

1. Definitions

1.1. In these General Conditions, unless the context otherwise requires:

- (a) "Agreement" means a contract for the Supply of Goods and/or Services by the Supplier to the Customer;
- (b) "days" means calendar days unless otherwise stated;
- (c) "GST" means Goods and Services Tax or other tax that is substituted or replaces the GST tax;
- (d) "the Supplier" means Minprovis International (ABN 65 167 931 768);
- (e) "the Customer" means any person or persons, company or business entity to whom the Supplier sells or supplies, or proposes to sell or supply, Goods or Services;
- (f) "the Goods" means the goods or products supplied or sold by the Supplier to the Customer from time to time;
- (g) "the Services" means any services provided by the Supplier;
- (h) "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended from time to time;
- (i) "Party" means a party to an Agreement and "Parties" has a corresponding meaning;
- (j) "Quote" means any written estimate, proposal or quotation for the supply of Goods and/or Services by the Supplier to the Customer.

2. Only agreement

- 2.1. Unless a written document signed by the Parties expressly excludes or varies the application of these General Conditions, the only contractual terms that apply to the supply of Goods and/or Services by the Supplier are those set out in these General Conditions. Customer terms and conditions included in, attached to, or referred to any Customer documentation such as a Purchase Order will be of no force or effect.
- 2.2. A provision in an Agreement must not be interpreted to the disadvantage of a Party merely because that Party was responsible for drafting the Agreement and/or the inclusion of the provision in the Agreement.

3. Quotations

- 3.1. Any Quote provided to the Customer is an invitation to treat only and not an obligation to sell or an offer, unless and to the extent it expressly states otherwise. In the event of any counter-offer by the Customer that is accepted by the Supplier, to the extent of any conflict between any counter-offer and the initial Quote, these General Conditions will apply to the resulting Agreement.

4. Price

- 4.1. The price charged for the Goods and Services to be provided to the Customer are as set out in the Supplier's invoice or invoices for those Goods or Services. Unless otherwise stated in the Quote, any Quote given on price is an estimate only. If the price in the Quote is stated to be fixed, it remains fixed only for the period stated in the Quote, or if not stated, for a period of 30 days from the date of the Quote.
- 4.2. The price excludes GST unless otherwise specified.

5. Terms of Payment

- 5.1. Invoices for Goods and Services issued to a Customer are due and payable within 30 days of the invoice date.
- 5.2. The Supplier reserves the right to grant terms to approved Customers upon such terms and conditions as it determines in its absolute discretion.

6. Retention of Title to Goods and PPSA

- 6.1. Title to Goods sold by the Supplier to the Customer will not pass from the Supplier to the Customer until the later of:
 - (a) unconditional payment in full to the Supplier for those Goods; and
 - (b) unconditional payment in full of all other amounts owing or unpaid by the Customer to the Supplier on any account,

including in respect of Goods and Services previously or subsequently supplied to the Customer.

6.2. Payment in full will not be regarded as having been received by the Supplier unless and until payment is made in cleared funds.

6.3. Until such time as title to Goods passes to the Customer under clause 6.1:

(k) the Customer will hold the Goods as a fiduciary and as bailee for the Supplier and will be responsible for any loss, damage or conversion of the Goods;

(l) the Customer must label and store the Goods in such a manner as to show clearly that they remain the Supplier's property;

(m) the Supplier may enter any premises owned or occupied by the Customer or its agents to inspect the Goods or inspect the Customer's books and records regarding the Goods at any time;

(n) subject to clause 7.1(j), the Customer may only use the Goods in the ordinary course of the Customer's business, or sell the Goods in the ordinary course of the Customer's business, provided that where the Customer sells Goods to a third party, it will do so as principal and the Customer will have no power to commit the Supplier to any contract or otherwise or to any liability, but as between the Customer and the Supplier, the Customer will sell as fiduciary agent; and

(o) the Customer must ensure that the Goods are not and will not be subject to any encumbrance or other security interest (including a lien) granted or created in favour of any third party (whether under contract, statute or common law) without the Supplier's prior written consent. Without limiting the Supplier's rights, if the Customer becomes aware of a third party's interest in, encumbrance or other security interest (including alien) in respect of the Goods, the Customer must notify the Supplier immediately in writing and provide the Supplier with all relevant details relating to the encumbrance or other security interest, including:

(i) the third party's full name and contact details;

(ii) the nature of the encumbrance or other security interest; and

(iii) the Goods subject to the encumbrance or other security interest.

6.4. Despite this clause 6, the Supplier is entitled to maintain an action against the Customer for payment of the purchase price of Goods.

6.5. The Customer agrees that clause 6.1 creates a security interest (including, where applicable, a purchase money security interest, as defined in the PPSA) in Goods (and their proceeds, as defined in section 31 of the PPSA) supplied by the Supplier to the Customer from time to time.

6.6. The Customer agrees to do all things necessary and execute all documents required by the Supplier to register each security interest in the Goods, and ensure that the Supplier acquires a perfected security interest in the Goods, under the PPSA at its own cost.

6.7. Until title to Goods passes to the Customer under clause 6.1, the Customer waives its rights under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 135, 142, 143, 157(1) and 157(3) of the PPSA, to the full extent permitted by law.

6.8. Where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.

6.9. The Customer agrees that repossession and retention of Goods pursuant to the PPSA will only satisfy so much of the amounts owing by the Customer to the Supplier as is equivalent to the net realizable value of the Goods, or their cost price (whichever is the lower) as at the date of repossession, and the repossession and retention will immediately extinguish any rights or interest the Customer has in the Goods.

6.10. Until title to Goods passes to the Customer under clause 6.1, the Customer must not give to the Supplier a written demand, or allow any other person to give to the Supplier a written demand, requiring the Supplier to register a financing change statement under the PPSA in respect of or affecting any Goods, or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA in respect of or covering the Goods.

6.11. Subject to section 275(7) of the PPSA and any other agreement between the Supplier and the Customer permitting a party to disclose information, the Supplier and the Customer agree that neither of them will disclose, or authorise the disclosure of, information of the kind described in section 275(1) of the PPSA in relation to these General Conditions, any Agreement, or any transaction contemplated under these General Conditions.

6.12. The Customer must notify the Supplier in writing of any change in the Customer's ownership/trading structure, the

ownership of the Customer's business, its directors or its address. Notwithstanding any such change/s, the Customer will remain personally liable for the payment for any Goods and/or Services supplied to, or ordered by, the Customer from the Supplier until the Customer has received written confirmation from the Supplier that the Customer's account has been closed and full payment has been received by the Supplier.

7. Default

7.1. If:

- (a) the Customer breaches any term of any Agreement to which the Customer and the Supplier are parties;
- (b) any cheque tendered by the Customer or on its behalf to the Supplier is dishonoured for payment;
- (c) the Customer fails to comply with any lawful demand for payment issued by the Supplier within the time stated;
- (d) any amount payable by the Customer to the Supplier becomes overdue for payment or, in the Supplier's opinion, the Customer will be unable to meet its payment obligations to the Supplier as they fall due;
- (e) any of the following occurs to the Customer, if it is, or to the extent it includes, a company:
 - (i) a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for the Customer's winding up, or the Customer enters into a deed of company arrangement; or
 - (ii) the Customer becomes an externally-administered body corporate or becomes insolvent;
- (f) the Customer (if it is, or to the extent it includes, an individual) commits an act of bankruptcy, or is or becomes an insolvent under administration; or
- (g) a change occurs in the ownership of the Customer, or in the ownership of the Customer's business, or in its directors,

then, without prejudice to the Supplier's other remedies under these General Conditions or at law:

- (h) all amounts owing to the Supplier by the Customer will, whether or not due for payment, become immediately payable by the Customer;
- (i) the Supplier will be entitled to cancel all or any part of any of the Customer's orders for Goods and/or Services which remain unfulfilled;
- (j) the Customer's right to possess, use up, sell or otherwise deal with Goods in respect of which title has not passed to the Customer under clause 6.1 will cease; and
- (k) the Supplier will be entitled to enter any premises where the Goods in respect of which title has not passed to the Customer under clause 6.1 are kept, and remove, repossess and re-sell all or any such Goods. The Supplier is not liable to the Customer if it takes any such action.

7.2. The Customer indemnifies the Supplier in respect of any claims or actions against, and costs, expenses and other liabilities incurred by, the Supplier in relation to:

- (a) the removal, repossession, transportation, storage and sale of Goods pursuant to these General Conditions, including without limitation, any claims brought by third parties; and
- (b) any of the matters set out in clauses 7.1(a) to 7.1(k) (both inclusive).

7.3. Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including relating to payment), the Supplier may suspend or terminate the supply of Goods and Services to the Customer and any of the Supplier's other obligations under these General Conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier exercises its rights under this clause.

7.4. The Customer must pay interest to the Supplier on any of its invoices to the Customer which are overdue for payment. Such interest will accrue daily at a rate of 10% per annum, from the date when payment becomes due until the date of payment. Interest will be calculated daily, and will accrue at such a rate after, as well as before, any judgment.

7.5. If and to the extent that the arrangements provided under or in connection with these General Conditions constitute a credit contract as defined in the National Credit Code, the time for payment of any overdue account is limited to a total period of not more than 62 days from the date of the Supplier's invoice. Nothing in this clause 7.5 imposes an obligation on the Supplier to extend its payment terms to the Customer for any period at all.

8. Quality or Description of Goods and Services

- 8.1. The Customer shall inspect the Goods immediately on delivery and, with fourteen (14) days of delivery, give notice to the Supplier of any defect or allegation that the Goods or Services are not in accordance with the Contract. If the Contract fails to give such notice within that time, the Goods and Services shall be deemed to be in all respects in accordance with the Contract.
- 8.2. If any sample of the Goods or Services has been shown to and inspected by the Customer, the Customer acknowledges and agrees that such sample was so shown to enable the Customer to judge the quality of the Goods or Services and the exhibition and inspection of the sample do not constitute a sale by sample under this Agreement. Unless, and to the extent, stated in writing in any Quote, the Supplier does not represent or guarantee that the Goods or Services supplied by it will correspond with any sample shown, or will be of a particular quality, condition or fitness for any purpose.

9. Delivery

- 9.1. The Goods shall be delivered to the Customer's address here in, or as otherwise notified to the Supplier at the time of order.
- 9.2. From the time of dispatch from the Seller's premises and until delivery, the risk of any loss or damage to or deterioration of the Goods for whatever cause arising shall be borne by the Customer unless:
 - (a) the Supplier arranges delivery, or
 - (b) the Parties have otherwise agreed in writing.

10. Liability of Supplier

- 10.1. To the extent permitted by law, no warranty, condition, description or representation on the part of the Seller is given or implied or has been given or is to be implied from anything said or written in the negotiations between the parties or their representatives, and any statutory or other warranty, condition, description or representation, express or implied as to the state, quality or fitness of the Goods is hereby expressly excluded. Nothing herein shall derogate from or exclude any warranties or conditions necessarily implied by any statute or other applicable law.
- 10.2. In the event that an Agreement constitutes a supply of goods or services to a consumer as defined in the *Competition and Consumer Act 2010 (Cth)* (including the *Australian Consumer Law*) as amended from time to time, or analogous State or Territory legislation ("the Acts"), nothing contained in that Agreement excludes restricts or modifies any condition, warranty or other obligation which, pursuant to any of the Acts, is applicable or is conferred on the Customer where to do so is unlawful. In such cases, the Seller's sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which the Customer may sustain or incur, shall be limited to:-
 - (a) the replacement of the Goods or Services; or
 - (b) the supply of equivalent goods or services; or
 - (c) payment of the cost of replacing the Goods or Services or acquiring equivalent goods; or
 - (d) the repair of the Goods or payment of the cost of having the Goods repaired,as the Supplier may elect in its absolute discretion.
- 10.3. The Seller will not be liable for any failure to deliver the Goods or Services if the failure arises as a consequence of fire, embargo, strike, inability to secure materials or labour, or any other circumstances beyond the Seller's control.
- 10.4. The Supplier accepts no responsibility for any Damage, claim, loss, demand and/or Liability which may arise out of the incorrect, improper or negligent use of the Products and/or Services supplied by the Supplier, and the Customer hereby forever releases, holds harmless and fully indemnifies the Supplier for all such Damage, claim, loss, demand and/or Liability.

11. Warranty

- 11.1. All Goods and Services provided by the Supplier are guaranteed to be free from defects in workmanship (or materials if manufactured by the Supplier) for a period of three (3) months from the date of delivery or handover to the client unless a varied warranty period has been stated in a Quote or otherwise agreed by the Supplier in writing.

- 11.2. Goods manufactured by others but supplied by the Supplier will only carry the original manufacturer's warranty provided with such goods the benefit of which shall be assigned to the client.
- 11.3. All goods or services supplied under a contract or order are supplied in accordance with the instructions technical specifications and drawings supplied as part of the contract. Verbal instructions are not considered binding unless confirmed in writing.
- 11.4. Completed services or supplied goods considered by any client to contain any defects in workmanship materials or function which are identified by notice in writing to the Supplier within the warranty period will be inspected by the Supplier on the client's site at the point of original delivery. If the Supplier accepts responsibility for the defect, it will reinstate the goods or service to the originally agreed standards, and hand them over at the original agreed point of delivery.
- 11.5. The Supplier's warranty excludes any:
- (a) damage to any goods or any component thereof while being dismantled and/ or assembled by the client or the client's employees or contractors, and any damage incurred while any part of the goods are in transit;
 - (b) fair wear and tear;
 - (c) damage to any goods or any components thereof caused by incorrect operation, application or maintenance by the client or the client's employees or contractors;
 - (d) damage resulting from: inclement weather, fire, explosion, act of God or other like cause; unauthorized alterations, additions or tampering of the Goods, or any other event beyond control of the Seller and use beyond specification or design; and
 - (e) liability for consequential loss, damage or injury howsoever arising, whether from downtime, loss of production or any other circumstance arising out of any fault, malfunction or other inadequacy of the Goods or Services provided by the Supplier under an Agreement.
- 11.6. Certain legislation (including the *Australian Consumer Law (Cth)* and the *Sale of Goods Act 1895 (WA)*) imply certain conditions and warranties into contracts, and give consumers certain rights and remedies, that cannot be excluded, restricted or modified by agreement. This Agreement must be read having regard to such legislation (to the extent that it may be applicable) and nothing contained herein shall purport to exclude, restrict or modify any such condition or warranty, or the rights and remedies conferred thereby.

12. Returns

- 12.1. Subject to clause 11.6, Goods are not be returnable except due to a material defect, or unless otherwise agreed to in writing.

13. Privacy

- 13.1. We use personal information as supplied by the Customer to process Goods and Services, for marketing purposes, and to access a Customer's credit rating.

14. Governing Law

- 14.1. This Agreement is governed by the law in force in the State of Western Australia.
- 14.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

15. Severability

- 15.1. If a clause or part of a clause of these General Conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.
- 15.2. If the removal of a clause or part of a clause under clause 15.1 materially alters the commercial allocation of benefit and risk (or management of risk) under this document, the parties agree to negotiate in good faith to amend or modify the terms of the document as may be necessary or desirable having regard to the original terms of the bargain and the prevailing circumstances.

16. Dispute resolution

- 16.1. Where a dispute or difference between the parties arises which is in any way connected with an Agreement, any Party wishing to progress the dispute must deliver to the other Party a written notice of dispute, which adequately identifies and provides details of the dispute.
- 16.2. Within 14 days of giving a notice of dispute, the parties, represented by a person having authority to agree a resolution of the dispute, must confer in an attempt to resolve the dispute.
- 16.3. If the dispute is not resolved within 30 days of the date on which the parties conferred, either party may refer the dispute to mediation.
- 16.4. No dispute or difference pertaining to an Agreement may be referred to litigation prior to completion of the dispute resolution steps set out in clauses 16.1 to 16.3.
- 16.5. Nothing herein will prejudice the right of a party to institute proceedings to enforce payment due under an Agreement or to seek interlocutory injunctive relief in respect of a dispute under clause 16 or any matter arising under an Agreement.