

**DEFINITIONS**

In the following Terms and Conditions of Sale the "Company" shall mean Waldheim Pty Ltd (ACN 067 479 234) and its related bodies corporate within the meaning of Section 50 of the Corporations Act and the "Customer" shall mean the entity purchasing the goods or services the subject of these terms and conditions of sale.

**1. ORDERS**

Orders accepted by Waldheim Pty Ltd (hereinafter called "the Company") will be subject to the following terms and conditions of sale as amended from time to time. Any such orders accepted will be effected in multiples of standard quantities. Minimum invoice value \$25.00. All orders are to be from the legal entity/parties the trading account was set up for. The Company accepts these orders in writing in good faith in the belief they are true and correct. The Customer acknowledges that it is their full responsibility to advise the Company of any changes to any of the details relating to the trading entity and the trading account. This would include but not limited to business address or details change, name or owner change or director changes if and where applicable. This advice must be received immediately the change takes effect. The Customer acknowledges that failure by them to advise the Company of any change does not in any way limit the Company's right to pursue full payment or recovery of goods should the need arise due to a breach in any of the Terms and Conditions of Sale.

**2. TERMS OF PAYMENT**

(PLEASE NOTE THE COMPUTER DATABASE PREVENTS THE DESPATCH OF GOODS TO CUSTOMERS WHO HAVE OVERDUE ACCOUNTS)

- a) By nett cash in exchange for goods.
- b) For authorised dealers who have fulfilled the credit requirements of the Company nett cash within 30 DAYS of the close of the month in which the goods are supplied.
- c) In accordance with the terms of a mutually negotiated contract.
- d) If any amount invoiced shall remain unpaid 30 days after statement date, the Company shall be entitled to liquidate damage calculated at the rate of 1.5% per calendar month or part thereof on that amount up to the date of payment. The Customer agrees that they will also pay all fees, collection or legal costs incurred by the Company in obtaining payment of outstanding amounts.
- e) Discount does not apply if these terms are not met.
- f) The Company's records are sufficient evidence of the amount payable by you to us unless they are shown to be incorrect. You agree that if you dispute any amount rendered by us for goods or services you will nevertheless pay the amount of the account in full by the due date for payment and accept that the Company's decision on the disputed account will be final.

**3. TIMING OF PAYMENT**

Payments shall be deemed to have been made:

- a) If cash is tendered - on date it is entered; and
- b) If a cheque (bank or otherwise) or other negotiable is tendered - on date upon which such cheque or other negotiable instrument is negotiated and cleared by the Company's bankers. The Customer acknowledges that any costs incurred due to uncleared funds will be passed on to the Customer.

**4. TIME OF ESSENCE**

In respect of the Customer's obligation to make payment for goods sold by the Company to the Customer, time shall be of the essence for the entire contract.

**5. SANCTIONS FOR LATE PAYMENT**

If the Customer defaults in making payment for the Company in accordance with these terms and conditions the Company may in its absolute discretion:

- a) Charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the rate of 1.5% per month from the date on which such default arose; and
- b) Require the Customer to reimburse the Company for all fees, collection or legal costs incurred by the Company calculated on a solicitor and own client basis as a consequence of the Company instructing its solicitor and/or agent to provide advice to it in connection with each default and or to institute such recovery process as shall in the absolute discretion of the Company be appropriate in the circumstances.
- c) The whole sum then owing by the Customer to the Company for all goods sold by the Company to the Customer, shall immediately become due and payable and the Customer shall not thereafter be entitled to purchase goods on credit from the Company unless the Company has agreed to same in writing in which case unless a contrary intention is shown in such agreement, the payment obligations contained herein shall apply.
- d) Should an account remain outstanding beyond 90 days, the Company has the right to register this fact with the appropriate Credit Reporting Agencies.

**6. APPLICATION OF PAYMENT**

Any payments tendered by the Customer to the Company shall be applied as follows:

- a) firstly as reimbursed for any fees, collection or legal costs incurred by the Company in accordance with Clause 5(b) hereof;
- b) secondly in payment of any interest charged to the Customer in accordance with Clause 5(a) hereof; and
- c) thirdly in satisfaction or part satisfaction of the oldest portion of the Customer's account.

**7. PRICING**

Orders will be accepted at the prices in effect at the date of shipment. Prices are subject to change without notice. Any reference to retail prices contained in the Company's official pricing are recommended retail prices only; there is no obligation to comply with the recommendation. The Company's price list shall not be construed or operate as an offer or obligation to sell but shall be an invitation to treat only and the Company reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

**8. GST**

GST will be charged on all items sold in accordance with the A.C.C.C. and tax legislation guidelines. All invoices will show total GST paid and total amount due including GST.

**9. DELIVERY**

Every effort will be made to ensure prompt delivery of goods ordered. However the Company cannot accept responsibility for delivery delays. All goods within the Melbourne metropolitan area will attract our nominal delivery charge unless otherwise arranged. Delivery

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charges on orders required by overnight transport, air freight or other special delivery will be at the Customer's expense unless otherwise arranged. All fabricated products are quoted ex works unless otherwise arranged.

**10. RISK AND INSURANCE**

Upon delivery to the Customer or in the Customer's custody (whichever is the sooner) the goods shall be at the risk of the Customer and the Customer shall, at its own costs, insure the goods (in its name and in the name of the Company) against all risks for which a prudent owner would insure his goods and for their full replacement value. The Customer shall upon request provide a copy of the insurance policy to the Company.

**11. ACCEPTANCE**

The Customer shall inspect the goods forthwith upon delivery and shall within 7 days from the date of delivery give written notice to the Company of any matter or thing by reason whereof the Customer alleges that the goods are not in accordance with the Contract. If the Customer fails to give such notice then to the extent permitted by statute the goods shall be deemed to have been accepted by the Customer and the Customer shall pay for the goods in accordance with the provision hereof.

**12. RETURNS**

All returns of products must be authorised by the Company. The Company will credit returned goods only if they are in a saleable condition. All authorised returns under these terms will be subject to a minimum handling charge of 15% of the price of the goods returned under the Customer as a "consumer" for the purposes of the Trade Practices Act 1974 or similar State or Territory legislation. Returned documents must quote the original delivery docket or invoice number and reason for return. Freight costs for authorised returns are at the Customer's expense.

**13. DELAY AND INSTALMENTS**

The Company shall not be liable for any failure to deliver or for any delay in delivery occasioned by any acts of God, strike, combination of workmen, industrial action, lockout, difficulty in procuring suitable materials or articles or substances required in the manufacture of the goods, shortage of stocks, lack or shortage of labour, delays in transportation or in transit, governmental or legal prohibitions or restrictions, fire, flood, hostility, civil commotion or other impediments whatsoever (whether similar in nature to the foregoing or not) reasonably beyond the Company's control. The Company reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment shall not entitle the Customer to terminate its agreement with the Company.

**14. CLAIMS**

Claims for shortages, overcharges etc will only be recognised if made in writing and forwarded to the Company's Accounts Department within 14 days of the date of the invoice.

**15. EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES**

The only conditions and warranties which are binding on the Company in respect of the state, quality or condition of the goods supplied by it to the Customer and/or in respect of advice recommendation(s), information or services supplied by it, its employees, servants or agents to the Customer regarding the goods, their use and application are those imposed and required to be binding by statute (including the Trade Practices Act 1974) and to the extent permitted thereby the liability, if any, of the Company arising from the breach of such conditions or warranties shall, at the Company option be limited to and completely discharged in the case of the goods by either the Supply by the Company of equivalent goods or the replacement by the Company of the goods supplied to the Customer and in the case of further advice, recommendation(s), information or services and otherwise by the supplying of the advice, recommendation(s), information or services again and otherwise all other conditions or warranties be binding whether express or implied by law in respect of the state, quality or condition of the said goods which may apart from this clause by binding on the Company are hereby expressly excluded and negated.

Except to the extent provided in this Clause the Company shall have no liability (including liability in negligence) to any person for any loss or damage consequential or otherwise howsoever suffered or incurred by any such person in relation to the goods and/or advice recommendation(s), information or services and without limiting the generality thereof in particular any loss or damage consequential or otherwise howsoever suffered or incurred by any such person caused by or resulting directly or indirectly from any failure, defect or deficiency of whatsoever nature or kind or in the goods/or advice, recommendation(s), information or services.

**16. PATENTS**

Where the Company has followed a design or instruction furnished or given by the Customer or any person, company or other entity on behalf of or at the request of the Customer, the Customer indemnifies the Company and keeps the Company indemnified against all damages penalties costs and expenses to which the Company may become liable by reason of any work being required to be done in accordance with those instructions involving an infringement of any patent trade mark, registered design, copyright or common law right.

**17. PERFORMANCE**

Specifications and performance data are stated to be correct to the best of the Company's knowledge but the Company accepts no responsibility for errors in such specifications and performance data provided or given. Additionally, pictures of products and product packages may sometimes differ from the actual product. The Customer acknowledges that in assessing the fitness for any purpose of a particular product manufactured, fabricated or supplied by the Company they do not rely on the skill and judgement of the Company.

**18. RETENTION OF TITLE**

- a) As long as the Customer owes the Company any part of the price of goods supplied at any time, the Company shall retain the legal title to all goods supplied and not yet used or resold in the ordinary course of business. When such goods as used, even with loss of identity, the legal title to the resultant product shall vest in the Company. Proceeds of sale of unused goods or resultant products shall be received by the Customer as agents of the Company and on their account such proceeds to be kept in the separate account or to be account for it to the Company on demand.
- b) If goods are in the possession of a Customer to which title has not passed the Customer is under obligation to retain them in good and merchantable condition and to ensure that they are stored separately and marked as the property of the Company until either paid for or collected and to allow the Company and/or its servants or agents on to the premises where they are stored for the purpose of collecting the goods.
- c) Goods supplied to the Customer shall be at the risk of the Customer from the time the goods ceased to be within the actual possession of the Company or its agents.
- d) Until payments of all debts owing to the Company, the Company may, without prejudice to any of its other rights without prior notice, re-take and resume possession of any goods which remain the Company's property and by its servants and agents, enter upon the Customer's premises, or any other place where the goods may be, for the purposes if:

**18.1** There is any breach of any contract between the Company the Customer; or

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- 18.2 The Customer commences to be wound up or is placed under official management, or a receiver or a receiver and manager, or a voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumberancer, by itself or by an agent, taken possession of the Customer's undertaking or property or any part thereof; or
- 18.3 The Customer parts with possession of the goods or any of them otherwise than by way of sale to a customer in the ordinary course of business.
- 18.4 The Company may recover the price of the goods by such action as is considered appropriate including proceedings to appoint a liquidator to the Customer, if the goods are not paid for within the Company's usual credit terms, or any separate arrangement for credit made by the Company with the Customer, notwithstanding that property in the goods has not passed to the Customer.

**19. DISCLAIMERS**

All advice and information or design work given or carried out by the Company is on the sole basis that the Company accepts no responsibility whatsoever for the same. If the Customer relies upon the same he does so entirely at his own risk and the Company will not be liable for any loss or damage thereby suffered including any consequential loss notwithstanding any want of care on the part of the Company or its staff in compiling or giving such advice, information or design work. In no case shall the Company's liability exceed the total value of the contract.

**20. LEGAL JURISDICTION**

This contract shall be governed by the laws of the State of Victoria notwithstanding the place in which the goods or any of them are to be delivered. The Customer submits to the exclusive Jurisdiction of the Courts of the State of Victoria.

**21. INCORPORATION IN OTHER DEALINGS, LIMIT OF CONTRACT**

Subject to express contrary agreements in writing and signed on behalf of the Company these terms and conditions shall so far as they are applicable and making all changes necessary having regard to the context be incorporated in any Contract arising from future orders placed by the Customer with the Company. At that date of signing any application or ordering goods the foregoing terms and conditions contain the terms by which goods will be supplied. These terms do alter from time to time and the Company has the right to vary these Terms and Conditions of Sale as and when deemed appropriate. The Customer accepts and acknowledges that this may happen during the term of their business relationship and that it is not possible to resubmit signed documents each time they alter. The customer acknowledges that they will keep themselves updated on the latest terms of trade by accessing them on the Company's website at [www.waldheim.com.au](http://www.waldheim.com.au) and these shall supersede all previous and other communications and presentations unless these are in writing and express special terms or variations.

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**TERMS AND CONDITIONS OF SALE**

**WALDHEIM P/L**

Director / Principal Full Name & Private Address: ..... Telephone: ( ).....

Director / Principal Full Name & Private Address: ..... Telephone: ( ).....

Director / Principal Full Name & Private Address: ..... Telephone: ( ).....

I/we authorise The Company to obtain a report from the trade references I have supplied, or a credit reporting agency which contains details of my/our personal and commercial credit information if required for the purpose of this application.

I/we hereby agree to the Trading Terms and Conditions

Director / Principal Signature: .....

Name of Signatory: .....Date:.....

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