

TERMS AND CONDITIONS OF SALE

1. SUPPLY OF GOODS AND/OR SERVICES

These Terms and Conditions of Sale apply to and form part of any Contract for the supply of Goods and/or the performance of any Services provided by the Company to the Customer.

2. CUSTOMER'S REQUEST FOR PRICING

2.1 The Customer may, at any time, issue to the Company a request for pricing or a purchase order, both of which are deemed to be a request for pricing (RFP).

2.2 The Company will within three (3) business days (or as otherwise agreed between the parties) of the receipt of the RFP do any of the following:

- (a) Provide the Customer a Quotation that sets out the Goods and/or Services that it offers to provide together with the price and times for delivery of those Goods and/or Services;
- (b) Inform the Customer which Goods and/or Services mentioned in the RFP it offers to supply and or provide together with the price and times for delivery of those Goods and/or Services; or
- (c) Inform the Customer that it cannot supply the Goods and/or Services.

2.3 Notwithstanding that the Customer may have relied on any catalogue or publication issued by the Company, the Company reserves the right to correct any errors or omissions (including pricing) contained in any catalogue or publication issued by the Company and shall not be bound by any information contained therein.

2.4 All Quotations provided by the Company are for indicative purposes only and do not constitute a binding offer to sell.

2.5 Times stated for the supply of Goods or the provision of Services in any Quotation are estimates only based on the information available at the time of quotation.

2.6 Any Price quoted by the Company (unless specifically stated otherwise on the quotation) is exclusive of GST.

3. QUOTATION AND ACCEPTANCE OF A PURCHASE ORDER

3.1 Upon issue of the Company's Quotation, the Customer must issue to the Company a purchase order that is in accordance with the Quotation, references the Quotation Number, states the Customer's purchase order number, certificate number (if applicable) and sets out the full description of the Goods and/or Services together with the Company's prices set out in the Quotation. To the extent that the Customer's has provided terms and conditions with its purchase order and those terms and conditions are inconsistent or different to these Terms and Conditions of Sale, the Customer's terms and conditions will be void and of no legal effect and will not constitute any part of the Contract unless a director of the Company signs those terms and conditions and those terms and conditions are annexed to the purchase order.

3.2 Any purchase order placed by the Customer pursuant to a Quotation is not binding on the Company unless and until accepted by the Company in writing, which is the time that the Contract is formed.

4. CANCELLATION OF A PURCHASE ORDER

4.1 The Customer may not cancel any purchase order issued to the Company without the express written consent of the Company.

4.2 In the event the Company consents to the cancellation of a Customer purchase order the Customer shall:

- (a) pay for the Goods delivered and/or Services performed by the Company in accordance with the purchase order prior to the date of cancellation;
- (b) pay for the Goods under manufacture by the Company in accordance with the purchase order at the date of cancellation;
- (c) pay the Company for the cost of materials purchased for the purposes of providing the Goods and/or performing the Services;
- (d) pay the Company for any other costs that the Company reasonably incurred prior to the date of cancellation in relation to providing the Goods and/or performing the Services; and
- (e) pay the Company twenty percent (20%) of the Price as fair and reasonable compensation for loss of profits and remedial work.

5. DELIVERY

5.1 Unless otherwise expressly stated in writing, all Goods sold by the Company are sold on an Ex Works basis (Incoterms® 2010).

5.2 The Company is deemed to have delivered the Goods upon the earlier of:

- (a) the time the Goods are made available for collection by the Customer (or it's agent); or
- (b) upon loading at the Company's premises where the Company has agreed (at the Customer's sole cost and risk) to effect delivery or to arrange freight for an on behalf of the Customer to an address specified by the Customer.

5.3 In all cases, the Customer is responsible for unloading the Goods from the delivery vehicle.

5.4 Unless expressly agreed otherwise in writing, the Company may supply the Goods by instalments, and the Company may claim payment for the Goods supplied in accordance with these Terms and Conditions of Sale.

5.5 The Company will use its best endeavours to deliver the Goods and/or perform the Services by the Date for Delivery.

5.6 The Company shall not be liable to the Customer for any loss or damage (including consequential loss or damage whether liquidated or otherwise) arising from delay in delivery or failure to deliver due to circumstances beyond its reasonable control. The Customer must pay for the Goods notwithstanding late delivery.

6. ADDITIONAL CHARGES

The Company reserves the right to charge the Customer for any costs, charges or expenses whatsoever that the Company may incur as a result of:

- (a) vehicle or wagon detention (to the extent the same is not caused or contributed to by the Company);
- (b) demurrage in consequence of any act or omission of the Customer; or
- (c) any special requirements or stipulations of the Customer accepted by the Company but not expressly provided for under the Contract.

7. STORAGE

If the Company notifies the Customer that the Goods are ready for delivery and the Customer requests the Company to hold the Goods on its behalf or refuses to accept scheduled delivery, such Goods will be held by the Company for the Customer at the

Customer's sole cost and risk and the Company shall be entitled to charge a reasonable storage fee in respect of the Goods.

8. TITLE AND RISK

8.1 Title in Goods passes to the Customer upon payment of the Price referred to in the Contract by the Customer.

8.2 Risk in Goods passes to the Customer upon loading onto transport at the Company premises.

9. RETURN OF STOCK ITEMS

9.1 Goods ordinarily sold as standard stock items by the Company may be returned for credit to the Customer's account within fourteen (14) days of the date of delivery of the Goods ONLY IF prior written consent is given by a duly authorised officer of the Company, the Goods are undamaged, the Goods are unused and the Goods are in good and saleable condition.

9.2 Special order Goods or Goods not ordinarily sold as standard stock items by the Company are not returnable to the Company for credit under any circumstances whatsoever.

9.3 The Company will apply a re-stocking charge of thirty percent (30%) of the Price to the amount of credit allowed to cover restocking and repacking charges to all Goods returned for credit subject to the conditions set out in above paragraph 9.2. The Company invoice number and Customer purchase order number must be stated with the Customer's application to return Goods for credit.

10. INTELLECTUAL PROPERTY

10.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Customer by the Company during tendering and/or at the time of establishing any Contract will remain the exclusive property of the Company and are to be kept strictly confidential.

10.2 The Company warrants that:

- (a) the Goods supplied and/or Services performed by the Company and the license granted by it to the Customer do not infringe any intellectual property rights of any third party; and
- (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Customer to use or sell the same.

10.3 The Customer acknowledges that the Company remains the owner of all intellectual property relating to the Goods. Furthermore, the Customer agrees that subject to clause 10.4, title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under any Contract created pursuant to this Agreement, shall vest exclusively in the Company upon its creation (**Company IP**).

10.4 The Company grants the Customer a non-exclusive, irrevocable, royalty free licence to use the Company IP to the extent necessary to enable the Customer to use, maintain, and/or repair the Goods supplied to the Customer by the Company under any Contract created pursuant to this Agreement.

11. PERSONAL PROPERTY SECURITIES ACT 2009 (Cth)

11.1 Defined terms in this clause 10 have the same meaning as those given to them in the *Personal Property Securities Act 2009* (PPSA).

11.2 The Customer and the Company agree that any Contract for the sale of Goods that incorporates these Terms and Conditions constitutes a Security Agreement for the purposes of s20 of the PPSA and gives rise to a Purchase Money Security Interest (**PMSI**) in favour of the Company over the Goods supplied to the Customer as Grantor.

11.3 The Goods supplied or to be supplied to the Customer under any Contract that incorporates these Terms and Conditions of Sale fall within the PPSA classification of "Other Goods".

11.4 The Customer will execute such documents and do such further acts as may be required by the Company to perfect the Security Interest granted to the Company under any Contract that incorporates these Terms and Conditions of Sale and the PPSA by registration. The Customer must ensure that until all of its obligations under a Contract are discharged and fully satisfied, the Company's Security Interest remains perfected and has priority over all other security interest in the Goods (except for the Security Interests that the Company has expressly agreed to subordinate).

11.5 The Customer undertakes that it will not, without the prior written consent of the Company, which the Company may grant in its sole discretion, change or permit the change of any of its details that are required to be included in the Financing Statement.

11.6 The Customer may not grant any Security Interest in all or any of the Goods except with the prior written consent of the Company, which may be withheld in its sole discretion.

11.7 The Customer agrees that the Company may apply to register its Security Interest in the Goods at any time before or after delivery of the Goods. The Customer irrevocably waives its rights under s157 of the PPSA to receive a notice of any Verification Statement in respect of the Company's Security Interest under this Agreement.

11.8 The parties Contract out of each provision of the PPSA which, under s115(1) of the PPSA, they are permitted to Contract out of.

11.9 Each party waives its rights to receive each notice which, under s157(3) of the PPSA, it is permitted to waive.

11.10 Each party waives its rights to receive anything from any other party under s275 of the PPSA.

11.11 The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to the Company under this Agreement.

12. DEFAULT

12.1 Should the Customer fail to make due payment for any Goods and/or Services supplied by the Company, or being a natural person commit an act of bankruptcy, or being a corporation by act of omission enable the appointment of a scheme manager, trustee, official manager, receiver, receiver and manager, liquidator, administrator or any other person authorised to enter into possession of the assets of the Customer pursuant to a mortgage or other security (**Default**) the Company may, without prejudice to any other rights it may have, do any or all of the following:

- (a) withdraw any credit facilities which may have been extended to the Customer;
- (b) become entitled to immediate payment for all Goods and/or Services supplied under a Contract incorporating these Terms and Conditions. In this case, the Customer is deemed to have waived all of its rights to make payment in accordance with the payment terms in the Contract.
- (c) withhold any further deliveries of Goods and/or performance of any Services required under a Contract incorporating these terms and conditions;
- (d) in respect of Goods already delivered, enter onto the Customer's premises to recover and resell same for its own benefit;
- (e) suspend and/or terminate the performance of any Contract which the Company has with the Customer.

12.2 In the event the Company terminates any Contract pursuant to sub-clause 12.1(e) the rights and remedies available to the Company shall be the same as if the Customer repudiated the Contract as a whole and the Company shall be entitled to recover all loss including consequential loss, costs, damages incurred by the Company as a result of such termination.

13. INDEMNITY

Without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any loss, costs, damages

or liabilities incurred by the Company if the Customer breaches any term of the Contract, which includes the breach of any of these Terms and Conditions of Sale or is in Default, as defined under above clause 12.

14. LIMITATION OF LIABILITY

14.1 Despite any other provision of these Terms and Conditions of Sale but subject to clause 14.2, and to the maximum extent permitted by law the Company's overall liability:

- (a) under, or arising out of, or in connection with a Contract incorporating these Terms and Conditions of Sale; and
- (b) otherwise at law or in equity including:
 - i. by statute to the extent permitted by law;
 - ii. in tort for negligence or otherwise; or
 - iii. on any other basis whatsoever,

shall not exceed 100% of the Contract Price.

14.2 Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, the Company has no liability to the Customer nor will the Customer be entitled to make any claim against the Company in respect of any indirect or consequential loss incurred or sustained by the Customer, whether arising under a Contract incorporating these Terms and Conditions of Sale, in tort, at law, in equity or otherwise.

14.3 The provisions of this clause 14 shall survive termination of any Contract.

15. FITNESS FOR PURPOSE

The Customer agrees that it does not rely in the skill or judgement of the Company in relation to the suitability of any Goods and/or Services for a particular purpose unless it has indicated that purpose in writing to the Company and the Company has acknowledged that the Goods and/or Services will be fit for that purpose.

16. WARRANTY AND CLAIMS

16.1 To the maximum extent permitted by law all terms and warranties which would otherwise be implied under the Competition and Consumer Act 2010 (Cth) or any other applicable statute, the common law, equity, trade, custom, usage or otherwise in relation to the Goods or in connection with the Contract are expressly excluded.

16.2 The Customer shall inspect the Goods immediately upon delivery and, if the Goods are damaged or not otherwise in compliance with the Contract, the Customer must give written notice to the Company of the details of the damage or non-compliance within seven (7) days of delivery. Failure to comply with this clause 16.2 means the Customer has or is deemed to have waived any right to claim for compensation, replacement, damages or costs in relation to such damage or non-compliance and shall pay the purchase Price thereof in accordance with the Contract.

16.3 The Goods the subject of a notice made under clause 16.2 shall be preserved intact and made available for inspection by the Company. If the Goods are not so left in the state and condition in which they were delivered, the Customer shall be deemed to have accepted the Goods and shall pay the purchase Price thereof.

16.4 Within a reasonable period of receipt of the notice issued under clause 16.2, the Company may, at its option:

- (a) replace the Goods or supply equivalent Goods;
- (b) pay the cost of replacing the Goods or purchasing equivalent Goods;
- (c) re-supply the Services; or
- (d) pay the cost of having the Services re-supplied.

16.5 On written request from the Company, Goods which have been replaced pursuant to clause 16.4 shall be made available to the Company and shall be the property of the Company.

16.6 No Goods may be returned to the Company without the prior written consent of the Company. If Goods are returned without the prior written consent of the Company, the Company may return those goods to the Customer at the Customer's cost and risk.

16.7 Notwithstanding any other provision of these Terms and Conditions of Sale, and to the maximum extent permitted by law, the Company has no liability to the Customer nor will the Customer be entitled to make any claim against the Company for loss and damage incurred or sustained by the Customer arising out of or in connection with any defect, including the cost of rectification of defects, searching for the cause of any defect, dismantling, removal, transport, repair, reinstallation, retesting and similar costs, whether arising under a Contract incorporating these Terms and Conditions of Sale, in tort, at law, in equity or otherwise.

16.8 Clause 16.7 shall survive termination of any Contract.

16.9 The Customer agrees that no warranty is given under clause this clause 16 in respect of defects caused by:

- (a) failure to handle, store, install, maintain or repair the Goods in an appropriate manner after delivery;
- (b) failure to use the Goods in the manner for which they were designed;
- (c) normal wear and tear; or
- (d) alterations to the Goods made without the prior written consent of the Company.

17. PAYMENT

17.1 The Customer must pay for the Goods and/or Services provided within thirty (30) days from the date of invoice issued by the Company for having delivered the Goods or provided the Services under a Contract incorporating these Terms and Conditions.

17.2 The Company reserves the right to require a thirty percent (30%) deposit to be paid on any Contract incorporating these Terms and Conditions of Sale prior to commencing any work under the Contract.

17.3 The Company may charge interest on overdue payments at the rate of 12% per annum, compounding daily, for each and every day that the account remains unpaid and overdue.

17.4 The Company may use the services of a credit agency from time to time to obtain information concerning the Customer and its Directors(if any) in order to assess the Customer's credit worthiness.

17.5 Any expenses, costs or disbursements incurred by the Company in recovering or attempting to recover any outstanding payment including debt collection agency fees and solicitor's costs shall be paid by the Customer.

17.6 The Directors of the Customer jointly and severally personally guarantee payment of tax invoices raised for Goods delivered or Services provided pursuant to a Contract incorporating these Terms and Conditions and must provide an executed standard form of guarantee used by the Company should such guarantee be required.

18. DISPUTES

Procedure for resolving disputes.

- (a) The parties agree that all disputes relating to or arising out of a Contract incorporating these Terms and Conditions must be resolved in accordance with this clause 18.
- (b) If a dispute arises, either party may give notice to the other party that must:
 - i. be in writing;
 - ii. state that it is a notice under this subclause 18; and
 - iii. include or be accompanied by detailed particulars of the dispute.

- (c) If a notice is given under subclause 18(b), then a senior management representative of each of the parties (who must be capable of binding the party) must meet at least once within five (5) business days of receipt of the notice under subclause 18(b) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute.
- (d) If the dispute is not resolved by the senior management representatives within the period referred to in subclause 18(c), either party may commence legal proceedings for the resolution of the dispute.

19. CHANGE OF OWNERSHIP – REGISTERED PARTICULARS

- 19.1 The Customer shall no later than fourteen (14) days prior to any proposed changes of ownership, change in Registered Particulars, alteration, addition to the shareholding or directorship, notify the Company of the proposed change, alteration or addition, to the Customer.
- 19.2 The Company may, in its absolute discretion;
 - (e) Cancel the Contract and the Customer and the Customer's obligations stated under above clause 4.2 shall apply;
 - (f) Require the Customer to pay an deposit that it deems appropriate;
 - (g) Accept the changes mentioned above and continue to perform the Contract.

20. ASSIGNMENT

The Customer must not assign its rights or obligations under a Contract incorporating these Terms and Conditions of Sale without Company's prior written consent, which the Company may give or refuse in its sole discretion.

21. GENERAL

- 21.1 This Agreement shall constitute the entire agreement between the parties and shall be governed and construed in accordance with the laws of Western Australia and the parties submit to the jurisdiction of the courts of Western Australia.

22. DEFINITIONS

Contract means a contract agreement comprising:

- (a) these Terms and Conditions of Sale;
- (b) the Customer's purchase order accepted by the Company; and
- (c) subject to clause 3.1 any attachments or annexure specifically referenced in any written acceptance of a Customer purchase order.

Company means the David Moss Group Pty Ltd related body corporate as defined under the Corporations Act 2001 (Cth) being David Moss Corporation Pty Ltd or David Moss Queensland Pty Ltd, and as named in any written correspondence with the Customer in relation to any Contract or tender.

Customer means the customer specified in an Application for Commercial Credit (or if there is no application the person placing the purchase order, or on whose behalf the purchase order is placed, with the Company).

Date for Delivery means the date upon which the Goods are due to be made available for collection by, or delivered to, the Customer as confirmed by the Company in writing upon receipt of order placement by the Customer.

Goods means the goods, if any, described on the purchase order which has been accepted by the Company.

GST has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Price means the price set out in the purchase order as accepted by the Company in writing, and any and all other costs and charges not specifically referenced on the purchase order but which are incurred by the Company or incidental to the supply of the Goods and/or performance of the Services and specified as additional and/or recoverable costs pursuant to these Terms and Conditions of Sale.

PPSA means the Personal Property Securities Act 2009 (Cth).

Services means the services, if any, described on a purchase order that has been accepted by the Company.