

Supply of Goods Terms and Conditions (Effective 7 June 2013)

1. Background

- 1.1. The Seller is the owner of the Goods.
- 1.2. The Buyer wants to purchase the Goods from the Seller has provided an Order for the Goods.
- 1.3. The Seller accepts the Buyer's offer and has agreed to sell the Goods to the Buyer in accordance with these Terms and Conditions.

2. Definitions and Interpretation

2.1. In this document:

- (a) **Agreement:** means these Terms and Conditions, the Order, the Specifications, the Installation Requirements or any other document that is incorporated into this Agreement by way of reference.
- (b) **Australian Consumer Law:** has the meaning given to it under the *Competition and Consumer Act 2010* (Cth) as implemented under the *Fair Trading Act 1989* (Qld).
- (c) **Business Day:** means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Seller's principal place of business;
- (d) **Buyer:** means the person or company who places an order for the Goods.
- (e) **Claim:** includes (and is not limited to) any claim, action, demand, application, proceeding, judgment, enforcement hearing and enforcement order.
- (f) **Goods:** means goods sold by the Seller as requested by the Buyer through the Order.
- (g) **GST:** means goods and services tax imposed through GST Law.
- (h) **GST Law:** means A New Tax System (Goods and Services Tax) Act 1999 (Cth), any regulations passed under this Act, or any statutory instrument amending, consolidating or replacing it.
- (i) **Installation Requirements:** means the recommended process for installing the Goods, having regard to the Specifications.
- (j) **Loss:** includes (and is not limited to) any loss, liability, tax, prohibition, penalty, fine or expense.
- (k) **Order:** means an offer to purchase made by the Buyer as described in clause 3.2 and may include over the counter orders, telephone orders or other methods for making an order as accepted by the Seller.
- (l) **PPSA:** means the *Personal Property Securities Act 2009* (Cth).
- (m) **Purchase Price:** means the full price for the Goods (excluding GST and delivery costs) as set out in the Order.
- (n) **Specifications:** means any technical or other specification related to the manufacture of the Goods and their use, as made available to the Buyer at the time of purchase.
- (o) **Seller:** means That's Right Pty Ltd (ACN 123 198 872) as trustee trading as BMG Imports and includes its officers, employees, agents and contractors.
- (p) **Terms and Conditions:** means these terms and conditions as amended from time to time.
- (q) **Voluntary Warranties:** means the voluntary warranties set out in clause 11.

2.2. In this Agreement, unless the context otherwise requires:

- (a) words importing a gender include any other gender;

- (b) words in the singular include the plural and vice versa;
- (c) all dollar amounts refer to Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an individual or person includes a corporation or other legal entity;
- (f) a reference to "consent" means prior written consent;
- (g) clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of this Agreement; and
- (h) if any expression is defined, other grammatical forms of that expression will have corresponding meanings; and
- (i) if a party includes two or more persons, this Agreement will bind them jointly and each of them severally

3. Supply of Goods

- 3.1. The Seller agrees to supply the Goods to the Buyer in accordance with the Terms and Conditions and the Buyer hereby accepts the Terms and Conditions.
- 3.2. An order or an offer to purchase (Offer) can be made by the Buyer in writing or verbally and is accepted upon the earlier of any of the following:
 - (a) the Buyer collects the Goods from the Seller; or
 - (b) the Seller delivers the Goods to the Buyer.
- 3.3. The Terms and Conditions apply to every Order unless otherwise agreed in writing by the Seller.
- 3.4. Acceptance of the Goods by the Buyer is conclusive evidence that the Terms and Conditions apply and are binding on the Buyer.
- 3.5. If at any time in relation to the supply of the Goods, the Buyer provides, refers to, submits, uses, or seeks to rely on terms and conditions other than the Terms and Conditions, such terms and conditions will not form part of this Agreement.

4. Title

- 4.1. Legal and equitable title in the Goods passes to the Buyer upon payment of the full Purchase Price to the Seller.
- 4.2. Subject to full payment of the Purchase Price, title of the Goods will be supplied free of any encumbrances and other adverse interests.
- 4.3. The Buyer also acknowledges that until full payment of the Purchase Price, and in circumstances where the Buyer receives early delivery of the Goods:
 - (a) the Buyer holds the Goods as bailee for the Seller;
 - (b) a fiduciary relationship exists between the Buyer and Seller for the Goods; and
 - (c) the Buyer must keep the Goods in the condition in which the Goods were provided by the Seller until such a time that title in the Goods passes to the Seller.

5. Risk

- 5.1. Risk in the Goods passes to the Buyer when the goods upon the earlier of the following:
 - (a) the Buyer collects the Goods from the Seller; or
 - (b) the Seller delivering the Goods to the Buyer.
 - (c) upon legal and equitable title in the Goods passing to the Buyer under clause 4.

6. Acceptance

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6.1. Within two days of receiving the Goods from the Seller, the Buyer must:

- (a) carry out a physical inspection of the goods; and
- (b) notify the Seller in writing if the goods do not comply with the description, conditions or warranties set out in this Agreement.

6.2. To the fullest extent permitted by law, the Goods be accepted by the Buyer within two business days of:

- (a) the Buyer collecting the Goods from the Seller; or
- (b) the Seller delivering the Goods to the Buyer,

regardless of whether a physical inspection is carried out by the Buyer under clause 6.1.

6.3. The Buyer acknowledges that the Seller only offers refunds for Goods when:

- (a) the refund is made available at the Seller's discretion under the Voluntary Warranties in clause 11;
- (b) if Australian Consumer Law applies, the right to a refund becomes available through an exercise of any relevant statutory condition or statutory right; or
- (c) the Goods are returned to the Seller unopened, unused and in their original packaging within 14 days of the date of purchase.

7. Installation and Use

7.1. The Buyer agrees that to the fullest extent permitted by law, it is a condition of all Voluntary Warranties and statutory warranties under the Australian Consumer Law (to the extent that they apply) that:

- (a) it install or affix the Goods in accordance with the Installation Requirements; and
- (b) only use the Goods in accordance with the relevant Specifications for the Goods.

7.2. If the Buyer:

- (a) does not comply with the Seller's Installation Requirements;
- (b) uses the Goods in a way that is inconsistent with the Specifications or their intended purpose, or
- (c) damages the Goods through their own negligence or failure to properly maintain the Goods,

the Voluntary Warranties will be invalidated any statutory warranties under the Australian Consumer Law may also be invalidated.

7.3. To the fullest extent permitted by law, the Buyer fully releases the Seller from all Loss suffered by the Buyer (or any person claiming through the Buyer) as a consequence of any breach of this clause 7.

8. Delivery

8.1. Where the Seller has agreed to deliver the goods, the Seller will make all reasonable efforts to have the Goods delivered to the Buyer in accordance with the Buyer's instructions.

8.2. Notwithstanding clause 8.1, the Seller is not be liable for:

- (a) any failure to deliver or any delay in delivery for any reason;
- (b) any damage or loss due to unloading or packaging; or
- (c) except to the extent that such damage was caused by the negligent act or omission of Seller, damage to property caused upon entering premises to deliver the Goods.

8.3. Any costs incurred by Seller due to any failure by the Buyer to accept the Goods at time of delivery will be reimbursed by the Buyer to the Seller.

8.4. The Buyer acknowledges that where the Seller coordinates delivery of the Goods:

- (a) delivery charges and estimated delivery times depend on where the goods are being delivered; and
- (b) it is the Buyer's responsibility to ensure that all delivery information is correct.

9. Good and Services Tax

9.1. Terms used in this clause have the meaning given to them in GST Law and all amounts payable under this Agreement are excluding GST.

9.2. Where goods and services provided under this Agreement are:

- (a) a taxable supply; and
- (b) the consideration for that supply excludes GST,

the recipient must pay an amount equal to the GST in addition to the consideration payable for the supply.

9.3. The amount of GST will be calculated at the prevailing GST rate.

9.4. If the GST rate is varied, the consideration payable for any supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.

9.5. Where GST applies to a supply made under this Agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at, or before the time payment for the supply is required.

9.6. If an adjustment event occurs in connection with any taxable supply made under this Agreement:

- (a) the amount payable by the recipient will be recalculated to reflect the adjustment event; and
- (b) payment for the adjustment event will be made by the recipient to the supplier or by the supplier to the recipient (as the case requires).

9.7. Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits for the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

10. Representations and Fitness for Purpose

10.1. The fullest extent permitted by law, all representations, warranties, guarantees and implied terms in relation to the Goods (whether implied or otherwise) are hereby excluded.

10.2. The Buyer agrees that if it is aware (or should be aware) that the Goods are for a particular purpose, the Buyer must clearly specify that purpose at the time of making the Order.

10.3. The Buyer also acknowledges that:

- (a) it has made its own enquiries in relation to the suitability of the Goods; and
- (b) it does not rely on any warranty, condition, description or representation by Seller in relation to their suitability of the Goods for a particular purpose.

11. Voluntary Warranties

11.1. In addition to any statutory conditions or statutory warranties that otherwise exist under the Australian Consumer Law, the Seller offers the following Voluntary Warranties for the Goods:

- (a) **Gate Opener and Solar Panels:** 12 months from the date of purchase;

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- (b) **Key Pad:** 6 months from the date of purchase;
 - (c) **Battery:** 6 months from the date of purchase; and
 - (d) **Remotes and Other Parts:** 3 months from the date of purchase.
- 11.2. This Voluntary Warranty covers the replacement or repair of any product that has a manufacturing or material defect that is not the result of:
- (a) normal wear and tear; or
 - (b) a natural characteristic of the material used; or
 - (c) a breach of clause 7 by the Buyer.
- 11.3. This Voluntary Warranty is not transferable and does not cover products used for commercial purposes.

12. Limitation of Liability

- 12.1. Subject to this clause 12 and to the extent permitted by law, the sole obligation of the Seller under this Agreement is to:
- (a) use its best endeavours to provide the products; or
 - (b) where the Voluntary Warranties, statutory conditions or statutory warranties are applicable, to:
 - i. repair the Goods;
 - ii. repair or replace (at the Seller's discretion) any part of a Goods which is found to be defective during the relevant warranty period; or
 - iii. where (i) or (ii) are not capable of providing an appropriate remedy, to provide a refund equal to the value of the Purchase Price for the relevant Goods.
- 12.2. In no event shall the Seller be liable for any Loss that is the subject of any Claim related to:
- (a) faulty design;
 - (b) claims resulting from the Buyer's breach of clause 7 (including negligent or faulty installation by the Buyer or the Buyer's installer);
 - (c) negligent or misleading advice;
 - (d) direct or indirect Loss resulting from the Buyer's actual, attempted or failure to use the relevant Goods; and
 - (e) any indirect, special or consequential Loss or injury to any person, corporation or other entity.
- 12.3. If any Goods supplied under this Agreement are supplied to the Buyer as a 'consumer' under the Australian Consumer Law:
- (a) the consumer will have the benefit of certain non-excludable rights and remedies for those goods or services; and
 - (b) nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy available under the Australian Consumer Law.
- 12.4. If the Goods are not acquired for ordinary personal, domestic or household use under the Australian Consumer Law, the Seller limits its liability for payment to the Buyer (or any person claiming through the Buyer) of an amount equal to the lowest of:
- (a) the cost of replacing the goods or supplying equivalent goods;
 - (b) the cost of repair of the goods; or
 - (c) the cost of having the goods repaired or replaced.
- and the Seller will not be liable for any consequential loss resulting from our negligence, breach of contract or under any other theory of liability.

- 12.5. The Buyer also acknowledges that if the Seller suffers a loss in connection with attending to and servicing a request from the Buyer that is not covered by:
- (a) Voluntary Warranty; or
 - (b) a statutory warranty under the Australian Consumer Law,
- the Buyer must reimburse the Seller for reasonable losses suffered and costs incurred in connection with attending to such requests.

13. Confidential Information

- 13.1. If the Buyer receives any confidential information belonging to the Seller that is not publicly known, the Buyer must not use or disclose such information:
- (a) without the Seller's consent; or
 - (b) unless the disclosure is required by law.

14. Delay

- 14.1. Subject to this Agreement, if the Seller is unable to perform any obligation under this Agreement due to any reason, fact or circumstance beyond the Seller's reasonable control:
- (a) the Seller will notify the Buyer of such circumstances that caused or contributed to the delay; and
 - (b) the period for performing current and future obligations will be proportionately extended by a period that is equal to the period of delay.

15. Waiver

- 15.1. Any failure by a party at any time to enforce a clause of this Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

16. Severance

- 16.1. If any part of this Agreement is held to be invalid, unlawful or unenforceable for any reason, then to the full extent permitted by law:
- (a) the offending provision will be severed from the rest of the Agreement; and
 - (b) the remaining terms and conditions will continue to be valid and enforceable.

17. Applicable Law

- 17.1. This Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

18. Entire Agreement

- 18.1. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.

19. Further Assurances

- 19.1. Each party must do all things and execute all documents reasonably required to give effect to this Agreement.

20. Personal Property Securities Act (PPSA)

- 20.1. To the extent that any reservation in favour of the Seller under this Agreement is a security interest under the PPSA (and if the Buyer is in default) the Seller may:
- (a) take steps to register their security interest on the personal property securities register; and
 - (b) if the Buyer is in default:
 - i. take possession of the Goods;
 - ii. enter the Buyer's premises for that purpose;

- iii. appoint any person to be a receiver of all or any of the Goods, subject to a security interest being created by this document.
- 20.2. Until legal and equitable title passes to the Buyer, the Buyer must not do anything:
- (a) to further encumber the Goods; or
 - (b) that will result in the security interest granted in favour of the Seller as ranking in priority behind any other security interest.
- 20.3. The Buyer:
- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under this Agreement; and
 - (b) contracts out of its right to receive any other notice or statement under any other applicable provisions in the PPSA.
- 20.4. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) will not apply.