



## Sayfa Systems Pty Ltd – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Sayfa" shall mean Sayfa Systems Pty Ltd, and its successors and assigns (or any person acting for or on behalf of and with the authority of Sayfa Systems Pty Ltd).
- 1.2 "Client" shall mean the Client (or any person acting for or on behalf of and with the authority of the Client), as described on the invoice or quotation, work authorisation or other form provided by Sayfa to the Client.
- 1.3 "Guarantor" shall mean that person (or persons), who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean all Goods supplied by Sayfa to the Client (and within the context shall include any provision of Services as defined below), as described on the invoice or quotation, work authorisation or other form provided by Sayfa to the Client.
- 1.5 "Services" shall mean all Services provided by Sayfa to the Client (and within the context shall include any provision of Goods as defined above), and includes any advice or recommendations.
- 1.6 "Price" shall mean the Price payable for the Goods and/or Services, as agreed in the Contract between Sayfa and the Client, and in accordance with clause 4.1 to 4.3 below.
- 1.7 "Contract" shall mean the signed written agreement entered into between Sayfa and the Client, for the supply of Goods and/or the provision of Services at the Price payable, in accordance with these Terms.
- 1.8 "Terms" shall mean the Sayfa Terms and Conditions of Trade constituted by clauses 1 to 18 herein.

### 2. The Competition and Consumer Act 2010 (CCA) and Fair Trading Acts (FTA)

- 2.1 Nothing in the Contract is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA, in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except where applicable and to the extent permitted by those Acts.
- 2.2 Where the Client buys Goods as a consumer, these Terms shall be subject to any laws or legislation governing the rights of consumers, and shall not prejudice the consumer's statutory rights.

### 3. Acceptance

- 3.1 The Contract shall be binding and supersede any prior agreements, representations or undertakings made between Sayfa and the Client in respect of the supply of Goods. These Terms are integral to the Contract, and can only be amended with the written consent of Sayfa.
- 3.2 Any instructions received by Sayfa from the Client for the supply of Goods, and/or the Client's acceptance of Goods supplied by Sayfa, shall constitute acceptance of these Terms.
- 3.3 Goods are supplied by Sayfa solely on these Terms, to the exclusion of anything stated to the contrary in the Client's order, notwithstanding if the terms thereof purport to override these Terms.
- 3.4 Where more than one Client has entered into the Contract, each Client shall be jointly and severally liable for all payments of the Price.
- 3.5 The Client shall give Sayfa not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client, or any change in the Client's name and/or contact details (including but not limited to business practice, address or telephone number). The Client shall be liable for any loss incurred by Sayfa as a result of the Client's failure to comply with this clause.
- 3.6 The Client shall acknowledge and accept responsibility for determining the fitness of the Goods for the intended purpose, and should satisfy itself by carrying out appropriate investigations and/or tests. The Client shall undertake to read and apply all installation guidelines, operating instructions and safety regulations, and to ensure User competency in connection with the Goods.

### 4. Price and Payment

- 4.1 At the sole discretion of Sayfa the Price shall be either:
- as stated on Sayfa's invoices issued to the Client in respect of the Goods supplied; or
  - according to Sayfa's current Price list ruling at the date of delivery of the Goods; or
  - as stated on Sayfa's quotation (subject to clause 4.2 below), which shall be binding upon Sayfa provided that written acceptance by the Client is received within thirty (30) days.
- 4.2 Sayfa reserves the right to amend the Price of the Goods in the event of a variation to their quotation to the Client. Any variation from the scope of works or specifications (including but not limited to increases incurred by Sayfa, in prices of materials and labour, fluctuations in foreign currency rates of exchange, or other external factors), will be costed out on the basis of Sayfa's quotation and shown as variations on the invoice.
- 4.3 Goods and Services Tax (GST) and other applicable taxes, duties and surcharges etc shall be added to the Price, except where expressly included in the Price of the Goods.
- 4.4 A non-refundable deposit may be required at Sayfa's sole discretion, on order placement by the Client and confirmation by Sayfa.
- 4.5 At the sole discretion of Sayfa payment shall be either:

- due in full on delivery of the Goods; or
- due before delivery of the Goods; or
- made in instalments for approved Clients and in accordance with Sayfa's payment schedule.

4.6 Time of payment for the Goods shall be of the essence, and will be stated on Sayfa's invoice or other forms. If no time is stated then payment shall be due at the end of the month following the invoice date.

4.7 Payment shall be made by cash, Client's or Bank cheque, direct credit or credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or as agreed to in the Contract between Sayfa and the Client.

4.8 The Client shall not be entitled to set off against or deduct from the Price, any sums owed or claimed to be owed to the Client by Sayfa, nor to withhold payment of any invoice because part of that invoice is in dispute.

### 5. Building and Construction Industry Security of Payments Act 2002 (Victoria)

- 5.1 At the sole discretion of Sayfa, should any disputes or claims for unpaid Goods and/or Services arise, then the provisions of the Building and Construction Industry Security of Payments Act 2002 (Victoria) may apply.
- 5.2 Nothing in the Contract is intended to have the effect of contracting out of any applicable provisions of the said Act, except where applicable and to the extent permitted by the Act.

### 6. Delivery of Goods

- 6.1 Delivery of the Goods shall be deemed to have taken place when either:
- the Client takes possession of the Goods at Sayfa's address; or
  - the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by Sayfa or its nominated carrier); or
  - the Client's nominated carrier takes possession of the Goods (in which event the carrier shall be deemed to be the Client's agent).
- 6.2 Unless stated to the contrary in the Contract, the costs of delivery shall be in addition to the Price of the Goods, and for the Client's account.
- 6.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged, then Sayfa shall be entitled to charge a reasonable fee for demurrage and/or re-delivery.
- 6.4 Delivery of the Goods to a third party nominated by the Client, shall be deemed to be delivery to the Client for the purposes of the Contract.
- 6.5 Sayfa may deliver the Goods in separate instalments, in accordance with the provisions of these Terms.
- 6.6 Sayfa shall not be liable for any loss or damage whatsoever, arising from the failure to deliver all or any part of the Goods promptly or at all, where caused by circumstances beyond Sayfa's control.
- 6.7 Any failure by Sayfa to deliver the Goods, shall not entitle either party to cancel, repudiate or void the Contract.

### 7. Risk

- 7.1 All risk for the Goods shall pass to the Client on delivery, however ownership of the Goods shall remain vested in Sayfa until payment in full is received.
- 7.2 If any of the Goods are damaged or destroyed after delivery but prior to ownership passing to the Client, Sayfa shall then be entitled to receive all insurance proceeds payable for the Goods. The production of these Terms shall be sufficient evidence of Sayfa's rights to receive the insurance proceeds.
- 7.3 The Client shall acknowledge and accept that Sayfa shall not be liable for any loss or damage whatsoever, which may arise due to incorrect or defective installation of the Goods, by the Client or any third party.
- 7.4 Where the Goods or any part thereof are fitted to any structure, then it shall be the Client's sole responsibility to ensure that the structure is capable of accepting such Goods, and complies with the relevant loadings stipulated in the applicable Australian Standards, and the requirements mandated in the Federal and State Work Health and Safety regulations and codes.

### 8. Title

- 8.1 Sayfa and the Client shall agree that title to, and ownership of the Goods shall not pass until:
- the Client has paid to Sayfa all amounts owing for the particular Goods; and
  - the Client has met all other obligations towards Sayfa in respect of the Contract.
- 8.2 Receipt by Sayfa of any form of payment other than cash, shall not be deemed payment until honoured or cleared, and until then Sayfa's ownership or rights vested in the Goods shall continue.
- 8.3 Sayfa and the Client further agree that:
- Sayfa shall have the right to stop the Goods in transit, whether or not delivery has been made; and



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- (b) where practicable the Goods shall be kept separate and identifiable, until Sayfa has received payment and all other obligations have been performed by the Client; and
- (c) until such time that ownership of the Goods shall pass from Sayfa to the Client, Sayfa may give notice in writing to the Client to return all or part of the Goods. Upon receipt of such notice, the Client's rights to ownership or any other interest in the Goods shall cease forthwith; and
- (d) if the Client fails to return the Goods, then Sayfa or their agents may (as invitee of the Client), enter into premises owned, occupied or used by the Client, or into any premises where the Goods are situated and take possession of the Goods; and
- (e) Sayfa may issue proceedings to recover the Price of the Goods sold, notwithstanding that ownership of the Goods may not have passed to the Client; and
- (f) until such time that Sayfa has received payment in full for the Goods, the Client (as bailee of the Goods), shall hold any proceeds from the sale or disposal thereof in trust for Sayfa, up to the amount owing; and
- (g) the Client shall not deal with Sayfa's money in any way which may prove adverse to Sayfa; and
- (h) the Client shall not charge out the Goods to any third party, nor grant any interest in the Goods while they remain the property of Sayfa; and
- (i) Sayfa shall become the owner of the end products if the Goods are converted into other products, until such time that ownership of the Goods passes to the Client.
- 9. Defects**
- 9.1 The Client shall inspect the Goods on delivery and within five working (5) days of delivery, shall notify Sayfa of any alleged defect or damage, shortage in quantity, or failure to comply with the quotation or description of the Goods.
- 9.2 The Client shall then afford Sayfa an opportunity to inspect the Goods within a reasonable time following delivery. If the Client fails to comply with these provisions, the Goods shall be presumed to be free from any defect or damage.
- 9.3 In the case of defective or damaged Goods which Sayfa has agreed in writing that the Client is entitled to reject, Sayfa's liability shall be limited to either repairing or replacing the Goods at their sole discretion.
- 9.4 Where the Client has acquired the Goods as a consumer, as defined in the Competition and Consumer Act 2010 (Commonwealth) or the Fair Trading Acts of the relevant States or Territories of Australia, the Client shall also be entitled at the consumer's discretion, to either a refund of the Price of the Goods, or repair or replacement of the Goods.
- 10. Returns**
- 10.1 Returns of defective or damaged Goods shall only be accepted by Sayfa provided that:
- (a) the Client has complied with the provisions of clauses 9.1 and 9.2 above, and Sayfa has agreed in writing; and
- (b) the Goods are returned at the Client's cost within ten (10) days of delivery; and
- (c) Sayfa shall not be liable for Goods which have not been handled or stored in a proper manner; and
- (d) the Goods are returned in the condition in which they were delivered, with all packaging materials and product literature in as new condition as is reasonably possible.
- 10.2 Sayfa may at their sole discretion accept the return of Goods for credit, but this may incur a handling fee of up to fifteen percent (15%) of the value of the returned Goods, plus any freight costs.
- 10.3 Non-stocklist items or Goods made to the Client's drawings and/or specifications, shall under no circumstances be acceptable for return or credit.
- 11. Cancellation**
- 11.1 Sayfa reserves the right to cancel any Contract to which these Terms apply, or cancel delivery of the Goods at any time before the due date, by giving written notice to the Client. Sayfa shall then repay to the Client any amounts already paid in respect of the Price of the Goods, but shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2 In the event that the Client cancels delivery of the Goods, then Sayfa reserves the right to charge a fee of up to ten percent (10%) of the value of the cancelled Goods. The Client shall nevertheless be liable for any resultant loss incurred by Sayfa up to the time of cancellation, including but not limited to any loss of profits.
- 11.3 Cancellation of orders for non-stocklist items or Goods made to the Client's drawings and/or specifications, shall under no circumstances be accepted after production has commenced.
- 12. Warranty**
- 12.1 Subject to the conditions of warranty set out in clause 12.2 below, Sayfa warrants that if any defect in the Goods due to faulty workmanship becomes apparent, and is reported in writing to Sayfa within twelve (12) months after delivery, then Sayfa shall at their sole discretion either remedy the workmanship or replace the defective Goods.
- 12.2 The conditions applicable to the warranty in clause 12.1 above are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by, or arise through either:
- (i) failure by the Client to properly handle or store the Goods; or
- (ii) failure by the Client or third party installer to properly install the Goods; or
- (iii) failure by the Client to follow any instructions or guidelines provided by Sayfa; or
- (iv) any use of any Goods otherwise than for the application specified in Sayfa's quotation or the Client's order; or
- (v) the continued use of any Goods after any defect becomes apparent; or
- (vi) fair wear and tear, any accident or act of God; and
- (b) the warranty shall cease and Sayfa shall thereafter under no circumstances be liable, if the Goods or workmanship are repaired or altered without Sayfa's written consent; and
- (c) Sayfa shall not be liable in respect of any claims to compensate the Client for any delay in either properly assessing the Client's claim, remedying the workmanship or replacing the Goods.
- 12.3 In the case of Goods not manufactured by Sayfa, the warranty shall be the current warranty provided by the Manufacturer. Sayfa shall not be bound by nor responsible for any term or condition, representation or warranty other than that provided by the Manufacturer of the Goods.
- 13. Intellectual Property**
- 13.1 Standard product and system designs incorporated in the Goods, are registered or patented and the intellectual property of Sayfa.
- 13.2 Standard product brand names and trademarks incorporated in the Goods, are registered and the intellectual property of Sayfa.
- 13.3 Where Sayfa has designed, drawn or specified Goods for the Client, then the copyright in those designs and drawings, specifications and documents shall remain vested in Sayfa, and shall only be used or adapted by the Client subject to Sayfa's sole discretion.
- 13.4 The Client shall agree that Sayfa may use any such designs, drawings and specifications of Goods created by Sayfa, for advertising and marketing, reference and other related purposes.
- 13.5 The Client shall warrant that all designs and instructions provided to Sayfa, will not constitute infringement of any registered design, patent or trademark in the execution of the Client's order. The Client shall furthermore agree to indemnify Sayfa against any action taken by any third party, in respect of any such potential infringement.
- 14. Personal Property Securities Act 2009 (PPSA)**
- 14.1 In this clause the following have the meanings as defined by the PPSA:
- (a) financing statement; and
- (b) financing change statement; and
- (c) security agreement created between the Client and Sayfa by these Terms; and
- (d) security interest.
- 14.2 Upon assenting in writing to these Terms, the Client acknowledges and agrees that they:
- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:
- (i) all Goods that may have been previously supplied by Sayfa to the Client; and
- (ii) all Goods that may be supplied in the future by Sayfa to the Client.
- 14.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information, complete, accurate and up-to-date in all respects, which Sayfa may reasonably require to either:
- (i) register a financing statement or financing change statement, in relation to a security interest on the Personal Property Securities Register; or
- (ii) register any other document required by the PPSA; or
- (iii) correct a defect in any statement or document referred to in clause 14.3(a)(i) or 14.3(a)(ii) above; and
- (b) indemnify and upon demand reimburse Sayfa for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA, or releasing any Goods charged thereby; and
- (c) not register a financing change statement in relation to a security interest, without prior written consent by Sayfa; and
- (d) not register or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party, without prior written consent by Sayfa; and
- (e) immediately advise Sayfa of any material change in its business practices of selling the Goods, which would result in a change in the nature of proceeds derived from such sales.



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- 14.4 Sayfa and the Client agree that Sections 96, 115 and 125 of the PPSA do not apply to the security agreement constituted by these Terms.
- 14.5 The Client waives its rights to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives its rights as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.
- 14.7 The Client waives its right to receive a verification statement in accordance with Section 157 of the PPSA, unless otherwise agreed to in writing by Sayfa.
- 14.8 The Client shall unconditionally ratify any actions taken by Sayfa pursuant to clauses 14.3 to 14.5 above.
- 15. Security and Charge**
- 15.1 Despite anything to the contrary contained herein, or any other rights howsoever which Sayfa may have:
- (a) where the Client and/or the Guarantor is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor shall agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Sayfa or its nominee, for securing all amounts and other monetary obligations payable under these Terms; and
- (b) the Client and/or the Guarantor shall acknowledge and agree that Sayfa or its nominee shall be entitled to lodge where appropriate a caveat, which shall be withdrawn once all payments and other monetary obligations hereunder have been discharged; and
- (c) the Client and/or the Guarantor shall agree to irrevocably nominate, constitute and appoint Sayfa or its nominee as the Client's and/or the Guarantor's true and lawful attorney, for performing all necessary acts to give effect to the provisions of this clause; and
- (d) should Sayfa elect to proceed in any manner in accordance with this clause, the Client and/or the Guarantor shall indemnify Sayfa from and against all Sayfa's costs and disbursements, including legal fees on a solicitor and own client basis.
- 16. Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment at a rate of two percent (2%) per calendar month, after as well as before any Court judgment. Such interest shall compound monthly at this rate subject to Sayfa's sole discretion.
- 16.2 If any invoice remains overdue after sixty (60) days, then a charge of ten percent (10%) of the amount overdue shall be levied to cover administration fees, and become immediately due and payable up to a maximum of two hundred and fifty dollars (\$250).
- 16.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Sayfa against all costs and disbursements incurred by Sayfa in pursuing the debt, including legal costs on a solicitor and own client basis, and Sayfa's collection agency costs.
- 16.4 In the event that the Client's payment is dishonoured for any reason, the Client shall reimburse any resultant fees incurred by Sayfa.
- 16.5 Without prejudice to any other remedies available at law, if at any time the Client is in breach of any obligation (including those relating to payment), Sayfa may suspend or terminate the supply of Goods to the Client, and any of its other obligations under these Terms. Sayfa shall not be liable to the Client for any loss or damage the Client may suffer as a result of Sayfa exercising its rights under this clause.
- 16.6 Without prejudice to any other remedies available at law, Sayfa shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled, and all amounts owing to Sayfa shall, whether or not due for payment, become immediately payable in the event that either:
- (a) any moneys payable to Sayfa become overdue, or in Sayfa's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors, proposes and/or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver or financial manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client, or any asset of the Client.
- 17. Privacy Act 1988**
- 17.1 The Client/s and/or the Guarantor/s (hereinafter referred to as the Client), agree for Sayfa to obtain from a credit reporting agency, a credit report containing personal credit information about the Client in respect of credit provided by Sayfa.
- 17.2 The Client agrees that personal credit information provided may be used and retained by Sayfa for the following purposes, or other purposes as agreed between the Client and Sayfa, or as required by law from time to time:
- (a) providing Goods; and
- (b) marketing Goods by Sayfa, its agents or distributors; and
- (c) analysing, verifying and checking the Client's credit and payment status, in relation to the provision of Goods; and
- (d) processing any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and
- (e) operating the Client's account and/or collecting amounts outstanding in relation to the Goods.
- 17.3 The Client agrees for Sayfa to exchange information about the Client, with those credit providers either named as trade referees by the Client, or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and
- (b) to assess the creditworthiness of the Client; and
- (c) to notify other credit providers of any default by the Client; and
- (d) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with such credit providers.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness or credit standing, credit history or credit rating that credit providers are permitted to exchange under the Privacy Act 1988.
- 17.4 The Client consents to Sayfa being given a consumer credit report, in order to collect overdue payments on commercial credit under Section 18K(1)(h).
- 17.5 Sayfa may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and
- (b) to facilitate creating and updating a credit information file about the Client.
- 17.6 The information given to the credit reporting agency may include:
- (a) personal particulars of the Client (e.g. name and sex, date of birth, drivers licence number, current and previous addresses, name of employer etc); and
- (b) details concerning the Client's application for credit or commercial credit, and the amount requested; and
- (c) advice that Sayfa is a current credit provider to the Client; or
- (d) notification that any credit provided by Sayfa to the Client has been paid or otherwise discharged; and
- (e) advice of any overdue accounts, loan repayments, and/or outstanding moneys, which are overdue by more than sixty (60) days, and for which debt collection action has commenced; or
- (f) notification that any overdue accounts, loan repayments and/or outstanding moneys are no longer overdue, in respect of any default action that has been lodged; and
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; and
- (h) information that in the opinion of Sayfa, the Client has committed a serious credit infringement, i.e. fraudulently or intentionally not complied with their credit obligations.
- 18. General**
- 18.1 These Terms and Conditions of Trade and any Contract to which they apply, are governed by the laws of Victoria and subject to the jurisdiction of the Courts of Victoria.
- 18.2 If any provisions of these Terms are invalid or void, illegal or unenforceable, the validity and existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any way.
- 18.3 If any provisions of these Terms are inconsistent with the PPSA, then the PPSA shall prevail to the extent of that inconsistency.
- 18.4 The Client agrees that Sayfa may review these Terms at any time and at its sole discretion. If following any such review there is any change to any provision, then that change will take effect from the date on which Sayfa notifies the Client in writing. Any such changes shall only apply where Sayfa supplies further Goods to the Client, and shall not apply to Goods already supplied to the Client.
- 18.5 Failure by Sayfa to enforce any provision of these Terms shall not be deemed a waiver of that provision, nor shall it affect Sayfa's subsequent right to enforce that provision.
- 18.6 In the event of any breach of this Contract by Sayfa, the remedies available to the Client shall be limited to damages, which under no circumstances shall exceed the Price of the Goods.
- 18.7 Sayfa shall be under no liability whatsoever to the Client for any indirect and/or consequential damage, loss or expense, including loss of profit suffered by the Client, arising out of any breach of these Terms by Sayfa.
- 18.8 Neither Sayfa nor the Client shall be liable for any default in respect of the Contract attributable to any act of God or natural disaster, fire or flood, earthquake or storm, war or terrorism, strike or lock-out, industrial action or other event beyond the reasonable control of either party.