



Sayfa Systems Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "ACL" shall mean The Australian Consumer Law, set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.2 "Australian Privacy Principals", "Credit Information", "Personal Information" and "Sensitive Information" shall each have the meaning prescribed to them in the *Privacy Act 1988* (Cth).
- 1.3 "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.
- 1.4 "Consumer" shall have the meaning prescribed to it in the ACL.
- 1.5 "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, which includes any credit application or personal guarantee provided in connection with the Price, in accordance with these Terms.
- 1.6 "Force Majeure Event" shall mean a circumstance which is beyond the reasonable control of the effected party.
- 1.7 "Guarantor" shall mean that person (or persons), who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.8 "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.
- 1.9 "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.
- 1.10 "PPSA" shall mean the *Personal Property Securities Act 2009* (Cth).
- 1.11 "Proceeds", "Purchase Money Security Interest", "Register", "Registration", "Security Agreement", "Security Interest" and "Verification Statement" shall each have the meaning prescribed to them in the PPSA.
- 1.12 "Sayfa" shall mean Sayfa Systems Pty Ltd, and its successors and assignors (or any person acting for or on behalf of and with the authority of Sayfa Systems Pty Ltd).
- 1.13 "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.
- 1.14 "Terms" shall mean the Sayfa Terms and Conditions of Trade constituted by clauses 1 to 20 herein.
- 1.15 "Warranty Document" shall mean any document referred to in any Contract or otherwise provided to the Client with the Goods and/or Services in which Sayfa gives a warranty in relation to the Goods and/or Services.
2. **ACL and Warranties**
- 2.1 Sayfa warrants that the Goods and Services comply with the warranties included in any Warranty Document and any guarantees that apply compulsorily under the ACL.
- 2.2 To the extent permitted by law, all other guarantees, warranties, undertakings, or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Terms or any Warranty Document are expressly excluded.
- 2.3 Where the Client purchases Goods and Services from Sayfa as a Consumer but the Goods and Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, Sayfa's liability under the ACL is limited, at the option of Sayfa, to one or more of the following:
 - (a) replacing or repairing the Goods; or
 - (b) reimbursing the Client the cost of replacing or repairing the Goods; or
 - (c) re-supplying the Services again; or
 - (d) reimbursing the Client the cost of having someone else supply the Services.
- 2.4 If the Client is not a Consumer, to the full extent permitted by law:
 - (a) Sayfa will not be liable in any circumstances for any loss or damage (including consequential loss) to the Client or any property or person whatsoever arising out of or connected with these Terms, the provision of the Goods and Services, the delay in delivery or non-delivery of the Goods, or the delay in completing or the non-completion of the Services; and
 - (b) the Client shall indemnify Sayfa against any claims arising out of or connected with these Terms, the provision of the Goods and Services, the delay in delivery or non-delivery of the Goods, or the delay in completing or the non-completion of the Services.
3. **Acceptance**
- 3.1 These Terms are expressly incorporated into each and every Contract, invoice, quotation, work order or any other document governing the provision of the Goods and/or Services.
- 3.2 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.
- 3.3 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.
- 3.4 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.
- 3.5 Where more than one Client has entered into the Contract, each Client shall be jointly and severally liable for all payments of the Price.
- 3.6 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.
- 3.7 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:
 - (a) as stated on Sayfa's invoices issued to the Client in respect of the Goods supplied; or
 - (b) according to Sayfa's current Price list ruling at the date of delivery of the Goods; or
 - (c) 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:
 - (a) due in full on delivery of the Goods; or
 - (b) due before delivery of the Goods; or
 - (c) 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:
 - (a) the Client takes possession of the Goods at Sayfa's address; or
 - (b) 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
 - (c) 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.



Sayfa Systems Pty Ltd – Terms & Conditions of Trade

- 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 which case each consignment shall be invoiced for payment by the Client, 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. Insurance**
- 7.1 From the time the Goods leave Sayfa's premises until title and ownership in the Goods passes to the Client, the Client will maintain, at its own expense, comprehensive insurance over the Goods for their full insurable value, in the name of Sayfa and the Client.
- 8. Risk**
- 8.1 All risk for loss and damage to the Goods shall pass to the Client upon the Goods leaving Sayfa's premises, whether or not Sayfa arranges delivery.
- 8.2 Ownership of and title to the Goods remains with Sayfa until the Client has paid Sayfa in full the Price and any other money that the Client may owe to Sayfa at any time on any account.
- 8.3 Until ownership of and title to the Goods passes to the Client:
- (a) the Client will not, without Sayfa's consent:
- (i) make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of Sayfa;
- (ii) sell or dispose of the Goods except in the ordinary course of its business; and/or
- (iii) charge, encumber or create a Security Interest in the Goods.
- 8.4 The Client will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods.
- 8.5 Sayfa may give notice in writing to the Client to return the Goods or any of them to Sayfa and, upon such notice, the Client's right to obtain ownership or any other interest in the Goods will cease.
- 8.6 If the Client supplies the Goods to any person before ownership of and title to the Goods passes to it, whether or not with Sayfa's consent, the Client holds the proceeds of the resupply of the Goods on trust for Sayfa and will pay the proceeds of sale to Sayfa upon receipt.
- 8.7 If the Client breaches clause 8.3(a) or 8.4, Sayfa may enter upon the Client's premises, or any other site, to repossess the Goods without incurring liability to the Client or any other person, and the Client grants Sayfa an irrevocable licence to do so and will indemnify Sayfa for any adverse consequences of such action.
- 8.8 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.
- 8.9 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.
- 8.10 Sayfa and the Client further agree that:
- (a) Sayfa shall have the right to stop the Goods in transit, whether or not delivery has been made; and
- (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) 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
- (d) 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
- (e) 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, Sayfa's liability will be in accordance with clause 2.
- 10. Returns**
- 10.1 Subject to the ACL, 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 which to represent Sayfa's reasonable costs incurred as a result of the cancellation. 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 Subject to the ACL, 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. Intellectual Property**
- 12.1 Standard product and system designs incorporated in the Goods, are registered or patented and the intellectual property of Sayfa.
- 12.2 Standard product brand names and trademarks incorporated in the Goods, are registered and the intellectual property of Sayfa.
- 12.3 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.
- 12.4 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.
- 12.5 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.
- 13. PPSA**
- 13.1 The Client acknowledges and agrees that:
- (a) These Terms constitute a Security Agreement under the PPSA which creates a Security Interest in favour of Sayfa in the Goods and their Proceeds until the Price has been paid for in full;
- (b) Sayfa may, without notice, register its Security Interest in the Goods and in their Proceeds as a Purchase Money Security Interest on the Register;
- (c) the Security Interest is not discharged nor the Client's obligations affected by the administration of the Client.
- 13.2 For the purposes of sections 115(1) and 115(7) of the PPSA, where the Goods are not used predominantly for personal, domestic or household purposes, Sayfa need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA and sections 142 and 143 are excluded.
- 13.3 For the purposes of section 115(7) of the PPSA, Sayfa need not comply with sections 132 and 137(3).
- 13.4 To the extent the law permits, the Client waives its rights to receive any notice that is required by any provision of the PPSA (including a notice of Verification Statement) or any other law before Sayfa or a receiver exercises a right, power or remedy.
- 13.5 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.



Sayfa Systems Pty Ltd – Terms & Conditions of Trade

- (b) indemnify and upon demand reimburse Sayfa for all expenses incurred in registering its Security Interest, or releasing any Goods charged thereby; and
- (c) 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.
- 14. Security and Charge**
- 14.1 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.
- 15. Default and Consequences of Default**
- 15.1 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.
- 15.2 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).
- 15.3 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.
- 15.4 In the event that the Client's payment is dishonoured for any reason, the Client shall reimburse any resultant fees incurred by Sayfa.
- 15.5 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.
- 15.6 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.
- 16. Privacy**
- 16.1 Sayfa complies with the Privacy Act 988 (Vic) and is bound by the Australian Privacy Principles and Credit Reporting Privacy Code dealing with the collection, use and storage of Personal Information, Sensitive Information and Credit Information.
- 16.2 A copy of Sayfa's Privacy and Credit Reporting Privacy Policy can be found at Sayfa's website or a hardcopy can be provided upon request.
- 17. Confidentiality**
- 17.1 Information supplied by a party to the other party is confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the written consent of the party who originally supplied the information, or as required by law.
- 18. Force Majeure**
- 18.1 Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.
- 18.2 Nothing in this clause excuses payment of any money due or which becomes due under these Terms.
- 19. Dispute**
- 19.1 If a dispute arises under these Terms, the party claiming that a dispute has arisen must give notice to the other party specifying the nature of the dispute.
- 19.2 Once a notice is given in accordance with clause 19.1, the parties will attempt to negotiate a resolution in good faith.
- 19.3 If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.
- 19.4 Save for seeking urgent interlocutory or injunctive relief, neither party may issue court proceedings in relation to a dispute arising in connection with these Terms until resolution by mediation has been attempted.
- 20. General**
- 20.1 These Terms and any Contract to which they apply, are governed by the laws of Victoria and subject to the jurisdiction of the Courts of Victoria.
- 20.2 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.
- 20.3 Nothing in these Terms is intended to exclude, restrict or modify rights which the Client may have under the ACL or any other law.
- 20.4 If any provisions of these Terms are inconsistent with the PPSA, then the PPSA shall prevail to the extent of that inconsistency.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 Sayfa shall be under no liability whosoever 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.