

Terms and Conditions of Sale

PACIFIC OPTICS PTY LTD ABN 96 064 312 107

1. DEFINITIONS

1.1. In these terms and conditions, unless the context otherwise requires:

ACL means the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Australian Standards means the standards issued by Standards Australia applicable to the Goods.

Company means Pacific Optics Pty Ltd (ABN 96 064 312 107).

Credit Application means the form completed by the Purchaser seeking credit from the Company.

Defect has the meaning given in clause 10.2.

Goods means all goods supplied or to be supplied by the Company to the Purchaser, as described in any quotation, order, invoice, delivery docket, or other Company documentation.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the person listed as the guarantor in the Credit Application.

Personal Information means the information of or relating to a person and, where applicable, includes "personal information" as defined in the Privacy Act.

PMSI means a purchase money security interest under the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Properties Securities Register.

Privacy Act means the *Privacy Act 1988* (Cth).

Purchaser means the person or entity purchasing Goods from the Company, including anyone acting on its behalf, as set out in the Credit Application.

RBA means the Reserve Bank of Australia.

RBA Cash Rate means the cash rate published by the RBA on first business day of a month in which payment became overdue.

Sale Price means the amount shown on the Company's invoice for the Goods, including freight (if any) and GST.

Terms means these Terms and Conditions of Sale, as amended by the Company from time to time in accordance with clause 17.1.

2. GENERAL

- 2.1. These Terms form a binding contract between the Purchaser and the Company, govern every order for Goods and override any conflicting terms proposed by the Purchaser.
- 2.2. Any terms proposed by the Purchaser that conflict with these Terms will not apply unless expressly accepted by the Company in writing.
- 2.3. Placing an order for, or accepting delivery of, Goods constitutes acceptance of these Terms by the Purchaser.
- 2.4. The approval of any Credit Application by the Company constitutes a credit facility only and does not obligate the Company to supply any Goods to the Purchaser.
- 2.5. Each order submitted by the Purchaser for the purchase of Goods constitutes an offer to purchase those Goods on these Terms and is not binding on the Company unless and until accepted by the Company.

3. CREDIT TERMS

- 3.1. The supply of Goods by the Company is conditional on the Purchaser and its Guarantor completing and signing the Credit Application and the Company approving the provision of credit in accordance with the Credit Application. Orders may be refused by the Company until approval is granted.
- 3.2. Credit is granted at the Company's sole discretion and may be withdrawn, reduced, or varied at any time. No assurance is given by the Company that a Credit Application will be approved or credit maintained.

4. PRICE AND PAYMENT

- 4.1. The Sale Price must be paid by the purchaser to the Company within 30 days of the invoice date.
- 4.2. The Sale Price must be paid in full, without deduction or set-off, in immediately available funds, by the payment method specified on the Company's invoice or as otherwise notified by the Company in writing.
- 4.3. The Purchaser is responsible for and must pay all applicable taxes, duties, and surcharges, including GST at the prevailing rate, imposed in connection with the supply or delivery of the Goods.

- 4.4. The Purchaser is responsible for and must pay all freight and shipping charges imposed in connection with the supply or delivery of the Goods, unless otherwise agreed by the Company in writing.
- 4.5. If any amounts payable under these Terms are not paid when due, the Company may charge interest on the overdue amounts at a rate equal to 12% per annum, calculated daily, from the due date until payment in full is received by the Company.
- 4.6. The Company may apply any payment received from the Purchaser to any outstanding invoice or obligation as it determines.
- 4.7. The Purchaser indemnifies the Company by agreeing to pay to the Company on demand an amount equal to all costs and expenses reasonably incurred by the Company in recovering any overdue amount, including debt collection agency fees and legal costs.

5. RISK

- 5.1. Risk of damage to or loss in the Goods passes to the Purchaser on delivery to or collection by the Purchaser, whichever occurs first.
- 5.2. If the Purchaser submits a request for the return of the Goods pursuant to clause 10 of these Terms, and the Company accepts the request for the return of Goods in writing, risk passes back to the Company on delivery to or collection by the Company, whichever occurs first.
- 5.3. Until risk passes under clause 5.1, the Company is responsible for loss or damage, except to the extent caused or contributed to by the Purchaser or its officers, employees or agents.

6. RETENTION OF TITLE

- 6.1. Title to the Goods remains with the Company until full payment is received for those Goods and any other amounts owed by the Purchaser to the Company.
- 6.2. Until title passes to the Purchaser, the Purchaser holds the Goods as bailee, must keep them separate, and ensure they are clearly identifiable as the Company's property.
- 6.3. The Purchaser may sell Goods in the ordinary course of business, provided the sale is at normal commercial terms and the proceeds are held in trust for the Company until payment is made.
- 6.4. Until title passes to the Purchaser, the Purchaser must keep the Goods fully insured for their replacement value against all usual risks and note the Company's interest in the policy.
- 6.5. The Purchaser agrees that whilst title in the Goods remains with the Company, the Company has the right, with prior notice to the Purchaser, to enter upon any premises occupied by the Purchaser (or any receiver, receiver and manager, administrator,

liquidator, or trustee in bankruptcy of the Purchaser) to inspect the Goods of the Company and, when payment is overdue, to immediately repossess the Goods in the Purchaser's possession, custody or control at the Purchaser's expense.

- 6.6. The Purchaser agrees that where the Goods are repossessed by the Company, the Company has the absolute right to sell or deal with the Goods in any manner it deems fit (including if the Goods bear the trademark or name of the Purchaser), and the Purchaser hereby grants an irrevocable licence to the Company to do all things necessary to sell the Goods bearing the name or trademark of the Purchaser.
- 6.7. The Purchaser grants the Company a security interest in the Goods and any proceeds from the sale of such Goods under the PPSA, including as a PMSI.

7. PPSA

- 7.1. The Purchaser acknowledges that these Terms create a registrable security interest in the Goods and therefore form a security agreement under the PPSA and that the Company has a security interest in the Goods and their proceeds, which may be registered on the PPSR, including as a PMSI, where applicable.
- 7.2. If the Purchaser defaults in the performance of any of its obligations owed to the Company under this agreement or any other agreement with the Company, the Company may enforce its security interest in the Goods or proceeds by exercising all or any of its rights under the agreement or the PPSA.
- 7.3. The Purchaser must take all reasonable steps requested by the Company to perfect, maintain, or enforce the Company's security interest, including executing documents, providing information, and promptly notifying the Company of any relevant changes.
- 7.4. The Purchaser waives its right under section 157 of the PPSA to receive notice of any verification of any registration of a security interest.
- 7.5. To the maximum extent permitted by law, the following provisions of the PPSA do not apply to the enforcement by the Company of any security interest in any Goods or proceeds: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 7.6. Unless the Purchaser has obtained the Company's prior written consent, the Purchaser undertakes not to:
 - (a) register a financing change statement in respect of a security interest contemplated or constituted by these Terms; and
 - (b) create or allow any encumbrance over the Goods, do anything that may prejudice the Company's security interest, or intermix, alter or cause the Goods to lose their identifiable character.

8. DELIVERY AND SUPPLY

- 8.1. The Company may refuse or stop supplying Goods at any time, including if the Purchaser breaches these Terms, fails to meet credit requirements, or if supply is not commercially or operationally practical.
- 8.2. The Company will use reasonable efforts to meet order specifications, delivery dates, and instructions. Delivery dates are estimates only. The Company is not liable for delays or failure to meet delivery instructions, and such delays do not allow the Purchaser to cancel an order provided the Goods are delivered in a reasonable time from the delivery date.
- 8.3. The Company is not liable for loss arising from failure to supply Goods where:
 - (a) insufficient stock exists;
 - (b) Goods have been discontinued or are unavailable; or
 - (c) the Company reasonably decides not to extend further credit or supply.
- 8.4. If events beyond the Company's reasonable control prevent or delay performance (including acts of God, natural disasters, terrorism, war, strikes, fire, shortages of materials or transport, or import restrictions), the Company is not liable for failure or delay. During such events, the Company may suspend delivery, place orders on hold, or cancel all or part of an order by written notice to the Purchaser.

9. CANCELLATION OF ORDERS

- 9.1. Orders accepted by the Company may only be cancelled by the Purchaser with the prior written consent of the Company.
- 9.2. The Company may refuse cancellation requests by the Purchaser in its sole discretion.
- 9.3. If an order is cancelled by the Purchaser in accordance with clause 9.1, the Company may charge a reasonable fee to cover costs incurred, including materials, work performed, third-party fees, and administration.

10. RETURN OF GOODS

- 10.1. The Purchaser must inspect Goods promptly on delivery or collection.
- 10.2. The Purchaser must notify the Company in writing within 7 days of delivery or collection, of any evident defect or damage, shortage in quantity or other material non-conformity (**Defect**) with the terms of an order and, where reasonably practicable, provide evidence of such Defect. If the Purchaser fails to give notice of a Defect in accordance with this clause, the Goods are deemed accepted (and the Purchaser shall have no claim against the Company for any Defect or failure of the Goods to comply with any order and the Purchaser must pay for the Goods in accordance with these Terms).

- 10.3. Goods may only be returned, other than Goods returned due to a Defect, with prior written consent of the Company.
- 10.4. Where Goods are returned pursuant to clause 10.2 and the Company agrees the Goods have a Defect under clause 10.6, the Company bears reasonable return freight costs. In all other circumstances, the Purchaser bears the cost unless otherwise agreed by the Company.
- 10.5. Returned Goods must be in original packaging and condition, with documentation including Purchaser details (name, address, account number), invoice number, reason for return, and Company return authorisation.
- 10.6. If, upon inspection, the Company agrees (acting reasonably) that such Goods have a Defect and have been returned according to these Terms, the Company may, at its discretion refund or credit the Sale Price or replace the Goods. Except as required by law, no additional claims for loss may be made by the Purchaser.
- 10.7. This clause does not affect the rights of the Purchaser's customers under the ACL or other applicable law.

11. CHANGE OF OWNERSHIP

- 11.1. The Purchaser must provide 7 days' written notice to the Company of any sale, transfer, or change of ownership or change in ultimate control of the Purchaser or the Purchaser's business or assets.
- 11.2. The Company may:
- (a) require a new Credit Application from the new owner, however, it is not obliged to approve it or provide any credit to the new owner; or
 - (b) withdraw, reduce, suspend or vary any credit terms (including payment timeframes or credit limits) with immediate effect if the Company reasonably considers that the Purchaser is not of the same or higher financial standing as prior to the change of control.

12. LIMITATION OF LIABILITY

- 12.1. The Company warrants that Goods are of merchantable quality and meet applicable Australian Standards or agreed specifications.
- 12.2. Subject to clauses 12.5 and 12.6, and to the extent permitted by law, all other statutory guarantees and warranties are excluded. Where a statutory guarantee cannot be excluded, the Company's liability is limited, at its option, to:
- (a) replacement of the Goods or the supply of equivalent Goods;
 - (b) repair of the Goods; or

(c) the payment of the cost of replacing the Goods or acquiring equivalent Goods.

12.3. None of the Company and its related bodies corporate and the officers, employees, agents, contractors and subcontractors of any of them (**Group**) has any liability to the Purchaser or any other person for any consequential or indirect loss arising due to a breach of this agreement or in tort (including negligence) in connection with the supply of, or failure to supply, any Goods or otherwise under or in connection with this agreement including, without limitation, loss of profits, bonuses, anticipated income, anticipated cost savings or corruption or destruction of data.

12.4. The total liability of the Group to the Purchaser (and any other person) for a breach of this agreement or in tort (including negligence) in connection with the supply of, or failure to supply, any Goods or otherwise under or in connection with this agreement (except for liability arising due to the supply of goods in breach of a condition of warranty implied by law into the agreement that cannot be lawfully excluded) is limited to the Sale Price for the Goods.

12.5. Nothing in these Terms excludes, restricts, or modifies any legislation, including non-excludable statutory guarantees under the ACL.

12.6. Any exclusion or limitation operates only to the maximum extent permitted by law.

13. INDEMNITY

13.1. The Purchaser indemnifies the Company in respect of all liability, claims, damage, losses, costs, and expenses (including legal costs on an indemnity basis) that the Company may suffer or incur at any time, directly or indirectly as a result of:

- (a) damage to the property or death of, or injury to, any person caused directly or indirectly by the Goods;
- (b) any claim against the Company in relation to any incident concerning the Goods or their use, operation or storage; or
- (c) any breach of these Terms by the Purchaser in the performance or observance of the Purchaser's obligations under these Terms;

except to the extent any claim, damage, loss, cost or expense arises due to a wrongful act of the Company or the Company not taking reasonable steps to mitigate the claim, damage, loss, cost or expense.

13.2. The Purchaser's liability to indemnify the Company is a continuing obligation.

13.3. It is not necessary for the Company to incur any expense or make any payment before enforcing its rights of indemnity conferred by these Terms.

14. SUSPENSION OR TERMINATION

14.1. The Company may cease accepting orders at its discretion.

14.2. The Company may suspend deliveries, require advance payment, or terminate orders immediately on notice to the Purchaser if the Purchaser:

- (a) fails to pay amounts due within 7 days from the due date of payment;
- (b) commits any breach of this agreement which in the Company's opinion is capable of remedy, and fails to remedy the breach within 30 days from receipt of a written notice of default from the Company;
- (c) commits a material breach of the agreement which in the Company's opinion is not capable of remedy; or
- (d) is dissolved, wound up or placed into bankruptcy or an order is made by a court or a resolution is passed or the Purchaser gives notice of its intention that the Purchaser be dissolved, wound up or placed into bankruptcy, a controller or administrator is appointed in respect of the Purchaser or any property of the Purchaser or takes possession or gains control of any property of the Purchaser, the Purchaser (except to reconstruct or amalgamate while solvent) enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, the Purchaser is (or states that it is) insolvent or an insolvent under administration or the Purchaser takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

14.3. The Purchaser may terminate this agreement by written notice to the Company if the Company:

- (a) commits a material breach of this agreement and the Company fails to remedy the breach within 30 days from receipt of a written notice of default from the Purchaser; or
- (b) is dissolved, wound up or placed into bankruptcy or an order is made by a court or a resolution is passed or the Company gives notice of its intention that the Company be dissolved, wound up or placed into bankruptcy, a controller or administrator is appointed in respect of the Company or any property of the Company or takes possession or gains control of any property of the Company, the Company (except to reconstruct or amalgamate while solvent) enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them, the Company is (or states that it is) insolvent or an insolvent under administration or the Company takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

15. NOTICES

15.1. Any notices required to be given under this agreement must be in writing and may be delivered by hand delivery, pre-paid post or email to the address details of the relevant party set out in the Credit Application or in such other way as the recipient party may have last notified each other party in writing .

15.2. A notice is deemed to be received:

- (a) if sent by hand delivery, at the time of delivery if on a business day at or before 5:30pm, or otherwise on the next business day;
- (b) if sent by pre-paid post within the same country, on the second business day after the date of posting, or if sent by pre-paid airmail from an address in a country to an address in another country, on the fifth business day after the date of posting; or
- (c) if sent by email, at the time of sending if on a business day at or before 5:30pm, otherwise on the next business day, provided that the sender does not receive a subsequent 'Out of Office' reply or similar response or a system administrator message stating that the email did not reach its intended recipient.

16. ASSIGNMENT

16.1. Neither party may assign its benefits or obligations under these Terms without the prior written consent of the other party (which shall not be unreasonably withheld).

17. VARIATION

17.1. The Company may, at any time, on 30 days written notice to the Purchaser, vary these Terms. If the Company varies these Terms then the variation applies to any order placed by the Purchaser after the variation.

18. NO SET OFF

18.1. The Purchaser must not set off or withhold payment of any amount payable under these Terms for any reason.

19. SEVERANCE

19.1. 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.

19.2. If any part of these Terms is invalid or unenforceable, that part is deleted and the remainder of these Terms remains in place.

20. GOVERNING LAW

20.1. These Terms are governed by the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

21. WARRANTIES OF AUTHORITY

21.1. Each party represents and warrants to each other party (at the date of the Purchaser's entry into the Credit Application and each time the Purchaser orders Goods from the Company) that:

- (a) it has the power to enter into and perform this agreement, and enters into this agreement in its own capacity and not as trustee;
- (b) the agreement is valid and binding on it and enforceable against it in accordance with its terms subject to any necessary stamping, the availability of any equitable remedies and to laws affecting creditors' rights generally;
- (c) it benefits by entering into the agreement; and
- (d) it is able to pay its debts as and when they fall due, and no action has been taken towards winding it up or placing it in bankruptcy.

22. PRIVACY

22.1. The Purchaser consents to the Company collecting and using any Personal Information (including credit reporting information) given for assessing the Purchaser's credit worthiness, assisting the Company to exercise its rights against the Purchaser (including the right to enforce payment of any amount payable) and for any other lawful purpose, and the Company may disclose that Personal Information to any person it considers reasonably appropriate to achieve.

22.2. The Purchaser acknowledges that the Company may use and/or disclose credit eligibility information under section 21G of the Privacy Act. Further information on the use and disclosure of Personal Information (including credit reporting information), including how the Purchaser may access and seek correction of their Personal Information, how the Purchaser may make a complaint about a failure to comply with the Privacy Act and how the Company will deal with such complaint can be found in the Terms and the Company's Privacy and Credit reporting policy (available at [[Privacy and Credit Reporting Policy](#)]).

22.3. The Company's credit reporting policy contains a statement of notifiable matters in accordance with section 21C of the Privacy Act and section 4 of the Privacy (Credit Reporting) Code 2025 in respect of disclosure to credit reporting bodies including:

- (a) the details of the credit reporting bodies to which the Company may share the Purchaser's credit information;

- (b) what information may be used for, what the Company may disclose and the Purchaser's right to request limitations to the use of their credit information.

22.4. The Purchaser may request a statement of notifiable matters be provided in an alternative form.

23. GUARANTEE

23.1. The Guarantor gives this guarantee in consideration of the Company providing goods to the Purchaser. The Guarantor acknowledges the receipt of valuable consideration from the Company for it incurring obligations and giving rights under this guarantee.

23.2. The Guarantor unconditionally and irrevocably guarantees to the Company the due and punctual performance by the Purchaser of the Purchaser's obligations under this agreement.

23.3. This guarantee is a continuing guarantee, and is not discharged by any one payment, and does not merge on termination of this agreement.

23.4. If a claim that a payment or transfer to another party by the Purchaser in connection with this agreement is void or voidable (including, but not limited to, a claim under laws relating to liquidation, insolvency or protection of creditors) is upheld, conceded or compromised then that party will be entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee if the payment or transfer had not occurred.

ACCEPTANCE

- All information provided by the Purchaser in this Credit Application is true, complete, and accurate in every respect;
- The Purchaser consents to the Company obtaining information from authorised credit reporting agencies or other credit providers for the purpose of assessing this application;
- The Purchaser acknowledges that the Company has informed it that the Company may give certain Personal Information to a credit reporting agency;
- The Purchaser has read, understood, and agree to be bound by the Terms;
- If credit is approved and extended to the Purchaser, the Purchaser will be bound by the Terms; and
- I am duly authorised to sign this Credit Application on behalf of the Purchaser and to bind the Purchaser to its obligations under this Credit Application and the Terms.