

Sperling Enterprises Pty Ltd: Business to Non Consumer Terms and Conditions of Sale- Non FOB

Applicability

These terms and conditions, including the attached Schedule (Terms) govern the supply of all goods by the seller (as that term is defined in the schedule) to any sole trader, business or company (the Buyer). The Buyer acknowledges and agrees that the Goods are acquired by the Buyer for a use or purpose other than for personal, household or domestic use. These terms will apply to every sale or supply of goods by the Seller to the Buyer. These terms prevail over any other discussions or terms or conditions that may have been communicated between the Seller and the Buyer, whether orally or in a letter from the Buyer in negotiations or otherwise.

No person acting or purporting to act on behalf of the seller or the buyer will have authority to waive or change these terms orally. Waivers or changes will only have effect if made in writing and signed by a duly authorised officer of the Seller.

Orders

Any order placed with the seller will be confirmation of the Buyer's acceptance of these Terms. Any terms or conditions printed on any purchase order or other document of the Buyer are hereby expressly disclaimed by the seller and will not apply to an order for Goods placed by the buyer or on the Buyers behalf with the seller. These terms will prevail over and supersede any such terms and conditions of the buyer.

Cancellation

The Buyer may cancel all or any part of an order provided that the Buyer gives the Seller at least five (5) days written notice of the cancellation prior to the delivery date. If an order is cancelled within five (5) days of delivery date the Buyer will be liable to pay the full amount of the agreed price unless the Seller agrees otherwise in writing.

Prices

The Buyer must pay the seller for the goods the prices for the goods as fixed by the seller at the delivery date to the Buyer or the Buyer's agent or nominee, or as quoted by the Buyer in writing prior to delivery to the buyer or the Buyer's agent or nominee. Any prices quoted orally to the Buyer prior to delivery are indicative only and are not binding on the seller.

All prices and quotations exclude any Australian or overseas taxes or Duties and are exclusive of GST. The Buyer is liable for all taxes or duties including GST, payable on the goods. All prices and quotations do not include freight and insurance costs unless stated otherwise. The Buyer is liable for any and all freight and insurance costs unless stated otherwise.

Payment

The terms of payment are (30) days from the date of Statement. All invoices are due and payable in full on the last banking day of the month following the date of the invoice.

Should the Buyer fail to pay an invoice by the due date then

- (a) The seller may charge interest on any overdue invoice at the penalty rate fixed under the Penalty Interest Rate Act NSW, Calculated and payable daily, compounded from the due date until the invoice is paid in full
- (b) The buyer will pay all costs and expenses (including legal costs determined as between solicitor/ own client and mercantile agents fees) which may be

incurred in the recovery or attempted recovery of the overdue account

- (c) Accounts with overdue invoices will not qualify for discounts, Accounts in arrears will be suspended with an account keeping fee of 2%per month
- (d) A 2% discount will be allowed for payment within 7 days

Delivery

The seller will advise, in writing, the Delivery date (the Delivery Date). The Buyer must provide a delivery address to the Seller at the time of placing an order (Delivery Address). The Delivery address provided is the address to which delivery will be made unless the buyer notifies the Seller otherwise prior to the Delivery date. If the Buyer changes the delivery address, the freight and Insurance costs may change accordingly. The Buyer or its agent or nominee must be present at the delivery address and able to receive and sign for delivery of goods upon their delivery at the delivery address on the delivery date during the hours of 7.00 am to 7.00pm (unless a different time frame is prior agreed with the seller. The Seller will use all reasonable endeavors to meet the delivery date but the seller is not and will not be liable for any loss or damage, however it arises, if the goods are not delivered by the delivery date .Without limiting this provision, where the seller is unable to deliver the Goods because of a Delaying event (as that term is defined in the schedule) or otherwise, the date of delivery of the goods will be extended until the cessation of such matter or matters

Ownership of Goods

To the extent that the goods and/or services includes goods:

- (a) Notwithstanding delivery of goods and the terms of payment, ownership of good delivered only passes to the buyer when the goods are paid for in full and in cleared funds, including payment in full of all taxes duties and delivery charges:
- (b) Until the buyer has paid in full and in cleared funds for the goods, ownership of the goods remains with the Seller and the Buyer holds the goods as bailee and fiduciary for the seller;
- (c) The Buyer must store the goods securely in a way that clearly demonstrates the sellers title;
- (d) The Buyer may only dispose of the goods as the Sellers fiduciary and agent and provided that the entire proceeds of those goods are held by the Buyer on trust for the seller; and
- (e) The seller or its agents may (without notice and without prejudice to any of its other rights) demand the immediate return of the goods at the buyer's expense or enter any premise or premises where the goods are stored and retake possession of them. The Buyer may not revoke this permission. The seller may resell the goods, without incurring any liability to the buyer or any person claiming through the Buyer.

Personal Property Securities Act

The Buyer acknowledges and agrees that, until the seller has received payment in full from the Buyer of the goods:

- (a) The seller interest in the goods is a "Security Interest" for the purposes of the Personal Property Securities Act 2009 (PPSA)

Sperling Enterprises Pty Ltd: Business to Non Consumer Terms and Conditions of Sale- Non FOB

- (b) The Sellers Security Interest is effective and attached to the goods immediately upon the buyer taking delivery of the goods
- (c) The seller may take all necessary steps to perfect, record, register, amend or remove the registration of the Sellers security interest on the Personal Property Securities register ("Register")
- (d) The Buyer must, at its own cost, do anything which the Seller considers reasonably necessary to: (i) ensure that the Sellers Security Interest in the Goods attaches to the goods, is enforceable, perfected and otherwise effective under the PPSA, (ii) enable the Seller to exercise or enforce any of its rights in relation to its Security Interest and (iii) enable the Seller to prepare, register or renew a financing statement or these terms on the Register
- (e) The buyer must not: (i) otherwise than in accordance with these terms, create any Security interest in the goods, or any property which constitutes "personal property" under the PPSA and becomes an accession to the goods, without the prior written consent of the Seller; or (ii) change its name without first giving the seller 15 Business days notice of the new name or relocate its principle place of business outside Australia or change its place of Registration or incorporation;
- (f) To the extent permitted under the PPSA the seller need not give any notice, including without limitation a notice of receipt of a verification statement, to the Buyer under the PPSA ; and
- (g) Neither the Seller nor the Buyer shall disclose information of the kind mentioned in section 275(1) of the PPSA and the Buyer will not authorize and will ensure that no other party authorizes the disclosure of such information

Risk of Goods

To the extent that the Goods and /or services includes goods the risk in any goods delivered will, unless otherwise agreed in writing, pass to the Buyer on delivery of the goods to the Buyer or its nominee or agent.

Acceptance and Return of Goods

To the extent that the Goods and/or Services includes goods, the Buyer is deemed to have accepted a delivery of goods within forty eight (48) hours after delivery unless prior to that time the Buyer has notified the Seller in writing of its rejection of that delivery and the reasons for the rejection are accepted by the Seller, or immediately upon use of the goods, whichever is the earlier. If the Seller's goods are used or the Seller receives no notification of rejection of the goods within the stated time, then the Seller will be entitled to payment in full and thereafter the Seller will not be liable for any claims, loss or damage, however it arises. Returns of saleable goods (other than deliveries made in error) will be subject to a 25% restocking fee. Returned goods must be from current stock lines. Run out specials & deleted stock lines will not be accepted for return
Claims for Damaged Goods

To the extent that the Goods and/or Services includes goods, No claims for credit will be accepted without prior authorization. . Any goods which are returned for credit will only be accepted if they are in original packaging, in pristine order and condition and accompanied by documentation showing: Buyer Name and address (You), Seller invoice Number, Reason for Return and our authorization number. If the physical return of goods is authorized the good must be carried by our nominated carrier.

Default

The Buyer agrees that if: the Buyer fails to pay, when due, any amount owing to the Seller; the Buyer fails to comply with any of these Terms; any step is taken to enter into any arrangement between the Buyer and its creditors; the Buyer ceases to be able to pay its debts as they become due or ceases to carry on business; any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Buyer's assets or business; or in the Seller's opinion, the Buyer's credit standing or financial circumstances has materially changed, the Seller may do any or all of the following (in addition to any other rights the Seller may have): (a) require the Buyer to immediately pay all amounts that are unpaid and/or to pay in advance for any further delivery of Goods and/or Services (even if specified otherwise in any invoice or confirmation of order given to the Buyer by the Seller); (b) suspend or cease supplying Goods and/or Services to the Buyer (whether or not the Buyer has ordered Goods and/or Services that have not yet been supplied), until the default has been made good; (c) to the extent that the Goods and/or Services includes goods, demand that the goods be immediately returned to the Seller at the Buyer's expense and the Buyer must comply within 3 days; (d) to the extent that the Goods and/or Services includes goods, enter the Buyer's premises and repossess goods for which payment is overdue; and (e) cancel this agreement or any other contract(s) with the Buyer as the Seller sees fit. These rights are without prejudice to any other right or remedy available to the Seller.

Warranty and Limitation of Liability

To the extent that the Goods and/or Services includes goods, the Seller warrants that the goods supplied are of merchantable quality and are free from defects in material and workmanship. To the extent that the Goods and/or Services includes services, the Seller warrants that the Seller shall exercise reasonable care when providing any services.

To the extent that the Goods and/or Services includes goods, the Seller warrants that, upon payment in full and clear funds for the goods, the Seller will give the Buyer good title to the goods. To the full extent permitted by applicable law, the Seller excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute (including the Competition and Consumer Act 2010 or cause any part of this clause to be void ("statutory condition").

The Seller limits its liability for breach of any express provision of these Terms, warranties or any statutory condition (other than an implied warranty of title) to, at the Seller's option: (a) if the Seller has supplied goods to the Buyer, to the replacement of

Sperling Enterprises Pty Ltd: Business to Non Consumer Terms and Conditions of Sale- Non FOB

the goods or the payment of the cost of replacing the goods; and (b) if the Seller has supplied services to the Buyer, to the supplying of the services again or the payment of the cost of having the services provided again.

To the fullest extent permitted by applicable law, the Seller will not be liable for any loss or damage suffered by the Buyer (whether direct, indirect or consequential including but not limited to loss of profits, loss of opportunity or loss of goodwill) relating to this agreement or its subject matter or arising in any way out of the supply of the Goods and/or Services to the Buyer or the use or re-supply of the Goods and/or Services and the Seller will not be liable for any negligent act or omission of the Seller, its officers, employees, contractors or agents (whether direct, indirect or consequential including but not limited to loss of profits, loss of opportunity or loss of goodwill), or for any costs and damages sustained or incurred as a result of a claim by a third party.

The Buyer acknowledges that, unless otherwise agreed in writing, any description of the Goods and/or Services given to the Buyer by the Seller is intended only for identification, and is not to be construed or relied upon as being a representation or warranty that the Goods and/or Services will conform to that description.

Indemnity

The Buyer must indemnify the Seller and its directors, officers, employees and agents (each for whom the Seller holds this indemnity in trust or as agent, as applicable) jointly and severally, from and against any and all claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, reasonable legal fees) whether for personal injury or property damage, arising out of or in connection with the Buyer's purchase, sale, marketing, distribution or use of the Goods and/or Services, whether in their present form or as processed or combined with other materials into another form of goods or services.

Intellectual Property

The Seller or others own and reserve all of its Intellectual Property Rights (as that term is defined in the Schedule) in any information and/or materials which are notified to or provided to the Buyer. If the Seller makes available or introduces to the Buyer any of its intellectual property for which the Seller has Intellectual Property Rights, then all proprietary rights to that intellectual property, including all Intellectual Property Rights, shall remain the sole property of the Seller.

Privacy and Personal Information

Any personal information that is collected, used or disclosed by the Seller, for the purposes of the sale or supply of Goods and/or Services to the Buyer, is treated as confidential and will only be used or disclosed in the following manner: (a) for the purposes of meeting the obligations under these Terms; (b) to respond to any queries that the Buyer may have; (c) to recover any goods or money owing to the Seller; and (d) in compliance with any legislative requirements, including the Privacy Act 1988 (Cth) (as amended from time to time).

Force Majeure

The Seller will not be liable for any loss caused by its failure or delay to supply, in whole or in part, the Goods and/or Services

due to anything outside the reasonable control of the Seller including but not limited the Force Majeure Events (as that term is defined in the Schedule).

Severance

If any provision of these Terms is or will be illegal, invalid or unenforceable, then that provision will be severed and the validity and enforceability of the remaining provisions will not be affected.

Waiver and Assignment

No rights of the Buyer may be assigned without the express written consent of the Seller.

No waiver by the Seller of any default will be deemed a waiver of any prior or subsequent default

.Governing Law: These Terms will be governed by and construed in accordance with the laws of the State (as that term is defined in the Schedule).

Signature of Buyer/Authorised Officer:

Full name in block letters:

Title:

Name of Buyer/

Buyer's Seller:

Date:

Schedule

Seller	Sperling Enterprises Pty Ltd ABN 39001 882 364
Delaying Event	Means accidents to machinery, acts of God, strikes, fires, floods, international incidents, priorities required or requested by any government or restrictions imposed by any laws or cause beyond the control of the seller
Intellectual Property Rights	Means all forms of intellectual property rights throughout the world, whether or not registered including without limitation, copyright, patent, trademark, business name, domain name and confidential information including know-how and secrets
Force Majeure Events	Means acts or omissions of the Buyer, breakdown of plant or machinery, shortage of Labour, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention and /or control, transport delays, accidents or embargoes of any kind
State	New South Wales