



## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

- "ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;
- "Agreement" means any agreement for the provision of Goods or services by the Company to the Customer;
- "Company" means Erntec Pty Ltd (ABN 53 005 281 176);
- "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 more than one, acquiring Goods or services from the Company;
- "Goods" means goods supplied by the Company to the Customer;
- "GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated Regulations as amended;
- "PPSA" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;
- "Services" means services supplied by the Company to the Customer; and
- "Terms" means these Terms and Conditions of Sale.

### 2. APPLICATION

- a) These Terms apply to all Goods sold by the Company.
- b) No amendment, alteration, waiver, or cancellation of these Terms is binding on the Company unless confirmed by the Company in writing.
- c) The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Goods or the sale of the Goods other than as contained in these Terms.

### 3. TERMS OF PAYMENT

- d) Prices are strictly ex-store and subject to change. Except for where otherwise provided in this clause 3, any price change will apply orders placed for Goods occurring after the date of such change.
- e) If a price is quoted with an exchange rate adjustment for the supply of imported goods, the quoted prices are calculated on the EXCHANGE RATE BASE and are subject to adjustment at the time of delivery. The price payable by the Customer on the invoice will be recalculated with the respective exchange rate ruling at the time of delivery. Any change to the price of less than 1% will be disregarded.
- f) Payments are to be made direct to the Company, strictly net, without any deduction, discount or set off other than as stated herein or in the relevant invoice or statement.
- g) Payments are to be made within thirty (30) days of the date of the Company's invoice.
- h) Interest is payable on all overdue accounts calculated on a daily basis at the rate of 2% per month as from the due date for payment until payment in full is received by the Company. The Company, may forego charging interest on overdue accounts.

### 4. PROPERTY IN GOODS AND INSURANCE

- i) Until the Company receives full payment in cleared funds for all Goods and services supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer:
  - i) title and property in all Goods remains vested in the Company and does not pass to the Customer;
  - ii) the Customer must, at its own cost, maintain the Goods and insure them for the benefit of the Company against theft, breakdown, fire, water, and other risks.
  - iii) the Customer must take all reasonable measures to ensure that the Company's title in the Goods is in no way prejudiced.
  - iv) the Customer must hold the Goods as fiduciary bailee and agent for the Company;
  - v) the Customer must keep the Goods separate from its own Goods and maintain the Company's labelling and packaging;

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- vi) the Customer must hold the proceeds of sale of the Goods on trust for the Company 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 as trustee;
- vii) in addition to its rights under the PPSA, the Company may 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 the Company, and for this purpose the Customer irrevocably licences the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action except where such costs, claims, demands or actions arise by reason of the Company's gross negligence or wilful acts..

**5. Personal Property Securities Act**

- a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- b) For the purposes of the PPSA:
  - i) terms used in clause 5 that are defined in the PPSA have the same meaning as in the PPSA;
  - ii) these Terms are a security agreement, and the Company has a Purchase Money Security Interest in all present and future Goods supplied by the Company to the Customer and the proceeds of the Goods;
  - iii) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
  - iv) the Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by the Company on the Personal Property Securities Register.
- c) The security interest arising under this clause 5 attaches to the Goods when the Goods are collected or dispatched from the Company's premises and not at any later time.
- d) 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.
- e) The Company 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.
- f) To the extent permitted by the PPSA, the Customer agrees that:
  - i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Company will apply only to the extent that they are mandatory, or the Company agrees to their application in writing; and
  - ii) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- g) The Customer must immediately upon the Company's request:
  - i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - ii) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.
- h) The Company may allocate amounts received from the Customer in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by the Company.
- i) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

**6. RE-SALE OF GOODS**

- a) Should the Customer be a re-seller then, subject to clause 4.1 the Customer has the right to sell the Goods in its own name at a price of its choosing and in the ordinary course of business.
- b) Until the amount payable to the Company in respect of the Goods, and in respect of all other goods previously supplied by the Company to the Customer, has been paid in full in cash or cleared funds:
  - i) the provisions of clause 4.1 apply;
  - ii) the Customer must indemnify the Company from and against any claim, action, proceeding, damage, loss, cost, expense, or liability incurred or suffered by the Company arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession of them by the Company; and
  - iii) any sale of the Goods under clause a) will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Customer against the third party buyer arising from such sale will



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- be held on trust for the Company. The said proceeds must be held in separate account with a bank to whom the Customer has not given security and clearly identified in the books and records of the Customer.
- c) If the Customer resells any Goods, then, unless the Goods are clearly identifiable by serial number or other distinguishing marks the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to most recent).
  - d) If the Customer has not received the proceeds of any such sale, then in addition to its rights under the PPSA, it will, if called upon to do so by the Company, assign to the Company within seven (7) days all rights against the person or persons by whom the proceeds are owed.
  - e) The Customer agrees with the Company that where:
    - i) the buyer make a new object from the Company's Goods, whether finished or not; or/and
    - ii) the buyer mixes the Company's Goods with other goods; or/and
    - iii) the Company's Goods become part of other goods, the PPSA will apply.

### 7. DEFAULT

- a) If:
  - i) The Goods are not paid for in accordance with these Terms of any other written agreement between the Company and the Customer; or
  - ii) The Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods; or
  - iii) Any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee, or similar person (each an "Insolvency representative") to the Customer's undertaking), then.

subject to any applicable statutory stay of proceedings the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods.

- b) If the Customer is in default of these Terms, the Company is entitled to refer the overdue account, at the Customers expense, to an agency for collection.

### 8. ADMINISTRATION, RECEIVERSHIP ETC.

- a) Subject to the rights granted to secured parties under the PPSA, and to the maximum extent permitted at law:
  - i) In any of the circumstances referred to in clause a)iii), neither the Customer nor its Insolvency representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's interest in the Goods, without the Company's prior written approval.
  - ii) The Customer, its Insolvency representative or any other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Goods to the Company immediately or immediately on his appointment at its or his expense.
  - iii) If the Goods are returned to or collected by the Company, the Company will account to the Customer or its legal representative for all monies received for the Goods from the Customer less the Company's reasonable administration charges, expenses incurred, and loss of profits involved.

### 9. CUSTOMER AS TRUSTEE

- a) If the Customer carries on business as trustee of a trust, then the Customer warrants that:
  - i) the Customer enters into the contract in its own capacity and as trustee of a trust;
  - ii) the Customer has all requisite powers to enter into the Agreement;
  - iii) the beneficiary of the trust approves the purchase of the Goods on the terms of the Agreement; and
  - iv) the assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer.

### 10. GOODS AND SERVICES TAX

- a) GST is not included in the quoted price.

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- b) If GST is imposed on the Company in respect of the Goods, then the Customer must pay to the Company the amount of such GST in addition to the quoted price.
- c) The Company must give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.

### 11. CUSTOMS DUTIES, TARIFFS AND LEVELS

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- a) All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing indicates otherwise.

### 12. DELIVERY

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- a) Availability dates are estimates only. The Company will use its best endeavours to maintain these estimates.
- b) At the Customer's request, the Company will arrange for the delivery of the Goods into the Customer's store at the Customer's expense by adopting one of the following means;
  - i) the Company's nominated carrier at a set rate for each delivery; or
  - ii) for part or schedule deliveries, the Company's nominated carrier at a set rate for each delivery; or
  - iii) for small packages, Pack-Post at the normal rate; or
  - iv) road/rail transport charged on freight.

### 13. INSPECTION AND ACCEPTANCE

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- a) Unless the Customer has inspected the Goods and given written notice to the Company within fourteen (14) days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, then to the maximum extent permitted at law the Goods are deemed to have been accepted in good order and condition.
- b) Any claim must be lodged by forwarding a written statement quoting the original invoice number and date to the Company by registered mail.

### 14. DELIVERY BY INSTALMENTS

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- a) Where reasonably necessary, the Company reserves the right to deliver the Goods in whole or by instalments, as well as to delivery prior to the date of delivery and in such event the Customer must not unreasonably refuse to take delivery the Goods.
- b) Where the Goods are delivered by instalments, each instalment is sold under a separate contract.
- c) Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the contract with regard to any undelivered Goods.

### 15. RISK

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- a) Unless otherwise agreed in writing by the parties, all risk in the Goods passes to the Customer from the moment the Goods leave the Company's premises.

### 16. RETURN OF GOODS

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- a) To the maximum extent permitted at law, and without in any way limiting, modifying, or restricting the provisions of the ACL, no returns will be accepted unless the Company has previously agreed in writing. If the Company agrees to return of Goods, they must be unsoiled, undamaged and in a resalable condition (or Customer pays for all costs of replacement or repair) and delivered free to the Company's premises unless otherwise agreed by the Company in writing.

### 17. CANCELLATION OF ORDER

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- a) No order may be cancelled, modified, or deferred, or deliveries postponed without the prior written consent of the Company and, if such consent is given, it is at the Company's election, subject to the Company being reimbursed all losses, including loss of profits, and paid a cancellation and restocking fee sufficient to indemnify the Company against all loss.

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## 18. COMPANY'S LIABILITY LIMITED

- a) Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or services, the Agreement does not include by implication any other term, condition, or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or services or any contractual remedy for their failure.
- b) If the Customer is a consumer nothing in these Terms restricts, limits, or modifies the Customer's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- c) If the Customer on-supplies the Goods to a consumer and:
- i) the Goods or services 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 the Company's liability to the Customer;
  - ii) the Goods or services are of a kind ordinarily acquired for personal, domestic, or household use or consumption; payment of any amount required under section 274 of the ACL is the absolute limit of the Company'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 or services by the Customer or any third party.
- d) If clause c)i) or c)ii) do not apply, then other than as stated in the Terms or any written warranty statement the Company 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 or services by the Customer or any third party.
- e) The Company is not liable for any 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.
- f) The Customer acknowledges that:
- i) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information, or assistance provided by the Company in relation to the Goods or services or their use or application.
  - ii) it has not made known, either expressly or by implication, to the Company any purpose for which it requires the Goods or services, and it has the sole responsibility of satisfying itself that the Goods or services are suitable for the use of the Customer.
  - iii) Where the Goods are manufactured to the Customer's specifications that the Company is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s).
  - iv) Where the Goods are manufactured to the Customer's specifications the Company does not accept any responsibility or liability whatsoever in relation to the patent, design, copyright, trademark, or other intellectual property rights of third parties in relation to the use or re-sale of the Goods.
  - v) the Company does not accept any responsibility or liability whatsoever for loss or damage in transit once the Goods have left the control of the Company. However, should transport insurance be desired, a quote can be submitted on request.
- g) Nothing in these Terms is to be interpreted as excluding, restricting, or modifying or have the effect of excluding, restricting, or modifying the application of any State or Federal legislation applicable to the supply of Goods than cannot be excluded, restricted, or modified.

## 19. CATALOGUES

- a) Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, from no part of the contract between the Company and the Customer and are not binding on the Company.

## 20. SAMPLES

- a) Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

## 21. SPECIFICATIONS

- a) Unless otherwise agreed in writing, the Goods are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Goods, or, if no such specification

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has been published or set out, subject to such specification as is normally regarded as being commercially acceptable.

- b) Where any specification for the Goods is to be supplied by the Customer, they must be supplied in a reasonable time to enable the Company to complete delivery by the date for delivery.

**22. CONTRACT**

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- c) The terms of contract between the parties are wholly contained in these Terms and any other agreement in writing signed by both parties. The contract is deemed to have been made at the Company’s place of business in Melbourne and any cause of action is deemed to have arisen there.
- d) The provisions of the United Nation Convention on contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 does not apply to any Goods supplied by the Company to the Customer.

**23. FORCE MAJEURE**

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- a) Neither party will be liable for any breach of contract due to any matter or thing beyond that party’s control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion, or accident).

**24. WAIVER OF BREACH**

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- a) No failure by either party to insist on strict performances of any of the terms in these Terms is a waiver of any right or remedy which that party may have and is not a waiver of any subsequent breach or default by the other party.

**25. NO ASSIGNMENT**

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- a) Neither the Agreement nor any rights arising under the Agreement may be assigned by either party without the prior written consent of the other party, which must not be unreasonably withheld.

**26. SEVERABILITY**

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- a) If any provision contained in these Terms is held by a Court to be unlawful, invalid, or unenforceable, the validity and enforceability of the remaining provisions are not affected.