

## Parties

Telegram Group Pty Ltd ABN 50 606 166 741  
([Telegram](#)).

Any person, corporation, partnership or other legal entity that places an order with Telegram ([Customer](#)) in accordance with the provisions of these trading terms ([Terms](#)).

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### 1. Formation of Contract

- 1.1. A contract is entered into between Telegram and the Customer when Telegram accepts, either in writing or by conduct, an order placed by the Customer for Goods ([Contract](#)).
- 1.2. These terms and conditions are incorporated into each Contract.
- 1.3. A Contract constitutes the only agreement governing the supply of the Goods to which it relates, and supersedes all previous communications and negotiations and agreements in connection with the supply of those Goods.
- 1.4. Except as specifically provided in these Terms, any terms in respect of the supply of Goods contained in or relating to any other documents, including any of the Customer's documents (even if they purport to provide that they prevail), are excluded. By accepting the Goods, the Customer acknowledges that these Terms prevail over any qualification or condition purported to be imposed in any such other documents.
- 1.5. Telegram may vary these Terms from time to time by providing to the Customer reasonable notice of the variation. The varied terms and conditions are incorporated into each Contract from the date of that notice.

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### 2. Payment

- 2.1. Payment of the Price must be made within the trading terms and in the manner agreed between Telegram and the Customer. Where the trading terms have not been expressly stated, payment must be made within 30 days of the day on which the Goods are invoiced. Time is of the essence in relation to payment.
- 2.2. Payments must be made in immediately available funds, without set off, counterclaim or deduction. Payment must be made either to Telegram or any third nominated in writing by Telegram.
- 2.3. The Price must be paid in the currency set out in the Contract or, if no currency is specified, in Australian dollars.

- 2.4. If the Price is not paid on the due date, interest at the Commonwealth Bank Corporate Overdraft Rate (monthly charging cycle) plus 2% will apply. Interest will be calculated from the date that the Price is due and payable until the date that payment is received by Telegram. Interest will be calculated daily and compound monthly.
- 2.5. The Customer is responsible for, and must pay to Telegram, all taxes, duties, imposts, fees, levies or other charges imposed by any governmental, semi-governmental or regulatory authority (Taxes) that are payable in respect of the supply of Goods. Where possible Telegram will include Taxes in the Price. If a change to law results in the Taxes payable altering then the amount payable by the Customer is to be adjusted by the amount of the alteration in the applicable Taxes.
- 2.6. In addition to other rights granted under these Terms, the Customer charges all of its property, both real and personal, with the amount of any indebtedness to Telegram.

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### 3. Supply & Delivery

- 3.1. Telegram may accept or decline any order in whole or in part and impose conditions on the order.
- 3.2. Any delivery time specified in a Contract or otherwise specified (whether orally or in writing) is an estimate only and in no circumstances will Telegram be liable for any Loss occasioned to the Customer arising from late delivery or non-delivery of Goods. The term 'Loss' means any damage, loss, liability, cost, charge, expense, outgoing or payment (whether direct or indirect, consequential or incidental, loss of profit or otherwise).
- 3.3. Telegram will deliver the Goods to the location nominated by the Customer in a contract or, if none is stated, the Customer's principal place of business ([Delivery Location](#)).
- 3.4. Risk in the Goods passes to the Customer at the time that the Goods are delivered at the Delivery Location.
- 3.5. Telegram may deliver any Goods to the Customer in one lot or by instalments.
- 3.6. The Customer is liable to pay Telegram any charges for delivery, freight and transportation, and such payment must be made as part of the Price.
- 3.7. If Telegram enters into the Customer's premises to make supply of Goods, the Customer releases Telegram from claims for damage to the premises or personal injury. Further, the Customer indemnifies Telegram

against any Loss or Claim arising from the supply of Goods to the Customer, except where Telegram is negligent.

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#### 4. Return of Goods

- 4.1. The Customer must notify Telegram of any short supply, defect in or damage to the Goods within 5 business days of receiving the Goods. If the Customer does not notify Telegram of any short supply, defects or damage to the Goods within the time specified in the previous sentence then the Goods are deemed to have been delivered in good condition and in accordance with these Terms and any Contract. All claims must refer to the invoice number and date and state the reason for the claim.
  - 4.2. Upon receiving notification from the Customer of a claim for short supply, defect in or damage to the Goods Telegram may conduct its own investigation to determine whether the claim is warranted. The Customer must provide reasonable assistance to Telegram to facilitate its investigation.
  - 4.3. If Telegram's investigation establishes that there has been a short supply, defect in or damage to the Goods then Telegram must make good the short supply or defect in or damage to the Goods in accordance with clause 9.3.
  - 4.4. The following Goods cannot be returned for credit under any circumstances:
    - 1) Goods specifically made or otherwise purchased for the Customer; or
    - 2) Goods damaged or altered in any way by the Customer or the Customer's customer.
  - 4.5. If for any reason Telegram elects to accept any of the returned Goods, the acceptance is on such terms as Telegram may determine (which may or may not involve a credit), and a restocking fee of not less than 15% of invoice value (inclusive of GST) will apply. Except where otherwise required to do so under these Terms or at law, Telegram may refuse to accept any returns or replace unused Goods.
  - 4.6. Telegram is not liable for any loss arising as a result of Telegram's failure to give credit or its delay in doing so.
  - 4.7. Goods returned are at the Customer's expense, and the Customer must pay all freight charges for the return of the Goods.
  - 4.8. Goods returned must have been purchased from Telegram, be in original packaging and saleable condition and the relevant invoice number supplied.
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#### 5. Ownership & Risk

- 5.1. Title to the Goods only passes to the Customer when the Price and all Taxes and other amounts set out in a Contract are paid in full.
- 5.2. The Customer has the right to sell the Goods by way of bona fide sale to a retail customer in the ordinary course of its business despite not having title to the Goods.
- 5.3. Until title to the Goods passes:
  - 1) the Customer must keep the Goods free from any security interest as defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA); and
  - 2) the Customer holds the Goods as bailee only; and
  - 3) the Customer must not resell them to any retailer or transfer them to any related party or do any other act or thing which causes the Goods to leave the care and control of the Customer; and
  - 4) Telegram may inspect the Goods at any time; and
  - 5) if the Goods are subsequently sold, disposed of or assigned the Customer holds the proceeds received from such sale, disposition or assignment on trust for Telegram. The Customer agrees that it will account and distribute to Telegram the funds received by it on trust for Telegram.
- 5.4. If an Event of Default occurs Telegram may repossess the Goods and resell them. The funds obtained from such sale are to be applied first in satisfaction of all amounts owed to Telegram with the balance being paid to the Customer.
- 5.5. For the purposes of enabling Telegram to inspect the Goods or retake possession of the Goods, Telegram and its representatives are irrevocably authorised to enter (forcibly, if necessary) into any premises owned or occupied by the Customer on or in which the Goods may be located from time to time, and to do all things necessary to recover the Goods. The Customer appoints Telegram as its agent to enter any premises not owned by the Customer and on or in which the Goods may be located from time to time.
- 5.6. The Customer:
  - 1) agrees that Telegram is not liable for any Loss whatsoever suffered or incurred by the Customer as a result of Telegram or its agents exercising the powers conferred on Telegram under this clause 4; and
  - 2) releases Telegram and its agents from any Claim if Telegram takes possession of goods owned by the Customer in the reasonable belief that such goods are the

- Goods. Upon receipt of evidence from the Customer which satisfies Telegram that the relevant goods are not the Goods, Telegram will make the goods available for collection by the Customer.
- 5.7. The Customer must properly store, secure and insure the Goods at all times.
  - 5.8. The Customer must promptly execute all documents and do all things that Telegram reasonably requires to enable the registration and maintenance of an effective financing statement in respect of the security interest created by these Terms.
  - 5.9. The Customer waives any rights to receive notice of any verification statement issued under the *Personal Properties Securities Act*.

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#### 6. Telegram Fixtures

- 6.1. The parties acknowledge that Telegram may, from time to time, provide fixtures (whether fixed or mobile) to the Customer (Fixtures).
- 6.2. Title to the Fixtures remains vested in Telegram at all times. The Customer must take proper care of the Fixtures and keep them, at the Customer's cost, insured and in good working order and condition (fair wear and tear excepted).
- 6.3. The Customer must not:
  - 1) make any alteration or addition to the Fixtures; or
  - 2) remove the Fixtures from the Customer's retail premises without Telegram's written consent; or
  - 3) create or allow to be created any Security Interest over the Fixtures.
- 6.4. Telegram may at any time enter the Customer's premises for the purpose of taking possession of the Fixtures. The provisions of clauses 5.5 and 5.6 also apply to the repossession of the Fixtures (with the appropriate amendment).

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#### 7. Customer Warranties

- 7.1. By entering into a Contract, the Customer warrants that:
  - 1) it does not rely on the skill or judgment of Telegram as to the suitability of any Goods for a particular purpose;
  - 2) any sample, catalogue or brochure shown to the Customer is solely for the purpose of enabling the Customer to judge the normal commercial quality and finish of the Goods and not so as to constitute a sale by sample or a sale by description, nor does Telegram warrant or agree that the

- bulk of the Goods sold conform with any such sample or description; and
- 3) it will not undertake any sales of the Goods online or otherwise through the internet without the prior written approval of Telegram; and
  - 4) it will only resell Goods to consumers at retail level and it will not resell Goods at wholesale level or to any other trader that is known or suspected to be purchasing for resale; and
  - 5) all information provided by the Customer to Telegram in the Application for Commercial Credit Account was true and correct and not misleading in any material regard.

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#### 8. Customer's Default

- 8.1. The following events constitute an 'Event of Default':
  - 1) the Customer fails to comply with these Terms or any Contract; or
  - 2) the Customer dies, is dissolved or becomes subject to external administration (as defined in the *Corporations Act 2001 (Cth)*).
- 8.2. Where an Event of Default occurs Telegram may, at its absolute discretion and without limitation to any other rights that it might enjoy at law, do any one or more of the following:
  - 1) terminate these Terms, any contract and the supply of any Goods; and
  - 2) charge interest on any amounts owed by the Customer; and
  - 3) immediately and without notice take any steps to repossess the Goods and resell them; and
  - 4) cancel or suspend any undelivered or uncompleted Contracts; and
  - 5) recover from the Customer any other costs and expenses incurred as a consequence of the Customer's breach (including legal costs on a full indemnity basis).
- 8.3. A statement from Telegram stating the amount owing by the Customer to Telegram is conclusive evidence of the Customer's indebtedness to Telegram in that amount.
- 8.4. Termination of a Contract or of a credit facility does not affect any accrued rights.

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#### 9. Exclusion and Limitation of Liability

- 9.1. Telegram makes no express warranty in respect of the Goods.

- 9.2. To the maximum extent permitted by law any conditions and warranties imposed or implied by law are excluded.
- 9.3. Telegram's liability to the Customer is limited to the following:
- 1) replacement of any defective or damaged Goods or of any short supplied Goods; or
  - 2) repair of any Goods; or
  - 3) payment of the cost of replacing any defective or damaged Goods or substitution of the Goods with products of the same or similar nature; or
  - 4) refund of any amounts paid by the Customer in relation to any defective or damaged Goods.
- 9.4. Subject to clause 9.3, the Customer releases and indemnifies Telegram from and against Claims and Loss arising out of or in respect of the supply of the Goods to the Customer. The term 'Claims' means any claim, action, demand, proceeding, judgment, damage, loss, cost, expense or liability howsoever incurred or suffered by or brought or made or recovered against that person and howsoever arising (whether or not presently ascertained, immediate, future or contingent).
- 9.5. If the Customer is directed to assist in any suspension of supply or recall of Goods for any reason by Telegram or an authority, the Customer must cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall.
- 9.6. In no event will Telegram, its officers, employees or agents be liable for any consequential, incidental, special or indirect loss or damage, any loss of business or revenue, loss of profit, loss of opportunity, loss of goodwill or loss of business reputation arising out of or in connection with the supply of Goods or a Contract, even if due to the negligence of Telegram, its officers, employees or agents.
- 9.7. The provisions of this clause 9 survive the termination of a Contract.

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10. Changes to Customer's business
- 10.1. The Customer undertakes to advise Telegram by registered post within 5 business days of any actual or proposed change in:
- 1) the address of the business and the address at which the Goods will be located (if it differs to the business address); and
  - 2) the trading name of the Customer's business; and

- 3) the person(s), the directors, the trustee or the partnership conducting the Customer's business; and
  - 4) the ownership or structure of the Customer's business (for example, if the business is converted into a trust or company or is sold); and
  - 5) the status, or details of, the Customer's registration for GST purposes or Australian Business Number.
- 10.2. Where such a change occurs Telegram may require a new Application for Commercial Credit Account to be made for Telegram's approval and the Customer will sign all documents and do all acts and things appropriate to such new Application for Commercial Credit Account.

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## 11. Privacy

- 11.1. Telegram is committed to protecting the privacy of the personal information that you provide to us. We need to collect the personal information that we obtain and/or request through our Contract with the Customer so as to enable us to source, offer and distribute the Goods. If you do not provide us with this information, we may not be able to source, offer and distribute the Goods to you.
- 11.2. In providing the Goods to you, we may disclose your personal information that we collect through the Contract to our staff, agents, contractors, business partners and third party suppliers engaged by us to deliver our Goods.
- 11.3. From time to time, we may use your name, company name and contact details we collect to send you offers or information regarding our products that may be of interest to you.
- 11.4. We rely on you to provide information to us that is current and accurate. On request, you can ask to see what personal information we hold about you and, where necessary, correct any errors in this information (some restrictions and costs may apply).

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## 12. Confidentiality and Intellectual Property Rights

- 12.1. These Terms, any Contract and any information regarding Telegram's business and plans (including employees, customers, systems, pricing, costs, profits, markets, products and processes) (Confidential Information) are confidential and must not be disclosed by the Customer without the prior consent of Telegram.
- 12.2. The Customer may disclose the Confidential Information:

- 1) to its employees and advisers who have a need to know and who are subject to a duty of confidentiality; or
- 2) where required by law.

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### 13. Personal Property Securities Act (PPSA)

#### 13.1. The Customer acknowledges and agrees that:

- 1) this clause 13 creates a security interest in all present and after acquired Goods and any proceeds as security for the Customer's obligations to Telegram; and
- 2) Telegram is a secured party in relation to the Goods and any proceeds from the sale of the Goods and is entitled to register its interest on the register as:
  - (a) a security interest; and
  - (b) if applicable, a purchase money security interest; and
- 3) Telegram may, by notice to the Customer, require the Customer to take all steps requested by Telegram to ensure its security interest in the Products is enforceable, and to perfect, or better secure the position of Telegram as a first ranking security, and the Customer must comply with that notice; and
- 4) Telegram is not obliged to give any notice, document or information under the PPSA (including but not limited to under sections 95, 121(4), 130, 132(3)(d), 132(4), 135 and 143 of the PPSA), unless the provision of that notice, document or information is required by the PPSA and cannot be excluded.
- 5) The parties may not disclose any information of a kind referred to in section 275(1) of the PPSA that is not in the public domain.

#### 13.2. A term used in italics in this clause 13 has the same meaning as in the PPSA.

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### 14. GST

#### 14.1. Terms used in this clause that are not otherwise defined have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999*.

#### 14.2. If and to the extent that one party (Supplier) makes a taxable supply to the other party (Recipient) pursuant to this document, the Recipient must pay to the Supplier an additional amount equal to the GST payable on that taxable supply (unless the consideration for that taxable supply is expressed to be GST-inclusive). The additional amount must be paid by the Recipient at the later of:

- 1) the date when any consideration for the taxable supply is first paid or provided; and
- 2) the date when the Supplier issues a tax invoice to the Recipient.

#### 14.3. If the GST payable in relation to a supply made under or in connection with this document (including any GST payable in relation to an adjustment for the supply) varies from the amount that the Recipient has paid the Supplier under clause 14.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will adjust the amount payable by the Recipient to take account of the variation, and:

- 1) any amount that becomes payable must be paid by the Recipient within 10 business days of the Supplier providing written notice requiring such payment. Any payment is deemed to be a payment of the additional amount payable under clause 14.2.
- 2) any refund or credit that becomes payable to the Recipient must be paid by the Supplier within 10 business days of the Supplier receiving such credit or refund from the Australian Taxation Office. Any credit or refund is deemed to be a credit or refund of the additional amount payable under clause 14.2.

#### 14.4. This clause will not merge on completion and will survive the termination of this document by any party.

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### 15. General

#### 15.1. Any notice required or permitted to be given must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. Notices sent by post will be deemed to be received 3 clear business days after posting and notices sent by facsimile or electronic mail will be deemed to be received immediately except where the sender receives notification that the transmission did not complete (whether in whole or part). Where a notice sent by facsimile or e-mail after 5 PM (AEST) it will be deemed to be received on the next business day following transmission.

#### 15.2. Each Contract is governed by the law of the State of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and the federal courts of Australia.

#### 15.3. Any of Telegram's rights under a Contract can be waived by Telegram only in writing. The waiver by Telegram of any breach by the

Customer of any term of a Contract does not prevent the subsequent enforcement of that term and is not be deemed a waiver of any other or subsequent breach.

- 15.4. Subject to 1.5 above, a Contract may not be amended, modified or varied except in writing signed by both parties.
- 15.5. Telegram's rights, remedies and powers under a Contract are in addition to any rights, remedies and powers provided by law.
- 15.6. The Customer agrees to do anything Telegram asks in order to bind the Customer under a Contract and to show whether the Customer is complying with its obligations under a Contract.
- 15.7. If a provision of this document or a right or remedy of a party under this document is invalid or unenforceable in a particular jurisdiction:
- 1) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
  - 2) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- This clause is not limited by any other provision of this document in relation to severability, prohibition or enforceability.
- 15.8. The rights contained in these Terms and any Contract are personal to the Customer and may not be assigned or transferred without the prior written consent of Telegram.
- 15.9. The non-exercise or delay in performance of a right does not constitute a waiver. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- 15.10. This Terms and any Contract are the entire agreement of the parties in respect of each order of Goods. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by these Terms and any relevant Contract.

## 16. Defined Terms & Interpretation

- 16.1. Unless the contrary intention appears:
- 1) Application for Commercial Credit Account means an application completed by the Customer for credit for Goods with Telegram.
  - 2) Contract means a contract for the supply of Goods by Telegram to the Customer.
  - 3) Customer means any natural person, company, partnership or other entity which enters into a Contract with Telegram.
  - 4) Goods means all present and after-acquired stationery goods, accessories and lifestyle products supplied by Telegram to the Customer under a Contract.
  - 5) Price means the amount in Australian dollars, inclusive of any GST, payable by the Customer to Telegram in respect of the supply of Goods, including any charges for delivery, freight and transportation.
- 16.2. In these Terms:
- 1) a reference to a document (including these terms and conditions) includes any variation or replacement of it; and
  - 2) the singular includes the plural and vice versa; and
  - 3) a reference to a person (including a party to a Contract) includes a firm, a body corporate, an unincorporated association or an authority, and includes the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and
  - 4) a reference to any legislation or to any provision of any legislation includes any enactment, modification, consolidation or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and
  - 5) headings are inserted for convenience and do not affect interpretation of these terms and conditions.