

Terms and Condition of Sale



1. Definitions

In these conditions:

“Conditions” means the terms of these Conditions of Sale;

“Customer” means a person, firm or corporation seeking to acquire Goods or services from the Supplier and where applicable includes the Applicant in the Commercial Application and, if the Customer consists of more than one person, each of them jointly and severally;

“Goods” means all goods and or materials supplied by the Supplier to the Customer;

“GST” means GST within the meaning of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended;

“Other Property” means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant;

“PPSA” means the Personal Property Securities Act 2009 (Cth) as amended;

“Security Agreement” and **“Security Interest”** have the meaning ascribed to them in the PPSA;

“Services” means an and all services supplied by the Supplier to the Customer; and

“Supplier” means HELU Australia Pty Ltd (ABN 87681994712) of 123 Logis Boulevard Dandenong South Victoria 3175, Australia.

2. Application of the Conditions

- 2.1. Subject to clause 2.4, or unless otherwise agreed in writing, these Conditions will apply exclusively to every contract for the sale of Goods and or the supply of Services by the Supplier to the customer and cannot be varied or replaced by any other conditions without the prior written consent of the Supplier.
- 2.2. Any written quotation provided by the Supplier to the Customer concerning the supply of Goods and or Services is valid for 30 days, unless otherwise stated in the quotation, and is an invitation only to the Customer to place an order based upon that quotation.
- 2.3. The Supplier will not be deemed to have accepted an order or an offer by the Customer unless it has communicated acceptance, in the form of an official Order Confirmation, to the Customer in writing or has delivered the Goods stated in the order.
- 2.4. The Supplier may vary these Conditions provided it first gives 30 days written notice to the customer. Any order placed, or Goods or Services supplied at the request of the Customer, after such 30-day period, will be deemed to be the Customer's acceptance of the varied Conditions.
- 2.5. The Customer agrees that any order under the minimum order value (as notified by Supplier to the Customer from time to time) may incur a fee at the discretion of the Supplier.
- 2.6. The Supplier may terminate this agreement on 30-days written notice. Any termination is without prejudice to the rights of the Supplier accrued prior to such termination including the right to be paid or recover the Goods.
- 2.7. The Customer and Supplier agree to keep confidential the terms of these conditions, including the price of the Goods, except as required by law.
- 2.8. The Customer warrants that if it is a trustee of a trust, it has full and unrestricted indemnity out of the trust in respect of all obligations incurred by the Customer pursuant to these Conditions.

3. Payment

- 3.1. Payment for Goods and or Services must be made on or before the thirtieth day of the month following the month in which the Goods are delivered and or Services supplied.
- 3.2. In the event that there are insufficient funds to meet any cheque drawn by the Customer in favour of the Supplier, an administration fee will be charged on each and every representation and or dishonour.

- 3.3. The Supplier may withdraw any credit terms or require the provision of security at any time in its absolute discretion and without notice to the Customer and may apply any payment by the Customer in any manner as the Supplier see fit.

4. Payment Default

- 4.1. If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any accrued rights or other remedy available to it:-
 - a. charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 plus 2 per cent for the period from the due date until the date of payment in full;
 - b. charge the customer for all expenses and costs (including legal costs on a solicitor/own client basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due;
 - c. cease of suspend for such period as the Supplier thinks fit, supply of any further Goods, Services or credit to the Customer; and
 - d. by notice in writing to the Customer, terminate any contract with the Customer so far as unperformed by the Supplier.
- 4.2. Clause 4.1 may also be relied upon, at the option of the Supplier:
 - a. where the Customer an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit or any creditors; or
 - b. where the Customer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit or any creditors or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution with winding up the Customer.
- 4.3. In the event of a dispute, the Customer will not be entitled to withhold payment of any undisputed amount due to the Supplier.

5. Passing of Property in Goods

- 5.1. The customer agrees:
 - a. that these Conditions constitute a Security Agreement for the purposes of the PPSA;
 - b. that these Conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Supplier to secure the purchase price for the Goods;
 - c. the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Supplier elects in writing to retain Part 4.3 (which the Supplier may elect to do either in whole or in part); and

- d. to waive its right to receive notice of a verification statement in relation to the registration or a Security Interest.

5.2. The Customer:

- a. further agrees that these Conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and
- b. separately charges all land owned now and in the future by the Customer whether owned alone or jointly in a tenant in common or as a joint tenant,

in favour of the Supplier to secure payment and performance of all the Customer's obligations under these Conditions.

5.3. The Customer agrees

- a. title and property in all Goods remain vested in the Supplier and do not pass to the Customer;
- b. the Customer must hold the Goods as fiduciary bailee and agent for the Supplier;
- c. the Customer must keep the Goods separate from its own goods and maintain the labelling and packaging of the Supplier;
- d. the Customer is required to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account;
- e. the Customer must deliver up all Goods to the Supplier immediately upon service of a written demand; and
- f. the Supplier may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier from and against all costs, claims, demands or actions by any party arising from such action,

until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer.

- 5.4. The Customer may resell the Goods in the ordinary course of its business (but may not otherwise sell or encumber the goods) and if it does so shall receive the proceeds of the resale as trustee of the Supplier, to be held on trust for the Supplier. The Supplier shall be entitled to trace the proceeds of resale.

- 5.5. To assure performance of its obligations under these Conditions, the Customer hereby grants the Supplier irrevocable power of attorney to do anything the Supplier considers should be done by the Customer pursuant to these Conditions. The Supplier may recover from the Customer the cost of doing anything under the clause 5, including registration fees.

6. GST and Duties

- 6.1. Prices for the supply of Goods and Services exclude sales tax, consumption or goods and services tax, and any other taxes, duties or imposts imposed on or in relation to the Goods and or Services.

- 6.2. If prices for Goods and Services provided by the Supplier do not expressly indicate that the prices include GST then the Customer will pay the Supplier the price for the Goods and or Services plus GST.

7. Delivery of the Goods

- 7.1. Any period or date for delivery of Goods and or Services stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier may deliver the Customer's orders in part or in whole and the Supplier is not liable in any way for such partial or late delivery.
- 7.2. All costs of freight, insurance and other charges associated with the delivery of the Goods to the agreed delivery address shall be borne by the Customer.
- 7.3. If the Customer is unable or fails to accept delivery of the Goods, the Customer will be liable for all direct and indirect costs incurred by the Supplier and which may include storage, detention, double cartage, travel expenses or similar costs in relation to the Goods.

8. Risk

- 8.1. During transport of the Goods, the Goods are at the risk of the Customer and to the maximum extent permitted by law, the Supplier is not liable to the Customer or any third party in tort (including negligence), contract, bailment or otherwise for any loss, damage (including concealed damage), injury to goods (but excluding personal injury), delay, contamination, evaporation, deficiency, deterioration caused to the Goods, or mis-delivery or failure to deliver the Goods.
- 8.2. Without derogating from clause 8.1, all risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately upon commencement of delivery of the Goods to the Customer.

9. Liability

- 9.1. Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods and/or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded and the Supplier is not liable to the Customer or any third party in tort (including negligence), contract, bailment, or otherwise for any loss, damage or claim.
- 9.2. The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused arising from the supply or the Goods and/or Services, including but not limited to loss of turnover, profits, business or goodwill.
- 9.3. The Supplier will be liable for any loss, damage or claim suffered by the Customer where the Supplier has failed to meet any delivery date or cancels or suspends the supply of Goods or for any Goods that display a "use-by" date that are sold or distributed by the Customer after that date.
- 9.4. Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of the Goods and/or Services which cannot be excluded, restricted or modified. If any of these Conditions is inconsistent with State or Federal legislation, such Conditions must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.

9.5. If the Customer is a “consumer” within the meaning of Schedule 2 of the *Competition and Consumer Act 2010*(Cth) and the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier’s liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to any one of the following as determined by the Supplier:

- a. the replacement of the Goods or the supply of equivalent Goods; or in case of Services, supply the services again or pay the costs of having the Services supplied again;
- b. the payment of the cost or replacement of the Goods or of acquiring equivalent Goods.

10. Cancellation

No purported cancelation or suspension of an order of contract for Goods and or Services by the Customer will be binding on the Supplier after that order has been accepted by the Supplier

11. Goods Returned

11.1. All Goods are sold on a non-refundable basis and, subject to clause 11.3, may only be returned if the Goods are damaged by the Supplier upon delivery or are incorrectly supplied by the Supplier.

11.2. Any claim by the Customer that the Goods are damaged or incorrectly supplied must be made in writing to the Supplier within 5 business days or receipt of the Goods by the Customer and the Customer must provide a reasonable opportunity for the Supplier to inspect the Goods. The Supplier’s only liability (if any) is limited to the resupply of the Goods.

11.3. The Supplier may, in its sole and absolute discretion, agree to accept a return of some or all of the Goods but all such Goods returned will be subject to a minimum 25% handling fee.