

## TERMS AND CONDITIONS OF SALE

### 1. Interpretation

In these Terms and Conditions of Sale:

- (a) “Company” means Treline Pty Ltd (ACN 075 880 652) trading as Scapeworks Australia, and any Related Body Corporate as defined in Section 9 of the Corporations Act 2001 including but not limited to.
- (b) “Customer” means the Customer stated in the Application and any other person offering to contract with us on these terms and conditions or, where such person is acting in the course of employment, such person's employer.
- (c) “goods” means goods supplied by the Company to the Customer from time to time.
- (d) “services” means any work undertaken by the Company for the Customer.
- (e) “agreement” means the agreement for purchasing goods and services and includes these terms and conditions (as amended from time to time) plus any Application for Commercial Credit Trading Account submitted by the Customer to the Company (including the Credit Terms) if that application is accepted by the Company.
- (f) “terms and conditions” mean these terms and conditions of sale as amended from time to time.
- (g) “application” means, unless the context requires otherwise, the Customer’s Application for a Commercial Trading Account to the Company.
- (h) “Officer” means each director, secretary, credit manager and authorised representative of the Company.
- (i) Unless the context requires otherwise, all references to a party include the party’s successors and permitted assigns.

### 2. Supply Terms and Conditions

2.1 The Customer will purchase, and the Company will supply goods and services to the Customer on these terms and conditions. However, the Company is not obliged to supply to the Customer when requested to do so.

2.2 All additions and amendments to the terms and conditions must be in writing signed by the Company.

### 3. Quotations and Orders

3.1 Any quotation or price list given by the Company to the Customer does not constitute any offer to sell goods or services to the Customer. The Company reserves the right to alter the quote or price list without notice to the Customer.

3.2 By ordering goods and services, the Customer is making a binding offer to purchase those goods and services. The Company will notify the Customer of the Company’s acceptance of the Customer’s order in writing. Alternatively, the Company’s delivery of goods and services pursuant to the Customer’s order shall be deemed acceptance of the Customer’s offer to purchase.

### 4. Prices, GST, Freight, and Insurance

4.1 Unless the Company expressly agrees in writing, the price of the goods and any services shall be the price specified in the Company’s invoice (or in the Company’s price list) plus the amount which the Company is required to pay on account of any charges which may be levied by any government (domestic or foreign) plus any increase caused by exchange rates, costs or labour, materials, and overheads.

4.2 The Customer is responsible for all freight and credit costs. If the Customer nominates a carrier this must be advised to the Company in writing in the absence of which the Company will choose a carrier.

4.3 Freight services will be charged to the Customer's account if such costs are met by the Company. These costs are the subject of a separate contract and are included in the composite invoice price. These services will be taken to be required unless the Customer advises by writing to the contrary.

4.4 Freight charges will be calculated at the Company's discretion but will generally be the actual cost to the Company along with a service charge.

4.5 Where the Customer elects to opt out of services, the Customer must advise the Company in writing so that arrangements can be made for reasonable access to the Company's premises to pick up and pay for the goods. In such circumstances, the service charges will not apply.

## **5. Payment**

5.1 The Customer agrees that unless the Customer has a current credit account with the Company (in which case all amounts owing are due and payable within the credit period granted by the Company in writing), all goods are supplied on a cash before delivery basis.

5.2 The Customer agrees that if the Customer fails to pay in accordance with this clause 5.1, the Company may: -

- (a) charge interest at a rate equivalent to 3% more than the business overdraft commercial interest rate of the Company's principal bankers per annum from the invoice date to the date of payment of the debt; and
- (b) charge a dishonour fee, where a cheque is dishonoured by the Company's bank; and
- (c) recover all collection costs and expenses (including collection agency fees), including legal expenses on a solicitor/own client basis incurred in collecting overdue accounts; and
- (d) withhold supply.

5.3 Any forbearance by the Company in charging any of the fees set out in this clause 5 does not constitute a waiver of the Company's right to do so in the future.

## **6. Risk in the Goods**

6.1 Subject to clause 7.2, the risk of loss or damage to the goods passes to the Customer on the date and at the time that the goods are removed from the Company's premises or other place of storage for the purpose of delivery to the Customer.

## **7. Delivery**

7.1 The Company reserves the right to deliver goods by instalments. Any delivery times notified to the Customer are estimates only. If the Customer requests the Company to postpone delivery of the goods beyond the delivery date or dates specified in the Customer's order, the Company may agree to do so if the Customer agrees to pay an additional fee for such postponement.

7.2 If the Company does not receive delivery instructions sufficient to enable the Company to dispatch the goods within fourteen days of the Customer being notified that the goods are ready for delivery, the Customer shall from the fifteenth day after notification:

- (a) be deemed to have taken delivery of the goods.
- (b) be liable for storage charges, payable monthly on demand; and
- (c) assume risk in the goods.

7.3 Containers (includes, but are not limited to, pallets) in or on which goods are delivered and for which a deposit charge is made, remain the Company's property. On the containers return, in good order, the deposit will be returned to the Customer. The Company reserves the right to deduct monies from the Customer's deposit to compensate the Company for any damage to the containers.

7.4 Deliveries by the Company are subject to suitable access, firm standing, storage, unloading and manoeuvring space being satisfactory and safe, as determined by the Company.

7.5 The Company shall not be liable for, and the Customer shall indemnify the Company against, any claims for damage caused to access ways, storage areas, plant, equipment or works during delivery.

7.6 Additional costs incurred by the Company in delivering and unloading goods:

- (a) outside the hours of 7.00am to 4.00pm Monday to Friday (excluding public holidays); or
- (b) due to delays at the delivery site or an unsuitable delivery site; or
- (c) where less than full delivery vehicle loads are required to be delivered, shall be expenses due and payable by the Customer.

7.7 The Customer warrants to the Company that its facilities and equipment are suitable for deliveries of goods and satisfy and comply with all relevant and applicable standards, laws, and regulations. The Customer indemnifies the Company against any breach of such standards, laws, and regulations during delivery of goods, and against any damage or loss caused by leakage, spillage, breakage, or contamination during or caused by delivery.

## **8. Claims and Liabilities**

8.1 Any claim by the Customer as to breach of these terms and conditions by the Company must be made to the Company in writing within 14 days of delivery. Time is of the essence.

8.2 The parties acknowledge that there is legislation (including the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("the CCA"), as supplemented or amended) that may imply certain representations, warranties, terms, conditions, and guarantees into a contract between the Company and the Customer for the supply of goods or services, and also avoid or prohibit the exclusion, restriction or modification of the application of, or exercise of rights under, the applicable legislation in respect of those representations, terms, conditions, warranties, and/or guarantees ("Non-Excludable Rights"). Nothing in this clause 8 or these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law set out in Schedule 2 of the CCA except to the extent permitted by that Act where applicable.

8.3 To the extent permitted by law, the liability of the Company for any breach of any Non-Excludable Right (including where the Australian Consumer Law set out in Schedule 2 of the CCA as supplemented or amended, imposes statutory consumer guarantees in respect of goods or services supplied by the Company to the Customer, and the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, any breach of such statutory consumer guarantees) is strictly limited, at the option of the Company to:

- (a) if the breach relates to goods: -
  - (i) the replacement of the goods or the supply of equivalent goods.
  - (ii) the repair of the goods.
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services: -
  - (i) the re-supplying of the services, or
  - (ii) the payment of the cost of having the services re-supplied.

8.4 (a) To the full extent permitted by law, all express and implied terms, other than the ones set out in these terms and conditions are excluded.

(b) To the full extent permitted by law, the Company is not liable for any injury to or death of any person or loss (including loss of profits or consequential loss) or damage to property arising from any act or omission of the Customer, the Company, or any other person (including any loss or damage arising from the Company's negligence).

(c) The Customer indemnifies the Company against: -

- (i) any claims made against the Company by any third party in respect of any loss, damages, death, or

injury as is set out in subclause 8.4(b); and

(ii) all losses and expenses which the Company may suffer or incur due to the Customer's failure to observe fully the Customer's obligations under the agreement incorporating the terms of the application; and

(d) The Company makes no representation, warranty or undertaking about the compliance of the goods or services with any statutory requirements relating to the marketing of goods. The Customer acknowledges that the Customer alone is responsible for compliance of the goods and services with this legislation.

8.5 The Company will not be responsible for non-delivery or delay in delivery of any goods and services due to any cause beyond the Company's reasonable control, notwithstanding that the cause may be operative at the time of entering the contract of sale. Where such delivery or delay occurs, the Company may deliver the goods and services not delivered or delayed at any subsequent time and the Customer must accept and pay for them.

8.6 Where the Company gives a date of intended delivery, this will be subject to the goods and services ordered being available and the Company being able to make the delivery on that date.

8.7 The Company shall not be liable for any failure of the Customer to comply with any instructions or warnings with respect to doing anything with or in relation to the goods.

8.8 Any design or description of use, capacity, durability, colour, manner of installation and / or detail contained in drawings, data sheets, technical brochures or other documents provided by the Company are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the goods for the Customer's particular purpose, use or application.

8.9 Any sample goods or sample colour is provided to indicate only the general nature of the goods. The Company provides no warranty or guarantee that the goods supplied shall correspond in colour, texture, or blend with any sample or any previous or future goods supplied. The Company shall not be liable for any failure of the customer or others to blend the goods.

## **9. Defects and Returned Goods**

9.1 The Customer shall ensure that it has an authorised representative at the delivery site who shall check prior to unloading that the information shown on the delivery docket corresponds with the Customer's order.

9.2 Unless otherwise noted on the delivery docket, the signature of the Customer's representative on the delivery docket shall represent acknowledgement by the Customer that the goods comply with the Customer's order and have been supplied in accordance with the terms of this agreement.

9.3 Where defects are noted at the time of delivery, notice shall be given to the Company in writing on the delivery docket or other document, be signed by the Customer's representative and be immediately returned with the contractor or carrier who has delivered the goods to the site.

9.4 Where goods are returned to the Company, credit will only be issued under the following conditions: -

- (a) a return credit ("credit") authority number must be obtained from the supply point prior to the return of any goods. The Company may refuse to give a credit or accept the return of any goods.
- (b) the Customer must provide the invoice number and date of purchase before a credit will be issued; and
- (c) the credit authority number must be clearly marked on the packaging of goods returned to the Company. Failure to comply with this requirement could result in the Company refusing to accept delivery of the returned goods.

9.5 All claims for credit must be supported by: -

- (a) carrier's consignments note or similar receipt of delivery.
- (b) the Company's relevant invoice number; and
- (c) the credit number issued by the Company.

9.6 Without in any way limiting the Company's discretion to refuse to accept the return of any goods, the following goods will not be returnable: -

- (a) any goods that have been held by the Customer for more than 14 days; or
- (b) any goods which are not in original condition; or
- (c) any goods that are manufactured as made to order unless faulty – any manufacturing surcharge is non-refundable.

9.7 The Company will only recognize claims for faulty goods that are lodged within 7 days of the Customer receiving the goods.

9.8 Goods must be returned by the carrier specified by the Company.

9.9 Where at the time of delivery or collection of goods the site is unattended, the Customer shall give written notice to the Company within 24 hours from the time of delivery or collection, and prior to use, of any defects in the goods.

## **10. Retention of Title**

10.1 In relation to goods supplied to the Customer:

- (a) property in those goods shall remain with the Company until the latter of:
  - (i) payment in full for the goods and services; and
  - (ii) payment in full of all monies owing as unpaid by the Customer to the Company including monies in respect of goods and services previously or subsequently supplied to the Customer by the Company.
- (b) where goods have been fully paid for, they must be kept separate from unpaid goods otherwise where there is commingled stock property in the goods will revert back to the Company, as supplier, irrespective of whether the goods have been fully paid for.
- (c) the relationship between the Customer and the Company shall be fiduciary.
- (d) the Customer will hold the goods as bailee for the Company.
- (e) where the Customer sells those goods, the Customer has no power to commit the Company to any contract or liability, but as between the Customer and the Company will sell as fiduciary agent.
- (f) the Company will be given full ownership of any new goods or objects formed if the Customer transforms the Company's goods into other products or those goods to other objects.
- (g) where those goods are disposed of the monies resulting from the disposal and all other proceeds, (tangible or intangible) received in respect of the goods, including insurance proceeds, will be held separately in trust for the Company.
- (h) where those goods are disposed of the Customer may only dispose of the goods in the ordinary course of the Customer's business on commercially reasonable terms.
- (i) the Customer will keep records of those goods.

10.2 The Customer undertakes that until the Customer delivers the goods to a third party, the Customer will store the goods on the Customer's premises separately from the Customer's own goods, and those of any other person, and in a manner which makes the goods readily identifiable as the Company's goods.

10.3 The Customer agrees that the Company's employees or agents may enter upon the Customer's premises (doing all that is necessary to gain access) when it is reasonably thought goods supplied under this agreement might be stored for the purpose of examining or recovering the goods.

## **11. Credit card payment**

(a) The Company may require the Customer to pay for goods and services utilising a credit card facility of the Customer ("credit card account") with a bank or other financial institution ("finance provider"). For that purpose, the Customer will, following a request by the Company, provide to the Company an imprint of a credit card or other form of written authorisation for a credit card account ("credit card authority") at the time determined by the Company being either prior to, at the time of or following the Company supplying goods and services to the

Customer.

- (b) The credit card authority is to be signed by or on behalf of the Customer by a person whose permission and approval is required by the finance provider to enable payment to be made to the Company of the amount charged to the credit card account.
- (c) Where at the time the credit card authority has been signed by or on behalf of the Customer the cost of the goods and services due of the Customer to the Company has not been recorded on the signed credit card authority, the Company is authorised and permitted by the Customer to complete the credit card authority by inserting the amount due of the Customer to the Company.
- (d) The Customer shall do all things required to cause the credit card account of the Customer to be debited for the amount due to the Company for the goods and services the Company has supplied, or will supply, to the Customer, and for such amount to be paid to the Company.
- (e) If and to the extent necessary, the Customer hereby irrevocably appoints each Officer as the Customer's attorney to complete and sign the credit card authority in the name of the Customer, and to do such other things or complete and sign such other documents, in order to enable and cause the finance provider to approve and permit the amount due of the Customer to the Company to be paid from the credit card account.

## **12. Security for Payment**

In accordance with the Personal Property Securities Act (Cth) 2009 ("PPSA") the following terms, and all related terms, have the meaning given to them by PPSA namely "financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled".

12.1 In consideration of the Company supplying the goods to the Customer at the Customer's request, the Customer:

- (a) grants to the Company "Purchase Money Security Interest" ("PMSI") in all goods supplied by the Company to the Customer from time to time as security for payment of the purchase price of such goods.
- (b) grants to the Company a "Security Interest" ("SI") in all goods supplied by the Company to the Customer from time to time and in all of the Customer's personal property as security for payment of any other amount owed by the Customer to the Company and as security for the performance by the Customer of the obligations set out in these terms and conditions.
- (c) agrees that any goods or proceeds of sale of the goods coming into existence after the date of these terms and conditions will come into existence subject to the PMSI and SI granted herein and these terms and conditions without the need for any further action or agreement by any party.
- (d) acknowledges that the Customer has received valuable consideration from the Company and agrees that it is sufficient; and
- (e) agrees that the PMSI and SI has attached to all goods supplied now or in the future by the Company to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.

12.2 The Company reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these terms and conditions.

12.3 The costs of registering a financing statement or a financing change statement can be charged to the Customer by the Company at the Company's complete discretion.

12.4 The Customer must promptly, on request by the Company, execute all documents and do anything else reasonably required by the Company to ensure that the PMSI and SI created under these terms and conditions constitutes a perfected security interest.

12.5 The Customer must not agree to allow any person to register a financing statement over any of the goods in which the Company has any PMSI and/or SI without the prior written consent of the Company and will immediately notify the Company if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such goods.

12.6 The Customer must not allow the goods in which the Company has any PMSI or SI to become accessions or commingled with other goods unless the Company has first perfected any PMSI or SI that the Company has in relation to the goods.

12.7 If the Company perfects any PMSI and/or SI that the Company has in relation to the goods, the Customer must not do anything that results in the Company having less than the security or priority granted by the PPSA that the Company assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.

12.8 The Customer irrevocably grant to the Company the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Company has cause to exercise any of the Company's rights under Chapter 4 of the PPSA, and the Customer will indemnify the Company for any claims made by any third party as a result of such exercise.

12.9 The Customer acknowledges and agrees that: -

(a) nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these terms and conditions.

(b) sections 92, 95(1)(a), 97, 118(1)(b)(i), 121(4), 130(1)(a), 132(4) and 135(1)(a) of the PPSA will not apply to the enforcement of any PMSI and SI created under these terms and conditions and the Customer waives any rights given to the Customer by, and any obligations imposed on the Company under, the said sections.

(c) the Customer waives its right to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these terms and conditions under section 157 of the PPSA; and

(d) the Security Agreement created by these terms and conditions may be reinstated on the terms considered appropriate by the Company at its complete discretion.

### **13. Charge**

13.1 As security for payment to the Company of all moneys payable by the Customer and for the Customer's obligations generally under these terms and conditions, the Customer charges in favour of the Company the whole of the Customer's undertaking in property and assets (including without limitation all of the Customer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.

13.2 The Customer irrevocably appoints each Officer as the Customer's attorney to do all things necessary to create and register each such charge.

13.3 Upon demand by the Company, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure payment of the money payable by the Customer. If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledges that the Company may execute such a mortgage or other instrument as the Customer's attorney pursuant to the appointment of the Company as the Customer's attorney set out in these terms and conditions.

### **14. Set Off**

The Customer agrees that: -

14.1 The Company may set off any credit amount that the Company owes to the Customer against any debt due by the Customer to the Company.

14.2 The Customer is not entitled to withhold payment of any money in respect of any set off or claim the Customer might have against the Company.

### **15. Acts of Default**

15.1 If the Customer:

- (a) fails to pay for any goods and services on the due date; or
  - (b) otherwise breaches this agreement and fails to rectify such breach within 7 days' notice; or
  - (c) cancels delivery of the goods; or
  - (d) commits an act of bankruptcy; or
  - (e) allows a trustee in bankruptcy or receiver and manager to be appointed to the Customer or any of the Customer's property; or
  - (f) allows a judgment, order, or security to be enforced, or to become enforceable against the Customer's property; or
  - (h) is a company and proceedings are commenced to wind the Customer up or any of the Customer's subsidiaries; or
  - (i) is a company and a controller, receiver, administrator, liquidator, or similar officer is appointed to the Customer or in respect of any part of the Customer's property,
- then the Company and its agents may enter upon the Customer's premises (doing all that is necessary to gain access) where goods supplied by the Company to the Customer (for which payment has not been made to the Company) are situated at any time and retake possession of any or all of such goods the Company has supplied to the Customer.

15.2 The Company reserves the right to resell the repossessed goods.

15.3 The Company reserves the right to terminate the agreement for the further supply of goods and services.

## **16. Resale**

If the Company conducts a re-sale pursuant to this clause: -

16.1 The Company may do so at its premises or any other place; and

16.2 The re-sale may, at the Company's discretion, be by public or private sale; and

16.3 The Company may recover from the Customer as liquidated damages for the Company's loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of the Customer's breach), if applicable goods cannot be sold within 3 months of the first attempted sale, those goods will be deemed to have a re-sale price of nil.

## **17. Governing Law**

17.1 The agreement is governed by the Law of New South Wales. The Customer and the Company, as supplier, irrevocably submit to the exclusive jurisdiction of the New South Wales Courts and Federal Courts sitting in New South Wales.

## **18. Whole Agreement**

18.1 (a) These terms and conditions, plus all of the provisions (including the Credit Terms) of any application submitted by the Customer to the Company, if that application is accepted by the Company, embody the whole agreement between the parties.

(b) Subject to the express terms contained in any written order or written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded except where they are required to be included by any legislation of the Commonwealth or any State or Territory and cannot be expressly excluded at law.

## **19. Cessation of Supply**

19.1 The Company's agreement to continue to deliver or sell goods to the Customer is always conditional upon the Company being satisfied of the Customer's ability to pay and comply with these terms and

conditions. If the Company ceases to be so satisfied the Company may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense, or cost suffered by the Customer.

**20. Severance**

20.1 Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions shall be read and enforced as if the void or unlawful provisions have been deleted.

**21. Force Majeure**

21.1 The Company shall not be liable for any delay, loss, damage, or injury arising by reason of any event beyond its control and without limiting the generality of the foregoing such events include industrial disputes, the unavailability of equipment or materials, fire, flood, machinery breakdown, civil disturbance, acts of God or government action.

**22. Notices**

22.1 Any notices required to be given by either the Customer or the Company under these terms and conditions must be in writing. The notice shall be effectively given or sent if personally delivered or sent by pre-paid ordinary post to any one of the following addresses:

- (a) the last address for the party receiving the notice known to the party giving the notice.
- (b) if the party is a company, the registered office or principal place of business.
- (c) if the party trades under a registered business name, any address contained on a current business name register for that business name.