

DYNO NOBEL ASIA PACIFIC PTY LIMITED
STANDARD TERMS & CONDITIONS OF SALE

1. **Statutory provisions.** This Agreement is subject to the provisions of the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law, any amendment or re-enactment of that Act for the time being in force and any other relevant and applicable provision of State and/or Commonwealth legislation (the **Statutory Provisions**).
2. **Delivery** of goods, products, materials and services supplied by Seller (**Goods**) as properly ordered by Buyer will be made by Seller at the agreed point of delivery during the normal business hours of that location. Buyer will unload any packaged Goods from the vehicle and place in storage. Seller may deliver the Goods in one or more consignments. Seller will attempt to effect delivery within the agreed timeframe but will not be liable for any additional costs incurred by Buyer in the event of late delivery.
3. **Acceptance.** Buyer shall within seven working days after delivery of the Goods give written notice to Seller of any grounds upon which Buyer alleges the Goods are not acceptable. If Buyer fails to give such notice then to the extent permitted by law Buyer is deemed to have accepted the Goods and Buyer will be liable for payment for those Goods when due.
4. **Total Price** for the Goods is as set out in the invoice, prepared in accordance with unit values agreed between the parties, applying on the delivery date. Any applicable transaction tax (GST/VAT) is also shown separately and must be paid to Seller as part of the Total Price.
5. **Payment** for the Goods must be made by Buyer no later than **30** days after the of the month in which the invoice is dated. If Buyer fails to pay the invoice amount by the due date or if an amount claimed by Seller is in dispute but is ultimately determined to have been payable to Seller then Buyer must pay to Seller, if so invoiced, interest on the unpaid amount calculated at the rate of 1% per month for the period it remains unpaid past the due date. Any legal fees or other costs incurred by Seller in collecting any amount unpaid after 45 days shall be recoverable from Buyer.
6. **Property**
 - (a) Seller retains title to the Goods and title to the Goods does not pass to Buyer until Buyer pays in full the purchase price and all other amounts that are payable, owing but not payable or that otherwise remain unpaid by Buyer to Seller on any account at any time. This is so even if Buyer has taken possession of the Goods, or has enhanced or changed the Goods or performed work on them. The Goods, proceeds and any product or mass that the Goods may be or become part of are referred to in this Agreement collectively as **Collateral**.
 - (b) Until Buyer pays in full the purchase price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid by Buyer to Seller on any account at any time, Buyer must store Goods properly and separately and mark the Goods to identify it as being subject to the Seller's security interest.

- (d) Buyer may only dispose of Collateral in the ordinary course of business and for cash proceeds at least equal to the market value of the Collateral and will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of Seller's security interest. If such a security interest does arise despite the previous sentence, Buyer must immediately pay those proceeds to Seller in reduction of the amount owing. Seller can apply amounts it receives from Buyer towards amounts owing to it in such order as Seller chooses.
- (e) If Buyer defaults in the performance of any obligation owed to Seller under this Agreement, Seller considers that the credit of Buyer has become impaired, or Buyer becomes insolvent as defined in Regulation 7.05.02 of the Corporations Regulations 2001 (Cth), Seller may repossess the Collateral and the Containers and otherwise enforce its security interest in the Collateral and the Containers. (Seller may for that purpose enter into any premises occupied by Buyer and remove the Collateral and the Containers, including by detaching the Goods from any other products to which they may be attached, or by detaching Goods from any land to which they may be fixed).
7. **Risk** of loss or damage to the Goods passes to the Buyer on delivery or collection of the Goods. Use of the Goods, other than in accordance with Seller's express instructions or recommendations, is at the sole risk of Buyer.
8. **Laws** of the State of Australia applying at the point of delivery (**State**), including the laws of the Commonwealth of Australia as it applies in the State, govern this Agreement and any security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**)) under it and the parties agree to submit to the non-exclusive jurisdiction of the courts of the State and any courts competent to hear appeals therefrom. Each party shall abide by all relevant laws when fulfilling its contractual obligations, especially those relating to measurement, health and safety, transport, environment, industrial relations, trade practices, privacy and anti-bribery or corruption.
9. **Policies** of Seller must be complied with by the parties at all times when acting in connection with this Agreement, including policies relating to health, safety and the environment, anti-bribery & improper payments, anti-harassment & bullying and privacy, which policies are available on request from Seller. Seller may terminate this Agreement at any time immediately on notice if Seller reasonably believes that Buyer has or is likely to breach any of these policies.
10. Any **Terms or Conditions** implied by law including any warranties by the Seller are hereby excluded and are not applicable to the maximum extent permitted by law.
11. **Liability.** Seller's liability for defective Goods is limited (at the Seller's sole discretion) to (i) re-supplying the Goods; (ii) repairing or replacing the Goods; or (iii) paying the costs of re-supply or repair of the Goods. To the extent permitted by law, under no circumstances will any party be liable to the other party for any special, exemplary or punitive damages, loss of production, loss of use, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads whether arising directly or indirectly and howsoever arising whether in contract, tort (including negligence) or otherwise. Without limiting the above, to the extent permitted by law, the total liability of the Seller to the Buyer under this Agreement shall not exceed the amounts paid and payable by Buyer to Seller under this Agreement.

12. **Default and suspension.** If Buyer defaults in the performance of any of its obligations under this Agreement, becomes insolvent as defined in Regulation 7.05.02 of the Corporations Regulations 2001 (Cth) or Seller considers that the credit of Buyer has become impaired, Seller may terminate any order of the Buyer, suspend delivery of Goods to Buyer, and/or amend the terms for any supply of Goods to Buyer until such time as Buyer has rectified that default to the satisfaction of Seller.
13. **Insurance.** Seller and Buyer shall each obtain and keep in force with a reputable insurer(s) relevant and prudent insurance cover for its liabilities covering all insurable events that may cause loss of or damage to property or injury to or death of a person that occur in the performance of their obligations under this Agreement. Such insurance shall at least include a public liability policy with an indemnity limit of at least \$10,000,000 per claim and may include vehicle, property, goods-in-transit and employer's liability policies if relevant.
14. **Intellectual Property** created under or in connection with this Agreement, whether jointly with the Buyer or not, will be the property of the Seller and title in such intellectual property will vest immediately in the Seller upon its creation.
15. **Confidentiality.** A party shall not at any time disclose to any third party this Agreement and any information of the other party identified as being confidential or reasonably known to be confidential, including any information of a type specified by section 275 of the PPSA, except to its professional advisers or business partners under a similar duty of confidentiality, without the prior written consent of the other party, except to the extent that disclosure is required by law (other than section 275(1) of the PPSA) or if the information is already in the public domain not due to a breach of the recipient party's obligations of confidentiality.
16. **Force Majeure.** Except in relation to an obligation to make a payment, if a party is rendered wholly or partially unable to perform its obligations under this Agreement by an event outside its reasonable control, when acting in a diligent and prudent manner, including but not limited to an act of God, war, accident, fire, flood, adverse weather conditions, strike, action (including a direction) or inaction by a Government authority, legislation, breakdown or failure of plant or equipment (**FM Event**), that party must give a written notice specifying details of the nature and the expected duration of the effects of the FM Event to the other party no more than two business days after it becomes aware of the FM Event. The obligations of the party giving the notice so far as they are affected by the FM Event will be suspended until its effect has ceased. The affected party must use all reasonable efforts to end or overcome the FM Event in a timely manner and must notify the other party when it is over. Seller will be entitled to deliver and Buyer must take and pay for such part of the Goods as can be delivered while the FM Event exists. If the FM Event lasts for 90 consecutive days then either party may terminate this Agreement by giving written notice to the other party to take effect seven days thereafter.
17. **Notices** to be given pursuant to this Agreement shall be in writing in the English language and may be served personally during normal business hours, sent by registered mail, email or facsimile transmission to the address last notified in writing by the receiving party.
18. **Containers.** Seller retains at all times the right of possession of all reusable containers (including pallets, shipping containers, tanks, crates, drums, bags and boxes) used for delivery of the Goods (**Containers**). Buyer agrees to indemnify

Seller in respect of any containers not returned to Seller or its agent, in similar condition as when received by Buyer, within 28 days after the date of delivery to Buyer.

19. **Approvals** required by law to make, store, transport, trade, use and/or perform the Goods must be held by the party performing that activity and Seller may refuse to release the Goods to Buyer until it has been satisfied that Buyer holds any such licence, permit or approval.
20. **General Provisions**
- (a) Any terms of this Agreement that by their nature or as contemplated by the Agreement extend beyond the expiry or termination date shall survive termination of this Agreement.
 - (b) Buyer shall not novate, assign or subcontract any of its obligations, rights and benefits of the Agreement without the prior written consent of Seller, such consent not to be unreasonably withheld or delayed but reasonable conditions may be imposed. Seller may assign to any person any amount payable, owing but not payable or otherwise unpaid by Buyer to Seller under this Agreement.
 - (c) The failure or omission of a party at any time to enforce the strict compliance with any provision of this Agreement or exercise any discretion under this Agreement shall not operate as a waiver of the rights of a party arising under this Agreement. Any waivers granted by a party must be in writing and signed by the party waiving its rights.
 - (d) If any part of this Agreement is or becomes illegal, invalid or unenforceable in any relevant jurisdiction then this Agreement will be read as if that part had been deleted in that jurisdiction only and the remainder shall remain in full force and effect and the intent carried out in full by each party.
 - (e) Where a party comprises more than one entity, each of them shall be jointly and severally liable for the performance of that party's obligations.
 - (f) The parties acknowledge that the relationship between them is one of independent parties and nothing in this Agreement shall be construed to constitute one party as the employee, agent, affiliate, associate, partner or legal representative of the other for any purpose whatsoever.
 - (g) In the absence of a defect in Seller's system of measuring proven by Buyer, the measurements of Goods sold will be the last measurement determined by Seller's system of measuring prior to delivery of the Goods, determined in accordance with the applicable laws.
 - (h) A party shall not be liable whatsoever for any information or advice provided pursuant to this Agreement except as expressly agreed by the parties or as required by law.
 - (i) Each party shall bear its own internal and third party costs of entering into this Agreement.
 - (j) A party shall not encumber any of its rights under this Agreement without the prior written consent of the other parties.
 - (k) This Agreement shall be binding upon and inures to the benefit of the parties' respective successors and assigns.
 - (l) Any stamp duty payable on this contract is to be paid by the Buyer.
 - (m) The UN Convention on Contracts for the International Sale of Goods is hereby expressly excluded and does not apply to this Agreement.
21. **PPSA**
- (a) Buyer acknowledges that Seller may register a financing statement in relation to its security interest in the Collateral and the Containers and agrees to provide all information and do anything reasonably requested by Seller to enable it to do so, and to ensure that any registration of Seller's security interest remain fully effective or perfected (or both).

- (b) To the extent the law permits, Buyer waives its rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before Seller exercises a power, right, discretion or remedy and any time period that must otherwise lapse under any law before Seller exercises a power, right, discretion or remedy. If the relevant law cannot be excluded but permits the period of notice or lapse of time to be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
- (c) To the extent the law permits, for the purposes of sections 115(1) and 115(7) of the PPSA, Seller need not comply with sections 95, 118, 121(4), 125, 130, 132, 132(3)(d), 132(4) and sections 142 and 143 are excluded and for the purposes of section 115(7) of the PPSA Seller need not comply with sections 135 and 137(3).
- (d) Buyer and Seller agree not to disclose information of the kind mentioned in section 275(1), except in circumstances required by sections 275(7)(b)-(e) of the PPSA. Buyer agrees not to make any request of the Seller under section 275 of the PPSA.