

| Document Title              | Document Number |
|-----------------------------|-----------------|
| Terms & Conditions of Trade |                 |

## Definitions

**1.1** “Atrada” shall mean Atrada Pty Ltd T/A Atrada its successors and assigns or any person acting on behalf of and with the authority of Atrada Pty Ltd T/A Atrada.

**1.2** “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by Atrada to the Customer.

**1.3** “Guarantor” means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.

**1.4** “Equipment” shall mean all Equipment including any accessories supplied on hire by Atrada to the Customer (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Atrada to the Customer.

**1.5** “Goods” shall mean all Goods supplied by Atrada to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Atrada to the Customer.

**1.6** “Services” shall mean all Services supplied by Atrada to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

**1.7** “Price” shall mean the Price payable for the Goods as agreed between Atrada and the Customer in accordance with clause 4 of this contract.

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

**2.1** Nothing in this agreement 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 to the extent permitted by those Acts where applicable.

**2.2** Clause 10 (Defects), clause 11 (Returns) and clause 12 (Warranty) may NOT apply to the Customer where the Customer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Customer is in any other way a consumer within the meaning of the CCA or the FTA of the relevant state or territories of Australia.

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## 3. Acceptance

**3.1** Any instructions received by Atrada from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by Atrada shall constitute acceptance of the terms and conditions contained herein.

**3.2** Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

**3.3** Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of Atrada.

**3.4** The Customer shall give Atrada not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Atrada as a result of the Customer's failure to comply with this clause.

**3.5** Goods are supplied by Atrada only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

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## **4. Price and Payment**

**4.1** At Atrada's sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Atrada to the Customer in respect of Goods supplied; or
- (b) Atrada's quoted Price (subject to clause 4.2) which shall be binding upon Atrada provided that the Customer shall accept Atrada's quotation in writing within thirty (30) days.

**4.2** Atrada reserves the right to change the Price in the event of a variation to Atrada's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or as a result of increases to Atrada in the cost of materials and labour) will be charged for on the basis of Atrada's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

**4.3** Atrada may submit detailed progress payment claims in accordance with Atrada's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

**4.4** At Atrada's sole discretion a non-refundable deposit may be required.

**4.5** At Atrada's sole discretion:

- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment for approved Customers shall be made by instalments in accordance with Atrada's payment schedule.

**4.6** Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

**4.7** Payment will be made by cash, or by cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and Atrada.

**4.8** GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

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## **5. Delivery of Goods**

**5.1** At Atrada's sole discretion delivery of the Goods shall take place when:

- (a) the Customer takes possession of the Goods at Atrada's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by Atrada or Atrada's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

**5.2** At Atrada's sole discretion the costs of delivery are:

- (a) in addition to the Price; or
- (b) for the Customer's account.

**5.3** The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Atrada shall be entitled to charge a reasonable fee for redelivery.

**5.4** Atrada may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

**5.5** The failure of Atrada to deliver shall not entitle either party to treat this contract as repudiated.

**5.6** Atrada shall not be liable for any loss or damage whatsoever due to failure by Atrada to deliver the Goods (or any of them) promptly or at all where due to circumstances beyond the control of Atrada.

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## **6. Risk**

**6.1** If Atrada retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.

**6.2** If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Atrada is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Atrada is sufficient evidence of Atrada's rights to receive the insurance proceeds without the need for any person dealing with Atrada to make further enquiries.

**6.3** Where the Customer expressly requests Atrada to leave Goods outside Atrada's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.

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## **7. Title**

**7.1** Atrada and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid Atrada all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to Atrada in respect of all contracts between Atrada and the Customer.

**7.2** Receipt by Atrada of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Atrada's ownership or rights in respect of the Goods shall continue.

**7.3** It is further agreed that:

- (a) where practicable the Goods shall be kept separate and identifiable until Atrada shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from Atrada to the Customer Atrada may give notice in writing to the Customer to return the Goods or any of them to Atrada. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) Atrada shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to Atrada then Atrada or Atrada's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as Atrada has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to Atrada for the Goods, on trust for Atrada; and
- (f) the Customer shall not deal with the money of Atrada in any way which may be adverse to Atrada; and

(g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of Atrada; and

(h) Atrada can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and

(i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that Atrada will be the owner of the end products.