

Commercial Customer – Terms and Conditions

1. Background

These Terms and Conditions apply to each Contract for the supply of Goods and/or Services by or on behalf of Mobo Group to any Customer.

2. Ordering and prices

- 2.1 All orders for Goods and/or Services are subject to acceptance by Mobo Group.
- 2.2 Quotations for Goods and/or Services may be subject to change to reflect increases in costs of production.

3. Contract

- 3.1 The Contract will be formed, incorporating these Terms and Conditions, on acceptance (written, verbal) of the Contract Particulars, by the Customer or on delivery of Goods and/or Services.
- 3.2 The Customer may not cancel any Contract without reasonable notice to Mobo Group and the prior written consent of Mobo Group which Mobo Group will not withhold unreasonably.

4. Mobo Group's obligations

- 4.1 Subject to these Terms and Conditions and any Contract Particulars, Mobo Group will supply all Goods and/or Services in accordance with the Contract.
- 4.2 Mobo Group may use any competent employee, representative, associate, officer, agent or subcontractor to supply the Goods and/or Services to the Customer.

5. Customer's obligations

Without limiting its other obligations under the Contract, the Customer must:

- 5.1 ensure that all Goods delivered, or Services supplied comply with the Contract and/or Contract Particulars;
- 5.2 comply with all reasonable directions given to it by Mobo Group; and
- 5.3 where applicable, provide Mobo Group with access to any Site, equipment and all information necessary to enable Mobo Group to carry out its obligations under any Contract.

6. Fees

- 6.1 The Customer must pay all fees for the Goods and/or Services in full (without any set off), and Mobo Group must receive such fees:
 - 6.1.1 on or before Mobo Group supplies those Goods and/or Services; and
 - 6.1.2 within 30 days after the end of the month of invoice unless otherwise specified in the Contract Particulars.
- 6.2 Unless otherwise specified in the Contract Particulars, all fees for the Goods and/or Services are exclusive of GST. Such fees for each taxable supply under the Contract must be increased by the rate of GST imposed by law.
- 6.3 Without limiting Mobo Group's rights under the Contract, if the Customer does not pay an invoice from Mobo Group on or before it is due, Mobo Group may (at its sole and absolute discretion) charge interest on the outstanding invoice at a rate not exceeding the maximum rate charged by Mobo Group's primary bankers on overdrafts in excess of \$100,000.

6.4 The Customer must pay Mobo Group's costs in recovering any amounts under the Contract, including legal fees on an indemnity basis.

6.5 A word or expression used in this clause 6 which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this clause 6.

7. Product specific clauses

The following clauses 7.1 to 7.4 specifically relate to the purchase of Goods from Mobo Group.

7.1 Delivery and risk of the Goods

- 7.1.1 Subject to clause 7.1.2, the Customer will, at its cost, arrange to pick up the Goods from the Premises. Mobo Group will load the Goods at its cost.
- 7.1.2 The Customer may request any Goods to be delivered to the Customer and delivery will be made by Mobo Group at its sole discretion and at the Customer's cost to the Site and in accordance with the Customer's written instructions by such transport at Mobo Group's discretion.
- 7.1.3 Delivery dates given for the supply of Goods and/or Services are estimates only and late delivery will not be grounds for cancellation or non-payment.
- 7.1.4 For the sole purpose of delivering Goods and/or Services in accordance with the Contract, the Customer provides Mobo Group with a licence to enter the Site.
- 7.1.5 The Customer must ensure that the Site is safe for such collection or delivery.
- 7.1.6 Mobo Group will not be liable for any failure to deliver or delay in delivery for any reason beyond its reasonable control.
- 7.1.7 In no event will Mobo Group be liable for any third party or consequential loss for any failure or delay in delivering Goods and/or Services.
- 7.1.8 Except as required by law or pursuant to these Terms and Conditions, Mobo Group will be under no obligation to accept returned Goods for any reason.
- 7.1.9 Risk in the Goods will pass to the Customer when the Goods are picked up by the Customer or on delivery of the Goods to the Site.
- 7.1.10 If payment in full has not been made by the Customer when the Goods are picked up by the Customer or upon delivery, insurance against all risks whatsoever will be maintained by the Customer from when the Goods are picked up or delivered.

7.2 Property in the Goods

Property in the Goods will not pass to the Customer until payment in full has been made by the Customer to Mobo Group for all Goods picked up or delivered to the Customer by Mobo Group.

7.3 Goods Warranty

- 7.3.1 Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to Goods (whether implied or otherwise) are excluded to the maximum extent permitted by law.

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7.3.2 Damages for breach of any warranty by Mobo Group will be limited to replacement of the Goods or the supply of the Goods again or the cost of replacement of the Goods or having the Goods supplied again, at Mobo Group's discretion, and will not extend to any indirect or consequential loss or damages whatsoever.

7.4 Quantity of Goods delivered

7.4.1 All claims for short delivery, non-delivery and/or incorrect pricing must be advised to Mobo Group within 14 days of invoice, together with documentation supporting the claim.

8. Delivery specific clauses

The following clauses 8.1 to 8.3 specifically relate to the delivery of Goods by Mobo Group.

8.1 Risk of Goods

8.1.1 Mobo Group at no time takes or accepts any ownership of or responsibility for the Goods. All risk and liability in and attaching to the Goods remains with the Customer at all times.

8.1.2 The Customer is responsible for all extra costs and risks incurred by Mobo Group and for all damage sustained by Mobo Group in reliance on the information and specifications provided by the Customer.

8.1.3 Where Mobo Group collects and/or delivers Goods from and/or to the Customer (as appropriate), the Customer warrants that it is the owner of the Goods.

8.1.4 The Customer must comply with all relevant State or Territory legislation and guidelines (as applicable) regarding sampling and/or classifying of the Goods for transport, supply, disposal and re-use.

8.2 Site requirements

8.2.1 At no time does Mobo Group take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Customer at all times.

8.2.2 Unless otherwise specified, the Customer is responsible for directing Mobo Group at the Site, and for the safe loading and unloading of the Goods.

8.2.3 The Customer is responsible at all times for maintaining the safety and cleanliness of the Site and its access roads.

8.3 Licence to enter

The Customer grants to Mobo Group an irrevocable licence to enter the Site at any time to remove any equipment of Mobo Group or its sub-contractors.

9. Indemnity

The Customer indemnifies and holds harmless Mobo Group from and against any claim, loss, damage, liability or cost suffered or incurred by Mobo Group and/or its personnel caused (directly or indirectly) by the Customer's actions or omissions, except to the extent that such claim, loss, damage, liability or cost is solely and directly caused by Mobo Group's negligence or wilful misconduct.

10. Termination

10.1 Either party may terminate the Contract:

10.1.1 For any reason by giving the other party 30 days written notice; or

10.1.2 By written notice if the other party breaches a material obligation under the Contract and fails to remedy the breach within 30 days following notice.

10.2 Termination of the Contract is without prejudice to any other legal right or remedy of a party and the accrued rights of the parties, including the right of Mobo Group to recover fees.

11. Dispute resolution

11.1 Neither party may commence Court proceedings in relation to the Contract without first complying with this **clause 11**, except as may be required to obtain urgent injunctive relief.

11.2 The parties must use their best endeavours to resolve any dispute in relation to the Contract by negotiation.

12. General

12.1 The Contract contains the entire agreement between Mobo Group and the Customer in respect of the subject matter of the Contract and supersedes and replaces any prior agreement, representation or understandings between them.

12.2 The Customer's rights and obligations under the Contract are personal and cannot be assigned without the prior consent of Mobo Group.

12.3 Mobo Group's rights and obligations under the Contract may be assigned by giving reasonable notice to the Customer, and with or without the prior consent of the Customer.

12.4 The laws in South Australia govern the Contract.

12.5 Unless otherwise specified in the Contract, the rights and obligations under the Contract cannot be varied or amended without the written agreement of the parties.

12.6 A consent, approval, request or notice must be in writing and may be given by pre-paid post, email or facsimile to the address notified to all parties.

12.7 The Contract does not create a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.

12.8 Any provision of the Contract must be read down to any extent necessary to be valid. If that is not possible, it must be severed. All other provisions of the Contract are unaffected.

12.9 If the Customer is a trustee of a trust, it is bound by the Contract both personally and in its capacity as trustee for each trust for which it acts as trustee.

13. Limitation of liability

No liability whatsoever of any kind will be accepted by Mobo Group for direct or indirect loss of damage including loss of profits, livelihood or goodwill relating to supply of Goods and/or Services by Mobo Group or relating to any act or omission on the part of Mobo Group or its servants, agents or contractors. Without limitation to the above, liability arising out of defects or damage to goods caused by misuse, abuse, neglect, improper processing or accident is specifically excluded.

14. Definitions

In these Terms and Conditions

14.1 'Contract' means all contracts entered into between Mobo Group and the Customer for the supply of Goods and/or Services by Mobo Group;

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- 14.2 'Contract Particulars' means any quote, tender response, delivery docket, invoice or other document describing the supply of Goods and/or Services forming part of a Contract;
- 14.3 'Customer' means the customer identified in the Contract Particulars;
- 14.4 'Goods' means any part, material, product and/or component produced by Mobo Group specified in the Contract and/or Contract Particulars;
- 14.5 'Premises' means any of Mobo Group's premises or other sites controlled by Mobo Group;
- 14.6 'Services' means any services provided by Mobo Group or its subcontractors to the Customer in accordance with the Contract and/or Contract Particulars;
- 14.7 'Site' means the location where the Goods are delivered to as directed by the Customer; and
- 14.8 'Terms and Conditions' means all the terms and conditions stated in this document.