seller and APP and in this respect time will be of the essence.
- 9.2 The Seller must, if required by the Order, ensure that a delivery docket which includes APP's Order number and any other information required by the Order is provided to APP with the Goods. APP may refuse to accept delivery of Goods without such delivery docket.
- 9.3 APP may inspect the Goods at its discretion within five Business Days of the date of delivery and the Seller must facilitate such inspection on request by APP.
- 9.4 Without limiting the powers granted under clause 9.3, if the Goods are delivered directly by the Seller to APP's customer, that customer may also inspect the Goods. Signed delivery dockets or payment for the Goods does not mean acceptance by APP of Goods delivered.
- 9.5 If, on inspection, the Goods do not conform to the Order or the requirements of these terms and conditions or are otherwise defective APP may reject the Goods.

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9.6 APP will notify the Seller if the Goods are rejected pursuant to clause 9.5 and hold such Goods for the Seller's instructions and at the Seller's risk for a reasonable period not exceeding 60 days. If the Seller's instructions are not received within that period, APP may return the Goods to the Seller's premises at the Seller's expense and risk and any expense reasonably incurred by APP in such return is payable forthwith by the Seller.

9.7 Delivery of Goods is deemed to have occurred when completed by the Seller in accordance with the relevant Incoterm specified in the Order or as agreed in writing between the parties.

9.8 The Seller must notify APP as soon it becomes aware that it may not be able to deliver the Goods by the time specified in the Order.

10 Title and Risk of Goods

10.1 Risk and title to the Goods passes to APP on delivery of the Goods in accordance with clause 9. The Goods are at the Seller's risk until such delivery occurs.

10.2 Nothing in the conduct of APP or the transfer of property in the Goods (including delay that is or is not the fault of APP or of any person who represents APP) alters the incidence of risk under this clause.

10.3 In the event APP is required or entitled to return any Goods to the Seller, risk in the Goods passes to the Seller upon the Goods being removed from the delivery address or any APP premises.

11 Performance and delivery of Services

11.1 The Seller must perform all Services in accordance with the Order and by the delivery dates specified in the Order referable to them.

12 Seller obligations - Services

12.1 The Seller must:

- (a) perform the Services:
 - (i) at the Services Location;
 - (ii) in a competent, proper and workmanlike manner in accordance with good industry practice;
 - (iii) exercising a standard of skill, diligence, knowledge, judgment and care expected of an experienced Seller providing goods and services of a similar nature;
 - (iv) in a manner that is safe to both people and the environment assessed against the higher of industry best practice and legislative requirements;
 - (v) so as not to interfere with any activities of any other person at any APP premises or the Services Location; and
 - (vi) so as to minimise delays in the performance of the Services;
- (b) supply and maintain, at its own cost, everything the Seller requires in order to provide the Services in accordance with the Order including all personnel, goods, materials and authorisations;

- (c) where the Seller provides the Services through its employees, agents or permitted sub-contractors, ensure that such personnel are suitably qualified and competent;
- (d) ensure that all equipment used by the Seller in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant Laws, regulations and other governmental requirements;
- (e) pay all of the Seller's employees and sub-contractors on time in respect of any work undertaken in respect of the Services; and
- (f) notify APP on completion of the Services.

13 Royalties

13.1 The Seller acknowledges and agrees that the Goods are for the use or re-sale by APP or its associated companies and may be incorporated in any products (whether owned or used or possessed or manufactured by APP). The Seller is not entitled to and must not make any claim for royalties or other additional compensation from APP by reason of or connected with such use, re-sale or manufacture.

14 Intellectual Property Rights

- 14.1 APP retains all Intellectual Property Rights in any specifications, technical data, drawings, plans, designs, and other materials provided by APP in connection with an Order ('**APP Intellectual Property**').
- 14.2 APP grants the Seller a non-exclusive, non-transferable licence to use APP Intellectual Property solely for the purpose of fulfilling an Order.
- 14.3 To the extent that any Goods and/or Services (including any Software), are created, delivered, or modified in accordance with APP's specific requirements and/or technical or functional specifications then all Intellectual Property Rights arising out of or created during the performance of the Order in accordance with, or to confirm with, such specific requirements and/or technical or functional specifications will be the property of and belong to APP. The Seller will take any action reasonably required by APP to give effect to this clause 14, including obtaining any assignment from its employees or a third party and will execute such documents as are reasonably required to give effect hereto.

15 Goods - Special dies, etc to remain APP's property

- 15.1 Special dies, tools, patterns and drawings (each a "**tool**") used in manufacture of the Goods, the cost of which is met by APP, remain APP's property whether during or after the termination of these terms and conditions.
- 15.2 The Seller must keep the tools in good condition and when necessary maintain the tool without expense to APP.
- 15.3 The Seller agrees that it will not use any tool in the production, manufacture or design of any other articles, nor of larger quantities than those required on the relevant Order, except with APP's prior

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- written consent and at the termination of this Agreement each tool must be disposed of as APP reasonably directs.
- 15.4 While the Seller is in possession of APP's tools, it acknowledges that it is a bailee of them and owes to APP the duties, responsibilities and liabilities of a bailee.
- 16 Confidential Information**
- 16.1 Each party must keep confidential the terms of the Order and any confidential information of the other party.
- 16.2 Confidential information of APP includes information relating to the Goods or work made or done according to APP's design or specifications or developed for APP or at the direction of APP, and any original or copy of designs or specifications supplied by APP that are held by the Seller on APP's behalf, and business data or other commercially valuable information of APP.
- 16.3 Each party must not disclose the other party's confidential information or furnish it to any other person, firm or government without the other party's prior written consent unless required to do so by Law.
- 16.4 Each party must take all reasonable precautions to protect the confidentiality of the other party's confidential information.
- 17 Packing costs and standard**
- 17.1 The Seller must bear the costs for all labelling, wrapping, packing, cartons or crating of the Goods and the costs of return of any crating, and including any such costs claimed by their agents or Sellers, unless otherwise agreed in writing by APP.
- 17.2 The Seller must ensure that all Goods are suitably and securely packed or otherwise prepared for shipment in accordance with carriers' requirements and applicable standards, laws and regulations.
- 18 Advertising**
- 18.1 The Seller must not, without APP's prior written consent, in any manner advertise or publish the fact that the Seller has contracted to APP with the Goods and/or Services.
- 19 Delivery documents**
- 19.1 The Seller must invoice APP for the price of the Goods and Services promptly after delivery of the relevant Goods or Services to APP and must provide APP with monthly statements of account.
- 19.2 The Seller must dispatch packing lists, shipping documents and certified invoices to APP's office by direct mail on the day of shipment unless a different method or date of dispatch (or both) is agreed by APP.
- 20 Cancellations of Order**
- 20.1 APP may immediately cancel an Order if the parties (acting reasonably) are not able to reach an agreement on commercial terms or any other variation within 30 days of the date on which either party sought a change to the commercial terms or other variation.
- 20.2 If an Order is cancelled under clause 20.1 or 21.1, the Seller will:
- immediately cease carrying out the Order;
 - promptly return to APP all property, documentation or information provided by APP to the Seller in connection with the Order; and
 - use its best endeavours to mitigate all costs in connection with the cancellation of the Order; and
 - within five Business Days, deliver to APP any Goods or Services that have been paid for as at the date of cancellation.
- 20.3 If the Order is cancelled under clause 20 or 21.1, the Seller acknowledges and agrees that it will only be entitled to claim from APP the amount payable for any Goods and/or Services already delivered to APP up to the date of cancellation and the Seller will not have and may not prosecute any claim whatsoever at Law or in equity against APP in relation to such cancellation including any claim for loss of profits, or direct or indirect damages or loss or for any loss of a consequential nature, or costs, losses, or expenses suffered or incurred by the Seller.
- 21 Termination by APP**
- 21.1 Without prejudice to any other rights or remedies to which it may be entitled, APP may immediately terminate an Order and/or this Agreement by notice to the Seller if:
- the Seller becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
 - the Seller commits a material breach of its obligations under these terms and conditions (including but not limited to a breach of any warranty under clauses 6, 7, 8 or 30) which is not capable of remedy;
 - the Seller commits a breach of its obligations under these terms and conditions (including but not limited to a breach of any warranty under clauses 6, 7, 8 or 30) which is capable of remedy and does not remedy the breach within 30 Business Days of notice by APP requesting the breach be rectified; and
 - the Seller breaches clause 29.
- 21.2 In the event that APP terminates an Order pursuant to this clause 21, without limiting any other rights it may have, APP may at its discretion engage others to, or itself, carry out any part or the whole of the Seller's obligations under these terms and conditions.
- 21.3 If APP terminates an Order under this clause 21, it will have the same entitlements and the Seller will have the same liabilities as each would at Law, had the Seller repudiated the Agreement and APP terminated this Agreement by acceptance of the Seller's repudiation.

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21.4 Without limitations, the Seller must, in addition to any other liability, pay the costs of removing any defective Goods, or Goods not supplied in accordance with the Order or these terms and conditions or rejected by APP pursuant to clause 9, from APP's premises, including any the costs of packing, storage, transport or shipping.

22 Termination by the Seller

22.1 Without prejudice to any other rights or remedies to which it may be entitled, the Seller may immediately terminate an Order and/or this Agreement by notice to APP if:

- (a) APP becomes or is in jeopardy of becoming insolvent or going to liquidation, having a receiver or administrator appointed to it or any part of its assets or it entered into any scheme or arrangement with creditors;
- (b) APP commits a material breach of its obligations under these terms and conditions which is not capable of remedy; and
- (c) APP commits a breach of its obligations under these terms and conditions which is capable of remedy and does not remedy the breach within 30 Business Days of notice by the Seller requesting the breach be rectified.

22.2 If the Seller terminates an Order under this clause 22, it will have the same entitlements and APP will have the same liabilities as each would at Law, had APP repudiated the Agreement and the Seller terminated this Agreement by acceptance of APP's repudiation.

23 Breach of warranties

23.1 If:

- (a) the Seller breaches any of the warranties in clauses 6, 7 or 8;
- (b) APP rejects any Goods under clause 9.5; or
- (c) the Seller breaches clause 12.1(a),

such that the Goods or Services are defective or not supplied or performed in accordance with this Agreement then, without limiting its other rights and at APP's discretion and upon demand from APP, the Seller must (as applicable) at the Seller's cost and expense:

- (i) repair or modify the Goods;
- (ii) replace the Goods;
- (iii) re-perform part or all of the Services; or
- (iv) refund any amount paid by APP to the Seller in relation to the Goods and/or Services (subject to APP returning any such Goods to the Seller).

23.2 The Seller's obligations under clause 23.1 will continue for at least 24 months after the Goods are delivered pursuant to clause 9 and/ or the Services are delivered pursuant to clause 11.

23.3 If the Seller fails to comply with clause 23.1, APP may (as applicable):

- (a) engage an alternative Seller to provide the

Services and/or supply the Goods and recover APP's reasonable costs of doing so from the Seller as a debt; and

- (b) repair, modify or replace the Goods and/or dispose of the Goods and recover any reasonable costs of doing so from the Seller as a debt.

24 Liability and Indemnity

24.1 To the extent permitted by Law, the Seller must indemnify and hold harmless APP, its directors, officers, employees and agents and its related bodies corporate (**Indemnified Person**) against all actions, claims, demands, damages, costs, charges and expenses whatsoever brought or made against an Indemnified Person or incurred by an Indemnified Person in respect or as a result of:

- (a) any product recall or remedial action required as the result of any defective workmanship, quality, design or materials of the Goods unless to the extent that due to the Seller having followed APP's design or instruction;
- (b) infringement or alleged infringement of any form of Intellectual Property Right by the use or sale of the Goods or materials supplied to APP unless to the extent that the infringement is due to the Seller having followed APP's design or instruction;
- (c) any breach of the Seller's (or its Personnel's) obligations under clauses 16 (Confidential Information), 34 (Cyber Security), or 35 (Privacy).
- (d) any wilful misconduct of the Seller or its Personnel;
- (e) any injury loss or damage to persons or property caused by act, default or negligence of the Seller, its employees, sub-contractors or agents or by faulty design, workmanship or materials unless to the extent that the injury, loss or damage is caused by the negligence of APP; or
- (f) any claim brought or made by a third party against an Indemnified Person in relation to the late delivery of the Goods and/or Services by the Seller.

24.2 For the avoidance of doubt, APP may make a claim under an indemnity in this clause 24 for any damages, costs, charges, expenses or losses incurred by an Indemnified Person as a result of the Indemnified Person breaching its contractual obligations to a third party as a result of the circumstances or conduct the subject of the indemnity in this clause 24.

25 Dispute Resolution

25.1 If a dispute or difference arises between APP and the Seller in respect of any fact, act, matter or thing arising out of or in connection with these terms and conditions and one party requires the dispute to be resolved, then that party will promptly give the other party a written notice giving details of the Dispute.

25.2 Within 10 Business Days of a party receiving a notice referred to in clause 25.1, APP and the Seller and/or their delegates must meet and attempt to resolve the dispute in good faith.

25.3 If, within 60 calendar days of the meeting referred to in clause 25.2, the dispute is still not resolved, then, either party may proceed to litigation.

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26 Force majeure

Neither party will be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations occasioned by any cause whatsoever that is beyond its reasonable control including: Act of God; war; civil disturbance; pandemics or epidemics; requisitioning by governments or public authorities; governmental restrictions; prohibitions or enactments of any kind; import or export regulations; strikes; shipping and transport delays; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining the Products or materials; breakdown of machinery; fires; or accidents. If any such event occurs the affected party may to the extent necessary suspend any Order or these terms and conditions for as long as the relevant event prevents it from performing any obligation under this Agreement, without incurring any liability to the other party for any such loss or damage.

27 Insurance (for Australia Sellers)

- 27.1 In addition to any insurance which the Seller is by Law obliged to effect, the Seller must procure and maintain at its own expense, with an insurer registered as an "Authorised Insurer" by the Australian Prudential Regulation Authority (APRA) as the regulating authority such policies of insurance, including:
- (a) public liability insurance to cover loss or damage in relation to personal injury (including illness), or damage to property including property belonging to third parties;
 - (b) cyber security insurance to cover losses that may be suffered as a result of a data security breach or the wrongful disclosure and use of Personal Information by the Seller (or its Personnel);
 - (c) product liability insurance, to cover loss or damage in relation to defective Goods that cause personal injury, property damage and losses such as delay, recall and rectification costs in relation to defective Goods; and
 - (d) professional indemnity insurance.
- 27.2 Each policy must be for an amount of not less than \$20 million (AUD) per occurrence for public liability insurance and in aggregate from product liability insurance. The Seller must ensure that APP is named as or falls with the definition of an insured party in respect of any liability arising out of or by reason of the supply of the Goods.
- 27.3 The Seller must provide APP copies of certificates of insurance for the insurances required by this clause if requested by APP. The Seller is responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required of the Seller under this clause.

28 Imports and Embargoes

- 28.1 This section applies where the Seller undertakes import of the Goods it supplies to APP or where our commercial arrangement is not restricted solely to the Australian market (**Imports**).

- 28.2 The Seller warrants and undertakes to APP:

- (i) The Seller will comply with all the import control regulations of Australia, New Zealand, France, the EU, and the USA and those of any other applicable jurisdiction and it will obtain all necessary licences, shipping documents and authorisations required under such legislation in respect of such Imports.
 - (ii) The Seller will not Import or re-Import the Goods from a country that is subject to embargo or sanction without having obtained all necessary authorisations from Australian, New Zealand, French, European or American authorities, the United Nations or any other country or organisation that imposes such restrictions.
 - (iii) The Seller will not obtain supply of the Goods from parties, organisations or entities subject to embargoes, sanctions or other restrictions imposed by Australia, New Zealand, France, the EU, the USA, the United Nations or by any other country, or to parties, organisations or entities if there is reason to believe that they fail to fully comply with all applicable national or international regulations, sanctions and embargoes.
 - (iv) The payments received for the Goods are not intended to be used in connection with any sectors or use that is banned or subject to restrictions under any applicable Laws, unless all required authorisation by the relevant bodies have been obtained.
 - (v) All transfer and receipt of funds by the Seller must comply with all applicable national and international Laws.
 - (vi) To enable authorities or APP to conduct compliance audits, the Seller upon request by APP, will promptly provide APP with all relevant licences and authorisations, information as to the identity of the Seller from whom the Goods are obtained, the destination and intended use of the payments for the Goods and the financial institutions or entities used to collect and issue payments.
 - (vii) The Seller will notify APP if the Seller suspects that any person the Seller has obtained the Goods from may not be complying with any embargo, sanction or application Import control Law.
 - (viii) Seller will indemnify and hold harmless APP from and against any and all claims, proceedings, actions, fines, losses, costs and damages arising out of or relating to any noncompliance by the Seller with any of the above undertakings or breach of any relevant Import control Laws or sanction or embargo.
- 28.3 The Seller's compliance with all the above undertakings is a condition of APP continuing purchase the Goods from the Seller and APP has the right to suspend such purchase and terminate this Agreement where APP if the above undertakings are not being complied with or if any obligation under this Agreement would constitute a breach of any national or international Law or any embargo or sanction and APP will have no liability to the Seller or any third party by way of damages or otherwise in respect of such suspension or termination.

29 Compliance with Anti-Bribery, Money

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Laundering and Corruption Legislation

- 29.1 The Seller represents and warrants that it will comply with all applicable Laws including but not limited to all anti-corruption, anti-bribery, anti-trust, anti-money laundering laws, export or embargo, modern slavery laws and other criminal laws, rules and regulations applicable to the Seller.
- 29.2 The Seller warrants to APP that it has not, and will not, make any payment or transfer of anything of value to any personnel of APP, or any government representative, or to any representative of any company or business, to secure an improper advantage or benefit in relation to the matters contemplated by this Agreement.
- 29.3 Seller agrees to notify any breach of any term of this clause, to APP within a reasonable time.
- 29.4 The Seller acknowledges and agrees to participate in APP's due diligence process pursuant to clause 29.1 before entering into any relationship and during the relationship.
- 29.5 APP reserves the right undertake due diligence audits of the Seller, as part of APP's due diligence process and the Seller acknowledges and agrees to participate and provide supporting information for the due diligence audit.
- 30 Health and safety**
- 30.1 By accepting an Order, the Seller guarantees that the Goods the subject of the Order are equipped with all the statutory and standard safety features. Wherever the Order involves services to be provided within APP's establishments, or those of its clients, the Seller will take all the necessary measures to comply with the legal and statutory provisions relating to health and safety in respect of the provision of those services.
- 31 Environment**
- 31.1 Where the Goods are pollutants or where the Goods contain components that are subject to Directive of the European Parliament on Restriction of Hazardous Substances (RoHS), Regulation (EC) No 1907/2006 – Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Regulation (EU) 2017/821 – Conflict Minerals Regulation the Seller is obliged to notify APP of the presence of the pollutants or components, any measures or precautions which must be taken when using the Goods and for their possible destruction (or that of residues) following use, in accordance with the applicable law or regulations on the date of receipt. Compliance with this clause constitutes an essential and decisive condition of the Order.
- 32 Compliance with Legislation, Corporate Social Responsibilities**
- 32.1 The Seller represents and warrants they will comply with Legrand Group's (of which APP is a part) Shared Code of Ethics (which can be accessed at <https://www.legrand.com.au/en>) to the extent it is applicable to the performance of these terms and conditions.
- 32.2 The Seller acknowledges and agrees to participate in APP's due diligence process in respect of the matters referred to in clause 29.1 and 32.1, before entering into any relationship and during the relationship.
- 32.3 APP reserves the right undertake due diligence audits of the Seller, as part of APP's due diligence process and the Seller acknowledges and agrees to participate and provide supporting information which is reasonably requested by APP for the due diligence audit.
- 32.4 The Seller acknowledges and agrees that any breach of this clause is deemed a material breach.
- 33 Contribution to reducing environmental impacts**
- The environment is a key aspect of Legrand Group's (of which APP is a part) CSR policy. The Seller agrees to read APP's CSR policy (<https://www.legrand.com/en/our-commitments/csr-resource-center>) and to consider implementing measures that will result in the Seller helping reduce the environmental footprint of the economic chain through improving waste recycling, risk management, including management of pollution and emissions, environmental protection, preserving biodiversity and contributing to a circular economy.
- 34 Cybersecurity**
- 34.1 The Seller must and must ensure that its subcontractors implement technical, organizational, administrative and physical measures in accordance with good industry practice and which ensure that any APP Data is not subject to any misuse, interference, loss, unauthorized access, modification or disclosure.
- 34.2 The Seller must and must ensure that its Personnel:
- ensure that APP Data is stored in Australia only, except where expressly authorized in writing by APP;
 - update its data security and virus screening procedures and technologies to respond to new data security threats or issues;
 - designate a person responsible for handling security and risk-related matters, serving as APP's primary contact for any such matters;
 - comply with all security controls which are applicable to the Goods and/or Services;
 - document and provide APP with a list of all security measures implemented to ensure the physical and logical security of APP Data in its possession or control; and
 - continuously monitor its risk control and compliance with security policies, including those of its subcontractors.
- 34.3 The Seller represents and warrants that all Goods and/or Services provided to APP are free from any known defects, weaknesses, or vulnerabilities that could impact information security at the time that they are put into production.
- 34.4 The Seller must immediately notify APP in writing of:
- any non-compliance with any security controls; or
 - any incidents,

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that may impact the security of its IT System and/or the APP Data.

34.5 APP may conduct or require the Seller or a third party to conduct, an audit of the Seller's systems, practices or procedures to the extent reasonably necessary to assess the compliance of the Seller with its obligations under this Agreement, any Order or under Privacy Law. In connection with any such audit, the Seller must provide APP (or its auditor or other nominees) with all access reasonably required by APP (or its auditor or other nominees) to the Seller's premises, data, systems and equipment, Personnel, facilities, policies, procedures and/or security measures used by the Seller in connection with its collection, storage and use of any APP Data.

34.6 A breach by the Seller of its obligations under this clause will entitle APP to terminate this Agreement.

35 Privacy

35.1 The Seller agrees to comply with the Privacy Laws with respect to any act done or practice engaged in by the Seller under on in connection with this Agreement both:

- (a) to the extent that the Seller is bound by and required to comply with the Privacy Laws; and
- (b) in the same way and to the same extent as APP would have been bound by and required to comply with the Privacy Laws in respect of that act or practice had it been directly done or engaged in by APP.

35.2 Where the Seller has access to Personal Information in order to perform its obligations pursuant to this Agreement, the Seller must:

- (a) comply and ensure that all Personnel comply with the Privacy Laws and any other relevant Laws;
- (b) not (and must ensure that all Personnel do not) do or omit to do anything that causes or is likely to cause APP to be in breach of its obligations under any Privacy Laws;
- (c) comply with any request, direction or instruction provided by APP to the Seller regarding the collection, storage, use, disclosure or management of Personal Information;
- (d) if it receives a request from an individual for access to, alteration, correction or deletion of Personal Information about the individual held or stored by the Seller in connection with this Agreement, promptly notify APP in writing of the request and comply with any reasonable and lawful direction issued by APP in respect of any such request;
- (e) ensure that it only allows access to Personal Information to Personnel as is strictly necessary for the Seller to comply with its obligations under this Agreement and that all such Personnel are aware of and properly trained to meet the requirements of this clause and the Privacy Laws;
- (f) only access, copy, view or use Personal Information where the Seller needs to do so to be able to provide the Goods and/or Services to APP pursuant to this Agreement and the Seller must not

access, copy, view or use Personal Information for any purpose other than providing the Goods and/or Services to APP pursuant to this Agreement;

(g) not disclose, transfer or otherwise provide any Personal Information to a third party (including, without limitation, any third party located outside of Australia) or appoint any third party to host or store Personal Information without the prior consent in writing of APP;

(h) not provide the Goods and/or Services using any personnel located outside of Australia without the prior consent in writing of APP;

(i) notify APP immediately if it becomes aware that:

- (i) any disclosure or use of Personal Information may have been made in contravention of any Privacy Law or this Agreement; or

- (ii) any unauthorised access, use, modification or disclosure of any Personal Information may have occurred or any other data security breach or incident in respect of any Personal Information may have occurred.

35.3 The Seller must, on termination or expiry of this Agreement or if requested by APP, at the option of APP, either:

- (a) return all Personal Information in the Seller's possession or control to APP;
- (b) securely destroy all Personal Information in the Seller's possession or control; or
- (c) de-identify all Personal Information in the Seller's possession or control, including in all backup and disaster recovery sites of the Seller,

provided that the Seller may retain a copy of any Personal Information it obtains under or in relation to this Agreement in order to comply with any document retention obligations imposed on that party by law, its professional obligations or its professional indemnity insurers.

35.4 The Seller must implement measures in accordance with good industry practice to seek to prevent and detect Data Breaches. If the Seller becomes aware or suspects that a Data Breach has occurred, the Seller must take appropriate steps in response to the actual or suspected Data Breach, including:

- (a) immediately notifying APP of that actual or suspected Data Breach;
- (b) promptly identifying the cause of the Data Breach;
- (c) disclosing to APP all information relevant to the actual or suspected Data Breach on an ongoing basis;
- (d) complying with all reasonable directions or instructions of APP in relation to the Data Breach; and
- (e) taking all reasonable steps to:
 - (i) mitigate against all adverse effect and harm arising from the Data Breach and to remedy the Data Breach;
 - (ii) prevent any potential Data Breach from

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becoming an actual Data Breach; and

- (iii) prevent any recurrence of such breach or potential breach.

Except to the extent caused or contributed to by the negligent act or omission, wilful misconduct or breach of this Agreement by APP, the Seller indemnifies APP against any losses, liabilities, costs, charges or expenses (including any direct, indirect, special or consequential losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by APP arising out of or in connection with any breach or threatened breach by the Seller of their obligations in this clause.

- 35.5 APP's Privacy Policy and Credit Reporting Policy are on our website at app.net.au. The Seller and its directors, partners or proprietors:
- (a) consent to the collection, use and disclosure of the personal information and credit information for the purpose of APP purchasing the Goods and or Services; and
- (b) consent to any personal information collected by APP being disclosed to third parties operating outside Australia including New Zealand, France, and other European countries, United States of America, and any other country where APP or its related entities have a presence or engage third parties, acknowledge and agree that Australian Privacy Principle 8.1 will not apply to such disclosures, that APP will not be required to take such steps as are reasonable in the circumstances to ensure such third parties outside of Australia comply with the Australian Privacy Principles and will not be accountable under the Privacy Laws and the individual will not be able to seek redress against APP in the event such overseas third parties do not comply.
- 35.6 A breach by the Seller of its obligations under this clause will entitle APP to terminate this Agreement.

36 Conflict of Interest

- 36.1 The Seller warrants that, to the best of its knowledge, at the time of entering into this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement. The Seller must immediately disclose in writing to APP any matter that may give rise to an actual or potential conflict of interest. APP may, at its sole discretion, take any action it considers necessary to manage or resolve such conflict, including terminating this Agreement or any Order.

37 General

- 37.1 Neither party may subcontract, assign or novate an Order or any obligations or rights under these terms and conditions without the prior written consent of the other party.
- 37.2 No neglect, delay or indulgence on the part of a party in enforcing any of these terms and conditions will prejudice the rights of that party or be construed as a waiver of any such rights.

- 37.3 Nothing in this Agreement will be construed to create an employment or agency relationship, partnership or joint venture between APP and the Seller.
- 37.4 If any part of these terms and conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from these terms and conditions, but in any event the remaining provisions will remain in full force and effect.
- 37.5 This Agreement is governed by and must be construed in accordance with the Laws which apply in New South Wales, except for the *Sale of Goods (United Nations Convention) Act 1994* which is expressly excluded except that in the event the Seller is in a jurisdiction other than Australian and any part of these terms and condition is required by the Laws of the Seller's jurisdiction to be severed then the relevant terms of the United Nations Convention on Contracts for International Sale of Goods will apply to replace the severed terms and conditions.
- 37.6 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of all matters or things arising out of these terms and conditions and any other provision of this Agreement.
- 37.7 The parties waive any right to have this Agreement and these terms and conditions translated from English to any other language. If they are subsequently recorded in any other language, the English language version will prevail to the extent of any inconsistency.
- 37.8 Clauses 1, 13, 14, 16, 24, 25, 29, 30, 31, 32, 33 34, 34, 35 survive the termination of this Agreement as do any other provisions that by implication from their nature are intended to survive the termination and any rights and remedies accrued prior to termination.