

All sales of goods and services by ECO3 Australia Ltd. ("ECO3") are made on the terms set out or referred to on the face hereof and as set out below ("Terms and Conditions"):

## 1. GENERAL

- These Terms and Conditions include all those statutory rights conferred on the Purchaser which ECO3 is not capable of excluding restricting or modifying ("the Purchaser's statutory rights").
- Unless other terms are accepted in writing by ECO3 these Terms and Conditions shall apply to the exclusion of all prior discussions representations, understandings and arrangements, and all conditions and warranties (written or oral, express or implied) and other representations (contractual or otherwise):
  - whether or not arising under statute, by implication of law or by custom or usage, and
  - whether or not endorsed or delivered with or referred to in any order or other document delivered by the Purchaser to ECO3.
- In these Terms and Conditions, headings are for convenience only and do not affect their interpretation.
- If any provision of these Terms and Conditions is invalid, void or unenforceable, all other provisions which are capable of separate enforcement without regard to an invalid, void or unenforceable provision are and will continue to be of full force and effect in accordance with their terms.
- The Purchaser may not assign or otherwise transfer the benefit of these Terms and Conditions without ECO3's prior written consent.
- Any notice required or authorised to be given or served upon a party pursuant to these Terms and Conditions must be in writing and given by post, facsimile or hand to the other party at the address nominated on the Cover Page.

## 2. INTERPRETATION

In these Terms and Conditions, unless the context otherwise requires:

- "ECO3" means ECO3 and includes all of ECO3's employees and agents;
- "Attaches" has the same meaning as given to that term in the PPSA;
- "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the Fair Trading Act 1999 (Vic);
- "Collateral" has the same meaning as given to that term in the PPSA;
- "Purchaser" means and includes the Purchaser and any servant, agent, partner, contractor or employee of that person;
- "Financing Statement" has the same meaning as given to that term in the PPSA;
- "Financing Change Statement" has the same meaning as given to that term in the PPSA;
- "Goods" means Goods supplied by ECO3 to the Purchaser;
- "Perfected" has the same meaning as given to that term in the PPSA; (j)
- "PPS Law" means:
  - the PPSA;
  - any regulation made pursuant to the PPSA; and
  - any amendment from time to time made to any other legislation or regulation as a consequence of a PPS Law referred to in paragraph (a) or (b) of this definition;
- "PPSA" means the Personal Property Securities Act 2009 (Cth);
- "Purchase Money Security Interest" has the same meaning as given to that term in the PPSA;
- "Purchaser" means the purchaser and any servant, agent, partner, contractor or employee of that person;
- "Registration Commencement Time" has the same meaning as given to that term in the PPSA;
- "Security Interest" means:
  - any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement;
  - a security interest as defined in the PPSA; or
  - any document that grants or creates anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority over any other creditor with respect to any asset or an interest in any asset.
- "Verification Statement" has the same meaning as given to that term in the PPSA;
- a reference to "including" means "including without limitation";
- any agreement, warranty, representation or obligation which binds or benefits two (2) or more persons, binds or benefits those persons jointly and severally; and
- "\$" or "dollars" is a reference to the lawful currency of Australia.

## 3. PRICES

- Prices are exclusive of GST and do not include installation;
- Effective from 1<sup>st</sup> July 2021 a fixed delivery / administration fee of \$35 will be charged on all orders placed with ECO3.
- The prices charged will be those ruling at the date of dispatch of the goods or supply of the services. Price lists are not an offer. All prices are subject to change without notice and may be adjusted to take into account any variation to:
  - excise duties or imposts due or paid by ECO3 in supplying goods or services; and
  - the cost of labour, material and utility charges.

## 4. PAYMENT

- Payment is to be made in full by the end of the month next following the month in which the goods or services are supplied.
- Payments in respect of export orders are to be made against documents by cash or confirmed irrevocable letter of credit.
- All payments are to be made on or before the due date as a condition precedent to future deliveries or supplied under this or any other contract.
- In the event of default by the Purchaser in breach of clause 4(a), all debt recovery costs, including legal costs on a solicitor/own client basis and disbursements, and any Mercantile agent costs charged to ECO3 will be part of the indebtedness of the Purchaser to ECO3.
- Without prejudice to any other remedy of ECO3, ECO3 may charge the Purchaser on any overdue accounts interest at the then overdraft interest rate charged by HSBC Bank Australia Limited.

## 5. DELIVERY OR SUPPLY

- ECO3 will endeavour to deliver the goods, supply the services or otherwise complete the contract within the time agreed (if any) or within a reasonable time (in the absence of agreement), but shall not be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery, supply or completion or failure to deliver, supply or complete.
- If delay or failure is caused by force majeure or labour dispute ECO3 may suspend delivery, supply or completion and/or terminate the contract. "Force majeure" means an act of God, war, lightning, fire, earthquake, storm, flood, explosion, unavailability or delay in availability of equipment, materials or transport, and any other cause whether of the kind specifically enumerated or otherwise which is not within the control of ECO3.

## 6. SMALL ORDER HANDLING

ECO3 applies a \$50 handling charge for orders below A\$500 in value. This does not apply to partial shipments or back orders where the whole order value is over \$500.

## 7. PROPERTY & RISK

### RETENTION OF TITLE

Property in the Goods will remain with ECO3 and will not pass to the Purchaser until such time when the Purchaser pays all monies owing to ECO3 by the Purchaser, on all accounts and under any contract (which payments are not to any extent subsequently claimed or clawed back by any person standing in the place of or representing the Purchaser).

### COVENANTS

While the Goods remain the property of ECO3 the Purchaser agrees with ECO3 that:

- the Purchaser holds the Goods as fiduciary Bailee of ECO3;
- the Goods will be stored separately so that they are readily identifiable as the property of ECO3;
- the Purchaser will not dispose of the Goods except with ECO3's prior written consent or in the ordinary course of the Purchaser's business;
- the Purchaser will hold all money received, relating to the sale of ECO3 Goods in a separate account on trust for ECO3 and will pay such monies immediately on request to ECO3.
- the Purchaser will not cause the Goods to lose their identifiable character or be intermingled with other goods, in any way, either by any process of its own or by a third party, except with ECO3's prior written consent;
- the money received for the sale of any intermingled goods, which contain the Goods of ECO3, will be held on trust for ECO3 (to the maximum extent that such "trust" monies represent the total outstanding debt owed to ECO3 on all accounts by the Purchaser (and will pay such monies immediately on request to ECO3));
- the Purchaser has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation ECO3 owes to the Purchaser;
- the Purchaser cannot claim any lien over the Goods;
- the Purchaser will not create any absolute or defeasible interest in the Goods in relation to any third party, except with ECO3's prior written consent;
- pending payment in full for all amounts owed by the Purchaser to ECO3 on all accounts, the Purchaser:
  - subject to clause 8, must not allow any person to have or acquire any Security Interest in the Goods;
  - must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Purchaser carries on business;
  - must not remove, deface or obliterate any identifying mark or number on any of the Goods; and
  - must not move the Goods from the Purchaser's premises.

### RISK

The risk in the Goods passes to the Purchaser on delivery to the Purchaser or into custody on the Purchaser's behalf, including but not limited to delivery to the Purchaser's agent or carrier, provided that if the Purchaser fails to accept delivery or requests a delay in delivery, risk in the Goods will be borne by the Purchaser from the time of such failure or request.

### ECO3'S RIGHTS

If the Purchaser fails to pay for any Goods within the period of credit extended by ECO3 to the Purchaser:

- ECO3 may recover possession of all Goods (in which property has remained with ECO3) at any site owned, possessed or controlled by the Purchaser and the Purchaser agrees that ECO3 has an irrevocable licence to do so without incurring any liability to the Purchaser or any person claiming through the Purchaser;

- If required, the Purchaser will assign to ECO3 any rights of the Purchaser to any outstanding money relating to the re-supply of the Goods. The Purchaser irrevocably appoints ECO3 or its nominee as its attorney to sign all documents and do all things necessary to assign the debts to ECO3 under this clause 7, where the Purchaser has failed to do so within seven (7) days of receiving written notice to do so, and ratifies any acts the attorney lawfully does or causes to be done with respect to any such assignment of debts.

## 8. PPSA FURTHER ASSURANCES

- If ECO3 determines that a PPS Law applies, or will in the future apply, to any agreement that incorporates these Conditions ("Supply Agreement") or the supply of any Goods, then the Purchaser must promptly upon request from ECO3:
  - do anything (including obtaining consents, making amendments to the Supply Agreement or executing a new Supply Agreement) for the purposes of:
    - ensuring that any Security Interest created under, or provided for by, the Supply Agreement:
      - attaches to the collateral that is intended to be covered by that Security Interest;
      - is enforceable, perfected, maintained and otherwise effective; and
      - any Security Interest created under, or provided for by, the Supply Agreement has the priority contemplated by that Supply Agreement; or
    - enabling ECO3 on and from the Registration Commencement Time, to prepare and register a financing statement or financing change statement; or
    - enabling ECO3 to exercise any of its powers in connection with any Security Interest created under, or provided by, the Supply Agreement; and
  - provide any information requested by ECO3 in connection with the Supply Agreement to enable it to exercise any of its powers or perform its obligations under the PPS Law.
- Except if section 275(7) of the PPSA applies, each of ECO3 and the Purchaser agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available.
- Where the Goods supplied under the Supply Agreement are not used predominantly for personal, domestic or household purposes, the Purchaser agrees that, on and from the Registration Commencement Time:
  - ECO3 is under no obligation to dispose of or retain any secured property ECO3 seize within a reasonable time under section 125 of the PPSA;
  - following a default, the Purchaser has no rights to redeem the secured property under section 142 of the PPSA;
  - the Purchaser has no rights to reinstate this document following a default under section 143 of the PPSA; and
  - despite the Purchaser paying for particular Goods itemized in an invoice or order or otherwise in respect of monies owing under or in connection with the Supply Agreement, any payments received by ECO3 from the Customer shall be applied in the following order:
    - first to satisfy any obligations owed by the Purchaser to ECO3 which are unsecured, in the order in which the obligations were incurred;
    - second, to satisfy any obligations that are secured but which are not secured by a Purchase Money Security Interest, in the order in which the obligations were incurred; and
    - third, to satisfy any obligations that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.
- Where the Goods supplied under the Supply Agreement are not used predominantly for personal or domestic purposes, on and from the Registration Commencement Time, the Purchaser waives its rights to receive:
  - a notice of ECO3's proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;
  - a notice of ECO3's proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
  - a notice of ECO3's proposal to dispose of any PPSA personal property under section 130 of the PPSA;
  - a notice of ECO3's proposal to retain PPSA personal property under section 135 of the PPSA;
  - details of the amounts paid to other secured parties in a statement of account provided by ECO3 under section 132(3)(d) of the PPSA;
  - a statement of account under section 132(4) of the PPSA; and
  - a copy of, or notice of, any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to any Security Interest under, or provided for by, the Supply Agreement.
- Anything that is required by ECO3 to be done under this clause 8 shall be done by the Purchaser at its own expense. The Purchaser agrees to reimburse the costs of ECO3 in connection with any action taken by ECO3 under or in connection with this clause 8.

## 9. EXPORT

All export sales shall be subject to the additional terms set out on the face hereof or otherwise stated by ECO3 in writing. Terms used shall have the meaning assigned to them by the relevant provisions of Incoterms current at the date of the sale, to the extent they are not inconsistent with these Terms and Conditions.

## 10. CLAIMS

The Purchaser shall advise ECO3 in writing of any claims –

- for loss or damage – within 7 days of receipt in the case of Australian orders and 14 days of receipt in the case of export orders, and
- for non-delivery – within 14 days of agreed or reasonable delivery time in the case of Australian orders and 21 days of agreed or reasonable delivery time in the case of export orders.

## 11. WARRANTY & LIABILITY

- Any warranties given by ECO3 with respect to goods or services are set out on, or on the packaging of, or enclosures with, the particular goods to which they relate and except as the extent required by law, ECO3 makes no other express or implied warranties or guarantees.
- Those warranties referred to in sub-clause (a) are in addition to the Purchaser's statutory rights, but it is a term of the contract that to the full extent permitted by law the liability of ECO3 for breach of any warranty, term or condition provided or implied in these Terms and Conditions and any other rights (including, for the avoidance of doubt, section 274 of the Australian Consumer Law or any similar or successor provision) is limited solely to any one or more of the following as determined by ECO3 namely:
  - (in the case of goods) the replacement or repair of the goods, supply of equivalent goods or the payment of the cost of replacing or repairing the goods or supplying equivalent goods, and
  - (in the case of services) supplying the services again or the payment of the cost of supplying the services again.
- Except for 9(b), ECO3 will in no circumstances be liable for any loss or damage of any kind whatsoever caused directly or indirectly by any defect in material or workmanship or any defect in or unsuitability of the goods or services supplied or by any negligence of ECO3 or of any servant, contractor or agent of ECO3.
- No person acting without the express written authority of a Director or General Manager of ECO3 is authorised or permitted to give or make on behalf of ECO3 any undertaking, assertion, statement, warranty, admission or other representation in respect of the goods or the service or their supply at variance with these Terms and Conditions.
- ECO3 does not make any promise other than that contained in its warranties that any parts or repair facilities in respect of the goods will be available or available at any time or at any specified location.

## 12. RETURNS

- No claim of any nature (other than relating to warranty) will be recognised unless made within 7 days of delivery.
- Goods can only be returned if accompanied by a complete ECO3 goods return authorisation form or quoting a return authorisation number.
- If goods are returned other than under 11(b), an appropriate re-stocking charge will be debited to the Purchaser's account.

## 13. RESALE AND USES

- Goods purchased may only be resold without alteration of their state, condition, get-up or packaging or alteration or obliteration of any of the trade marks, numbers, codes or other written matter used on or in relation to the goods or their packaging, and may only be resold or used –
  - before any expiry date specified on or in relation to the goods; and
  - if, at all times after leaving ECO3's premises –
    - their original sealed packaging (if any) has remained intact, and,
    - being sensitized materials, they have been stored and handled properly to preserve their quality.
- Any recommended or suggested price for the resale of the goods is a recommended price only and there is no obligation to comply with the recommendation.

## 14. WAIVER

Failure by ECO3 to enforce any of these Terms and Conditions shall not be construed as a waiver of any of ECO3's rights hereunder or a waiver of continuing breach.

## 15. GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws in force in the State of Victoria and the Purchaser submits to the jurisdiction of the courts of that State.

## 16. ACCEPTANCE

Acceptance by the Purchaser of these Terms and Conditions, as amended from time to time, may be by any one of the following ways:

- by signing and returning a copy of these Terms and Conditions;
- by performing an act that is done with the intention of adopting or accepting these Terms and Conditions after receiving these Terms and Conditions, including but not limited to continuing to order Goods; or
- by oral acceptance.