

TERMS AND CONDITIONS OF TRADE

1. Interpretation

- “Authority” means a government or government department, a governmental, semi-governmental or judicial person or person (whether autonomous or not) charged with the administration of any Law.
- “Contract” means a contract of sale of goods arising out of an order accepted by GRICON;
- “Invoice” means the invoice issued by GRICON in relation to each Contract.
- “Goods” means any goods and or services supplied by GRICON including goods described in any order or Invoice; and
- “GRICON” means GRICON INDUSTRIES PTY LTD (ACN 636 011 973);
- “Law” means any law, by-law, statute, regulation, ordinance, judgment, rule of common law or equity, condition of any authorisation or rule of an applicable stock exchange, as amended, consolidated or replaced.
- “Purchaser” means the entity to whom Goods are supplied by GRICON;
- “Permit” means a permit, credit, offset, allowance or other right under the Carbon Scheme which is capable of being held or surrendered by a person to satisfy an obligation or liability under the Carbon Scheme relating to the emission or reduction of a specified quantity of greenhouse gas.
- “PPSA” means the Personal Property Securities Act 2009 (Cth).
- “PPS Register” means the Personal Property Securities Register established under the PPSA.
- “Relevant Collateral” means Collateral which is the subject of a Security Interest granted under this Contract.
- “Security Interest” has the meaning given in the PPSA.

2. Operation

2.1 Every Contract is governed by these terms and conditions, the terms of the relevant Invoice and any other written agreement between GRICON and the Purchaser, which constitute the entire agreement between the parties. Any terms and conditions contained in the Purchaser’s order documentation inconsistent with these terms and conditions (including a statement by the Purchaser that the Purchaser’s terms and conditions prevail) are hereby expressly excluded. Any acceptance by the Purchaser of the Goods will be deemed to be acceptance that these terms and conditions are incorporated in the Contract to the exclusion of all others.

2.2 GRICON may at any time after the giving of at least 28 days’ notice to the Purchaser vary these terms and conditions.

2.3 Orders for Goods must be made in a manner acceptable to GRICON. GRICON may in its absolute discretion accept an order received from the Purchaser. Such acceptance may be made by written notice or by delivery of the Goods to the Purchaser. Each order the Purchaser places shall be and be deemed to be a representation made at the time that it is solvent and able to pay all of its debts as and when they fall due.

2.4 When any order is placed, the Purchaser shall inform GRICON of any material facts which would or might reasonably affect the commercial decision by GRICON to accept the order and/or grant credit in relation thereto, and any failure to do so by or on behalf of the Purchaser shall create and be deemed to constitute the taking of an unfair advantage of GRICON and to be unconscionable, misleading and deceptive.

3. Prices and terms of payment

3.1 Prices of the Goods ordered (including without limitation, GST, stamp duty and other governmental taxes and imposts in relation to the Goods or any Contract) will be set out in the relevant Invoice. Payment of the price of all Goods supplied and of all other amounts GRICON is entitled to charge the Purchaser in the Invoice must be made:

- (a) where GRICON has not agreed to grant credit to the Purchaser, on the delivery of the Goods; or
- (b) where GRICON has agreed to grant credit to the Purchaser; in accordance with the payment terms stated on the invoice for the Goods (“Due Date”), which payments must be made without any set-off whatsoever. Time is of the essence of the performance and observation of the Purchaser’s obligation to make payment. In the event that an Invoice incorrectly states the type, quantity or price of the Goods ordered, GRICON may correct the original Invoice by issuing such further Invoices as may be necessary.

3.2 The Purchaser must pay to GRICON the price for the Goods by direct debit from the Purchaser’s bank account by the date or within a period specified by GRICON. GRICON may agree to alternative terms of payment.

3.3 All losses and costs, including legal costs, arising from the Purchaser’s failure to pay the total amount of any Invoice on the due date are recoverable from the Purchaser as liquidated damages.

3.4 If the Purchaser defaults in the performance of any of its obligations hereunder, or the contract terminates for whatever reason, the Purchaser must pay to GRICON all monies outstanding, including the price for Goods, the balance of any loan, interest on the outstanding amount at the average rate charged by the NAB bank on credit card accounts from time to time from the day upon which the outstanding amount was due until the day on which it is paid in full and legal costs.

3.5 The Purchaser agrees upon request to charge in favour of GRICON

(a) by way of a fixed charge all its books of account, goodwill, documents of title and current and later acquired real and intellectual property; and

(b) by way of a floating charge, the whole of the Purchaser’s other undertaking, property and assets, with payment of all monies owed to GRICON.

4. Title – property in the goods

4.1 Property in products shall not pass until payment in full of all monies owed for those products or on any other basis and GRICON reserves the right to take possession and dispose of products as it sees fit at any time until full payment. The Purchaser grants permission to GRICON to enter any property where any product is in order to do so and with such force as is necessary.

4.2 Where the total amount due is in breach of the agreed payment terms and is not paid following demand by GRICON or GRICON has reasonable grounds to believe that the Purchaser has committed an act of bankruptcy, that a receiver and or manager has been appointed over any of the assets or undertaking of the Purchaser, that the Purchaser is unable to pay its debts when due or is unable to pay its debts within the meaning of the Corporations Law or that an application or order has been made for the winding up or dissolution of the Purchaser, or is otherwise insolvent, insolvent under administration or has a controller appointed (as defined in the Corporations Law), in liquidation, in provisional liquidation or is under administration, the Purchaser must, if requested by GRICON, deliver up the relevant Goods to GRICON, failing which GRICON is irrevocably authorised to enter the place where the Goods are situated and repossess the Goods and dispose of them as it sees fit.

4.3 Until title to the Goods passes and without prejudice to any other rights of GRICON:

(a) the Purchaser possesses the Goods as bailee only; and
(b) the Purchaser may utilise the Goods in the ordinary course of business or sell the Goods as a principal and not as agent for GRICON but if the Goods are sold, the benefit and proceeds of such sale belongs to GRICON absolutely; and

(i) the Purchaser must keep the Goods free of any encumbrance; and

(ii) GRICON may maintain an action for the proceeds of the sale of the Goods by the Purchaser.

5. Delivery and risk

5.1 The Goods will be delivered at the premises of the Purchaser advised to GRICON from time to time or with the prior agreement of GRICON, at GRICON’s premises or the premises of the relevant GRICON distributor. Unless expressly provided to the contrary, the Purchaser requests GRICON to arrange the consignment of the Goods to the Purchaser. Notwithstanding clause 4.1, the Goods will be at the Purchaser’s risk from the time they are delivered to the Purchaser. No claim of any nature will lie against GRICON for any failure to deliver Goods through whatsoever cause, including negligence.

5.2 The Purchaser must:

(a) immediately notify GRICON in writing if the Goods have not been received within 5 days of the date of GRICON’s delivery docket or Invoice; and

(b) notify GRICON within 5 days of receipt of the Goods if there is any discrepancy between the Goods delivered and the Goods ordered, including if there is any shortage.

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5.3 The Purchaser must store the Goods so that they are clearly identifiable as the property of GRICON until such time as payment in full for the Goods has been received by GRICON.

5.4 The Purchaser must insure the Goods from the date of delivery until the date the Purchaser pays GRICON for the Goods.

6. Resupply or use

The Purchaser acknowledges that all Goods purchased from GRICON are purchased in the ordinary course of the Purchaser's business for the purpose of consuming them or transforming them within the Purchaser's business or of reselling or re-supplying the Goods.

The Purchaser must only resell or re-supply the Goods in the same condition, packaging and get up as that originally supplied by GRICON and the Purchaser must not alter, remove, conceal or vary any notice, promotional material, trademark or trade name appearing on the Goods or their packaging.

7. Returns and exchanges

Goods may be returned for credit or exchange only at the discretion of and with the prior approval of GRICON. GRICON disclaims liability for any returns whilst in transit to or from GRICON. If Goods are returned to GRICON without prior approval, the Goods will be returned to the Purchaser at the Purchaser's expense which expense is payable by the Purchaser on demand by GRICON.

8. Limitation of liability

8.1 To the extent permissible by law, all express and implied warranties and conditions in relation to the Goods or this agreement, statutory or otherwise, are hereby excluded and the liability of GRICON which may arise pursuant to the breach of any express or implied warranty in relation to the Goods or this agreement, including the warranties and guarantees implied by the provisions of Part 3-2 of Chapter 3 in Schedule 2 of the Competition and Consumer Act 2010, and the liability of GRICON which may arise pursuant to Chapter 5 in Schedule 2 of the Competition and Consumer Act 2010 or in negligence or otherwise, will be limited to, in the case of goods, the replacement of the goods, the supply of equivalent goods or the payment of the cost of replacing the Goods or of acquiring equivalent goods or, in the case of services, the supply of the service again or the payment of the cost of having the services supplied again. The choice of remedy will be at the discretion of GRICON and the Purchaser acknowledges that the limitation of liability in this clause 8.1 is fair and reasonable.

8.2 The Purchaser acknowledges that if the Purchaser on-sells the Goods to another person, it will limit its liability to the other person as set out in clause 8.1 and will ensure that the other person is bound by this clause 8.2.

9. Safety responsibility, specification and indemnity

9.1 The Purchaser is responsible for the proper storage, handling and transportation of the Goods and undertakes to do all that is necessary to ensure that the Goods are stored, handled and transported in accordance with any specification, Australian design rules, legislative or other applicable standard that may be issued from time to time and that the

Goods will be properly stored, handled and transported without risk to safety, health or the environment and according to law. The Purchaser acknowledges that:

(a) GRICON has not given or made any express warranties in relation to the Goods;

(b) It will inspect the Goods immediately on delivery.

9.2 Except as otherwise required by legislation, the Purchaser must indemnify and hold GRICON harmless against any claim, action, damage, loss, liability, cost, charge, obligation, expense, outgoing or payment ("Claim") which GRICON suffers, incurs or is liable for in respect of any claim, proceeding or demand by any person at any time arising out of or otherwise in connection with:

(a) the Goods, or the use, storage, handling or transportation of the Goods including, without limitation, any Claim arising under any law concerning, in any way, environmental matters;

(b) the supply of the Goods to the Purchaser including without limitation, a Claim with respect to delivery costs, sales tax, stamp duty or any other environmental taxes, imposts, fines or penalties in relation to the Goods supplied to the Purchaser;

(c) GRICON exercising its rights under clause 4.1 to 4.3 inclusive; and

(d) the re-supply of the Goods to third parties including, without limitation, a Claim under the Competition and

Consumer Act arising due to the failure of the Purchaser to comply with its obligations under clause 6 or 9.1.

10. Account application

10.1 The Purchaser represents and warrants that all information set out in any account application provided to GRICON by the Purchaser is true, correct in all respects and not, whether by omission, or otherwise, misleading and that the Purchaser has not withheld from GRICON any fact material to the decision of GRICON to provide credit to the Purchaser.

10.2 The Purchaser authorises GRICON to make all enquiries, which GRICON deems necessary in order to assess the credit worthiness of the Purchaser including, without limitation, enquiries to any referee or to any credit reporting or credit rating organisation.

10.3 GRICON may, in its absolute discretion, grant credit to the Purchaser and determine the terms on which such credit will be granted and vary the terms of or withdraw any credit granted to the Purchaser at any time and from time to time.

11. Equipment

11.1 The Purchaser must:

(a) provide and maintain suitable and safe equipment to receive delivery of the Goods;

(b) and comply with all relevant Laws and Australian Standards relating to the operation and installation of the equipment; and

(c) provide to GRICON evidence that it holds all relevant licences, permits, registrations and other requirements necessary for the storage and handling of the Goods.

11.4 If the Purchaser does not comply with any of the obligations set out in this clause, GRICON may cease delivering Goods to the Purchaser until the Purchaser provides written documentation that satisfies GRICON that the equipment is suitable and safe to receive delivery of Goods.

12. Confidentiality

The Purchaser must keep these terms and conditions, the price of the supply of the Goods and all information relating to these terms and conditions, including all specifications or descriptions of the Goods which are designated by GRICON to be confidential, strictly confidential and must not without the prior written consent of GRICON, disclose any of the above information to any third party except if required to make such disclosure pursuant to any law, regulation or court order or in circumstances where the information has come within the public domain otherwise than by a breach of an obligation owed to GRICON.

13. General conditions

13.1 It is expressly agreed that:

(a) if any provision of these terms is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of the Contract;

(b) all rights, immunities and limitations of liability in the Contract will continue to have their full force and effect in all circumstances notwithstanding any breach of the Contract by GRICON or the Purchaser;

(c) the rights of GRICON and the Purchaser will not be prejudiced or restricted by an indulgence or forbearance extended by either party and such indulgence or forbearance will not operate as a waiver of any other breach.

13.2 GRICON accepts no responsibility for loss, delays or non-delivery arising by reason of riot, civil commotion, war, whether declared or not, accident, shortened hours of labour, strikes, lockouts, storm, floods, fire or any other circumstances (whether of a kind mentioned in this clause or not) beyond the control of GRICON.

13.3 The Purchaser is not a partner, joint venturer or agent of GRICON and is not authorised to hold itself out as a partner, joint venturer or agent of GRICON or purport to incur any obligation, or make or give any promise, undertaking or warranty or representation on behalf of GRICON. The Purchaser does not have the exclusive right to purchase the Goods from GRICON or to re-supply the Goods and GRICON may sell the Goods to any person in any location without reference to the Purchaser.

13.4 Any notice given in relation to this Agreement:

(a) must be in writing; and

(b) must be given to a party by facsimile, post, email or hand at that party's address as specified in the Customer's application to GRICON for credit, or any updated address notified to the other party.

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13.5 A notice sent:

- (a) by post shall be deemed to be received at the time when in due course of postage it would be delivered at the address to which it was posted;
- (b) by email shall be deemed to be received at the time shown in a delivery confirmation report generated by the sender's email address system; and/or
- (c) by facsimile transmission shall be deemed to be received when the receipt is acknowledged.

13.6 This Agreement is governed by the laws in force in the State of Queensland. Each party submits to the non-exclusive jurisdiction of the Queensland courts in connection with matters concerning this Agreement.

14. Privacy

14.1 The Purchaser acknowledges that the personal information collected by GRICON is for the primary purpose of assessing your application and administering any business relationship between us. The Purchaser also acknowledges that this information will be entered on to databases controlled by GRICON and its associated companies and consents to the use of information supplied for that purpose.

14.2 GRICON will only deal with this personal information in accordance with the Privacy Act 1988 as it is amended. If the Purchaser wishes to access this information, please contact your GRICON representative.

15. Security interest

15.1 In this clause, the terms "Accession", "Collateral", "Inventory", "PPS Lease", "Proceeds", "Purchase Money Security Interest" and "Secured Party" have the meaning given in the PPSA.

15.2 The Purchaser acknowledges that:

- (a) the delivery of the Goods under this Contract gives rise to a Security Interest in the Goods being a Purchase Money Security Interest;
- (b) GRICON's rights and interest in Proceeds derived from the Goods constitute a Security Interest in such Proceeds;
- (c) if, notwithstanding clause 4, the Purchaser sells or otherwise disposes of the Goods before the full purchase price has been paid for the Goods, it does so as GRICON's fiduciary agent and the Proceeds of such sale or other disposal are also property of GRICON and are held by the Purchaser on trust for GRICON;

15.3 GRICON may, at the Purchaser's expense, register any Security Interest granted under this Contract on the PPS Register in any manner it chooses. The Purchaser must provide GRICON with any information it requires for the purpose of effecting such registration. For the purposes of section 157(3) of the PPSA, the Purchaser irrevocably and unconditionally waives its right to receive any notice from GRICON in connection with the registration of a Security Interest arising under this Contract.

15.4 The Purchaser agrees to take such steps as GRICON reasonably requires to perfect or otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under this Contract, including by:

- (a) obtaining and giving consents;
- (b) producing and providing receipts;
- (c) attending to the signing of documents or procuring the signing of documents;
- (d) facilitating the registration of any Security Interest on the PPS Register;
- (e) facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over Relevant Collateral; and
- (f) facilitating the exercise of GRICON's right in enforcing any Security Interest.

15.5 Unless otherwise agreed in writing and until the Purchaser has paid to GRICON the full purchase price in respect of any Goods, the Purchaser agrees:

- (a) to ensure that the Goods do not become a fixture to any land or an Accession to other goods and are not processed or comingled with other goods;
- (b) to take such steps as GRICON reasonably requires to prevent or remedy the affixation of the Goods to any land or goods including by:

- (i) procuring appropriate acknowledgements and consents from landlords, mortgagees and property owners; and
- (ii) detaching, or procuring the detachment of, the Goods from any land or goods to which they become attached.

15.6 The Purchaser warrants that the Goods are not, and will not be, Inventory of the Customer.

15.7 The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:

- (a) section 95 (notice by Secured Party of removal of Accession);
- (b) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
- (c) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
- (d) section 130, to the extent that it requires GRICON to give any notice to the Purchaser (notice by Secured Party of disposal of Collateral);
- (e) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
- (f) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period); and
- (g) section 135 (notice by Secured Party of retention of Collateral).

15.8 Without limiting any other provision of this Contract, it is a default of the Purchaser under this Contract for the purposes of section 123(1) of the PPSA if any person with a Security Interest in Relevant Collateral seizes or becomes entitled to seize that Relevant Collateral without the consent of GRICON.

16. Director's Guarantee

16.1 In the instance that the Purchaser is a company limited by shares duly incorporated at law, then the following clause applied to the Director/s of the Purchaser.

16.2 In consideration of GRICON providing to the Purchaser the goods on credit, at the request of the Guarantors (which request is attested to by the execution of this guarantee), the Guarantors hereby jointly and severally covenant with GRICON as follows:-

- (a) The Guarantors do hereby guarantee the performance of each and every obligation of the Purchaser under the Credit Application Standard Terms and any other GRICON terms and conditions of supply and/or service and agree to pay GRICON any money payable by the Purchaser to GRICON together with any costs or expenses incurred by GRICON as a result of the Purchaser's default under this guarantee, including but not limited to any legal costs on the indemnity basis.
- (b) The Guarantors agree that all of their legal and beneficial interest in land and/or chattels held by them from time to time shall be charged with, and secure, payment of any monies due pursuant to the terms of this guarantee.
- (c) The Guarantors agree that their obligations under this guarantee are independent of the obligations of the Purchaser and may be enforced without prior demand or actions against the Purchaser.
- (d) The Guarantors agree that this guarantee continues notwithstanding the deregistration or liquidation of the Purchaser or if the Purchaser otherwise ceases to trade or if the business of the Purchaser is sold or if GRICON terminates the Purchaser's credit.