

# eCommerce Terms and Conditions of Sale

## 1. Definitions and Interpretation

**ACL** means the Australian Consumer Law Schedule of *Competition and Consumer Act 2010 (Cth)* and its associated Regulations as amended from time to time.

**Acceptance Date** means the date on which a function test as described in Clause 9.13 occurs and both parties agree that the Installation is functional.

**Cash Account** means an account entitled “Cash Account” that has been registered in the name of the Customer with the Company and established with the Company in accordance with these Terms and which provide for upfront payment by the Customer.

**Company** mean Omron Electronics Pty Limited ACN 003 259 390 and having its registered office at Unit 6, 108-120 Silverwater Road, Silverwater, New South Wales 2128.

**Contract** means a contract between the Buyer and the Company comprising these Terms.

**Credit Account** means an account entitled “Credit Account” that has been registered in the name of the Customer with the Company and established with the Company in accordance with these Terms and with a Credit Limit.

**Credit Account T&Cs** means the terms and conditions available at <https://store.omron.com.au/pdf/terms-and-conditions.pdf>

**Credit Limit** means the maximum amount of credit extended to the Customer by the Company in writing from time to time in its absolute discretion.

**Customer** means a purchaser of the Goods (and Services (if any)) from the eStore.

**eStore** means the website operated by the Company available at <https://store.omron.com.au/> on which the Customer may purchase Goods and / or Services from the Company or its successors as applicable.

**Eway** means Web Active Corporation Pty Ltd ABN 32 086 209 403 trading as “Eway” and having its registered office at Level 9, 2 King Street Bowen Hills, Queensland 4006.

**Goods** means the goods described an Order by the Company and includes any goods or replacements thereof and/or any services/workmanship (including Installation) supplied by the Company to the Customer under an Order.

**Guest Account** means any account registered with the Company that is used by the Customer which is not a Cash Account or Credit Account.

**GST** means the goods and services tax imposed by the GST Act.

**GST Act** means *New Tax System (Goods and Services Tax) Act 1999* and its associated Regulations as amended.

**Installation** means installation work which the Company has agreed to carry out as part of an Order in the terms specified by the Company in the Order.

**Order** means an offer made by the Customer in response to an invitation to treat made by Company via the eStore.

**Person** means any natural or non-natural person such as a corporation.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and its associated Regulations as amended from time to time.

**Services** means services set out in an Order.

**Related Body Corporate** has the meaning given to the term in the *Corporations Act 2001 (Cth)*.

**Statement Date** means the date on which all the requirements in clause **3.8** are met.

**Tax Invoice** means an invoice that complies with the GST Act.

**Terms** means these terms and conditions of sale as amended from time to time.

**Wrongful Actor** means any Person who has:

- a. fraudulently:
  - i. established a Cash Account, Credit Account or Guest Account in the name of a Customer; or
  - ii. placed an Order through a Cash Account, Credit Account or Guest Account registered in the name of a Customer; or
- b. has otherwise:
  - i. established a Cash Account, Credit Account or Guest Account in the name of a Customer; or
  - ii. placed an Order through a Cash Account, Credit Account or Guest Account registered in the name of a Customer,

without the implicit or express authorisation of the Customer.

Words importing the singular are to include the plural and vice versa and words importing one gender are to include the other gender.

These conditions shall apply to every Contract entered into with the Company except as varied by express agreement in writing signed by an authorised person on behalf of the Company. The headings are for convenience only and shall not affect construction of these Terms. References to the provision of any statute or legislation shall be construed as reference to such statute or legislation as amended, consolidated or re-enacted (without substantial amendment) from time to time.

## **2. Terms of Sale & Credit**

- 2.1 These Terms govern all contracts for the sale or supply of Goods and / or Services by the Company to the Customer via the eStore. If a Customer does not accept these Terms, they must refrain from using the eStore or making a purchase on the eStore.
- 2.2 In respect of all circumstances related to the sale or supply of Goods and / or Services by the Company to the Customer via the eStore, these Terms will prevail to the extent there is any inconsistency or ambiguity between these Terms and any other terms and conditions established by the Company (including, but not limited to, the Credit Account T&Cs).

## **3. Orders and ordering**

- 3.1 The Customer should carefully preview any proposed Orders before adding them to their shopping cart and proceeding with an Order.
- 3.2 Representations of Goods and / or Services for sale made by the Company via the eStore constitutes an invitation to treat upon these Terms.
- 3.3 A quotation by the Company does not constitute an offer. Quotations are valid for a period of thirty (30) days from date of issue, and may be withdrawn by the Company at any time. If no quotation is rendered, the price set out on the eStore at the date of delivery of Goods shall apply.
- 3.4 The Customer's order to the Company (in whatever manner communicated) is an offer to enter into a contract upon these Terms. Acceptance occurs and the Contract is formed only upon the Company dispatching to the Customer its acknowledgement of order as set out in Clause 3.10 below. Any terms or conditions proffered at any time by the Customer are hereby excluded.
- 3.5 The Customer and the Company may enter into a Contract by the Customer making an offer via the eStore to purchase Goods and / or Services at the price advertised on the eStore or reflected in a quotation by:

- a. placing an electronic Order for the Goods and / or Services using the eStore;
  - b. confirming the Order details in accordance with the procedure on the eStore;
  - c. paying for the Order through the applicable method:
    - i. if the Customer has used a Credit Account to place an Order, complying with the payment terms applicable to the Credit Account provided in clause 5 of these Terms; or
    - ii. if the Customer has used a Guest Account or Cash Account to place an Order, making payment in full (plus any applicable delivery and handling charges) on the eStore; and
  - d. the acceptance of that offer by the Company.
- 3.6 Once the Customer has placed an Order, they cannot cancel, vary, amend or revoke that Order, unless expressly provided for in these Terms or without the express written consent of an authorised person on behalf of the Company and subject to Clause 3.7 below.
- 3.7 If the Company agrees to any cancellation by the Customer (which it may refuse to do so in its absolute discretion), the Customer shall indemnify the Company in full against all expenses incurred or losses suffered by the Company as a result of such cancellation less such any residual value as determined by the Company in its absolute discretion.
- 3.8 When entering into a Contract via the eStore, the Customer will be taken to have communicated their offer to purchase the Goods and / or Services only when:
- a. any requirements set out in these Terms have been met;
  - b. the electronic instruction containing the Offer from the Customer is entered and recorded in the Company's database;
  - c. a record is created and stored in the Company's database; and
  - d. either of the following has occurred:
    - i. if the Customer has used a Cash or Guest Account to place the Order, the Company receives in its payment in full (including any applicable delivery and handling charges, taxes or surcharges) for the Order and confirmation of that payment is received by the Company; or
    - ii. if the Customer has used a Credit Account to place an Order, complying with the payment terms applicable to the Credit Account provided in clause 5 of these Terms.

- 3.9 The Customer acknowledges that:
- a. the transmission of their offer or the confirmation of any payment, made through an electronic instruction may not be received by the Company for reasons beyond either parties' reasonable control including but not limited to, electronic failure, mechanical, software, computer, or telecommunications, or the omission or failure of third party website providers or systems;
  - b. to the extent permitted by law, the Company is not liable to the Customer in any way for any loss or damage at all and however caused, arising directly or indirectly in connection with the transmission of an electronic instruction through the eStore, or any failure to receive an electronic instruction for whatever reason;
  - c. the Company may act on and process all completed electronic instructions transmitted or issued through the eStore without further consent from or reference to the Customer or without the Customer receiving the confirmation of order provided in clause 3.10 below; and
  - d. the Company may treat an electronic instruction as authentic and is under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.
- 3.10 The Customer will receive an emailed acknowledgement of order from the Company as soon as practicable after the Customer has confirmed their Order and payment has been received by the Company.
- 3.11 If the Order is not accepted by the Company, the Company will notify the Customer to arrange for a full refund of any payment made by the Customer to be processed.
- 3.12 The Company may, in its sole and absolute discretion, accept or reject any offer made by a Customer for any reason (or no reason).
- 3.13 Any representations made about stock availabilities are accurate to the last known stock level and are subject to change. If the Company cannot supply a particular Good and / or Service, the Company will notify the Customer as soon as possible and arrange for a full refund of the Order.
- 3.14 The Customer is obliged to provide the Company with complete, current, and accurate billing and contact information when submitting an Order. Failure to do so may result in the Order not being accepted by the Company.

- 3.15 The Customer is obliged to provide the Company with accurate and complete shipping details when completing an Order. Without limiting the generality of clause 7.2, under no circumstances shall the Company be liable for any loss, damage or delay occasioned to the Customer arising from late or non-delivery or late installation of the Goods and / or Services due to the Customer's provision of incorrect or incomplete shipping details at the time of submitting an Order.
- 3.16 The Company will be deemed to have accepted the Customer's Order when the Order is delivered to the Customer's specified delivery address.
- 3.17 The customer shall not assign the benefit of the Contract without the Company's prior written consent.

#### **4. Price**

- 4.1 The prices included on the eStore are based on the Company's estimated cost of production, manufacture or supply at the time an Order is submitted by the Customer and are subject to alteration without notice to the Customer.
- 4.2 Unless specifically stated otherwise, all prices are exclusive of GST and, where applicable, any surcharge. If the whole or any part of any payment is the consideration for a taxable supply, the payer must pay to the payee an additional amount equal to the GST applicable to the supply subject to the payee providing a tax invoice. All prices are expressed in Australian dollars unless expressly stated otherwise.
- 4.3 Images of Goods and / or Services shown without any advertised or stated price beside that image are not offered for sale.
- 4.4 Unless otherwise stated, any accessories shown in any image of Goods and / or Services are not included in the price.
- 4.5 The Company reserves the right to correct any errors published on the eStore.
- 4.6 Where the Customer has been overcharged with respect to an Order due to an error in the price published on the eStore for the Goods and / or Services, the Company will provide a refund to the Customer for the difference between the actual and mistaken price of relevant Goods and / or Services. Apart from receiving such a refund, the Customer will have no further rights against the Company in these circumstances.

#### **5. Payment for Credit Accounts**

- 5.1 This clause 5 only applies to Customers who have submitted, and has been accepted by the Company, an Offer via a Credit Account.

- 5.2 The terms of payment are strictly thirty (30) days from the Statement Date, however the Company may, at any time vary the terms of payment including to require payment in full prior to delivery and/or installation should the credit worthiness of the Customer become, in the Company's sole opinion, unsatisfactory.
- 5.3 The terms of payment for training and services are strictly seven (7) days from the Statement Date. Training will not commence if payment for the course is not received in full prior to the scheduled training date.
- 5.4 Costs (legal or otherwise), stamp duties or other expenses reasonably incurred by the Company in respect of collecting any money due by the Customer to the Company and remaining unpaid in compliance with these Terms shall be paid by the Customer on demand.
- 5.5 The Customer will indemnify the Company on demand against all costs, charges, expenses and legal costs (on an indemnity basis) incurred by the Company in recovering sums owed (as provided by these Terms and in clauses 3, 8 and 15 in the Credit Account T&C's) by the Customer to the Company.

## **6. Payment for Guest Accounts and Cash Accounts**

- 6.1 This clause 6 only applies to Customers who have submitted, and has been accepted by the Company, an Offer via a Guest Account or a Cash Account.
- 6.2 All payments must be received by the Company in full two (2) days prior to the agreed date for delivery.
- 6.3 Payments for Guest or Cash Accounts must be made via the Eway, payment gateway, facilities accessible via the eStore and will be subject to any terms and conditions of Eway.

## **7. Delivery and installation**

- 7.1 Delivery dates are estimates only. Unless otherwise stated, delivery periods commence from the date of Acknowledgement of Order. Time of delivery is not of the essence of the Contract.
- 7.2 The Company shall use its reasonable endeavours to deliver the Goods by any stated or agreed delivery date(s), but may suspend or delay delivery and shall not be liable for any loss or damage howsoever arising in the event of late or non-delivery of Goods or late installation of the Goods and / or Services and/or any instalment due to any occurrence whatsoever beyond its control. The Customer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

- 7.3 The Customer shall inspect the Goods upon delivery and shall, within fourteen (14) days of delivery, give notice in writing to Company of any matter or thing by which the Customer alleges that the Goods are defective. Failing such notice and, to the extent permitted by Law, the Goods shall be deemed to have been delivered and accepted by the Buyer.
- 7.4 The Customer will be required to be available in person to accept delivery of their Order or by Customer's appointed agent provided such agent is notified to OMRON 5 days prior to the proposed date for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Goods on the agreed delivery date, then the Customer shall be liable for all reasonable storage costs, charges, expenses and additional delivery charges incurred by the Company, such amount to be paid prior to delivery.
- 7.5 Delivery shall take place and risk shall pass upon the earliest of the following:-
- a. the Company handing the Goods to the Customer or its previously notified and accepted agent at the Customer's premises as notified to the Company with the Order; or
  - b. the Goods leaving the Company's premises as notified and directed to the Company by the Customer; or
  - c. on the eighth day following notification to the Customer that the Goods are ready for dispatch.
- 7.6 The Company may at its option deliver by instalments (which will be accompanied by an invoice for the part delivery) and each instalment shall be deemed to be sold under a separate contract on these Terms. Failure of the Company to deliver or lateness of any delivery or non-delivery of any instalment shall not entitle the Customer to cancel or rescind the balance of the Order. In the event of the Customer defaulting in making payment in any instalments, the Company, in its absolute discretion, may elect to treat the default as a breach of the Contract relating to each other instalment.

## **8. Loss or Damage in Transit**

The Company shall not be liable for loss or damage to Goods in transit unless:-

- a. the loss or damage occurs prior to delivery at the Customer's premises; and either
- b. damage or shortage is reported within three (3) days of delivery at the Customer's premises; and
- c. in the case of total loss, non-arrival is notified to the Company within seven (7) days after the delivery date notified to the Customer by the Company.

## **9. Installation**

- 9.1 The Company will not be liable for any loss, damage or delay arising from any late Installation where the Company has not, in whole or part, had any part in the late Installation. The Customer warrants that all necessary consents (for instance, from building management, neighbours, and local authorities) or authorisations required for the proper completion of Installation work has been obtained or will be obtained prior to installation at the Customer's expense.
- 9.2 The Customer alone is responsible from obtaining and complying with all necessary consents and authorisations required for the proper completion of the Installation work.
- 9.3 Any costs incurred by the Customer, including arranging an alternate time for Installation arising from the failure by the Customer to obtain and comply with all necessary consents and authorisations required for the proper completion of the Installation work, are solely the responsibility of the Customer.
- 9.4 The Installation will take place during normal working hours, namely Monday to Friday 8:30AM to 5PM AEDT/AESTD (as applicable), not including public holidays in the State in which the Installation is to occur. The Company may at its discretion work outside of these hours, provided that the parties agree in advance on an additional hourly rate for the extra hours of work performed by the Company.
- 9.5 The Company will, at its own discretion, be entitled to suspend the Installation where materials that are reasonably deemed to be hazardous to health, such as Asbestos or lead paint, environmental issues or dangerous or inclement weather, are discovered by the Company at the site of Installation.
- 9.6 The Company will not be liable for any errors in the Installation work that are caused by incorrect data (in part or in whole) provided by or on behalf of the Customer to the Company.
- 9.7 The Company will not be liable for specification or design errors (in part or in whole) provided such specification or design is provided by or on behalf of the Customer to the Company.
- 9.8 The Customer must inform the Company five (5) full days in advance of any electronic or other systems that may be affected by the Installation work and the Customer must take the necessary measures to prevent or protect such systems. The Company is not liable for any loss or damage that arises from this clause.
- 9.9 The Customer must, in accordance with the *Workplace Health and Safety Act 2011* (Cth), provide a safe working environment for the personnel undertaking the Installation.

- 9.10 The Company must first notify the Customer of any fixtures, furniture and or fittings at the property that need to be moved to undertake the Installation work. After the Customer gives the consent or instruction to move such fixtures, furniture and or fittings items, the Company will have no liability for any loss or damage caused by their removal (expect where such damage is caused by negligence on the part of the Company).
- 9.11 The Company will be permitted to store materials and items at the Customer's site that are reasonably necessary for the performance of Installation and the Customer shall take reasonable care of those items. Such Installation materials remain the property of the Company.
- 9.12 If the conditions of the actual working environment are different from the conditions previously communicated or represented by the Customer to the Company, the Company will discuss with the Customer a new proposed Installation date and reserves the right renegotiate the price for the installation or to cancel the order. Any costs incurred by the Company, including additional labour costs to arrange an alternate time for Installation date arising from the failure by the Customer to provide correct information on the conditions at the Installation site will be solely the responsibility of the Customer.
- 9.13 The provision of the Installation work will end with a function test conducted by both the personnel of the Company and the Customer at the site of the Installation. The Customer must accept the Installation work and sign the acceptance report and / or other form of relevant documentations as soon as the Installation work has been completed and both parties are satisfied with the result of the function test. Approval will not be unreasonably withheld by the Customer.
- 9.14 Subject to clauses 9.2, 9.6, 9.6, 9.8, 9.8, 9.9, 9.11, and 9.13, if it is found during the function test that the Installation work has not been properly carried out, the Company will be obliged to rectify the defect in connection with the Installation at its own expense.
- 9.15 Subject to law, after agreement of a successful function test by both parties, the Company will provide a repair service to rectify any defect that is identified by the Customer and notified to the Company at 1300 766 766 within three (3) months after the Acceptance Date. The Company accepts no liability if in the Company's opinion, any purported defect is caused by any modification work undertaken by any other party to any part of the Installation.
- 9.16 Other than as required by law, the Company may at its sole discretion provide repair or maintenance service to Installation at a separate rate for any defective claim that is raised after the three (3) months period stated in clause 9.15. The Company will provide an estimate of costs and fees for prior agreement by the Customer.

## **10. Services**

- 10.1 The Company will not carry out Services if payment for Services is not received for:
- a. Services ordered by the Customer via a Guest Account or a Cash Account, in full (plus any applicable delivery charges, taxes or surcharges) on the eStore via Eway at the time that the Order is submitted by the Customer; or
  - b. Services ordered by the Customer via a Credit Account, prior to the agreed date of payment in accordance with the terms of payment on the Credit Account, as provided in clause 5 in these Terms and in clauses 3, 8 and 15 in the Credit Account T&Cs.
- 10.2 Other than as required by the ACL, if the Customer is not satisfied with the quality of Services performed by the Company, the Company may, at its sole discretion, choose to do either of the following:
- a. re-supply the Services; or
  - b. refund to the Customer through the eStore via Eway the cost of the Services.

## **11. Retention of title**

- 11.1 Until the Company has received payment in full of all sums owed to it on any account by the Customer, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Company; such Goods are referred to in this condition as "retained Goods".
- 11.2 Whilst the Customer has not paid for the Goods supplied in full, the Customer agrees that property and title in the Goods will not pass to the Customer and the Company retains the legal and equitable title in those Goods supplied and not yet sold.
- 11.3 Until payment in full has been made to the Company, the Customer will hold the Goods in a fiduciary capacity for the Company:
- a. the Customer shall not pledge or in any way charge by way of security for indebtedness, any of the retained Goods; and
  - b. agrees to store the Goods in such a manner that they keep safe in good condition and in a manner that they can be clearly identified as the property of the Company, including not mixing the Goods with other similar goods and with all identifying marks intact and legible.
- 11.4 The Customer will be entitled to sell the Goods in the ordinary course of its business, but until full payment for the Goods has been made to the Company, the Customer will sell

as agent and bailee for the Company and the proceeds of sale of the Goods will be held by the Customer on trust for the Company absolutely.

- 11.5 The Customer's indebtedness to the Company, whether in full or in part, will not be discharged by the operation of clause 10 hereof unless and until the funds held on trust are remitted to the Company.
- 11.6 The Customer agrees that whilst property and title in the Goods remains with the Company, the Company has the right, with or without prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods of the Company and to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue under these Terms.
- 11.7 The Customer will be responsible for the entirety of the Company's costs and expenses in exercising its rights under clause 11.6. Where the Company exercises any power to enter the premises, the Customer warrants that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Company, its employees, servants or agents.
- 11.8 The Customer agrees that where the Goods have been retaken into the possession of the Company, the Company has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trade mark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to the Company to do all things necessary to sell the Goods bearing the name or trade mark of the Customer.
- 11.9 For the avoidance of doubt, the Company's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## **12. Use of Cash Accounts and Credit Accounts**

- 12.1 Under no circumstances will the Company be responsible for, and the Customer must indemnify and hereby indemnifies the Company against any costs or liabilities that may arise in relation to, the administration and use of a Cash Account, Guest Account or Credit Account (or any related sub-accounts) registered in the name of the Customer.
- 12.2 Without limiting the generality of clause 12.1, the Customer must indemnify and hereby indemnifies the Company against any mistakes made in the:
  - a. administration or use of a Cash Account, Guest Account or Credit Account (or any related sub-accounts) registered in the name of the Customer; and / or
  - b. the placement of an Order through a Cash Account, Guest Account or Credit Account (or any related sub-accounts) registered in the name of the Customer.

### **13. Wrongful Actors**

- 13.1 Where a Cash Account, Guest Account or Credit Account (or any related sub-accounts) is used to place an Order:
- a. the Company is entitled to assume that the person who has made the Order on behalf of the Customer is authorised and entitled to do so; and
  - b. the Customer under whose name that account is registered will be obligated to assume the liabilities incurred as a result of the Order.
- 13.2 Under no circumstances will the Company be responsible for examining or evaluating, and the Company does not accept any responsibility or liability for the actions of, the persons who:
- a. establishes a Cash Account or Credit Account (or any related sub-accounts) registered in the name of the Customer;
  - b. deals with the Company in administering the a Cash Account or Credit Account (or any related sub-accounts) registered in the name of the Customer; or
  - c. places an Order through a Cash Account or Credit Account (or any related sub-accounts) registered in the name of the Customer.
- 13.3 The Customer must indemnify and hereby indemnifies the Company against any costs or consequential losses (whether direct or indirect) associated with the use by a Wrongful Actor of a Cash Account or Credit Account (or any related sub-accounts) registered in the name of the Customer.

### **14. Claims**

- 14.1 Any claim by the Customer for short or wrongful delivery of the Goods must be notified to the Company in writing within fourteen (14) days after delivery of the Goods to the Customer. Any claim which the Customer does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
- 14.2 If the Customer notifies the Company of any defect in the Goods within the period specified in clause 14.1, and that defect is accepted by the Company (at the Company's sole discretion, acting reasonably), and subject always to the *Competition and Consumer Act 2010 (Cth)*, the Customer's sole and exclusive remedy for any damage whether direct, indirect, or consequential will be limited to any one of the below:
- a. reduction of the purchase price for the Goods by agreement with the Customer;

- b. acceptance of the return of the Goods and, subject to the Goods being returned in the same condition as when they were delivered to the Customer, refund to the Customer the purchase price for the Goods; or
  - c. replacement of the Goods.
- 14.3 Any refund of an Order that is to be provided to the Customer by the Company will be processed through the eStore via Eway.
- 14.4 Subject to law, in the event of any of the Goods being proved to have a manufacturing fault within a period of twenty four (24) months from the date of dispatch from the Company's premises, the Company shall repair the same provide an appropriate refund to the Customer or provide a credit at the Company's discretion.
- 14.5 The limited warranties in relation to the goods under clauses 14.1 and 14.2 apply provided that:
- a. the Goods have been used by the Customer for the purpose for which they were manufactured;
  - b. the Goods have been properly stored, installed, handled, commissioned and maintained by the Customer;
  - c. the onus lies on the Customer to establish the validity of any request, claim or action under clauses 14.1 and 14.2; and
  - d. any alterations or modifications to the Goods carried out by any party, without the express written approval of the Company, will render the limited warranty in clauses 14.1 and 14.2 null and void.
- 14.6 Other than as required by the Australian Consumer Law, no Goods can be returned for any reason without first obtaining written permission from the Company. Goods returned without authorisation are subject to being returned to the Customer at the Customer's expense.

## **15. Cancellation of terms of credit**

- 15.1 The Company reserves the right to withdraw credit which is linked to a Credit Account at any time, whether the Customer is in default under these Terms or not.
- 15.2 Upon withdrawal of credit linked to a Credit Account registered in the name of the Customer, the Credit Account will become deactivated and all liabilities incurred by the Customer through the Credit Account will become immediately due and payable to the Company.

## **16. Provision of further information**

- 16.1 The Customer undertakes to comply with any request by the Company to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
- 16.2 If the Customer is a corporation (with the exception of a public listed company), it must advise the Company of any material alteration to its corporate structure (for example, a change of directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Company reserves the right to require new guarantors to sign a guarantee and indemnity.

## **17. Insolvency**

- 17.1 If the Customer becomes insolvent, the Customer remains liable under these Terms for payment of all liabilities incurred hereunder. The Customer remains liable under these Terms even if the Company receives a dividend or payment as a result of the Customer being insolvent.

## **18. Waiver**

- 18.1 A waiver of any provision or breach of these Terms by the Company must be made by an authorised officer of the Company in writing. A waiver of any provision or breach of these Terms by the Customer must be made by:
  - a. if the Customer is a natural person, the Customer in writing; or
  - b. if the Customer is a corporation, an authorised officer of the Customer in writing.
- 18.2 Until ownership of the Goods passes, the Customer waives its rights it would otherwise have under the PPSA:
  - a. under section 95 to receive notice of intention to remove an accession;
  - b. under section 118 to receive notice that the Company intends to enforce its security interest in accordance with land law;
  - c. under section 121(4) to receive a notice of enforcement action against liquid assets;
  - d. under section 129 to receive a notice of disposal of goods by the Company purchasing the goods;
  - e. under section 130 to receive a notice to dispose of goods;

- f. under section 132(2) to receive a statement of account following disposal of goods;
- g. under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
- h. under section 135 to receive notice of any proposal of the Company to retain goods;
- i. under section 137(2) to object to any proposal of the Company to retain or dispose of goods;
- j. under section 142 to redeem the goods;
- k. under section 143 to reinstate the security agreement; and
- l. under section 157(1) and 157(3) to receive a notice of any verification statement.

18.3 The Customer must immediately upon the Company's request:

- a. do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
- b. procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.

## **19. Costs**

- 19.1 The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Company relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes payable under these Terms (if any).
- 19.2 The Customer will pay any and all the Company's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including but not limited to collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer to the Company irrespective of whether pursuit of the recovery action, claim or remedy is successful.

## **20. Set-off**

- 20.1 All payments required to be made by the Customer under these Terms will be made free of any set-off, or counterclaim and without deduction or withholding.

20.2 Any amount due to the Company from time to time may be deducted from any monies that may be or may become payable to the Customer by the Company.

## **21. Intellectual property**

- 21.1 All intellectual properties including but not limited to copyrights, trade names, trade markets, patents, and designs (whether registered or unregistered) in connection with any Goods or Services located on the eStore or otherwise provided by the Company under these Terms are vested in the Company.
- 21.2 The Customer must indemnify and hereby indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any intellectual property rights.
- 21.3 The Customer may view the eStore and its contents for personal and non-commercial use only and subject to the *Copyright Act 1968* (Cth) and similar legislation, the Customer may not in any form or by any means reproduce, modify, distribute, store, transmit, publish or display within another website or create derivative works from any part of this website or commercialise any information obtained from any part of this website without the prior written consent of the Company or, in the case of third party material, from the owner of the copyright in that material.
- 21.4 The Customer may not modify or copy the layout or appearance of this website nor any computer software or code contained in this website, nor may the Customer decompile or disassemble, reverse engineer or otherwise attempt to discover or access any source code related to the eStore.
- 21.5 The Company warrants that it holds all necessary intellectual property rights in any document or material (including, but not limited to, plans and drawings) that are supplied to the Company for the purpose of the provision of Goods and/or Services and that there is and will be no infringement of any rights or entitlements held by any third party.

## **22. Secure Data and Transmissions**

- 22.1 Given the nature of the internet, the Company cannot guarantee that any data transmission is totally secure, free from viruses, fault or other conditions which could damage or interfere with the Customer's computer systems and the Company does not warrant that the Customer's access to the website will be uninterrupted, error free or that any defects will be corrected. Whilst the Company and its third parties contractors take precautions to protect information, the Company does not warrant and cannot ensure the security of any content or information the Customer transmits via the eStore. The Customer therefore transmit to the eStore at their own risk and indemnifies the Company against any loss which is caused (directly or indirectly) by such transmission.

22.2 The Customer must take their own precautions to ensure that the process which they use to access the website or any website does not expose them to the risk of viruses, malicious computer code or other forms of interference which may damage their own computer system. For the avoidance of doubt, neither the Company nor its third party contractors will accept any responsibility for any interference or damage to the Customer's own computer system which arises in connection with the Customer's use of the eStore or any linked website.

### **23. Confidentiality**

- 23.1 The Customer shall not, either during the operation of these Terms or at any time thereafter, use or disclose to any person or entity any of the information in relation to the drawing, planning or design of the Installation work performed by the Company, including for the purposes of section 275(6) of the PPSA.
- 23.2 The Customer will inform the Company immediately if any government agency, department, Court, Tribunal requests information or documents relating to these Terms or any dealings with the Company.
- 23.3 The obligation in clause 23.1 does not apply if the information has become public knowledge not due to a breach of an obligation of confidence under clause 23.1 and / or the Customer is required by law to disclose such information, where the Customer is obliged to notify the Company immediately of such requirement.

### **24. Credit Card and Debit Card Fraud**

- 24.1 The eStore employs software from Eway to secure eStore's payment systems.
- 24.2 To the extent permitted by law, the Company will not be responsible for any damages or consequential losses (whether direct or indirect) suffered by a Customer where a credit card or debit card is fraudulently used or is used in an unauthorised manner.

### **25. Third Parties**

- 25.1 The eStore may contain links to other websites, content or resources, which are owned or operated by third parties. These linked websites are not under the Company's control and the Company is not responsible for the operation, availability or contents of any linked website or any link contained in a linked website. The Company provides these links to the Customer for convenience only and the inclusion of any link does not imply the Company's endorsement of the linked website. The Customer will access linked websites at their own risk. Subject to any non-excludable rights, the Company disclaims all warranties, express and implied, as to the accuracy, value, legality or otherwise of any materials or information contained on linked website.

- 25.2 Unless stated otherwise, these third-parties are not in any way affiliated with the Company or any Related Body Corporate of the Company.
- 25.3 Under no circumstances will the Company be responsible for examining or evaluating, and the Company does not warrant or accept any responsibility or liability for the actions or offerings of:
- a. any third party whose website link is provided on the eStore; or
  - b. the content of such a third party's website.

## **26. Miscellaneous**

- 26.1 Nothing in these terms of use operate to exclude, modify or restrict the application of any provision, the exercise of any remedy, or the imposition of any liability under ACL. To the extent permitted by law (and where the consumer guarantees under the ACL do not apply), under no circumstances will the Company be held responsible or liable in any way for any claims, damages, losses, expenses, costs or liabilities whatsoever (including, without limitation, any direct or indirect damages for loss of profits, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right, business interruption, or any other indirect loss suffered by the Customer) caused to the Customer by any activity including but not limited to strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity that is under the Customer's control and beyond the Company's control.
- 26.2 The Company is not liable or deemed to be in breach of contract by reason of any delay in performing, or any failure to perform any of the Services or Installation works if the delay or failure was due to any cause beyond the Company's control, including but not limited to an act of God, government act, fire explosion, accident, hazardous material, civil commotion, industrial dispute or any other cause that is under the Customer's control.
- 26.3 The Customer will, at the request of the Company, execute documents and do such further acts as may be required for the Company to register the security interest granted by the Customer under the PPSA.
- 26.4 The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Company by the Customer or the Customer's authorised representative.
- 26.5 The Customer further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

- 26.6 The Customer irrevocably grants to the Company the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Company has cause to exercise any of their rights under sections 123 and / or 128 of the PPSA, and the Customer shall indemnify the Company from any claims made by any third party as a result of such exercise.
- 26.7 Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and / or services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* (Cth) or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

## **27. Severance**

- 27.1 If any provision of these Terms is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 27.2 If any part of these Terms is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

## **28. Variation**

- 28.1 The Customer agrees that Terms may be varied, added to, or amended by an authorised officer of the Company at any time by written notice to the Customer.
- 28.2 Any proposed variation to these Terms by the Customer must be requested in writing. The Company may refuse any such request without providing reasons either orally or in writing.

## **29. Consent to register**

- 29.1 The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

## **30. Entire agreement**

- 30.1 These Terms constitute the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in these Terms and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.

**31. Notices**

Any notices under these Terms shall be properly given if in writing and sent by recorded delivery or via facsimile transmission to the address of the intended recipient as stated in the Contract or to such address as the Company and the Customer from time to time notify each other as their respective addresses and shall be deemed served in the case of postal notice, on the expiry of forty-eight (48) hours from the time of posting and in the case of facsimile transmissions on the expiry of one (1) hour from completion of transmission by the sender.

**32. Construction and jurisdiction**

All Goods and Services supplied by the Company are subject to the laws of the State of New South Wales and are governed by and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of that State.