

## TERMS AND CONDITIONS OF PURCHASE AND SUPPLY OF GOODS

### Purpose and Scope

The terms and conditions of purchase and supply of goods applies to any order for and any supply of Goods and/or Services by the Supplier to the Purchaser. The Supplier being Truckmate Australia Pty Ltd referred to below as Truckmate.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In these terms and conditions:

- (a) **Agreement** means an agreement between the Purchaser and Truckmate for the supply of Goods constituted by a Purchase Order, these Conditions and any agreed variation;
- (b) **Conditions** mean these terms and conditions of purchase;
- (c) **Date for Delivery(s)** means the date for delivery(s) of the Goods as set out in the Purchase Order;
- (d) **Delivery Point** means in relation to Goods, the delivery address for the Goods as set out in the Purchase Order;
- (e) **Goods** means the goods described in the Purchase Order;
- (f) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (GST Act or any replacement or any other relevant legislation and regulations);
- (g) **Intellectual Property Rights** means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;
- (h) **Laws** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local in relation to environmental and occupational health and safety matters;
- (i) **Loss** means any loss, liability, costs (including legal costs at the higher of an indemnity or solicitor-client basis) or expense incurred by the Purchaser relating to this Agreement;
- (j) **Personal Information** means:
  - (a) information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; or
  - (b) information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt from any source as a consequence of or in the performance of this Agreement.
- (k) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (l) **Price** means the price payable by the Purchaser to Truckmate as shown on the Purchase Order.
- (m) **Purchase Order** means the Purchaser's order accompanying these Conditions or otherwise placed or communicated with Truckmate and includes these Conditions;
- (n) **Purchaser** means the company placing the order or any related body corporate (within the meaning of section 50 of the Corporations Act) as specified in the Purchase Order herein referred to as the Purchaser;
- (o) **Representative** of a party means that party's Director or authorised officer, employee, agent or sub-contractor;
- (p) **Specifications** means any technical or other specification relating to the Goods referred to in the Purchase Order and details of which have been supplied by the Purchaser or its Representative to Truckmate; and
- (q) **Supplier** means Truckmate Australia Pty Ltd (Truckmate) who is supplying the Goods to the Purchaser.

#### 1.2 Interpretation

In the interpretation of these Conditions, unless the context or subject matter otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (c) if a party consists of more than 1 person, the Agreement binds each of them separately and any 2 or more of them jointly;
- (d) an obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly; and
- (e) time is of the essence in respect of all of Truckmate's obligations to the Purchaser.

### 2. AGREEMENT

#### 2.1 Consideration

Truckmate agrees to supply the Goods to the Purchaser in accordance with the Agreement and in consideration for this the Purchaser agrees to pay the Price to Truckmate.

#### 2.2 Application

These Conditions apply to all Purchase Orders, and:

- (a) to the extent Truckmate's terms and conditions are supplied with the Goods and/or Services (including as printed on consent notes or other documents), those terms and conditions will be of no legal effect; and
- (b) any terms and conditions implied by statute or otherwise are excluded to the extent it is lawful to do so.

### 3. BINDING TERMS AND CONDITIONS

#### 3.1 Entire Agreement

The entire Agreement between the Purchaser and Truckmate for the purchase of the Goods by the Purchaser from Truckmate is constituted by:

- (a) these Conditions;
  - (b) any other terms and conditions (including Specifications) incorporated by reference in the Purchase Order if Truckmate has details of these terms and conditions;
  - (c) any other terms and conditions which are imposed by law and which cannot be excluded; and
  - (d) any agreed written variation.
- For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation.

#### 3.2 Precedence

These Conditions shall apply to all contracts for the purchase of Goods by the Purchaser from Truckmate to the exclusion of any other terms and conditions or any other materials which Truckmate or the Purchaser may claim to apply, or which are endorsed upon any correspondence or documents issued by Truckmate, irrespective of their date of communication to the Purchaser, except to the extent that Truckmate's terms and conditions are agreed to in writing and signed by the Purchaser.

#### 3.3 Acceptance

Acceptance of a Purchase Order by Truckmate will occur on the earlier of:

- (a) Truckmate's oral or written acceptance being received by the Purchaser; or
- (b) 3 (three) business days after the Purchase Order is sent by the Purchaser to Truckmate, provided Truckmate has not rejected the Purchase Order within that period, and will constitute acceptance of these Conditions by both Parties.

### 4. PRICE

#### 4.1 Price of Goods supplied

The Price specified in the Invoice is fixed and is not subject to increase. The price includes all costs of manufacturing, inspection, labelling and packing.

#### 4.2 GST

The Price at which the Goods are provided by Truckmate to the Purchaser excludes (unless otherwise stated or agreed in writing) GST, if applicable.

#### 4.3 Freight

Unless otherwise stated or agreed in writing the Purchaser is responsible for freight and delivery to the Delivery Point as specified in the Purchase Order. This excludes local deliveries (over Truckmate's minimum delivery value) in the Sydney metro area which are FOS.

### 5. PAYMENT

#### 5.1 Payment Terms

For approved creditors not currently 'on-hold', Payment for Goods supplied by Truckmate to the Purchaser must be tendered within 30 days after the end of the month in which Truckmate's invoice for those Goods is provided, issued in accordance with clause 5.2 and received by the Purchaser. All other payment terms are COD or payment for good prior to collection.

#### 5.2 Invoices

Truckmate will provide the Purchaser with a GST compliant tax invoice for the Goods provided under this Agreement. Each invoice will include:

- (a) a reference to the Purchase Order number;
  - (b) a reference to the item number;
  - (c) a detailed description of the delivered Goods (including sizes, quantities, unit types and price);
  - (d) the Price relating to the Goods, broken down to reflect the same Price components on the Purchase Order; and
  - (e) the amount of any applicable GST.
- The Purchaser must accept invoices which bear such information and can request Truckmate to reissue a valid invoice prior to payment.

### 6. DELIVERY AND PERFORMANCE

#### 6.1 Delivery of Goods

(a) Truckmate will ensure that the Goods are delivered at the Delivery Point on the Date for Delivery. Should any change in the Date for Delivery (or dates) be required by Truckmate for any reason, written notice will be given where it is reasonable and practicable to do so in the circumstances. The Purchaser may, acting reasonably, accept or reject such proposal, but will not unreasonably withhold acceptance of the new proposed Date for Delivery.

(b) If the Purchaser rejects a proposal to change the Date for Delivery and Truckmate fails to deliver on the Date for Delivery, the Purchaser may by written notice to Truckmate, terminate the Purchase Order. If the Purchaser has paid a deposit, Truckmate will refund the deposit in full to the Purchaser less any agreed non-refundable costs.

#### 7. TITLE AND RISK

##### 7.1 Title

Property in the Goods passes to the Purchaser on delivery of the Goods by Truckmate, Or to the purchasers chosen delivery / logistics supplier unless explicitly agreed otherwise.

##### 7.2 Risk

Truckmate bears the risks of loss and damage, unless this loss or damage is caused by the Purchaser, to the Goods until acceptance by the Purchaser in accordance with clause 7.4.

##### 7.3 Final inspection and acceptance

Prior inspections will be permitted by agreement with Truckmate. Truckmate and the Purchaser may agree that Goods shall be subject to:

- (a) final inspection which may include measurement, testing or examination; and
- (b) acceptance at the Purchaser's facility within a reasonable time (but not more than 5 days) after receipt of the Goods.

##### 7.4 Date of acceptance

Acceptance of the Goods by the Purchaser will occur on the earlier of:

- (a) the date upon which the Purchaser notifies Truckmate of acceptance; or
- (b) if the Purchaser has not rejected the Goods under clause 7.5, 5 days after receipt of the Goods.

##### 7.5 Rejected Goods

The Purchaser may, within 5 days of delivery of the Goods at the Delivery Point, reject any Goods which do not comply with the Purchase Order and the Agreement. If the Goods are rejected, Truckmate will be provided the opportunity to replace the Goods to the Purchaser's satisfaction. The Purchaser will provide access to the rejected Goods so that Truckmate can inspect the Goods, and ensure rectification of the issues by way of replacement Goods, in accordance with the Purchase Order.

Title and risk in the rejected Goods immediately re-vests with Truckmate.

##### 7.6 No Waiver

Truckmate's acceptance of a Purchase Order does not waive any of its rights under this Agreement or relevant consumer and business law. If the Purchaser accepts any Goods, Truckmate recognises that this does not extinguish any of the Purchaser's protected rights under applicable Consumer Law.

### 8. SUPPLIER WARRANTIES

#### 8.1 Warranties relating to Goods

Truckmate warrants that the Goods:

- (a) are safe and free from risk to health and safety and compliant with all relevant laws;
- (b) are and will remain free from any Security Interest (as that term is defined in the PPSA), or any other security, charge or encumbrance;
- (c) are free from all defects or faults;
- (d) are of acceptable quality for the agreed purpose;
- (e) are clearly and durably labelled identifying the Goods and including any appropriate and correct warning and instructions;
- (f) are fit for the purpose for which purchased (as communicated by the Purchaser before the Purchase Order or as should be reasonably understood by Truckmate of the Goods who is experienced in such technical and specific matters relating to the Goods and the purpose they are intended for);
- (g) match the description and the Specifications referred to in the Purchase Order;
- (h) comply with any representations, descriptions, samples or other specifications (including the Specifications) including quality, function, performance or design; and
- (i) comply with all legislation, regulations and other governmental requirements in Australia relating to the Goods including those relating to manufacturing, packaging, labelling and transportation.

#### 8.2 Warranties relating Goods - Purchaser installation

The Purchaser acknowledges for clause 8.1 to apply the Goods:

- (a) shall be installed by personnel that are suitably qualified, experienced and hold any requisite licences and authorisations necessary to install these Goods;
- (b) shall be installed in compliance with all policies, processes, and installation instructions of Truckmate (as are applicable to the Goods);
- (c) shall be installed with due care and skill, with the same or higher level of care and skill as would reasonably be expected of a person qualified and experienced in the installation of the same or similar Goods, taking all necessary care to avoid Loss or damage; and
- (d) the Goods are only used in accordance with the agreed purpose for which they were manufactured and supplied.

### 9. INTELLECTUAL PROPERTY RIGHTS

(a) Truckmate warrants that the Goods and the Purchaser's reasonably foreseeable use of them, will not infringe the Intellectual Property Rights of any person. The Purchaser indemnifies Truckmate against breach of this warranty.

(b) Truckmate will own all Intellectual Property Rights arising from performance of the Goods – except those explicitly belonging to the Purchaser.

### 10. CONFIDENTIALITY

Truckmate and the Purchaser will ensure that its Representatives keep confidential all information supplied by each Party relating to this Agreement (**Information**) and not use or disclose that information except to fulfil its obligations under this Agreement. The Information supplied remains the respective property of the Purchaser and Truckmate, and must not be disclosed without prior written consent of the applicable Party.

This clause does not apply to Information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by Representatives of Truckmate who have not been exposed to the Information.

**11. INDEMNITY AND RELEASE**

The Purchaser indemnifies Truckmate, its affiliated companies, and their Representatives, successors, and assigns and holds them harmless from and against all claims, suits, actions, liabilities, Loss, judgments or damages, whether ordinary, special or consequential arising directly or indirectly from or in connection with:

- (a) the acts, negligence, omissions or wilful misconduct of Truckmate;
  - (b) the Goods supplied;
  - (c) a breach of any of Truckmate's warranties or any other term of the Agreement;
  - (d) Truckmate's negligent, unauthorised or wrongful acts or omissions with regards to the use or installations of hazardous materials;
  - (e) a claim that any Goods supplied to the Purchaser infringe upon or misappropriate the Intellectual Property Rights of another person; or
  - (f) a claim of any lien, security interest or other encumbrance made by a third party.
- The indemnity in this clause is reduced to the extent that Truckmate has caused or contributed to such claims, suits, actions, liabilities, Loss, judgments or damages.

**12. TERM AND TERMINATION****12.1 Term**

This Agreement shall commence and end on the dates specified in the Purchase Order unless otherwise terminated earlier in accordance with the remainder of this clause 13. Clauses 11, 13.2 and 17 survive termination of the Agreement.

**12.2 Without cause**

Truckmate may, at any time on the provision of reasonable written notice, terminate the Purchase Order, in whole or in part, without cause, upon written notice to the Purchaser. Following receipt of such notice by Truckmate, the Purchaser accepts that Truckmate will stop all work on the Purchase Order.

If the Purchaser terminates the Purchase Order under this clause, Truckmate will be entitled to claim, by written notice to the Purchaser, any non-recoverable costs that Truckmate properly and directly incurred prior to the date of termination for fulfilling the Purchase Order. This condition relates to all purchases including customised products have been produced specifically for a customer.

**12.3 With cause**

The Purchaser may terminate the Purchase Order immediately, in whole or in part, if Truckmate:

- (a) fails to make delivery of the Goods within the time specified in that Purchase Order;
- (b) fails to replace defective Goods in accordance with these Conditions;
- (c) breaches a term of the Agreement that cannot be remedied, or for a breach capable of remedy, fails to remedy said breach within 28 days written notice by the Purchaser; or
- (d) becomes insolvent, files or has filed against petition in bankruptcy, or makes an assignment for the benefit of creditors.

**13. THE PURCHASER'S PROPERTY**

All drawings, specifications, artwork and data supplied or paid for by the Purchaser, shall be the Purchaser's exclusive property and shall be used by Truckmate only in performance of the Purchase Order. Upon the Purchaser's request, this property shall be returned to the Purchaser in good condition, normal wear and tear accepted. Tooling inserts are owned by Truckmate and will be destroyed upon request of the Purchaser.

The Purchaser recognises Truckmate's right to protect its intellectual property and its Trademarks regardless of the rights provided in this clause.

**14. SUBCONTRACTING, ASSIGNMENT AND ADVERTISING**

Truckmate and/or the Purchaser must obtain written consent before the respective party can:

- (a) subcontract any obligation under the Agreement; or
- (b) assign, charge or encumber this Agreement or any rights under this Agreement; or
- (c) advertise or publishes anything concerning the Agreement.

**15. INSURANCE**

During the period of the Agreement, Truckmate has the risk in the Goods and unless or until the Purchaser takes delivery and risk and title in the Goods, Truckmate will, at its own expense:

- (a) maintain appropriate insurance in relation to public liability and product liability with a reputable insurer for at least \$20,000,000; and,
  - (b) maintain workers' compensation in accordance with applicable legislation.
- Truckmate will, upon the Purchaser's request, provide the Purchaser with certificates of currency with respect to these insurance policies.

**16. RECOVERY OF MONIES**

Any debt due from, or moneys payable by, the Purchaser to Truckmate - whether under this Agreement or otherwise - may be deducted by Truckmate from any moneys paid or to become payable to Truckmate under this Agreement. Truckmate is entitled to recover from the Purchaser any balance that remains owing after deduction.

**17. DISPUTE**

(a) Without affecting the rights of the Purchaser or of Truckmate at law or under any relevant or applicable statute, any dispute relating to this Agreement must be resolved, at

first instance, by discussion between a Representative nominated by the Purchaser and a Representative nominated by Truckmate.

(b) If the Representatives fail to resolve the dispute, the dispute shall be referred to mediation. The mediator and the process will be agreed upon by Truckmate and the Purchaser.

(c) Notwithstanding the existence of a dispute, Truckmate and the Purchaser will continue to perform their obligations under this Agreement.

**18. RELATIONSHIP**

Truckmate will be an independent supplier to the Purchaser. Nothing in these Conditions constitutes any other type of relationship between the Parties.

**19. WAIVER**

A waiver by either Party:

- (a) in respect of a breach of a provision of the Agreement by the other party will not constitute a waiver in respect of any other breach of that or any other provision; and
- (b) is not effective unless it is in writing, and only relates to the specific purpose for which it is given.

**20. NO LIMITATION OF STATUTORY RIGHTS AND SEVERANCE**

Nothing in this Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed and the other provisions of this Agreement remain operative.

**21. VARIATIONS****21.1 Variation**

The Purchaser may, prior to delivery of Goods, direct Truckmate in writing to add, omit, amend, supplement or replace any Purchase Order Specification or these Conditions. Truckmate will, within 7 days of such direction, advise the Purchaser in writing if it can accept the variation to the Purchase Order. If Truckmate rejects the variation or fails to advise the Purchaser with the specified period, the Purchase Order shall be terminated unless otherwise agreed between the parties.

**21.2 Price**

Where a direction for a variation would result in variation to the Price, Truckmate will immediately advise the Purchaser in writing of the varied Price (which must be determined by the same method of pricing for the provision of the original Goods). A variation to the Price is not effective unless it is communicated to the Purchaser in writing and signed by the Purchaser.

**21.3 Agreement**

If, in the opinion of Truckmate, a direction for a variation is likely to prevent Truckmate from meeting its obligations under the Agreement, it will notify the Purchaser as soon as reasonably practicable to do so. The Purchaser will decide whether they want the variation to take effect and notify Truckmate of its decision in writing and the Parties may modify the Agreement to the extent required to enable Truckmate to deliver the variation.

**22. PRIVACY**

Truckmate collects Personal Information for the purposes of performing its obligations under this Agreement.

By executing this Agreement, the Purchaser consents to Truckmate using the Personal Information to perform its obligations under this Agreement. Truckmate will use that Personal Information in accordance with all relevant privacy legislation.

The Purchaser may contact Truckmate to gain access to and request correction or amendment to their Personal Information.

Truckmate may disclose the Purchaser's Personal Information to:

- (a) Truckmate's Related Entities (as defined in section 9 of the Corporations Act 2001); and
  - (b) third parties that are associated or connected with giving effect to the transaction contemplated under the Agreement and the performance of Truckmate's obligations under this Agreement
- Where Truckmate has been requested to extend credit to the Purchaser, the Purchaser:
- (c) agrees that Truckmate may disclose the Purchaser's Personal Information to investigate the credit worthiness of the Purchaser, including (without limitation), conducting a credit check at any time, making enquiries with persons nominated by Truckmate as trade references, its bankers or any other credit providers (**Information Sources**);
  - (d) authorises the Information Sources to disclose to Truckmate all information concerning the Purchaser which is within the possession of the Information Sources, and which is requested by Truckmate; and
  - (e) consents to Truckmate giving to, and obtaining from, the Information Sources, Personal Information about the Purchaser and information about the commercial credit arrangements of the Purchaser for collecting overdue payments or for notifying other credit providers of default by the Purchaser.

**23. GOVERNING LAW**

The law of the State of New South Wales, Australia governs this Agreement. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.