

The Customer acknowledge that it has read, understood, accepted and approved these Terms.

1. Definitions and Interpretation

- 1.1 **Agreement** means the Agreement of Service.
- 1.2 **COD** means cash on delivery.
- 1.3 **Company** means LRY GROUP OF COMPANIES PTY LTD (ACN: 142 669 896) ("LRYG").
- 1.4 **Customer** means the buyer/purchaser.
- 1.5 **Business Day** means a day which is a working day in WA and **Business Days** has a corresponding meaning.
- 1.6 **Goods** means any goods sold (and where the context so permits shall include any supply of Services as hereinafter defined) by the Company to the Customer.
- 1.7 **Guarantors** means the Directors, Partners, Proprietors or Trustees of the Customer, as the case may be.
- 1.8 **Interest** means 15% p.a. or 8% + the current bank overdraft rate charged by the Company's bankers from time to time, whichever is higher, calculated from the due date for payment to date of actual payment.
- 1.9 **Outstanding Amount** means any amount of money due from the Customer to the Company for the supply of Goods and or Services.
- 1.10 **Parties** mean and include the Company, Customer and the Guarantors. **Party** has the corresponding meaning.
- 1.11 **Price** shall mean the cost of the Goods and or Services as agreed between the Company and the Customer subject to clause 4 of these Terms.
- 1.12 **Services** shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.13 **Terms** means the terms and conditions contained in this Terms of Trade.

2. Terms

- 2.1 These Terms supersede any previous agreements, terms or understandings of any kind between the Parties with effect from the date of the Agreement.
- 2.2 These Terms govern all transactions and apply to all sale of Goods & supply of Services by the Company to, or at the direction of, the Customer, except as otherwise agreed in writing.
- 2.3 The Company may vary these Terms by written notice to the Customer and the varied Terms apply to all Goods and or Services ordered by the Customer after the date of such notice.
- 2.4 The Company will not be bound by any terms or conditions attached to the Customer's purchase orders, unless specifically agreed to in writing by the Company.

3. Orders

- 3.1 The Company may accept or reject any order for any reason and may withdraw credit (if granted) at any time for any reason.
- 3.2 The Customer remains liable to the Company notwithstanding that the Goods and or Services may be delivered by the Company to a third party at the direction of the Customer.
- 3.3 The Customer must advise the Company in writing of any disputed invoice or account within 7 Business Days of the date of delivery of the Goods and or the Services, otherwise the Customer is deemed to have accepted the charges as correct and will be bound thereby.
- 3.4 The Company will not be liable for any failure to fulfil any order, or part thereof, for any reason, or for or in connection with any delay in the supply or delivery of Goods and or Services.
- 3.5 Any claims for shortages or rejection of Goods and or Services are deemed to be waived and released by the Customer, unless such shortage or rejection is notified in writing within 7 Business Days of the delivery of the Goods and or Services.
- 3.6 In the case of oversupply or damaged Goods, the Customer may return the Goods to the Company for credit, provided the Company has been notified in writing within 7 Business Days of the delivery, quoting the original invoice number and invoice date. At the Company's discretion, the Customer may be required to contribute towards the costs of returning the Goods and or Services.
- 3.7 The Company will not accept returned Goods that are not in their original containers/packing or where the Goods were initially supplied to the Customer expressly on a no return basis. Whether the Goods are damaged or soiled will be determined by the Company in its sole discretion reasonably exercised.
- 3.8 Clause 3.6 & 3.7 do not apply to Goods made specifically for the Customer and which can't be used by any other person.

4. Prices & Payment

- 4.1 All Prices are in Australian dollars unless stated otherwise and are exclusive of GST, or any other charges, including freight, shipping, handling or insurance, unless otherwise agreed to in writing.
- 4.2 The Customer agrees to pay the Price specified in any quotation and/or purchase order as agreed or otherwise.
- 4.3 If no such Price is specified, the Customer must pay the Company's List Price for Goods and or Services ordered, current at the date of delivery.
- 4.4 The time for payment shall be the essence of the Agreement.
- 4.5 Unless otherwise agreed in writing by the Company the Customer must pay all outstanding amounts due on cash on delivery basis ("**COD**") without deduction (and notwithstanding any claim whatsoever that the Customer has or may wish to make against the Company). **COD**

accounts are due prior to delivery. The Company may withhold dispatch of any part of any order or require pre-payment for any given shipment if the Customer fails to make payments due in accordance with the provisions of these Terms or any written directions given by the Company, prior to the date of delivery.

- 4.6 The Customer agrees to notify the Company of any change of address, ownership or legal status of their business and provide any further details required by the Company in order to assess any provision of ongoing credit to the Customer from time to time.
- 4.7 The Company may correct errors in invoices after issue and the Customer is liable to pay any adjusted amount within 14 Business Days after notification of that adjustment.

5. Risk, Insurance & Warranty of Goods and or Services

- 5.1 All risk in the Goods and or Services will pass to the Customer on delivery.
- 5.2 Delivery is deemed to be effected when the Customer or its nominated carrier takes possession of the Goods and or Services or the time when the Goods and or Services leave the Company's premises, whichever is earlier.
- 5.3 The Customer shall keep the Goods and or Services insured with the Company as the loss payee, against all risks as is customary to have Goods and or Services of similar nature insured, at all times for at least the Price of the Goods and or Services. In case of damage to the Goods and or Services the Company is entitled, without prejudice to its rights, to receive all the insurance proceeds.
- 5.4 For Goods and or Services not manufactured/provided by the Company, the warranty shall be of the current warranty provided by the manufacturer of the Goods and or Services. The Company shall be under no liability whatsoever.
- 5.5 The intellectual property rights in the Goods and or Services shall remain with their respective owners.

6. Retention of Title

- 6.1 By way of security against future unpaid accounts, whether or not Goods and or Services have been paid for in full, ownership of the Goods and or Services does not pass to the Customer except as provided in this clause, and until such time, the Customer agrees that:
 - (a) the Goods and or Services are owned by the Company, the Customer holds the Goods and or Services as bailee and the Customer owes the Company the duties and liabilities of a bailee;
 - (b) the Goods and or Services must be stored in such a way to distinctively identify them as the property of the Company; and
 - (c) the Company, its agents or servants, without prejudice to the Company's other rights, may enter the Customer's premises, without the necessity of giving any notice, to repossess the Goods and or Services.
- 6.2 The Company authorises the Customer to contract to sell Goods and or Services, in the ordinary course of business of the Customer, to independent third parties, in which case ownership in the Goods and or Services passes to the Customer immediately prior to the time that title passes to that third party.
- 6.3 The Company may withdraw the authority in the preceding sub-clause at any time, and that authority is automatically revoked if:
 - (a) a liquidator, administrator, receiver or trustee in bankruptcy is appointed in respect of the Customer or a Guarantor; or
 - (b) a petition seeking the liquidation or bankruptcy of the Customer or a Guarantor is filed; or
 - (c) the Customer enters into any composition or arrangement with creditors.
- 6.4 If a liquidator, administrator, receiver or trustee in bankruptcy is appointed in respect of the Customer, none of the Customer, liquidator, administrator, receiver or trustee may sell any Goods and or Services without the Company's written consent.
- 6.5 If any Goods and or Services are sold by the Customer, in the ordinary course of business of the Customer, to an independent third party, while there is an Outstanding Amount, the Customer holds the proceeds of such sale on trust for the Company to the extent of the Outstanding Amount.

7. Lien over Goods and or Services

- 7.1 The Customer acknowledges that the Company may exercise a lien over any Goods and or Services that are in the possession of the Customer until all monies due and payable by the Customer to the Company are paid.
- 7.2 The lien shall not be extinguished if the Customer temporarily retakes possession of any Goods and or Services; the lien also extends to cover all monies owing by the Customer to the Company, not just the money owing in respect of the Goods and or Services supplied by the Company since the Company last obtained possession of the Goods and or Services.

8. Collection & Storage Fees

- 8.1 The Customer shall collect any Goods and or Services within 7 Business Days of notification that the Goods and or Services are ready for collection.
- 8.2 The Company may charge reasonable storage fees if the Customer fails to take delivery within 7 Business Days of notification by the Company that any Goods and or Services are ready for collection.

9. Disposal of Uncollected Goods and or Services

- 9.1 If the Customer fails to collect any Goods and or Services within 30 days of receiving notice that the Goods and or Services are ready for collection, the Company may sell/dispose of the Goods and or Services and apply the proceeds of the sale in satisfaction of any

outstanding money owed to the Company by the Customer without the need to advise the Customer.

- 9.2 The Company shall make reasonable efforts to sell the Goods and or Services for their market value. Any monies in excess of the outstanding debt shall be held in trust for the Customer.

10. Fees, Charges and Enforcement Expenses

- 10.1 Any payment not made within the specified period will attract Interest until the time of payment. Interest accrues daily.
- 10.2 The Company may sue for loss of profits and consequential damage suffered as a consequence of the Customer's breach of the Agreement.
- 10.3 The Customer is liable for and must pay all the costs of and incidental to the recovery of any Goods and or Services not paid for and any amounts due by the Customer to the Company on a full indemnity basis, including the charges of any mercantile or collection agents or solicitors appointed by the Company.
- 10.4 The Customer must pay stamp duty and any government charges payable in respect of the Agreement.

11. The Customer as a Trustee

- 11.1 If the Customer is a Trustee, the Agreement is binding upon the Customer personally and in its capacity as trustee of the Trust and the Customer warrants that:
- (a) the Trust is properly construed as on date and will continue to be so, during the term of the Agreement;
 - (b) the Customer when entering the Agreement as trustee of the Trust is acting within the scope of its authority under the trust deed; and
 - (c) it will not permit any amendment or variation to the trust (to the extent that it is able), without the prior written consent of the Company.

12. The Customer's Representations and Warranties

- 12.1 The Customer represents and warrants to the Company that, except as disclosed in writing to the Company and dispensed with in writing by the Company:
- (a) entering the Agreement will not conflict with, or result in any breach of, or require any consent or approval under, any mortgage, contract or other undertaking or instrument to which the Customer is a party;
 - (b) the Customer is not in default or in difficulty under any deed, contract or other document or obligation, whether statutory or otherwise and no dispute exists or is threatened against the Customer which might have an adverse effect upon its business, assets or financial condition; and
 - (c) the annual/bi-annual/quarterly accounts of the Customer provided by the Customer disclose a true and fair view of the financial position of the Customer and no material adverse change has occurred since the date of those accounts and the date of the Agreement.

13. Warranties, Representations and Limitation of Liability

- 13.1 The Customer agrees that to the full extent permitted by law neither the Company gives, nor any person purporting to act with the authority of the Company has given, any promise, condition, warranty, undertaking or representation whatsoever in favour of the Customer as to the condition or quality of the Goods and or Services.
- 13.2 The Company's liability is limited:
- (a) in the case of the Goods - to any one or more of the following at the Company's option:
 - i. the replacement of the Goods or the supply of equivalent Goods, or
 - ii. the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (b) in the case of the supply of Services - to any one or both of the following:
 - i. the supplying of the Services again;
 - ii. the payment of the cost of having the Services supplied again, and
 - iii. in either case, to any lesser liability permitted by the relevant law.
- 13.3 The Company will not be liable for, and the Customer releases and discharges the Company from, any loss or damage whatsoever and whenever caused to the Customer or its agents or employees, including, but not limited to, special, indirect or consequential damages, loss of profit, goodwill, revenue or loss of anticipated saving or loss, whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods and or Services or any accident to or involving the Goods and or Services (whether occasioned by the negligence of the Company or otherwise) or which may otherwise be suffered or sustained as a result of the Goods and or Services or as a result of a breach of the Terms and conditions of the Agreement by it or as a result of a breach of duty of care or negligence arising at law.
- 13.4 To the maximum extent permitted by law, the Company's liability to the Customer under the Agreement is limited to the value of the supply.
- 13.5 The Customer:
- (a) takes full responsibility for:
 - i. determining that the Goods and or Services are suitable for the purposes for which the Goods and or Services are required or purchased; and
 - ii. carefully examining the Goods and or Services for defects that a careful examination ought to reveal; and

- (b) hereby covenants and warrants to the Company that the Customer:
 - i. shall, in the storage and handling of the Goods and or Services and Containers:
 - A. comply with all relevant State and Commonwealth laws and regulations (without limitation, environmental and safety laws and regulations) and
 - B. possess and comply with all necessary and/or relevant permits and licenses; and
- is familiar with and adheres to and shall adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods and or Services.

14. Guarantee and Indemnity

- 14.1 In consideration of the Company, at the request of the Guarantors, entering into the Agreement, the Guarantors jointly and severally guarantee to the Company the performance by the Customer of its obligation under the Agreement and the Terms, including the payment of all monies due by the Customer to the Company.
- 14.2 The Guarantors are bound jointly and severally as guarantors for all liability of the Customer to the Company, and they remain bound notwithstanding:
- (a) any variation of the Agreement;
 - (b) any extension of time or other concession, variation, or release of any kind by the Company in relation to the monies due;
 - (c) any failure to enforce these Terms, or any other rights;
 - (d) any release of the Customer or any co-guarantor (in full or part) for any reason; or
 - (e) any failure by any Party to execute the Agreement properly, or at all.
- 14.3 As a separate liability and obligation the Guarantors (jointly and severally if more than one) indemnify the Company from all actions, claims, demands, notices, losses, damages, costs and expenses, of any nature whatsoever, suffered or incurred by the Company by reason of any breach or non-performance by the Customer of any of the Terms or conditions of the Agreement.
- 14.4 This is a continuing guarantee and indemnity in respect of all of the Customer's debts, liabilities and obligations to the Company and in respect of every transaction by the Customer with the Company from time to time.
- 14.5 This indemnity, and the guarantee, is not affected or discharged by the insolvency, liquidation or bankruptcy of the Customer, or the release from liability for any reason of the Customer, any guarantor or any other person, or any act or omission, or incapacity of any person, or any event or circumstance that might otherwise have the effect of discharging their liability under this guarantee and indemnity, whether as Customer, guarantor, indemnifier, principal debtor or otherwise.

15. Privacy

- 15.1 The Customer agrees and acknowledges that the Company may utilise any information previously provided to it by the Customer and any information which the Customer provides pursuant to these Terms or subsequently hereto to investigate the credit-worthiness of the Customer, including making enquiries to credit reference organisations, banks and financial institutions, the Customer's trade referees, bankers and credit providers and the Customer authorises each such person to disclose to the Company all such information in their possession concerning the Customer that is requested by the Company.
- 15.2 The Company is committed to ensuring the confidentiality and privacy of personal information that it receives. The information received may be stored.
- 15.3 The Company will not use personal information for any purposes not relating to the Goods and or Services provided by the Company to the Customer. The Company may pass all such information onto any buyer of the business or part of the business of the Company.

16. Miscellaneous Provisions

- 16.1 Corporate Customers must give not less than 14 days' notice of any change in the directors, or change of the shareholding of any major shareholders, of the Customer.
- 16.2 If any part of the Agreement becomes void or unenforceable then that part is severed from the Agreement and the remainder is not affected.
- 16.3 Nothing in the Agreement is intended to have the affect of contracting out of any applicable provisions of law, except to the extent permitted by the law.
- 16.4 The laws of Western Australia govern the Agreement and the Parties submit to the exclusive jurisdiction of the Courts of Western Australia.
- 16.5 If the Customer comprises of more than one person, each person is jointly and severally liable for the Customer's obligations under the Agreement, and one of those persons can bind the other persons making up the Customer.
- 16.6 Any notice required to be served on any of the Party may be served personally or be left at or sent by letter addressed to the any other Party at the Party's address so provided. If posted, the notice shall be deemed to be served 3 Business Days after posting. Notices sent by facsimile shall be deemed to be duly given within 24 hours of receipt by the sender of a transmission control report from the dispatching machine indicating successful transmission.
- 16.7 Neither Party may assign its rights and obligations under the Agreement without the prior written consent of any other Party.
- 16.8 No failure to exercise and no delay in exercising any right, power or remedy under the Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.