

## 1. Introduction

The following terms and conditions will apply to, and form part of any contract for goods and/or services entered into with Wiltrading Pty Limited (ACN 003 437 527), Life & Rescue International Pty Limited (ACN 115 251 593), Wiltrading (W.A.) Pty Ltd (ACN 009 140 783) or Wilhelmsen Manufacturing Australia Pty Ltd (ACN 062 659 198), or any related corporation within the meaning of the *Corporations Act 2001* (Cth) (the **Provider**) by any person, firm, corporation, governmental or semi-governmental authority (the **Customer**). Unless otherwise agreed by the Provider in writing, and to the extent of any inconsistency with all prior written or oral agreements, the contract between the Provider and the Customer will be constituted, in its entirety, by these terms and conditions and any Quotation or Purchase Order agreed by the Provider. Unless otherwise stated in these terms and conditions, where a term or condition is inconsistent with a clause, these terms and conditions will prevail to the extent of any inconsistency.

## 2. Definitions

**Agreement** means the contract for the supply of goods and/or services between the Provider and the Customer. This includes, but is not limited to, the terms of any Purchase Order or Quotation.

**Credit Arrangement** means any written agreement between the Provider and the Customer whereby the Provider agrees to extend payment terms to the Customer.

**Force Majeure Event** means any circumstance where the Provider is delayed, prevented or unable to perform its obligations pursuant to a Purchase Order or any other Agreement due to any circumstance other than gross negligence. The Customer agrees that an economic event (for example, substantial fluctuations in the value of the Australian Dollar (AUD) as against other currencies, or dramatic increases in the cost of fuel) may be considered a Force Majeure Event.

**Goods** means the goods and/or services listed under the heading "Description" on any Purchase Order or Quotation.

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

**Purchase Order** means any order placed by the Customer with the Provider for the supply of goods and/or services. All prices in the Purchase Order are in Australian Dollars (AUD) unless otherwise stated by the Provider.

**Quotation** means any quotation provided to the Customer by the Provider in connection with the supply of goods and/or services. The particulars of any Quotation are only valid through until the end of the period noted on the Quotation.

**Surcharge** means the percentage of the total amount payable by the Customer to the Provider that must be remitted at the time of payment where the Customer pays with a credit card. The Surcharge is payable, regardless of whether the Customer has a Credit Arrangement. The Surcharge will be calculated as follows:

- (a) Visa, Mastercard or Bankcard – an additional 2% of any money paid;
- (b) American Express – an additional 3% of any money paid; or
- (c) Diners Club – an additional 4% of any money paid.

### 3. **Acceptance of Purchase Orders**

Until it has been accepted by the Provider by act of part performance, no Purchase Order is binding. A Purchase Order can be accepted in whole or in part by the Provider at the Provider's absolute discretion. A Purchase Order placed pursuant to a Quotation is not binding on the Provider until it has been accepted in writing by the Provider. The Customer must provide an order number, a Quotation number (if any), an Australian Business Number, and a full description of the Goods including price, description and quantity, the delivery date or the date for the provision of services, and the address where the Goods are to be delivered or the services are to be provided. If the Purchase Order is placed pursuant to a Quotation, and the particulars of the Quotation are different to the particulars in the Purchase Order, the Provider reserves the right to revise and return the Purchase Order to the Customer. Unless otherwise agreed in the Purchase Order, the Customer agrees that the price of the Goods on the Purchase Order will be that quoted in the Provider's current price list. All Goods supplied pursuant to a Purchase Order are supplied on the condition that the Customer will pay the price of the Purchase Order and Surcharge (if applicable) to the Provider on the terms of payment.

### 4. **Cancellation or Variation of Purchase Orders**

The Customer cannot cancel or vary a Purchase Order without the written consent of the Provider. If the Customer cancels or varies the Purchase Order, the Customer agrees to indemnify the Provider against any loss, damage, expense or claim in connection with the variation or cancellation of the Purchase Order, or any consequential loss that follows the cancellation or variation of the Purchase Order.

### 5. **Payment**

Unless an existing Credit Arrangement otherwise provides, payment for Goods is required on the earlier of:

- (a) the date the Goods are delivered or provided; or
- (b) within 7 days from the date the Goods are invoiced.

The Customer is not entitled to withhold payment in whole or in part, or claim any right to set-off in respect of any money due.

If applicable, the Customer agrees to pay the Provider the Surcharge at the time of payment.

Despite any other agreement between the Customer and the Provider, if a Customer or its guarantor under a Credit Arrangement owes money to the Provider, the payment terms applicable to the Purchase Order will be as if no Credit Arrangement exists.

If the Customer fails to pay the money owing under the Purchase Order, the Customer agrees that it will pay the Provider interest at a rate of 0.06% per day on all money owing and unpaid. Interest will continue to accrue until all unpaid money has been paid.

Despite any other agreement between the Customer and the Provider, the Customer agrees that the Provider may withhold delivery of Goods in its possession until such time as all money owing to the Provider by the Customer or its guarantors, under any Agreement is paid.

If the Customer becomes an externally administered body corporate under the *Corporations Act 2001* (Cth), assigns its property for the benefit of creditors, states that it is unable to pay its debts when

due, or if any Court becomes entitled to make any presumption referred to in section 459C(2) of the *Corporations Act 2001* (Cth) in respect of the Customer or its guarantors, the Provider may withhold any Goods despite any other provision in any other Agreement.

The Customer agrees to indemnify the Provider for all legal costs (on a solicitor and own client basis) incurred as a result of anything the Customer fails to do pursuant to any Agreement or these terms and conditions.

## 6. **Delivery**

Delivery dates or service dates in Purchase Orders are estimates only. The Provider is not obliged to meet any date, and will not be liable in any way to the Customer for any delay, for any reason. The Provider may, by notice in writing to the Customer, extend the period for delivery, change the delivery schedule or cancel the Purchase Order without liability to the Customer for any loss or damage of any kind.

Goods will be delivered to the address specified in the purchase order unless otherwise agreed in writing by the Provider. The Customer will be responsible for the cost of all taxes, duties, insurances, handling, storage, packaging and all other expenses relating to the Goods. In the absence of specific instruction from the Customer accepted by the Provider in writing, the Provider will, in its absolute discretion, select the method of transport for the Goods.

The Provider may vary the delivery date or service date or deliver the Goods in part with written notice to the Customer. If Goods are delivered in part pursuant to a variation of the Purchase Order instigated by the Provider, the Customer must accept the part-delivery and pay the percentage of the price of the Purchase Order represented by the goods delivered.

## 7. **Risk in Goods**

The risk in Goods passes to the Customer on the earlier of the delivery of Goods (or any part of the Goods) to the address specified in the Purchase Order (or any written variation) or, delivery of the Goods (or any part of the Goods) into the control of persons authorised by the Purchaser.

## 8. **Returned Goods and associated claims**

The Customer is deemed to have accepted the Goods unless it acts in accordance with the terms and conditions below.

The Customer must notify the Provider in writing within 7 days of receipt of the Goods of any damage or defect in the Goods delivered. Any Goods delivered to the Customer which are damaged or defective, or which are not otherwise in accordance with the Customer's order may be returned to the Provider within 30 days of delivery, at no cost to the Customer, provided the Customer has notified the Provider within the aforementioned 7 day period that the Goods are damaged or defective, and specified the nature of the damage or defect.

The Customer may otherwise return Goods to the Provider on the following conditions:

- (a) it does so within 7 days of delivery;
- (b) the Goods are in their original packaging, unopened, and otherwise in a saleable condition; and
- (c) Goods are returned at the Customer's expense, or to the Customer's Credit Arrangement.

In the case of all Goods returned:

- (a) the Purchase Order number must be quoted;
- (b) a credit will be given to the Customer upon approval from the Provider;
- (c) risk in the Goods remains with the Customer until the Goods are received by the Provider;
- (d) a re-stocking fee of up to 15% may be imposed. For "special order" items that cannot be returned to the supplier this fee may be greater; and
- (e) the Provider does not need to issue a credit note if a "special order" item cannot be returned, or if the Customer owes any money to the Provider.

In the case of services rendered the Customer will, no later than 7 days after completion of performance of the services, give notice to the Provider of any defect in the services or any other matter where it is alleged that the services are not in conformity with the Purchase Order relating to their supply. The Customer agrees that it waives any claims of which it has not given notice within that time.

The Provider reserves the right to dispute any claim for any refund or refuse to accept any returned Goods at its absolute discretion.

The Provider reserves the right to set-off against any money owing any loss incurred in the resale of any Goods returned pursuant to this clause.

## 9. Title to Goods

If the Provider is not the owner of the Goods, the Provider will have a lien on all of the Customer's Goods and related documents in the possession or control of the Provider for all money payable by the Customer to the Provider. The Provider may charge the Customer for the removal and storage of any Goods in the Provider's control. In the event the Provider exercises this lien, risk in the Goods during all transit and for the period of storage lies with the Customer. 30 days after notice in writing to the Customer, the Provider may sell the Goods the subject of the lien by public auction or private treaty without being liable to the Customer in tort. The Provider will retain from any money realised by the sale, all money owed and charges raised, and pay any surplus to the Customer where it is appropriate and lawful to do so.

If the Provider is the owner of the Goods, title to the Goods will remain with the Provider until all money owing to the Provider, and any additional interest charges, Surcharges (if applicable) and the Provider's legal costs are paid. Until the Customer pays all money owing to the Provider, the Customer must deal with the Goods as follows:

- (a) hold the Goods as bailee for the Provider;
- (b) hold the Goods in secure storage, separate from all other goods, clearly marked as being the property of the Provider;
- (c) if the Customer sells the Goods or incorporates them into a manufacturing or construction process, the Customer must hold the proceeds of the sale of the Goods as trustee for the Provider in a bank account separate from any

other until such time as all money owing to the Provider under any account has been paid.

The Provider may, at its absolute discretion, terminate any bailment and retake the Goods at any time at the cost of the Customer. The Customer agrees that retaking of Goods pursuant to these terms and conditions is not trespass by the Provider, and the Customer agrees to permit the Provider, its employees or agents access to the Goods to enable the Provider to remove them from the Customer's possession.

#### 10. **Limitation of liability**

The Provider makes no representation or warranty to the Customer, and all warranties implied by law are excluded. The Provider accepts no responsibility for the accuracy of any particulars of any Purchase Order, any Goods delivered, or any service provided.

The Provider will not be liable to the Customer or any person claiming through or under the Customer for any direct or indirect liability incurred or alleged to have been incurred in contract, bailment, tort or otherwise in connection with:

- (a) loss or damage to Goods;
- (b) the use the Goods may be put to;
- (c) any warranty as regards any use for which the Goods may be fit in any jurisdiction outside of Australia;
- (d) failure to deliver or delay in delivery of Goods;
- (e) representations made in connection with the supply of Goods;
- (f) delay arising out of the breakdown of any Goods supplied;
- (g) any Force Majeure Event;
- (h) any consequential or economic loss incurred as a result of any neglect, act, omission by the Provider;
- (i) any damage caused by the installation of any Goods; or
- (j) any costs, expense or charge arising out of any delay, variation, breakdown or failure in connection with the Goods or supply of Goods.

Every exemption, limitation, condition, right, defence, immunity, available to the Provider will be available to protect any person or corporation that may be liable for the acts or omissions of the Provider.

To the extent any right, warranty or liability cannot lawfully be excluded, the Customer agrees that the liability of the Provider is limited to the following:

- (1) the lesser of the replacement cost of the Goods or the cost of remedying any defect required to ensure the Goods are of merchantable quality;
- (2) the lesser of the cost of the Goods paid by the Customer or the legal liability of the Customer for the loss of the Goods under any Bill of Lading;  
or

- (3) if the breach relates to the provision of services, the lesser of the cost of providing those services again, or the reasonable cost of having the services supplied by others.

#### **11. Provision of Services**

Despite any other term in any other agreement, the Customer agrees that the Provider is not providing any professional service. The Customer agrees that any service provided pursuant to a Purchase Order is for the provision of labour only, and the Customer is not relying on any expertise, professional judgement, opinion or representation regarding any matter in connection with the particulars of any Purchase Order, Goods supplied or any services rendered by the Provider. In all regards, in all circumstances, the Customer agrees that it has relied on its own enquiries, and it releases and indemnifies the Provider from any or all claims it might otherwise have pursuant to this clause.

#### **12. GST**

All prices quoted by the Provider, unless otherwise stated, DO NOT include goods and services tax ("GST") nor any other government taxes or levies. The Provider reserves the right to recover from the Customer all goods and services tax payable in respect of the supply of Goods to, and any additional charges raised, as against the Customer.

#### **13. Proprietary Information**

The Customer agrees that all Goods, information or services provided to it by the Provider remains the sole property of the Provider. The Customer agrees that its use of this information is as licensee only, and the licence is revokable by the Provider at its absolute discretion. The Customer must use its best endeavours to ensure that all information provided to it by the Provider remains confidential, and it must use its best endeavours to prevent disclosure of this information to any third party, except where compelled by an Australian Court or Tribunal to do so.

The Customer is not permitted to retain or procure any person or corporation to use, modify, clone, reverse engineer, copy, decompile or otherwise deal with the Provider's Goods, information or services.

#### **14. Notices**

Any notice given to the Customer or the Provider must be in writing. Any notice not in writing is unenforceable as against either party. A notice must be sent by post, email or facsimile. Proof of successful transmission will be proof of notice receipt. A notice received after 5:30 p.m. on a business day is deemed to have been received the following business day, provided that day is not a public holiday in the State to which the notice is being sent.

#### **15. No Waiver**

The failure of the Provider to exercise, or the delay in exercising, any right, power or privilege available to it under these terms and conditions will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right or power. Any waiver of any of the Provider's rights pursuant to these terms and conditions must be in writing.

**16. Dispute Resolution, Proper Law and Jurisdiction**

These terms and conditions and all other Agreements will be governed by, and construed in accordance with, the law in force in the jurisdiction in which the Goods originate. If the Goods originate in multiple jurisdictions, the choice of forum and choice of governing law will be at the discretion of the Provider. The parties unconditionally submit to the jurisdiction of Australian Courts only, and agree that any Court outside of Australia is a forum non conveniens.

The Customer must not exercise any right, power or seek any remedy for any breach of any Agreement or these terms and conditions until the following procedure has been followed.

- (a) The Customer must notify the Provider, in writing, and provide details of the alleged breach or dispute and the Customer's representative authorised to resolve the matter.
- (b) The Customer must give the Provider reasonable time to remedy the alleged breach or resolve the dispute. The time provided must be given in the notice to the Provider. If no time is given, the time for resolution will be determined by the Provider having regard to all of the circumstances.
- (c) The Provider may, at its absolute discretion, seek to refer the matter to any dispute resolution forum other than Court proceedings. Unless otherwise agreed in writing, costs will follow the event.

**17. Miscellaneous**

If any clause, or any part of a clause in any Agreement or these terms and conditions is deemed by an Australian Court to be illegal, unenforceable or invalid, that clause or part of the clause will be removed, and all other clauses will remain the same.

If there is more than one Customer or guarantor, those Customers or guarantors will be jointly and severally liable.

The Customer must not assign any Agreement with the Provider unless it has given the Provider at least 7 days advance written notice and the Provider has given its written consent.

Any right, remedy or entitlement in any Agreement or these terms and conditions available to the Provider will not affect any other right, remedy or entitlement otherwise available to the Provider.