

TERMS AND CONDITIONS OF TRADE

1. Definitions

In these conditions:

“Agreement” means any agreement or contract entered into for the provision of goods by the Supplier to the Customer;

“conditions” means these Terms and Conditions of Trade;

“Customer” means the person named as Applicant in the Credit Application and includes any servant, agent, partner, contractor or employee of that person;

“goods” means goods supplied by the Supplier to the Customer;

“GST” means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

“Supplier” means all or any of Barnes Products Pty Ltd as trustee for the Barnes Trust or any related company that supplies goods to the Customer and includes the companies’ employees and agents.

2. Basis of Contract

2.1 Unless otherwise agreed by the Supplier in writing, the conditions apply exclusively to every contract for the sale of goods by the Supplier to the Customer and cannot be varied or supplemented by any other condition including the Customer’s terms and conditions of purchase (if any).

2.2 Any written quotation provided by the Supplier to the Customer concerning the proposed supply of goods is valid for 14 days and is an invitation only to the Customer to place an order based upon that quotation. The conditions may include additional terms in the Supplier’s quotation which are not inconsistent with these conditions.

2.3 The Supplier may vary the conditions by written notice to the Customer at any time. Variations will take effect immediately once given and will apply to orders made by the Customer after the date of notice.

2.4 The Supplier may, in its absolute discretion, refuse to provide goods where:

- (a) goods are unavailable for any reason whatsoever;
- (b) credit limits cannot be agreed upon or have been exceeded; or
- (c) payment for goods previously supplied to the Customer or any related corporation has not been received by the Supplier.

2.5 An order cannot be cancelled without the prior written consent of the Supplier. Where an order is cancelled, the Customer indemnifies the Supplier against any losses incurred by the Supplier as a result of the cancellation, including loss of profit from other orders foregone as a result of the scheduling of the order which is subsequently cancelled.

2.6 The Customer must provide its full legal name, ABN and correct billing address for all orders.

3. Placing an Order

3.1 The Customer must comply with the procedure prescribed by the Supplier for the placing of orders.

3.2 An order placed by the Customer or any variation or cancellation of an order placed by the Customer is an offer. An order will not be accepted until the Supplier communicates acceptance to the Customer in writing or by electronic means or it has provided the goods.

4. Payment

4.1 Payment for goods must be made within the terms agreed, generally within 30 days of the end of month in which the Supplier's invoice is raised.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the sole discretion of the Supplier immediately upon giving written notice to the Customer. Time is of the essence in relation to the period specified for the Customer to pay for the goods.

5. Default, Cancellation or Suspension of Orders

5.1 If the Customer:

(a) defaults in payment by the due date of any amount payable to the Supplier;

(b) fails to comply with any of these conditions;

(c) being an individual, commits an act of bankruptcy or becomes an insolvent under administration;

(d) being a company, becomes an externally administered body corporate or has an application for winding up filed against it;

(e) has a receiver or receiver and manager appointed to it; or

(f) makes or proposes to make any arrangement with its creditors;

then the Supplier may, without prejudice to any other remedy available to it, at its option:

(i) require the immediate payment of all money which would become payable by the Customer to the Supplier at a later date on any account, without further notice;

(ii) charge the Customer interest on any sum due at the rate prescribed from time to time under the Penalty Interest Rates Act 1983 (Vic), calculated from the due date until the date of payment;

(iii) charge the Customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any goods or money;

(iv) cease or suspend for such period as the Supplier thinks fit, supply of any further goods to the Customer;

(v) by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier;

(vi) retain any deposit paid;

(vii) apply any amount paid by the Customer as the Supplier thinks fit.

5.2 In addition to any right of lien to which the Supplier may be entitled, the Supplier will be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full all money owing by it to the Supplier.

5.3 The Supplier may sell any items as referred to in clause 5.2 in such manner as it thinks fit to recover any money owing to it by the Customer.

6. Returns and Claims

6.1 The Customer must inspect the goods immediately upon delivery and must, within 7 days after the date of inspection, give written notice to the Supplier with particulars of any claim that the goods are not in accordance with this agreement.

6.2 If the Customer fails to give that notice, then to the extent permitted by law, the goods must be treated as having been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of these conditions.

6.3 In the event of a valid claim, the Supplier may, at its option:

(a) replace the goods or supply equivalent goods;

- (b) repair the goods;
- (c) reimburse the Customer for the cost of the goods.

7. Exclusions and Limitations

7.1 Nothing in these Terms excludes, restricts or modifies any rights, guarantees or remedies the Customer may have under the Australian Consumer Law or any other applicable legislation which cannot be excluded, restricted or modified by agreement.

7.2 Subject to clause 7.1, all implied conditions, warranties, guarantees and representations are excluded to the maximum extent permitted by law.

7.3 The Supplier's liability for breach of any term, warranty or condition (other than one implied by law that cannot be excluded) is limited, at the Supplier's option, to:

- (a) the replacement or resupply of the goods;
- (b) the repair of the goods; or
- (c) the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods.

7.4 To the maximum extent permitted by law, the Supplier is not liable for any indirect, special, incidental or consequential loss or damage, including but not limited to loss of profit, loss of revenue, loss of goodwill, or business interruption, howsoever caused (including by negligence).

8. Intellectual Property

8.1 All intellectual property in any documents or materials supplied by the Supplier to the Customer remains the property of the Supplier and may not be copied or used without the Supplier's prior written consent.

9. Indemnity

9.1 The Customer indemnifies the Supplier against any loss or damage arising from the Customer's breach of this agreement or the Customer's negligence.

10. Force Majeure

10.1 The Supplier is not liable for failure to perform the contract to the extent and for so long as its performance is prevented or delayed because of:

- (a) circumstances outside its control;
- (b) failure of the Supplier's machinery;
- (c) failure of a supplier to the Supplier;
- (d) strikes or industrial action;
- (e) pandemics or government restrictions.

11. Assignment and Subcontracting

11.1 The Customer must not assign or subcontract any of its rights or obligations without the prior written consent of the Supplier.

11.2 The Supplier may assign or subcontract its rights and obligations under this agreement without notice to the Customer.

12. Waiver

12.1 The failure of the Supplier to exercise any right or remedy does not constitute a waiver of that right or remedy.

13. Severability

13.1 If any provision of this agreement is found to be invalid or unenforceable, the remaining provisions will continue in full force and effect.

14. Notices

14.1 Any notice must be in writing and is deemed to be received:

- (a) if delivered by hand, on delivery;
- (b) if sent by pre-paid mail, two days after posting;
- (c) if sent by email, at the time of transmission.

15. Privacy

15.1 The Supplier collects and uses personal information in accordance with the Privacy Act 1988 (Cth) and handles all personal information in accordance with its Privacy Policy, available upon request or via its website.

15.2 The Customer consents to the Supplier collecting, storing, using and disclosing personal information for the purposes of:

- (a) supplying goods and services;
- (b) assessing creditworthiness;
- (c) managing commercial relationships;
- (d) complying with legal and regulatory obligations; and
- (e) direct marketing, unless the Customer opts out in writing.

15.3 Where the Customer provides personal information of third parties (such as employees or trade references), the Customer warrants that it has obtained all necessary consents for such disclosure.

15.4 The Supplier may disclose personal information to third-party service providers, including those located outside Australia, in accordance with its Privacy Policy.

16. Electronic Communications and signatures

16.1. The Supplier is bound by the Privacy Act 1988 (Cth) and handles all personal information in accordance with its Privacy Policy, available on request or at www.barnes.com.au.

16.2 The Customer agrees that all communications, including but not limited to invoices, statements, notices and agreements, may be provided electronically by the Supplier and that such communications satisfy any legal requirement for writing.

16.3 The parties' consent to the use of electronic signatures, and agree that an electronic signature is deemed to be equivalent to a handwritten signature for the purposes of forming binding agreements.

17. Personal Properties Securities Act (PPSA)

17.1 The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA") and that the Supplier has a security interest in all goods supplied to the Customer until full payment is received.

17.2 The Customer consents to the Supplier registering its security interest on the Personal Property Securities Register (PPSR) and agrees to provide all information and do all things necessary to ensure the registration is effective.

17.3 To the extent permitted by law, the Customer waives its right to receive any notice under the PPSA (including notice of verification statements) unless such notice is required by law and cannot be excluded.

17.4 The Customer must not create, permit or allow to exist any security interest over the goods

without the prior written consent of the Supplier.

17.5 These Terms and Conditions prevail to the extent of any inconsistency with any other agreement or document between the parties relating to the Supplier's security interest.

18. Governing Law

18.1 These conditions are governed by the laws of the State of New South Wales and the parties submit to the jurisdiction of the courts of that State.