

# Australia & New Zealand General Terms & Conditions

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# AUSTRALIA & NEW ZEALAND GENERAL TERMS & CONDITIONS OF TRADE

## 1. Application of Trading Terms and Conditions

- 1.1 All orders placed by Customer ("**Customer**") with Tom Stoddart Pty Ltd and/or Stoddart NZ Ltd (collectively "**Stoddart**") will be subject to these Terms.
- 1.2 Stoddart may vary these Terms from time to time in writing and such variations will be deemed accepted by Customer and operate as a variation of these Terms by Customer placing a subsequent order for goods with Stoddart.
- 1.3 Other Terms and Conditions may be introduced to the customer from time to time and in the case of conflict these shall apply in the following order of precedence:
  - a) Order specific Terms and Conditions;
  - b) Credit Account Terms and Conditions;
  - c) Dealer Specific Terms and Conditions;
  - d) These General Terms and Conditions

## 2. Prices

- 2.1 Where goods and/or services ordered are sold on a GST exclusive basis, Customer must also pay Stoddart an amount equivalent to Stoddart's GST liability on supply in addition to the GST exclusive purchase price payable for those goods.
- 2.2 Where goods and/or services ordered are subject to any other Government tax or duty (other than GST), then any price quoted by Stoddart will include such taxes or duties.
- 2.3 If Customer varies any order, Stoddart may charge Customer additional reasonable costs incurred by Stoddart as a consequence of such variation.
- 2.4 Prices quoted by Stoddart do not include delivery costs unless expressly confirmed in writing by Stoddart and Customer must pay or reimburse Stoddart for Stoddart's reasonable delivery costs.
- 2.5 Stoddart may request, at its sole discretion, Customer to pay a portion of the purchase price ("**Deposit**") before Stoddart manufactures the goods.
- 2.6 Customer acknowledges the Deposit is non-refundable and, if Customer fails to pay the balance purchase price to Stoddart in accordance with these Terms, Stoddart will be entitled, after 7 days written notice to forfeit and apply the Deposit to any costs or expense incurred by Stoddart in manufacturing or procuring and/or preparing to manufacture or procure the goods.
- 2.7 In this clause 2, "GST" means goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and/or the Goods and Services Tax Act 1985 (NZ) as applicable.

## 3. Invoices

- 3.1 Subject to clause 3.2, Stoddart will invoice Customer upon the collection, delivery or installation of the goods ordered.
- 3.2 Notwithstanding clause 3.1, Stoddart reserves the right to invoice Customer:
  - a) At any time for the work in progress on any order; and/or
  - b) Prior to the collection, delivery or installation of goods or the performance of services the subject of any order.
- 3.3 Where goods or services are supplied by Stoddart, Customer acknowledges and agrees that any tax invoice or (where elected by Stoddart) progress claim issued by Stoddart will be a "payment claim" for the purposes of the Security of Payment Acts.

## 4. Payment

- 4.1 If Stoddart agrees to supply goods and/or services to Customer on credit terms:
  - a) Customer must pay for goods and/or services ordered during a given month within 30 days of the end of the month in which the goods and/or services are delivered or supplied to Customer by Stoddart or within such other period as confirmed in writing by Stoddart.
  - b) If payment is not made by Customer in accordance with clause 4.1 (a), Stoddart may (in addition to any other rights it has) charge Customer interest at the rate of 16% per annum (or such other rate as Stoddart notifies Customer from time to time) on each overdue account. Interest shall accrue from the due date for payment of each account until the date of payment.
  - c) Customer acknowledges and agrees that, regardless of any security held or any action taken by Stoddart against another person to recover any payment due but unpaid, including without limitation under the Security of Payment Acts, Customer remains liable to pay Stoddart in accordance with clauses 4.1 (a) and 4.1 (b) and Stoddart will be entitled to take such recovery action it considers appropriate against Customer and any Guarantor under these Terms.
- 4.2 If Stoddart agrees to supply goods and/or services other than on credit terms Customer must pay in full before the goods will be supplied or manufactured or the services performed. This clause 4.2 is for Stoddart's benefit and may be waived by Stoddart, in which case clause 4.1 applies.
- 4.3 Stoddart may, in its sole discretion, elect to waive the requirements in clause 4.2 and instead agree for Customer to pay for goods and/or services by cheque or credit card after the goods or services have been supplied/performed. If this clause 4.3 applies Customer warrants by placing their order and providing their cheque or credit card details that there will be no impediment to clearance of funds immediately upon Stoddart presenting Customer's cheque or processing Customer's credit card.



# AUSTRALIA & NEW ZEALAND GENERAL TERMS & CONDITIONS OF TRADE

## 5. Collection and Delivery of Orders

- 5.1 For the purposes of these Terms, the expression "delivery" in relation to goods supplied by Stoddart includes delivery:
- To the business address or custody of Customer's nominated transport company;
  - To the address of Customer's nominated agent;
  - To Customer's nominated delivery address; or
  - To the address appearing on any purchase order or invoice for the goods.
- 5.2 If Stoddart agrees to deliver goods ordered by Customer, then that obligation and every obligation of Stoddart in these Terms are to the maximum extent possible discharged upon delivery.
- 5.3 Any date or time quoted by Stoddart for the collection or delivery of goods is, unless otherwise agreed by Stoddart, an estimate only. Stoddart may, in its sole discretion, agree to fix a time for collection or delivery of goods if the request is made by Customer at the time the order is placed.
- 5.4 Any failure by Stoddart to allow collection or effect delivery of goods at the time or times requested by Customer will not entitle Customer to:
- Cancel any order; or
  - Refuse to collect or accept delivery of any order; or
  - Terminate any agreement for the supply of the goods or to claim damages for any loss, including consequential loss, or to raise any set-off against Stoddart whatsoever.
- 5.5 Stoddart reserves the right, at its sole discretion, to deliver goods by installments and each installment will be deemed to be sold under a separate contract. Any failure by Stoddart to deliver any installment on time or at all will not entitle Customer to terminate or repudiate these Terms in whole or in part.
- 5.6 Stoddart reserves the right to:
- Sell or dispose of any goods:
    - Not collected by Customer; or
    - Where Customer refuses to accept delivery of those goods;
    - Within 60 days of Stoddart notifying Customer goods are available for collection and/or delivery;
  - Apply the proceeds of sale of any goods sold or disposed in accordance with clause 5.6 (a) of these Terms to the costs incurred by Stoddart in manufacturing and/or selling the goods; and
  - Recover charges for storage if Customer fails to collect or accept delivery of any goods on time.
- 5.7 Notwithstanding clause 5.6, any shortfall owing to Stoddart after applying the proceeds of sale of goods sold or disposed will remain a debt owed by Customer to Stoddart which Stoddart will be entitled to recover.

## 6. Cancelled / Returned Orders

- 6.1 For any orders that are manufactured to order, purchased to order (indent), or custom built, cancellation or returns of orders will not be accepted. Orders placed for these items can not be cancelled or returned and items will be delivered and invoiced in full.
- 6.2 Orders for stocked items may be cancelled up to 24 hours before the required date of shipment provided that they have not already been picked.
- 6.3 Customer may request to return stocked items that have already been shipped, and at Stoddart's sole discretion we may approve the return a stocked item for credit. Authorisation from a Stoddart representative must be sought prior to any goods being returned and an official authorisation number will be issued by Stoddart. Any returns will incur a 30% restocking fee to cover the costs of order processing, dispatch, delivery and re-warehousing. Goods returned must be in their original condition and packaging and the Customer must pay for the costs of any return freight to our warehouse.

## 7. Inspection

- 7.1 Customer will inspect the goods comprised in any order immediately upon collection or delivery.
- 7.2 To the maximum extent permitted by law, Stoddart will not consider any claim for mis-delivery, shortage, defect or damage to goods supplied unless such claim is in writing and received within 7 days from the date of collection or delivery of the goods.

## 8. Title and Risk

- 8.1 Risk in all goods supplied by Stoddart shall pass to Customer upon their collection or delivery or, where Customer fails to collect or accept delivery of the goods on time, upon Stoddart first making the goods available for collection or attempting to effect delivery of the goods.
- 8.2 Stoddart will retain legal ownership of all goods supplied to Customer until Customer makes payment in full of all moneys owing to Stoddart.
- 8.3 Customer irrevocably grants to Stoddart, its agent and servants an unrestricted right and license to enter, without notice, premises occupied by customer to identify and remove any goods, which are the property of Stoddart including goods sold but not paid for.
- 8.4 Stoddart will have the right to sell or dispose of any goods removed pursuant to clause 8.3



# AUSTRALIA & NEW ZEALAND GENERAL TERMS & CONDITIONS OF TRADE

## 9. PPSA

- 9.1 Customer and Stoddart acknowledge that these Terms & Conditions constitute a security agreement and may also constitute a purchase money security interest for the purposes of the Personal Property Securities Act 2009 (Cth) (**PPSA**) and/or the Personal Property Securities Act 1999 (NZ) (**PPSANZ**).
- 9.2 Stoddart may register a financing statement on the Personal Property Securities Register established under section 147 of the PPSA and/or section 139 of the PPSANZ (collectively, **PPS Register**) and Customer undertakes to sign any further documents or provide further information requested by Stoddart to complete and register a financing statement on the PPS Register. Registration charges incurred by Stoddart when registering a financing statement or a financing change statement must be paid by Customer and may be debited by Stoddart against Customer's credit account with Stoddart.
- 9.3 The Customer acknowledges and agrees that Stoddart may register its security interest in any manner Stoddart considers appropriate on the PPS Register.
- 9.4 To the extent permitted by law, and in respect of each security interest created by the agreement subject to these Terms & Conditions:
- the parties contract out of sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA) and sections 114(1)(a), 116, 120(2), 121, 127, 129, 131 and 133 of the PPSANZ;
  - the Customer irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing change statement relating to an agreement subject to these Terms & Conditions or any other notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.

## 10. Force Majeure

- 10.1 Stoddart will not be liable for any loss, damage, cost or expense suffered by Customer as a result of any delay or failure by Stoddart to supply any goods where such delay or failure is due (whether in whole or in part) to any cause or circumstance beyond Stoddart's control.

## 11. Trusts and Trustees

- 11.1 If Customer is a Trustee of any trust, whether or not disclosed to Stoddart:
- Customer must produce a stamped copy of the trust deed (with any amending documents) to Stoddart on request;
  - Customer warrants that it has full power and authority to enter into any agreement with Stoddart on behalf of the trust and that Customer is bound by these Terms both personally and in its capacity as Trustee;
  - Customer warrants that, in the case of default of these Terms, Stoddart can enforce any right or remedy accruing to it (under these Terms or otherwise) against any property in which Customer has an interest, whether in its own capacity or as a Trustee or beneficiary of any trust (including, but not limited to, under clause 19).

## 12. Means and Ability

- 12.1 Customer warrants that it has and will continue to have the ability to pay all of its debts as and when they fall due.

## 13. Default

- 13.1 Customer will be in default of these Terms if:
- Customer fails to comply with any of these Terms; or
  - Customer, being a natural person or persons, commits any act of bankruptcy; or
  - Being a corporation, passes a resolution for winding up or enters into any arrangement with creditors or a controller (as that term is defined in the Corporations Act 2001 (Cth) [Aus]) is appointed to any property or assets of Customer.
- 13.2 In the event of default by Customer under these Terms:
- All moneys owing to Stoddart shall, at the option of Stoddart, become immediately due and payable; and
  - Stoddart may, without notice and in addition to any other rights it may have:
    - Suspend or cancel any credit account provided to Customer;
    - Suspend or cancel any orders placed by Customer; or
    - Exercise its rights under clause 8.3; or
    - Forfeit any Deposit paid and apply the Deposit to any costs incurred by Stoddart for the purpose of manufacturing or procuring the goods; and
    - Sell the goods and apply any proceeds from the sale of those goods to costs incurred by Stoddart in manufacturing or procuring the goods.
- 13.3 Clause 13.2 will apply:
- Irrespective of the date of supply of the goods or services; and
  - Regardless of whether the goods ordered have been collected, delivered or installed.
- 13.4 Notwithstanding clause 13.2, any shortfall will remain a debt owed by Customer to Stoddart which Stoddart will be entitled to enforce.



# AUSTRALIA & NEW ZEALAND GENERAL TERMS & CONDITIONS OF TRADE

## 14. Review of Credit Account

- 14.1 Stoddart may, at any time and in its sole discretion, review any credit account provided to Customer and may, at its option acting reasonably, do any one or more of the following:
- Seek further information from Customer regarding Customer's financial position;
  - Allow the continuation of the account;
  - Increase or decrease the credit limit provided to Customer;
  - Amend payment terms; or
  - Cancel or suspend credit to Customer.
- 14.2 If Stoddart cancels, amends or suspends any credit account provided to Customer Stoddart will inform Customer of any such cancellation or amendment as soon as reasonably practical.
- 14.3 Customer must promptly provide Stoddart with any further information requested by Stoddart in accordance with clause 14.1 (a).

## 15. No Liability for Losses

- 15.1 Stoddart will not be liable for any loss, damage, costs (including legal costs) and expense suffered by Customer by reason of the operation of or the exercise by Stoddart of any rights, benefits or concessions exercisable in accordance with these Terms.

## 16. Indemnity by Customer

- 16.1 Customer indemnifies Stoddart against any loss, damage, costs (including legal costs on an indemnity basis) and expense which Stoddart suffers by reason of:
- The breach by Customer of these Terms; and
  - The operation of or the exercise by Stoddart of the rights, benefits and concessions exercisable in accordance with these terms.

## 17. Security of Payment Acts

- 17.1 At Stoddart's sole discretion, if there is any dispute or claims for unpaid goods and/or services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 (Qld), Building and Construction Industry Security of Payment Act 1999 (NSW), Building and Construction Industry Security of Payment Act 2002 (Vic), Building and Construction Industry (Security of Payment) Act 2009 (ACT), Building and Construction Industry Security of Payment Act 2009 (SA), Building and Construction Industry (Security of Payment) Act 2021 (WA), Construction Contracts (Security Of Payments) Act 2004 (NT) or the Construction Contracts Act 2002 (NZ) (the "**Security of Payment Acts**") may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Security of Payment Acts, except to the extent permitted by the Security of Payment Acts.

## 18. Competition & Consumer Acts

### AUSTRALIAN COMPETITION & CONSUMER ACT 2010 and NEW ZEALAND CONSUMER GUARANTEES ACT 1993 ("Relevant Country Consumer Law")

- 18.1 If Customer is a company, partnership, sole trader or individual with a registered business number, then Customer:
- Acknowledges that it is acquiring the goods for business purposes and that the provisions of the Relevant Country Consumer Law are excluded to the maximum extent possible;
  - Will not do or omit to do anything which gives rise to any liability on Customer's part or on the part of Stoddart under the Relevant Country Consumer Law in respect of the goods supplied under these Terms and Conditions ; and
  - Will not make any representation or give any guarantee, warranty or other undertaking in relation to the goods unless that representation, guarantee, warranty or undertaking is approved by Stoddart.
- 18.2 If Customer has indicated in writing that it is purchasing the goods for personal, domestic or household use, then clause 18.1 of these Terms does not apply to the supply of goods to Customer under these Terms.

## 19. Set-off

- 19.1 Customer authorises Stoddart to set-off any amount due and payable by Stoddart to Customer under any agreement with Customer ("**Customer Contract**") against any amount due and payable by Customer to Stoddart under any Customer Contract. Any right of set-off under this clause is in addition to any other rights Stoddart may have at law, under these Terms and/or under any Customer Contract.

## 20. Costs

- 20.1 Customer will pay or reimburse to Stoddart all costs, charges and expenses incurred by Stoddart, including legal costs on a solicitor- client basis, in enforcing any provision of these Terms, including the payment of the price by Customer.
- 20.2 Any costs incurred by Stoddart pursuant to this that are not paid by Customer, may be recovered from Customer by Stoddart as a liquidated debt.



# AUSTRALIA & NEW ZEALAND GENERAL TERMS & CONDITIONS OF TRADE

## 21. Governing Law and Submission to Jurisdiction

21.1 These Terms shall be construed in accordance with the laws of the following.

- a) For products and /or services supplied by Tom Stoddart Pty Ltd: Australia and the Customer submits to the non-exclusive jurisdiction of the courts of Brisbane, Queensland, Australia and all courts that hear appeals from those courts.
- b) For products and /or services supplied by Stoddart NZ Limited: New Zealand and the Customer submits to the non-exclusive jurisdiction of the courts of Auckland, New Zealand and all courts that hear appeals from those courts.

## 22. Severability

22.1 Any term of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of these Terms is not affected.

## 23. Entire Agreement

23.1 These Terms together with these in any application for credit, order, delivery, invoice, receipt or Dealer specific terms constitute the entire arrangements between the parties with respect to its subject matter