

## Terms and Conditions

### 1. Definitions

In these Terms:

**ACL** means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) as amended;

**Agreement** means any agreement or contract entered into for the provision of goods by Planex to the Customer;

**Consumer** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

**Customer** means the person, jointly and severally if there is more than one, acquiring goods from Planex;

**Goods** means goods supplied by Planex to the Customer;

**GST** means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended;

**Intellectual Property** means all copyright, patents, trade marks, designs, drawings, names, confidential information (including but not limited to technical information and advice), specifications and all modifications, improvements and enhancements (whether registrable or not) owned by or licensed to Planex in respect of the goods;

**PPSA** means the Personal Property Securities Act 2009 (Cth) as amended;

**Price List** means the price list issued by Planex from time to time;

**Planex** means Planex Sales Pty Ltd (ACN 005 567 528); and

**Terms** means these Terms and Conditions of Sale.

### 2. Basis of Agreement

2.1 Unless otherwise agreed by Planex in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other conditions.

2.2 Any quotation provided by Planex to the Customer is:

- a. valid for 30 days;
- b. an invitation to treat only; and
- c. only valid if in writing.

2.3 The Terms may include additional terms in Planex's quotation, which are not inconsistent with the Terms. The terms of the quotation will override the Terms to the extent of any inconsistency.

2.4 An Agreement is accepted by Planex when Planex accepts in writing an offer from the Customer or provides the Customer with the goods.

2.5 Planex may refuse to accept any offer.

2.6 The Customer must provide Planex with its specific requirements, if any, in relation to the goods.

2.7 Planex may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed after the notice date.

2.8 Goods may be subject to a minimum purchase quantity, where specified in the Price List.

### 3. Pricing

3.1 Prices quoted, whether in a Price List or otherwise, exclude GST and any other applicable taxes or duties.

3.2 If:

- a. the Customer requests any change to the Agreement, including the method of packaging; or
- b. there is any change in the costs incurred by Planex in relation to the goods, then Planex may seek to vary the price to account for the change, by notifying the Customer.

3.3 If Planex provides the Customer with notice as referred to in clause 3.2, the Customer may:

- a. agree to pay the varied price, and continue under the Agreement; or
- b. cancel the Agreement, in which case Planex must refund to the Customer any monies paid by the Customer to Planex in respect of any goods that will not be supplied by reason of the cancellation.

3.4 The Price List is subject to change without notice, however Planex will use its best endeavours to provide up to 4 weeks' notice of price changes. Any change will apply to orders placed after the notice date.

### 4. Payment

4.1 If payment terms are not specified in a quotation, then:

- a. terms of payment are strictly cash on delivery, except for account customers where credit is provided;
- b. where credit is provided, payment for the goods must be made within 30 days of the end of the month in which Planex's invoice is raised; and
- c. notwithstanding clause 4.1(b), Planex reserves the right to require payment in full on delivery of the goods.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended immediately upon Planex giving notice to the Customer. Any amendments to payment terms will apply to orders placed after the notice date.

4.4 Time for payment is of the essence.

### 5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Planex, then all money which would become payable by the Customer to Planex at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Planex may, without prejudice to any of its other rights:

- a. charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 3% for the period from the due date until the date of payment in full;
  - b. charge the Customer for, and the Customer must indemnify Planex from, all costs and expenses (including all legal costs, collection costs and expenses on an indemnity basis) incurred by it resulting from the default or in taking action under this Agreement;
  - c. cease or suspend supply of any further goods to the Customer; and
  - d. by written notice to the Customer, terminate any uncompleted Agreement.
- 5.2 Subject to any applicable statutory stay of proceedings, clauses 5.1(c) and 5.1(d) and clause 6.1(e) may also be relied upon:
- a. where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors; or
  - b. where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## **6. Passing of Property**

- 6.1 Until Planex receives full payment in cleared funds for all goods supplied by it to the Customer, as well as all other amounts owing to Planex by the Customer:
- a. title and property in all goods remain vested in Planex and does not pass to the Customer;
  - b. the Customer must hold the goods as fiduciary bailee and agent for Planex;
  - c. the Customer must keep the goods separate from its goods and maintain Planex's labelling;
  - d. the Customer must hold the proceeds of any sale of the goods on trust for Planex in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
  - e. in addition to its rights under the PPSA, Planex may without notice enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Planex, and for this purpose the Customer irrevocably licences Planex to enter such premises and also indemnifies Planex from and against all costs, claims, demands or actions by any party arising from such action.
- 6.2 Planex will exercise its right of entry (including the use and extent of force) in accordance with applicable laws.

## **7. Personal Property Securities Act**

- 7.1 The PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- a. terms used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
  - b. these Terms are a security agreement and Planex has a Purchase Money Security Interest in all present and future goods supplied by Planex to the Customer and the proceeds of the goods;
  - c. the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
  - d. the Customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by Planex on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from Planex's premises and not at any later time.
- 7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.5 Planex and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 7.6 To the extent permitted by the PPSA, the Customer agrees that:
- a. the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Planex will apply only to the extent that they are mandatory or Planex agrees to their application in writing; and
  - b. where Planex has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.7 The Customer must immediately upon Planex's request:
- a. do all things necessary to give effect to the security interest created under this Agreement; and
  - b. procure from any person considered by Planex to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Planex may at any time require.
- 7.8 Planex may allocate amounts received from the Customer in any manner Planex determines.

## **8. Risk and Insurance**

- 8.1 The risk in the goods, and all insurance responsibility, will pass to the Customer immediately on the goods being delivered to the Customer or collected from Planex's premises.
- 8.2 The Customer is liable for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by Planex, unless recoverable from Planex under the ACL.

## **9. Performance of Agreement**

- 9.1 Any date for delivery of goods stated by Planex is an estimate only and is not a contractual commitment.

9.2 Planex will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

#### **10. Intellectual Property**

- 10.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 10.2 The Customer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof or any patents, inventions, trade marks or designs derived from or similar to the Intellectual Property or aid or abet anyone else in doing so.
- 10.3 The Customer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 10.4 Any Intellectual Property provided to the Customer by Planex in connection with the goods remains the exclusive property of Planex and must be returned to Planex on demand and shall not be copied or communicated to any third party without the express prior written consent of Planex.

#### **11. Specifications**

- 11.1 All specifications, drawings, illustrations, descriptive matter and particulars contained in Planex's quotations, Price Lists, catalogues, website and marketing or other documents are indicative only, do not form part of this Agreement, and are not representations or warranties of any kind. Any discrepancy will not entitle the Customer to rescind this Agreement or seek compensation or damages.

#### **12. Delivery**

- 12.1 Subject to clause 12.8, Planex will arrange for delivery of goods to the Customer.
- 12.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
- 12.3 The Customer authorises Planex to subcontract delivery of the goods in its absolute discretion.
- 12.4 The Customer must make its premises available for Planex or its sub-contractors to effect delivery of the goods.
- 12.5 Planex may make part delivery of goods and invoice the Customer for the goods provided.
- 12.6 The Customer indemnifies Planex against any loss or damage suffered by Planex, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and Planex has not used due care and skill.
- 12.7 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. Where it is necessary for Planex to store the goods the subject of delivery, the Customer is liable for storage charges payable monthly on demand.
- 12.8 If agreed that the Customer will collect the goods:
  - a. the Customer must collect the goods within 7 days of being advised they are ready;
  - b. if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 12.9 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.
- 12.10 Any extra carrier charges due to difficult access, wrong instructions provided by the Customer, frustrated delivery, or the requirement for extra personnel, will be charged to Customer at cost.
- 12.11 Planex reserves the right to charge a handling fee of \$15.00 (plus GST) on any order for goods which is less than \$100.00.
- 12.12 Where it is necessary for Planex to deliver the goods in other than a fully assembled condition, the cost and responsibility of assembly and installation will fall to the Customer, unless otherwise agreed in writing.

#### **13. Returns**

- 13.1 Subject to the remainder of clause 13, Planex will not be liable for any shortages, damage, or non-compliance with the specifications in the Agreement unless the Customer notifies Planex within 14 days of delivery, otherwise the Customer is deemed to have accepted the goods. The Customer must quote the invoice number and date.
- 13.2 When any shortage, claim for damage or non-compliance with the Agreement specifications is accepted by Planex, Planex may, at its option, replace or repair the goods, or refund the Price of the goods.
- 13.3 Subject to clause 13.5, Planex will not under any circumstances accept goods for return that:
  - a. have been specifically produced, imported or acquired to fulfil the Agreement;
  - b. have been altered in any way;
  - c. have been used;
  - d. are not in their original condition and packaging; or
  - e. are not current models as listed in the current Price List.
- 13.4 Subject to Planex's obligations under the ACL:
  - a. the Customer must obtain Planex's prior written approval for the return of goods;
  - b. if goods are accepted for return by Planex, the Customer will receive a credit for the returned goods equal to the price charged by Planex less a 25% deduction for handling and restocking charges; and
  - c. the Customer must pay all freight charges associated with the return of goods.
- 13.5 If the Customer is a consumer, nothing in this clause 13 limits any remedy available under the ACL.

#### **14. Liability**

- 14.1 Except as the Terms specifically state, or as contained in any warranty statement provided with the goods, the Agreement does not include by implication any term, condition or warranty in respect of the quality, acceptability, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or any contractual remedy for their failure.
- 14.2 If the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Planex for failure of a statutory guarantee under the ACL.
- 14.3 If the Customer on-supplies the goods to a consumer and:
- the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Planex's liability to the Customer;
  - the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of Planex's liability to the Customer, howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Customer or any third party.
- 14.4 If clause 14.2 and 14.3 do not apply, then other than as stated in the Terms or any written warranty statement, Planex is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Customer or any third party.
- 14.5 Planex is not liable for any direct, indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 14.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods which cannot be so excluded, restricted or modified.

#### **15. Cancellation**

- 15.1 If Planex is unable to deliver or provide of goods, then Planex may cancel the Customer's order (even if it has been accepted) by written notice to the Customer, and refund to the Customer any payment the Customer has made to Planex for the relevant goods which will not be supplied.
- 15.2 No purported cancellation or suspension of any order or any part thereof by the Customer is binding on Planex once the order has been accepted.

#### **16. Force Majeure**

- 16.1 Subject to clause 16.2, neither party will be liable under the Agreement if it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, Planex or the Customer may suspend or terminate the Agreement by written notice to the other party.
- 16.2 Clause 16.1 does not operate to excuse the Customer from any payment obligation.

#### **17. Miscellaneous**

- 17.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 17.2 A party's failure to enforce any of these Terms shall not be construed as a waiver of any of the party's rights.
- 17.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.
- 17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by email or facsimile are deemed received on confirmation of successful transmission.