

Terms and Conditions of Business



The following Terms and Conditions ("Terms") shall govern all dealings between 'us' as the business known as Intraspace Pty Ltd, ACN 612 906 886 and 'you' the person or company or otherwise dealing with us as the Customer from time to time. Any supply of Goods or Services (herein referred to as 'Goods') made by us to you after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by us and any such supply does not give rise to a new or separate agreement.

1. Quotations

- All quotations and offers made by us or orders accepted by us are only made on the basis that the within terms and conditions shall apply.
- All offers or quotations by us shall be in force for no longer than thirty (30) days unless otherwise specified in writing by us.
- The Price as stated in a quotation is subject to withdrawal by us at any time prior to our acceptance of the order.

2. Orders

- An order given to us is binding, if a written acceptance is signed for by us or on behalf of us, or the Goods/ Services are supplied by us in accordance with the order. No order is binding until accepted by us.
- An acceptance of the order by Us is deemed as an acceptance of these Terms by us and you and these Terms will override any conditions contained in your order. No term or condition contained in your order or other document purporting to relate to the contract between us and you shall add to, amend or delete these Terms and conditions or any of them unless expressly agreed in writing by us.
- We reserve the right to accept a part only of any order by notifying you in writing or by delivering the Goods to you.
- Your order once accepted by us may not be cancelled or altered except upon written terms and conditions satisfactory to us. The terms may include payment by you of a cancellation or alteration fee for all expenses we incur by way of labour, materials, services, freight, overhead expenses, fees, duties, taxes and loss of profit or loss of opportunity.

3. Performance and Delivery

- Performance and delivery times are quoted in good faith and as accurately as we are able to estimate but we accept no liability for non-performance or non-delivery by a certain time unless we have given a prior written guarantee of such performance or delivery and provided therein for liquidated damages for failure to perform or deliver.
- Where services or procedures quoted are performed by any sub-contractor (the "Sub-contractor") to us or goods quoted are supplied to us by any of our suppliers (the "Supplier"), the times quoted for performance or delivery are based on the Subcontractor's or Supplier's promised times of performance or delivery to us or upon our estimate of a reasonable performance or delivery time.
- The Price does not include the cost of delivery of the Goods within the Melbourne Metropolitan area. Delivery of the goods shall be arranged by us, unless we are expressly notified that the goods will be collected by you or your agent. Any delivery to any destination outside of the Melbourne metropolitan area shall be arranged by us. We reserve the right to charge additional fees to the price for such extra delivery of the goods. All additional charges are payable by you in addition to the Price of the Goods.
- In no event will we accept liability for any delay or failure in delivery or for delivery of the Goods by instalment if caused by any act, matter or thing beyond our control. You are not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of us.
- You shall inspect the Goods immediately upon delivery and shall within seven days of delivery notify us by registered post of any matter or thing by reason of which you may allege that the Goods are not in accordance with your order. In case of failure to give such notification the Goods delivered by us shall be deemed to be accepted in all respects in accordance with the Contract/order.

4. Price

- You must pay the price quoted by us for the Order (the "Price") and all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by you to us arising out of the sale of the Goods ("Additional Charges").
- All amounts payable by you under these Terms must be paid without set-off or counter claim of any kind.
- All local, State or Federal taxes or levies including where applicable GST shall be payable by you.

5. Terms of payment

- Unless otherwise negotiated between you and us our terms of payment are nett cash fourteen (14) days from receipt of invoice. You shall not be entitled on any grounds whatsoever either wholly or in part to withhold payment when it becomes due.
- All orders over \$5,000.00 attract a 30% deposit and all orders over \$50,000.00 attract a 40% deposit (excl GST) payable at the time of acceptance of your order.
- We reserve the right to charge you (i) interest at the approved bank overdraft rate calculated on daily balances on any amount of the Price outstanding after the due date and thereafter and (ii) the cost incurred by us in using the services of a solicitor, collection agency or other agent in recovering from you any amount of the price outstanding at any time. Nothing in this provision is to be construed as our consent to late payment of the price.
- Any sum due from you to us under these Terms shall fall due immediately in the initiation of any act or proceeding involving your solvency, notwithstanding Clause 5(a)
- If you are in default, we may at our option withhold further deliveries or cancel an order without prejudice to any of our existing rights.

6. Property & Risk

- Ownership, Title and property in the Goods and in the proceeds of sale of those Goods remains with us until payment in full for the Goods and all sums due and owing by you to us on any account has been made and credited to our bank account without reservation.
- You are deemed to be in default immediately upon the happening of any of the following events: (i) if any payment to us is not made promptly before the due date for payment; (ii) if you cease to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by you payable to us is dishonoured;
- In the event of default, then without prejudice to any other rights which we may have at law or under these Terms; (i) we shall be entitled to enter upon your business premises or any premises under your control for the purpose of recovering possession of any of our Goods. (ii) We may recover and resell the goods; (iii) If the Goods cannot be distinguished from similar Goods which you have or claim to have paid for in full, we may in our absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claim of us and you may be ascertained. We must promptly return to you and goods the property of you and we are no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to your business howsoever arising from the seizure of the Goods.
- Separately, you hereby charge all your rights, title and interests to and in the proceeds of sale of the Collateral as original collateral, or any of it, in favour of us.
- We reserve the right to attach to any Goods at any time plaques, labels, notice or stickers (the "Plaques") indicating our continuing title to the Goods and you hereby covenant that you will not remove or permit to be removed any such Plaque until you have paid us for the Goods in accordance with Clause 5(a) hereof.
- Your dealings with the Goods prior to payment in full to us Under Clause 6(a) above are to be conducted by you for us in fiduciary capacity and as our bailee of the Goods. Any proceeds of a purported sale of any of the Goods by you to a third party shall be held by you in fiduciary capacity in a separate bank account on our behalf and the trust implied herein shall not determine until payment is made to us in full in accordance with Clause 5(a) hereof. You shall assign to us any claims against such third party in respect of the goods.
- Risk to the Goods passes to your upon delivery and shall be your responsibility to keep the Goods insured at your expense against loss or damage that may occur to the Goods at any time prior to your payment in full for the Goods.

7. Personal Property Securities Act 2009 (Cth)

- Defined terms in this clause have the same meaning as given to them in the PPSA.
- Both parties acknowledge that these Terms constitute a Security Agreement and entitle us to claim; (i) a Purchase Money Security Interest ("PMSI") in favour of us over the Collateral supplied or to be supplied to us as Grantor pursuant to these Terms; and (ii) a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.
- The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by you pursuant to these Terms.
- The Proceeds of sale of the Collateral referred to in clause 8.2(a) falls within the PPSA classification of "Account".
- You acknowledge that we, as a Secured Party, are entitled to register its Security Interest in the Collateral supplied or to be supplied to you pursuant to these Terms on the PPS Register.
- To the extent permissible at law, the you:
 - waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by you to us.
 - agrees to indemnify us on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis, associated with the;
 - registration or amendment or discharge of any Financing Statement registered by or on behalf of us; and
 - enforcement or attempted enforcement of any Security Interest granted to us by you;
 - agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;

iv. agrees to waive its right to do any of the following under the PPSA:

- receive notice of removal of an Accession under section 95;
 - receive notice of an intention to seize Collateral under section 123;
 - object to the purchase of the Collateral by the Secured Party under section 129;
 - receive notice of disposal of Collateral under section 130;
 - receive a Statement of Account if there is no disposal under section 132(4);
 - receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.
 - receive notice of retention of Collateral under section 135;
 - redeem the Collateral under section 142; and
 - reinstate the Security Agreement under section 143.
- v. All payments received from you must be applied in accordance with section 14(6)(c) of the PPSA.

8. Warranties and Liabilities

- To the extent permitted by law, Goods supplied or Services performed by us based on your instructions, are not guaranteed to achieve any standard unless guaranteed within specified margins by us in writing at our acceptance of the Order.
- Where we give advice in the course of supplying the Goods to you or performing the Service for you we give all such advice in good faith and with due diligence but we shall not be held liable at law for any such advice.
- All expressed and documented efficiencies and space saving affordances are based on our standard files, tabs and cabinets being used as prescribed.
- Processes performed or Goods supplied by any Sub-contractor or Supplier shall only have the benefit of such warranty as we have from such Sub-contractor or Supplier and then only to the extent that such warranty is honoured by such Subcontractor or Supplier.
- To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms are excluded and we shall not be liable to you or your servants or agents for any direct, indirect, incidental or consequential loss, injury or damages of any nature howsoever caused (whether based on tort contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business representation, direct or indirect labour costs and overhead expenses and damage to Services or Goods in consequence of any fault or defects in the same or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of or failure to perform this contract whether resulting from the negligence of us, our servants, agents or otherwise.
- Should any parts be removed or if anything is noticed as not functioning as it should, and us the Supplier is not notified, we will not be held liable for any damage done or caused by it.
- We make no representation or warranty that the services or goods conform with all or any legislation, by-laws or regulations including but not limited to the Occupational Health and Safety Act 2004 (VIC) or Building Act 1993 (VIC). You agree to make your own enquiries regarding these matters and you shall be liable and indemnify and keep indemnified us against all actions, proceedings, costs, charges, claims or demands arising directly or indirectly out of or in connection with any breach of this condition.
- Nothing in these conditions shall be read or implied so as to exclude, restrict or modify or to have the effect of excluding, restricting or modifying any conditions, warranty, guarantee right or remedy implied by law including the Competition and Consumer Act 2010 (Cth) and which by law cannot be excluded, restricted or modified.
- Our liability is limited to, to the extent permissible by law and at our option in relation to the Goods, the repair, replacement or supply of equivalent products or payment for such, and where the Goods are Services to the supply of the services again or the payment of the cost of having the services supplied again.

9. Waiver

Our failure to insist upon strict performance of any of these Terms or Conditions of this Contract shall not be deemed a waiver thereof or of any rights we may have and shall not, nor shall any express waiver be deemed to be acquiescence in any subsequent breach of any of these Terms or Condition of this Contract.

10. On-Sale

You agree that upon the on-sale of any goods to third parties, it will:

- inform any third party involved of these Terms;
- inform any third party of our product warranties if any; and
- Not make any misrepresentations to third parties about the Goods.

11. Indemnity

To the full extent permitted by law, you will indemnify us and keep us indemnified from and against any liability and any loss or damage we may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by you or your representatives. In the interpretation of these Terms and Conditions of business the headings are inserted for clarity of reference and do not define, limit or affect the interpretation hereof.

12. Interpretation

In the interpretation of these Terms the headings are inserted for clarity of reference and do not define, limit or affect the interpretation hereof.

13. Severability

Any conditions found to be void, unenforceable or infringes any State or Federal legislation shall to that extent be severable from the Contract without affecting the remaining Terms.

14. Insurance

Any raw materials, goods, designs, plans, photographs, standing matter or other chattels deposited by you with us for performance of the services or any other reason shall be at your risk.

15. Goods and Services

Where the order relates to the provisions of materials plus labour to carry our construction (the "Installation Works") the following additional terms and conditions shall apply.

- You will ensure the safe custody of and minimise deterioration to the materials and our equipment whilst on site and before use and will protect the same by providing covered and secured waterproof storage accommodation.
- You will immediately prior to the date for the commencement of installation works ensure that the site is cleared and free from obstruction and that electricity services are available for use by us and you further (unless we otherwise agree in writing) ensure that we are enabled to carry out the works of construction as one uninterrupted operation to be completed during normal working hours.
- The Price is quoted on the basis that the floors upon which the installation works are to be performed are level and even. Any additional costs or expenses for materials and/or labour required to shim the proposed installation due to uneven or out of level floor surface in excess of plus or minus 10mm elevation variation over the entire floor area shall be paid by you unless otherwise agreed.
- We are not responsible for the strength or structural condition of the floors or foundations upon which the installation works are erected and make no representation and give no warranty that such floors or foundations are suitable for the installation works thereon and shall not be liable for any damage or injury directly or indirectly attributed to any defects in or any structural movement collapse subsidence or failure of the said floors or foundations.
- On completion of the Installation work any surplus goods delivered by us shall remain the property of and be removed from the site by us. Until such removal you shall take reasonable precautions for the safe custody and protection of such surplus goods.
- If for any reason the commencement of the Installation works extends beyond two (2) weeks from the stipulated date we shall be entitled to receive from you an interim payment or payments on account of the Price and may render an interim invoice or invoices accordingly.
- Unless expressly provided for in the accepted order we will not undertake or be responsible for any builder's work or other work involving alterations to the structure of any premises at which work is to be undertaken by us.
- You will serve all notices and make applications for and obtain all such licences, consents and approvals as are required by any third party including the Landlord (if any) and under any Building Regulations or By-laws or any legislation for the time being in force prior to the carrying out of any installation works herein and you shall be liable and indemnify and keep indemnified, us, against all actions, proceeding, costs, charges, claims or demands arising directly or indirectly out of or in connection with any breach of this condition.
- Any interference to the performance of this installation works by a third party, eg union, will not be tolerated by us and we may cancel the order immediately.
- Where the Contract order relates to the supply of Goods only the following additional terms, and conditions apply:
 - We take no responsibility for the construction or set up of the Goods;
 - We will not otherwise be subject to or be liable for any loss, damage or costs whatsoever or wheresoever arising out of the layout, assembly, installation or operation of the Goods.

16. Governing Law

These Terms are to be construed in accordance with the laws from time to time in the State of Victoria and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.