

Terms & Conditions of Sale

1. Definitions

- 1.1 "Manufacturer" shall mean Rubber Mulch Australia Pty Ltd its successors, contract manufacturers/suppliers, assigns or related entities or any person or company acting on behalf of and with the authority of Rubber Mulch Australia Pty Ltd.
- 1.2 "Customer" shall mean the Customer and goods/products/service purchaser or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" shall mean that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods, Products or Services" shall mean Goods / Product / Service supplied by the Manufacturer to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Manufacturer to the Customer
- 1.5 "Services" shall mean all services supplied by the Manufacturer to the Customer and includes any installation, advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Manufacturer and the Customer subject to clause 3 of this contract.
- 1.7 The headings used in this Agreement form part of these terms and conditions.
- 1.8 Where the context admits or requires, words importing the singular shall include the plural, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.

2. Acceptance

- 2.1 Any instructions received by the Manufacturer from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Manufacturer shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Unless agreed to in writing by the Manufacturer, any variation of these terms and conditions, including any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions, is rejected by the Manufacturer.
- 2.4 The Customer undertakes to give the Manufacturer at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

3. General

- 3.1 The manufacturer does not accept any responsibility for how its products are used, applied or represented by a customer.
- 3.2 Due to the type of material and specific manufacturing process the Customer understands and accepts that Enduro Rubber Mulch and other products may vary in grade, size, colour, quality and level of if any impurities or foreign matter (metal, oil, dust and the like) and may also vary from any product depiction on the company website, company brochures, samples and packaging.
- 3.3 The Manufacturer may vary these terms and conditions by a notice of variation in writing to the Customer or as located on their website www.rubbermulchaustralia.com.au. The Customer agrees that the purchase of any goods or services after the date of a notice of variation will be deemed to be an acceptance of such varied terms and conditions by the Customer.
- 3.4 Should there be any variation to any of the information supplied by the Customer to the Manufacturer in the credit account application or in the structure or nature of the Customer's business (such as a conversion to or from a Company or trust) the Customer shall notify the Manufacturer in writing within 7 days of such variation.
- 3.5 These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of the Manufacturer's successors and assigns.
- 3.6 Where the Customer is comprised of the names of two or more persons then each person is jointly and severally liable to pay all monies owed by the Customer to the Manufacturer.
- 3.7 Where there is any inconsistency between these terms and conditions (including any updated versions of these terms and conditions that may appear on their website from time to time) and any subsequent agreement with the Customer for the supply of goods or services by the Manufacturer, then such subsequent agreement shall only prevail to the extent that it is inconsistent with these terms and conditions (including any updated versions of these terms and conditions).
- 3.8 The waiver of any of these terms and conditions by the Manufacturer shall not be construed as a continuing waiver of that term or condition and the Manufacturer shall be entitled to require compliance with all of the terms and conditions at any time.

4. Account Terms

- 4.1 The Manufacturer may in its absolute discretion refuse the Customer credit facilities or suspend or discontinue the supply of goods and services to the Customer or to increase or vary the Customer's credit limit at any time without any obligation to provide to the Customer or the Customer's guarantors, a reason for such action.
- 4.2 Unless otherwise agreed in writing between the Manufacturer and Customer all goods or services ordered will apply to the following terms: a) full payment is due on all goods or services delivered by the Manufacturer within 7 (SEVEN) days of the date of any order, and b) all orders over 1 (ONE) tonne require a 50% of the total invoice to be paid immediately upon the Manufacturer receiving the order and the full balance within 7 (SEVEN) days of the order date.***
- 4.3 If the Customer fails to make full payment by any Due Date interest will be charged at a rate which is 2.5% per month calculated on daily balances on monies owed by the Customer to the Manufacturer both before and (as a separate and independent obligation) after any judgment.
- 4.4 The Customer will pay the Manufacturer for any and all of the Manufacturer's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties and other expenses payable under these terms and conditions together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under these terms and conditions. Such costs, duties and other expenses as well as interest payable pursuant to clause

4.3 may be recovered as a liquidated debt.

4.5 Any payments received by the Manufacturer from the Customer shall be applied first to any costs, duty, commission or other expenses referred to in 4.4, then to interest and then to the remainder of monies outstanding.

4.6 The Customer shall not deduct any amount from the amount due on any Manufacturer invoice or statement. The Customer shall not make any claim on the Manufacturer if any amounts are outstanding from the Customer to the Manufacturer. The Customer is not entitled to set off any amounts against its outstanding debts to the Manufacturer.

5. Trust And Trustees

Where the Customer is a trustee:-

(a) The Customer agrees to produce a stamped copy of the trust deed (including all amendments) with this Agreement and also at any time in the future when requested by the Manufacturer in writing.

(b) The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by the terms of this Agreement both personally and as trustee.

6. Order, Price And Payment

6.1 An order shall be made on and in accordance with the Rubber Mulch Australia Quote/Order Form, by facsimile and or as verbally agreed.

6.2 Accuracy of the detail on such order form shall be the responsibility of the Customer including yet not limited to product specification, quantity, exact delivery location, unload position, Estimated Time of Delivery, type of truck, lifting equipment required, any special bag type or pallet configuration and all other related detail, any changes will incur cost that the Customer shall be liable. If no instruction of the above is received by the Manufacturer may configure the order as they see appropriate.

6.3 A Customer signature on such order form shall be authorisation to deliver as per the order, any cancellation may incur cost.

6.4 At the Manufacturer's sole discretion the Price shall be as indicated on invoices provided by the Manufacturer to the Customer in respect of Goods supplied.

6.5 The Manufacturer reserves the right to change the Price in the event of a variation to the Manufacturer's quotation.

6.6 At the Manufacturer's sole discretion a deposit and payment terms may be required.

6.7 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payments for goods or services must be made in full within SEVEN (7) days from any invoice date.

6.8 At the Manufacturer's sole discretion payment may be due before delivery of the Goods.

6.9 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit/EFT, or by any other method as agreed to between the Customer and the Manufacturer.

7. GST

7.1 In this clause the expressions "GST", "input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the New Tax System, (Goods and Services Tax) Act 1999.

7.2 With the exception of any amount payable under this clause 11, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.

7.3 If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the Manufacturer an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice.

8. Additional Charges

The following are not included in the price of goods and services of the Manufacturer and are payable by the Customer:-

8.1 Delivery and insurance charges;

8.2 Any sales, goods and services or consumption taxes, stamp duty and any other taxes, fees or other government levies or charges which may be imposed with respect to this Agreement, or the goods or services but excluding any income tax payable by the Supplier on its own income.

9. Evidence of Monies Payable

9.1 A statement in writing signed by any director, secretary, administration manager or credit manager of the Manufacturer stating the balance of the monies due to the Manufacturer by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Manufacturer at the date of that statement.

10. Credit Limit

10.1 Any credit limit is solely for the benefit of the Manufacturer.

10.2 The obligations of the Customer under this Agreement remain unchanged if the credit limit is exceeded or not specified at any time.

11. Delivery Of Goods

11.1 Delivery dates are estimates only, the Manufacturer will notify the Customer when the goods are available for delivery or if there is any variance to the type, size or other of the goods or service..

11.2 At the Manufacturer's sole discretion delivery of the Goods shall take place when;

(a) the Customer takes possession of the Goods at the Manufacturer's address; or

(b) the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or

(c) the Customer's nominated carrier takes possession of the Goods in which event the Carrier shall be deemed to be the Customer's agent.

11.3 At the Manufacturer's sole discretion the costs of delivery are;

(a) included in the Price, or

(b) in addition to the Price, or

(c) for the Customer's account.

11.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

11.5 The Manufacturer may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

11.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;

(a) such discrepancy in quantity shall not exceed 20%, and (b) the Price shall be adjusted pro rata to the discrepancy at the earliest possible time.

11.7 The failure of the Manufacturer to deliver shall not entitle either party to treat this contract as repudiated.

11.8 The Manufacturer shall not be liable for any loss or damage whatever due to failure by the Manufacturer or for any transport company to deliver the Goods (or any of them) promptly or at all.

12. Force Majeure

The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under this Agreement if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of this Agreement and the Manufacturer shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

13. Risk

13.1 If the Manufacturer retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

13.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Manufacturer is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Manufacturer is sufficient evidence of the Manufacturer's rights to receive the insurance proceeds without the need for any person dealing with the Manufacturer to make further enquiries.

14. Trademarks/Patents/Advertising/ Branding Ownership

Customers, Partners, Associates and or Manufacturer Distributors agree;

14.1 Ownership of all new or existing proprietary intellectual property and other matters related to the type of business, products, branding, trademarks, patents, certification, testing, ideas or concepts and or trade secrets shall remain the property of the Manufacturer.

14.2 Any use, retail or wholesaling in any private or public domain of the Manufacturers products or services must at all times be presented, named, branded, promoted and or marketed clearly displaying the brand "Enduro" and using the official certified Manufacturers logo/s.

15. Distributor Obligations

Distributors of the Manufacturer are required comply with these terms and condition in unison with their Standard Working, Non Circumvention and Non Disclosure Agreement.

16. Retention of Title

16.1 It is the intention of the Manufacturer and agreed by the Customer that ownership of the Goods or services shall not pass until:

(a) the Customer has paid all amounts owing for the particular Goods, and

(b) the Customer has met all other obligations due by the Customer to the Manufacturer in respect of all contracts between the Manufacturer and the Customer.

16.2 Receipt by the Manufacturer of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Manufacturer's ownership or rights in respect of the Goods shall continue.

16.3 Property and title to the goods will not pass to the Customer until these goods and all amounts owed to the Manufacturer by the Customer have been paid for in full until then:

(a) The Customer will hold the goods as a fiduciary and bailee for the Manufacturer;

(b) where practicable the Goods shall be kept separate and identifiable until

the Manufacturer shall have received payment and all other obligations of the Customer are met; and until such time as ownership of the Goods shall pass from the Manufacturer to the Customer the Manufacturer may give notice in writing to the Customer to return the Goods or any of them to the Manufacturer. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and

(c) the Manufacturer shall have the right of stopping the Goods in transit whether or not delivery has been made; and

(d) The Customer may sell the goods in the ordinary course of its business as bailee for the Manufacturer and will hold the proceeds of sale in a separate account on trust for the Manufacturer and account to the Manufacturer for those proceeds; and if the Customer fails to return the Goods to the Manufacturer then the

Manufacturer or the Manufacturer's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and

(e) the Customer shall not deal with the money of the Manufacturer in any way which may be adverse to the Manufacturer; and

(f) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Manufacturer; and

(g) the Manufacturer can issue proceedings to recover the Price of the Goods

sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the

Goods are converted into other products, the parties agree that the Manufacturer will be the owner of the end products.

17. Insurance

The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer which ever occurs first and the Manufacturer will be entitled to call for details of the insurance policy. If the Customer does not insure the goods or fails to supply the details of its insurance policy the Customer will reimburse the Manufacturer for the costs of any insurance which the Manufacturer may reasonably arrange in respect of the goods supplied

to the Customer.

18. Customer's Disclaimer

18.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Manufacturer and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgement.

19. Defects

19.1 The Customer buys the Manufacturers goods and services on an as is basis.

20. Returns

20.1 Returns will only be accepted provided that:

- (a) the Customer has complied with the provisions herein; and
- (b) the Manufacturer has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned by the Customer at the Customer's cost within seven (7) days to Manufacturer at a location as directed; and
- (d) the Manufacturer will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned by the Customer in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.

20.2 The Manufacturer may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of 20% of the value of the returned Goods plus any additional freight.

20.3 The following goods cannot be returned to the Manufacturer by the Customer for credit if they simply do not want or like them or do not fit a purpose determined by the Customer or:-

- (a) Goods are specifically made, modified or imported for the Customer;
- (b) Goods altered or damaged by the Customer.

21. Warranty

21.1 The Manufacturer warrants the quality of the Goods subject to the following conditions:

(a) Such warranty shall be to repair or replace parts of the Product which shall have been manufactured by the Manufacturer and shall within five (5) years after the date of delivery be defective either because of faulty manufacturing workmanship or the use of defective material on the Manufacturer's part.

(b) No liability on the Manufacturer's part shall arise hereunder unless within seven (7) working days after discovery of the defect the Customer submits to the Manufacturer a full e-mail report including pictures describing and showing the defect and such e-mail notice is received by the Manufacturer within seven (7) years after the date of delivery. A defect in workmanship or material of any part of the Product shall not alone condemn the entire Product installed.

(c) The Manufacturer shall be entitled by its workmen, servants or agents to enter on the Customers' premises to inspect the alleged defective Products.

(d) The cost of the inspection and labour associated with the removal and replacement of defective Product (including the cost of travel and accommodation) shall be the responsibility of and at the expense of the Customer initially until there is verification by the Manufacturer to be a warranty claim at which time these expenses shall be the responsibility of and at the expense of the Manufacturer.

(e) Any liability on the Manufacturer's part shall be conditional on the Product having been installed with to Manufacturers specification and/or as per the Manufacturers installation specification/guide for both the Product and if any additive, adhesive or other, by competent experienced tradespeople and having since the date of delivery/installation been properly used, maintained and serviced in accordance with the Manufacturer's care and maintenance guide and properly used for the purpose intended and no repairs, alterations thereon having been carried out without the Manufacturer's written consent. The warranty period hereunder shall be reduced on a pro-rata basis if the Products are used in excess of an eight (8) hour day/five (5) day week period.

(f) The warranty shall not cover any defect, damage or any other matter which may be caused or partly caused by or arise through: (i) normal wear and tear (more than 3mm consumed per year) during the warranty period; or, (ii) compressive loads or shear loads in excess of the Products maximum load capacity; or, (iii) if any additive / adhesive failure due to unsuitable sub-surfaces or deteriorating sub-surfaces or sub-surfaces that have not been prepared in accordance with the Manufactures Installation Guide or good tradesman-like or common surface preparation manners; or, (iv) product that has been installed by un-tradesman-like installers or persons unskilled in the installation of the Manufacturers Products; or, (v) natural disasters including but not limited to fire, floods, lightening, earthquakes, hail or hurricane; or, (vi) acts of negligence, accidents of misuse, including but not limited to, vandalism, civil disobedience, or acts of war; or, (vii) acids or harmful chemicals and the like being brought into contact with the Products; or, (viii) product flaking, binder breakdown, irregular mixes and under or over size particle sizes/grades and discolouration or fading of any colour due natural or extreme conditions and the limitations of the pigments including but not limited to ultraviolet damage and normal abrasion from pedestrian and other traffic; or, (ix) any rubber tile, paver, matt or roll product that contracts or expands in size due to temperature variations that differ from the installation temperature or from the product not being given enough time to settle, relax or acclimatise after unpacking, rolling out and shipping in accordance with the installation guide; or, (x) degradation through ozone, mould or U.V. exposure causing carbon black to be exposed on the surface which rubs off with skin contact; or, (xi) failure to properly maintain or storage of the Product (evidenced by factors including, but not limited to detrital material such as loose sand, wire, bark, dust and the like being found in the Product).

(g) If in a case of Products not manufactured by the Manufacturer its warranty to the Customer hereunder shall be the same as any warranty given to the Manufacturer by the Manufacturer to it of such Products provided always that the Manufacturer shall not be liable for any greater expense than the amount which it shall actually recover from the Manufacturer under any warranty given by it, the Manufacturer shall be under no liability other than the foregoing in respect of Goods not manufactured by it.

(h) This warranty is in substitution for and excludes all expressed or implied (whether by statute or otherwise) conditions, warranties or obligations of any kind relating to fitness for purpose or quality of workmanship, material or design, save to the extent that any Statute prevents such exclusion.

21.2 In the event that the Manufacturer is liable to the Customer under this warranty for any warranty so given, the Manufacturer's liability is limited to repairing or replacing the Product or part of the Product that do not comply with such warranty and in no case shall the Manufacturer be liable for consequential loss or costs any greater than the total Price of the Product or part thereof that does not so comply.

21.3 The Customer does not rely on any representation, warranty or other term made by or on behalf of the Manufacturer which is not set out in this Agreement:

- i) The Manufacturer is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:-
 - ii) Arising out of a breach of an implied or expressed term; or
 - iii) Suffered as a result of negligence of the Manufacturer or its employers or agents, apart from liability as set out in clause 20.
- 21.4 All terms which would otherwise be implied are excluded except if stated in this agreement..

22. Security And Charge

22.1 To secure payment of all monies which are or may become payable by the Customer to the Manufacturer under this Agreement the Customer (or where the Customer is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those monies all of the Customer's interest in real property wherever located both present and future and the Customer consents to the Supplier lodging a caveat or caveats over such property to protect its interest.

22.2 Upon demand by the Manufacturer, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Manufacturer to further secure the Customer's indebtedness to the Supplier.

22.3 Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably the credit manager or a duly authorised officer of the Supplier to be the Customer's lawful attorney to execute any such mortgage or other instrument.

23. Cancellation

23.1 The Manufacturer may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Manufacturer shall repay to the Customer any sums paid in respect of the Price. The Manufacturer shall not be liable for any loss or damage whatever arising from such cancellation.

23.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Manufacturer (including, but not limited to, any loss of profits) up to the time of cancellation.

24. Privacy Act 1988

24.1 The Customer and/or the Guarantor/s agree for the Manufacturer to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Manufacturer.

24.2 The Customer and/or the Guarantor/s agree that the Manufacturer may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a reputable credit reporting agency for the following purposes (though not limited to) :

- (a) to assess an application by Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Customer and/or Guarantor/s.

24.3 The Customer consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).

24.4 The Customer agrees that personal credit information provided may be used and retained by the Manufacturer for the following purposes and for other purposes as shall be agreed between the Customer and Manufacturer or required by law from time to time:

- (a) provision of Goods; and/or
- (b) marketing of Goods by the Manufacturer, its agents or distributors in relation to the Goods; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

24.5 The Manufacturer may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

25. Unpaid Manufacturer's Rights

25.1 Where the Customer has left any item with Manufacturer for repair, modification, exchange or for the Manufacturer to perform any other Service in relation to the item and Manufacturer has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Manufacturer shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Manufacturer is in possession of the item;
- (c) a right to sell the item,

25.2 The lien of the Manufacturer shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.

26. Enforceability and Jurisdiction

26.1 In the event that the whole or any part or parts of any clause in this Agreement is found to be unenforceable by a Court

then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.

26.2 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

26.3 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Western Australia. The parties submit to the exclusive jurisdiction of the Courts in Perth Western Australia.

26.4 The parties agree that proceedings may be commenced in any court in Brisbane and consent to that court having jurisdiction by virtue of this Clause notwithstanding that the court would not have such jurisdiction without this consent.

26.5 The Manufacturer shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Manufacturer of these terms and conditions.

26.6 In the event of any breach of this contract by the Manufacturer the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Manufacturer exceed the Price of the Goods.

26.7 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Manufacturer.

26.8 The Manufacturer may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

26.9 The Manufacturer reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Manufacturer notifies the Customer of such change.

26.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

27. Notice

27.1 Notice required to be given by the Customer to the Manufacturer pursuant to these terms and conditions may be delivered personally or sent by post to the credit manager of the Manufacturer at the Manufacturer's postal address at PO Box 111, Hillarys Western Australia 6923 and unless the contrary is proved shall be taken as delivered when received by the Manufacturer. Notice to be given to the Customer by the Manufacturer may be delivered personally or sent by post to the Customer's last known address and shall be taken as delivered on the second business day following posting.

27.2 The Manufacturer's invoices and statements are deemed to be received by the Customer on the second business day after posting by ordinary pre-paid post.

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