

# TERMS OF TRADE

## **Terms and Conditions of Sale for Goods & Services for Australasian Response Group**

In these terms and conditions ARG means Australasian Response Group Pty Ltd ACN 627 190 925 or any related corporation or legal entity. The Customer means the person, firm, corporation, government or semi government authority purchasing goods and/or services from ARG. Goods means such products as ARG may at its discretion agree.

### **1. GENERAL TERMS**

- a. These terms and conditions shall apply to the supply of goods and/or services by ARG to the Customer.
- b. ARG is not bound by any terms or conditions contained in any purchase order, purchase form or other similar document of the Customer delivered to ARG with respect to the purchase of or order for goods, services or otherwise which are at variance with, in derogation from or additional to these general terms and conditions. The Customer is bound by these general terms and conditions notwithstanding anything to the contrary in such purchase or er, purchase form or other similar document.

### **2. THE CONTRACT**

- a. The matters referred to in these terms and conditions constitute a contract between ARG and the Customer. These terms and conditions shall prevail over any other terms and conditions that may contain terms and conditions that may be inconsistent or contrary to those contained herein.
- b. These terms and conditions shall apply to the exclusion of all other agreements and prior representations, unless subsequently evidenced in writing by ARG and the Customer, and, together with each invoice and any supplementary agreement or other agreed document that references or is ancillary to this agreement, shall be the whole of the agreement between ARG and the Customer.

### **3. DESCRIPTION OF GOODS**

- a. The description of goods and/or services as stipulated on invoices or order forms is provided by way of identification only and the use of that description shall not constitute a description under any contract of sale by description. Any description of any goods in any brochure, document or other sales literature used by ARG shall not form part of any agreement between ARG and our customers.

### **4. DESIGN CHANGES**

- a. ARG shall have no obligations to make alterations in the design and construction of goods previously accepted and delivered even though design changes are incorporated in the goods subsequently being delivered.

### **5. PRICE VARIATION**

- a. Subject to paragraph 5b hereof the price shall be as quoted in writing by ARG. If a price is not quoted then it shall be in accordance with any current price list delivered by ARG. Verbal quotations are subject to written confirmation.

b. ARG reserves the right without notice to alter the price of goods and services whether or not a deposit or part payment has been received by ARG for such goods or service and to invoice the Customer for any such extra amount where the costs of the goods to ARG has altered due to circumstances beyond its control including but without limiting the generality of the foregoing any variation in ARGs exchange rates, goods and services tax (GST) or other taxes, levies, imposts, duties, premiums, fees or charges however designed and to correct errors and omissions.

## **6. PAYMENT**

- a. Payment is to be made to ARG on terms notified by ARG to the Customer at the date of order placement and in the absence of such notification, then as per the terms listed on this invoice.
- b. If the Customer fails to comply with the terms of payment in paragraph 6a hereof then:
  - i. the Customer agrees that it will pay ARG a late premium charge amounting to two (2) per centum per month on all monies from time to time in respect of goods and/or services including all charges from time to time owing by the Customer.
  - ii. the Customer shall be liable for all costs including GST relating to any legal action taken by ARG to recover moneys due from the Customer, these costs including GST will be payable by the Customer to ARG on demand.
  - iii. ARG reserves the right to discontinue or suspend the supply of goods and/or service to the Customer.
- c. No discount shall be allowed except where otherwise agreed by ARG in writing.
- d. Invoices may be issued by ARG and will be payable by the Customer in respect of every delivery notwithstanding that the balance of the order has not been nor will not be delivered for any reason.

## **7. DELIVERY AND RETURN OF GOODS**

- a. Unless ARG otherwise agrees in writing GST, delivery, insurance, handling, storage and packaging and any other expenses relating to the goods shall be charged to and paid by the Customer.
- b. In the absence of specific instruction from the Customer, ARG will select the carrier and make such agreement with the carrier on behalf of the Customer as ARG in its absolute discretion deems appropriate.
- c. ARG will endeavour to deliver the goods within the delivery schedule provided by ARG to the Customer, but subject to Clause 7d shall not in any event be liable for any loss or damage directly or indirectly sustained from any failure to deliver within such period. Time shall not be the essence of this contract and any delay shall not be the basis of the Customer's cancellation of this contract.
- d. ARG shall not be liable for any loss or replacement of goods undelivered by ARGs suppliers.
- e. ARG shall not be liable for any delays in delivery due to loss or interruption to ARGs supply chain via ARGs suppliers.
- f. The Customer shall be responsible for providing adequate labour and/or material handling equipment for the loading and unloading of goods at its premises.
- g. Where ARG agrees to collect goods from the Customer's premises the Customer shall ensure that the goods are all available for collection at an easily accessible central point and that they are ready for loading at the time ARG arrives to collect them.

# TERMS OF TRADE

- i. The Customer's return of goods to ARG for credit requires the prior written approval of ARG and issuance of a Returned Goods Authorisation Number (RGA).
- j. Where goods are being returned to ARG, the Customer shall ensure that they are returned complete, together with all instructions and accessories, in a safe condition, having regard to the risk to:
  - i. persons handling them and in their vicinity; and
  - ii. damage to the goods themselves.
- k. Claims by the Customer for short, damaged or incorrect deliveries must be made within fourteen (14) days from the date of invoice.
- l. ARG will not be liable or responsible for any loss or damage, cost or expense suffered by the Customer resulting directly or indirectly from any failure by ARG or its suppliers to fulfil any of the terms and conditions herein, including any obligation or liability in respect of any damage to or malfunction of any item supplied, if such failure damage or malfunction is due to any delay or other cause beyond the control of ARG.
- m. Where goods are incorrectly ordered by the Customer, supplied and subsequently returned, a restocking fee of fifteen (15) percent of the purchase price of the goods shall be paid together with any delivery fee and GST incurred by ARG as a result thereof within thirty (30) days from the date of invoice.
- n. No return of goods will be accepted or a credit note issued by ARG, for any goods and/or services specifically acquired for the Customer.
- o. If ARG is of the opinion that goods when returned are otherwise than in the same condition as when they were delivered to the carrier or directly to the Customer a charge equal to the cost necessary to restore the goods to their original condition shall be payable by the Customer upon demand by ARG.
- p. If goods are returned to ARG which ARG is unable to resell to a third party or resell for the same amount as was sold to the Customer then ARG may charge the Customer an amount equal to the loss incurred as a result of the Customer returning the goods.

## 8. OWNERSHIP AND RISK

- a. Notwithstanding any credit granted to or anything contained in these terms and conditions to the Customer, ARG shall retain the full legal and beneficial ownership and title in and to all the goods delivered to the Customer by ARG until the Customer has paid to ARG the full amount due on all outstanding invoice(s) to ARG. Until then the Customer will hold and sell the goods as agent for ARG and the Customer shall store the goods separately and with the interest of ARG as owner clearly marked on the goods and the area in which they are stored.
- b. The Customer will ensure that the goods are kept in good condition and in accordance with any instructions for use that are applicable to the goods.
- c. The Customer will secure the goods from risk, damage and theft; and keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.

# TERMS OF TRADE

- d. Any proceeds received by the Customer from the resale of the goods shall be held by the Customer as trustee for ARG to the extent of the unpaid invoiced price of those goods and the proceeds of the sale shall be forwarded to ARG in full as soon as is reasonably practicable after receipt by the Customer and where the proceeds of sale are less than the amount owing by the Customer to ARG, such proceeds shall be applied in practical satisfaction to the invoiced price or amount outstanding until all monies owing to ARG for all goods and services supplied by ARG to the Customer have been paid for in full by the Customer to ARG.
- e. Should the goods supplied by ARG to the Customer be lost or damaged after delivery and prior to payment, the Customer hereby agrees to indemnify ARG for such loss and damage.
- f. After the goods leave ARG's premises they shall be at the risk of the Customer and any damage to the goods shall be at the expense of the Customer.
- g. Without limiting any other remedy of ARG under these terms and conditions or at law, if the Customer does not pay for any goods and/or services on the due date then ARG is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.
- h. If ARG is unable to resell the goods at the same price or more as was invoiced to the Customer by ARG, then ARG shall be entitled to make claim, demand or institute, if necessary, an action to recover any loss or damage sustained by ARG due to ARG not being able to obtain the invoiced price plus the added expenses incurred by ARG as a result of non-payment by the Customer.
- i. The Customer acknowledges that by virtue of 8a and 8d (above), ARG has a security interest in the goods for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Act) and to the extent applicable the PPS Act applies.
- j. The Customer acknowledges that ARG may do anything reasonably necessary, including but not limited to registering any security interest which ARG has over the goods on the Personal Property Security Register established under section 147 of the PPS Act in order to perfect the security interest and comply with the requirement of the PPS Act.
- k. The Customer agrees to do all things reasonably necessary to assist ARG to undertake the matters set out in 8j (above).
- l. The Customer and ARG agree that, pursuant to section 115 of the PPS Act, the following provisions do not apply in relation to a security interest in the goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):
  - i. section 95 (notice of removal of accession), to the extent that it requires the secured party to give a notice to the grantor;
  - ii. subsection 121(4) (enforcement of liquid assets--notice to grantor);
  - iii. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
  - iv. paragraph 132(3)(d) (contents of statement of account after disposal); and
  - v. subsection 132(4) (statement of account if no disposal).

# TERMS OF TRADE

## 9. CANCELLATION

a. To the full extent permitted by law, orders for goods shall not be cancelled by the Customer without ARG's written consent. The cancellation of any order shall be made on terms which indemnify ARG against all loss.

## 10. CUSTOMER'S SPECIAL REQUIREMENTS

a. Changes to any order placed by the Customer, at the Customer's request, either at the time of placing the order or thereafter will only be accepted at ARG's discretion. Such changes will only take effect when agreed in writing by ARG and which may result in a price increase.

## 11. CUSTOMER'S SPECIAL REQUIREMENTS

- a. In any event ARG limits its liability for breach of condition or warranty to:
  - i. In the case of goods, any one (at ARG's election) of the following:
    - 1. the replacement of the goods or the supply of equivalent goods;
    - 2. the repair of goods;
    - 3. the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - 4. the payment of the cost of having the goods repaired; or
  - ii. In the case of services either (at ARG's election) of the following:
    - 1. the supplying of the services again; or
    - 2. the payment of the cost of having the services supplied again.
- b. The warranties set out in Clause 11c shall be additional to any non-executable warranties to which the Customer may be entitled pursuant to any statute.
- c. Subject to clause 11a.i ARG warrants that the goods sold are free from defective materials and workmanship.
- d. ARG will repair, or at its option replace or credit (at its discretion) those of the goods which, upon examination are found by ARG to be defective in workmanship and/or materials.
- e. The warranty does not apply if:
  - i. the defect becomes apparent more than twelve (12) months after the date of the invoice;
  - ii. the goods have not been used or stored in accordance with instructions issued by ARG;
  - iii. the defects are in a manufactured component supplied by ARG to another;
  - iv. the defective part is made of rubber, glass, synthetic or ceramic materials;
  - v. the goods have been subject to any alteration or repair by any person other than authorised in writing by ARG. If the alteration or repair is unrelated to the defect then the warranty remains applicable;
  - vi. the Customer fails to notify ARG of its claim under this clause within fourteen (14) days of the defect becoming apparent and to return the goods to ARG on its request to do so;
  - vii. the indicated shelf life of the goods has expired.
- f. Except as provided in Clause 11c and 11e above, ARG will not be liable for economic or consequential loss, injury, expense or damage to the Customer or any person to whom the goods are transferred, or in respect of any person to whom the Customer or the person using the goods make them available or their property, arising from any defect in or failure of the goods, notwithstanding negligence on the part of ARG, its suppliers, servants, agents, successors or assigns.



# TERMS OF TRADE

- g. If goods are repaired under warranty they will be returned to the purchaser or ultimate user carriage paid.
- h. The Customer warrants that the goods purchased by the Customer will not be used for personal, domestic or household use.

## 12. GOVERNING LAW AND JURISDICTION

- a. These terms and conditions and the contract governed thereby shall be governed by and construed in accordance with the laws from time to time, of the State of Western Australia which is where the head office of ARG is located.

## 13. INDEMNITY

To the full extent permitted by law the Customer:

- a. agrees to indemnify and at all times hereafter to keep indemnified and hold ARG, its servants and agents and each of them harmless against all claims for loss or damage (whether as a result of negligence or otherwise) arising directly or indirectly out of the Customer's use, possession, ownership or resale to a third party or out of the use, possession or ownership by such third party of the goods or any part or parts thereof whether separately or in combination with any other equipment or material.
- b. agrees that the indemnity in Clause 13a shall survive the termination of this contract and shall extend to cover all alleged defaults or defects in the goods or part(s) thereof or instruction supplied for use in connection with the goods or out of any failure of the goods to perform a particular task or to achieve a particular result or to comply with any particular specification.

## 14. FORCE MAJEURE

- a. To the extent permitted by law the Customer releases ARG from all and any liability for and in relation to or occurring out of any failure or transaction in performance of its obligation hereunder due in part or in whole to any cause whatsoever beyond ARG's reasonable control.

## 15. IMPLIED CONDITIONS AND WARRANTIES

- a. All implied conditions and warranties (statutory or otherwise) are hereby expressly excluded from this contract insofar as they are capable of being excluded by agreement.

## 16. COLLATERAL WARRANTIES AND REPRESENTATIONS

- a. All prior statements and representations or collateral warranties that may have been given whether oral or in writing by ARG or its servants or agents prior to the delivery of the goods and/or services are expressly excluded to the full extent allowed by law and accordingly ARG is released by the Customer from any liability as a result of such statement or representation.

## 17. FITNESS FOR PURPOSE

- a. The Customer shall not rely upon ARG's expertise or judgement as to fitness or suitability of use for which the Customer may require the goods and or service.

# TERMS OF TRADE

## 18. WAIVER

- a. Failure by ARG to insist upon strict performance by the Customer of any terms and conditions contained herein shall not be taken to be a waiver thereof or of any rights of ARG in relation thereto and in any event shall not be taken to be a waiver of the same terms and conditions on any subsequent occasion and shall not discharge the Customer from any of its obligations pursuant to these terms and conditions.

## 19. LIENS

- a. In addition to any lien to which ARG may be entitled by statute or common law, ARG shall in the event of the Customer's insolvency, bankruptcy or winding up, be thereupon entitled to a general lien on all property whatsoever owned by the Customer and in ARG's possession at the time.
- b. The Customer agrees that if demand is made by ARG the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to caveat, as required, and against the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by ARG to be its true and lawful attorney to execute and register such instruments. Such lien will cover the unpaid price of any goods and/or services supplied by ARG to the Customer.

## 20. NOTICES

- a. All notices on accounts shall be in writing and may be hand delivered or mailed postage pre-paid addressed to the postal address of either ARG or the Customer as notified to the other from time to time in writing. Any such notice or demand or account shall be deemed to have been received five (5) business days after dispatch if sent by mail, or the next business day if delivered by hand or email.

## 21. VOIDABILITY OF TERMS AND CONDITIONS

- a. The Customer acknowledges that these terms and conditions are subject to any rights and obligations arising between the parties pursuant to any legislation or by implication of a law and specifically acknowledge that this contract is not intended and will not operate to override any rights and obligations created by the Competition and Consumer Act 2010 as amended. To the extent that any term or condition of this contract is void, voidable or repugnant to the provisions of that Act or any other Act of the State of New South Wales or any other applicable legislation of the Commonwealth of Australia then this contract shall be read as if that term or condition were deleted and the balance of this contract shall be enforceable.

## 22. CONFIDENTIALITY

- a. The Customer must not make any public announcement or disclose any information relating to the existence of, or the subject matter of these terms and conditions unless it has the prior written consent of ARG or it is required to do so by law or regulatory requirement.



# ARG

Australasian Response Group

**Australasian Response Group**

1300 311 548

[admin@argrescue.com.au](mailto:admin@argrescue.com.au)

[argrescue.com.au](http://argrescue.com.au)

[argrescue.com.au](http://argrescue.com.au)