

1. Interpretation

- 1.1 “**Agreement**” is defined in clause 18.3.
- 1.2 “**Application**” means the application by the Customer to the Company for credit.
- 1.3 “**Company**” means Peikko Australia Pty Ltd, ABN 53161053907.
- 1.4 “**Company Staff**” is defined in clause 7.5.
- 1.5 “**Customer**” means any recipient, individual or company, of Goods from the Company, or anyone who orders Goods from the Company.
- 1.6 “**Goods**” means products, materials and related services provided by the Company at the request of the Customer.
- 1.7 “**PPSA**” means the Personal Properties Securities Act 2009 (Cth) as amended from time to time.
- 1.8 “**PPSR**” means the Personal Properties Securities Register established under the PPSA.
- 1.9 “**Terms and Conditions**” means these terms and conditions of sale.
- 1.10 In this Agreement, unless otherwise indicated by the context:
 - i words importing the singular include the plural and vice versa;
 - ii an expression importing a natural person includes a body corporate;
 - iii a reference to a party includes that party’s successors and permitted assigns; and
 - iv a covenant or agreement on the part of two or more persons binds them severally and jointly.

2. Payment and Price

- 2.1 Payment for Goods must be made by the Customer and received in full by the Company before the end of the calendar month after in which the Company issues a tax invoice in respect of the Goods.
- 2.2 All prices as published from time to time are subject to change without notice. Prices may be increased after acceptance by a Customer if the Company incurs an increase from its suppliers or any increase in its costs of production or carriage.
- 2.3 The Customer shall also pay the Company any costs the Company incurs in storing uncollected Goods (if not collected within 7 days from the agreed collection date or the date the Company notifies the Customer the Goods are available for collection), any applicable stamp duty, or other expenses payable on the transaction.
- 2.4 The Customer cannot deduct any amount due to the Company under any tax invoice or statement of account by way of set-off or cross claim and all amounts must be fully paid to the Company without any deduction whatsoever.

3. Delivery

- 3.1 The Customer may arrange for collection of the Goods or arrange its own delivery at its own cost.
- 3.2 If the Company agrees to deliver Goods, then all reasonable efforts to deliver the Goods to the Customer at the time(s) arranged will be made by the Company. Cost incurred at the failure of the Customer to accept the Goods will be borne by the Customer in full and payable immediately to the Company.
- 3.3 The Company is not liable for and will not take responsibility for any delay in delivery for any reason or the inability of the Company to secure continuation of supply of the Goods.
- 3.4 Any damage to property on delivery or any damage to the Goods being delivered or any direct or indirect loss suffered by the Customer by reason of any delay or failure in delivery will not be the responsibility of the Company. The Customer accepts all risk in this regard.

- 3.5 The Customer is obliged to inspect the Goods upon delivery as soon as practicable and immediately advise the Company of any damage to the Goods. The Customer must retain the Goods in the condition in which they were delivered to enable the Company to inspect the Goods.
- 3.6 There will be no obligation on the part of the Company to accept the return of the Goods unless required by law.
- 3.7 The Customer shall be liable for the cost of delivery by the Company.

4. Default

- 4.1 Default of these Terms and Conditions includes any breach by the Customer of these Terms and Conditions, non-payment for the Goods by the due date or any act of bankruptcy or insolvency including the external administration of the Customer.
- 4.2 Any default of the Customer will enable the Company to claim the return of the Goods without notice or to withdraw credit to the Customer making all monies payable on demand and the Company at its discretion to treat the whole contract as repudiated and sue for breach of contract.

5. Credit

- 5.1 Credit may be granted to the Customer upon Application and approved by the Company. Notice to the Customer will be provided to the Customer confirming the agreement for credit.
- 5.2 The Customer must notify in writing to the Company any change in the information provided on Application or other information provided.

6. Fit for Purpose

- 6.1 Except as expressly provided to the contrary, all representations, warranties, terms and conditions in relation to the Goods are excluded to the maximum extent permitted by law.
- 6.2 The Customer is required to expressly advise the Company of the specific purpose for the Goods.

7. Limitation of Liability

- 7.1 If the Customer obtains goods or services from the Company as a consumer, within a meaning of the Australian Consumer Law, then the following provisions shall apply:
 - i Such goods and services are supplied are subject to the guarantees set out in division 1 of the Australian Consumer Law (“**The Guarantees**”), subject to clauses ii and iii;
 - ii In a case of goods, the liability of the Company for failure to comply with the guarantee (other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law) is limited to the replacement of the goods or the supplier of equivalent goods;
 - iii In the case of services, the liability of the Company for failure to comply with the guarantee is limited to the supply of the services again; and
 - iv This clause 7.1 prevails over all other provisions of this Agreement.
- 7.2 To the fullest extent permitted by applicable law, the Company’s maximum aggregate liability in respect of any claim shall not exceed the sum paid by the Customer in respect of the Goods to which such claim relates.
- 7.3 Where loss or damage is not covered in paragraph 7.1 or 7.2, the Company is not liable to the Customer under statute or rule of law or equity (including negligence or otherwise) for any loss or damage arising out of its supply of the Goods.
- 7.4 To the fullest extent permitted by law, the parties agree that neither party to this Agreement shall have any liability, obligation or responsibility, whether in contract, tort (including but not limited to negligence), under statute or any other basis, for any indirect incidental, consequential, special or exemplary damages, or damages for loss of profits, revenue, data or use, arising in any way in connection with this Agreement or the Goods, including, but not limited to, damage to property, injury to persons, lost profits, or delays or inconvenience, even if such party has been advised of the possibly of such damages.

- 7.5 The Customer releases the Company's employees and contractors ("Company Staff") from any claim for which the Company is not liable to the Customer and the contract. Without limiting the foregoing, the Customer shall indemnify the Company for any claim against the Company by any Company Staff as a result of the Customer making a claim against such Company Staff. The Customer is agreeing to this clause 7 with the Company as the agent of such Company Staff.

8. Risk and Returns

- 8.1 Upon delivery of the Goods all risks pass to the Customer or risks pass upon the passing of title to the Customer whichever is earlier.
- 8.2 Goods manufactured to order are non-refundable.
- 8.3 The Company is not obligated to accept the return of any Goods, and if it does it does so at its absolute discretion. Goods will not be refunded after the expiry of 30 days from the date of purchase or delivery (whichever is later).
- 8.4 Any request for a refund must be accompanied by purchase order and evidence of payment. Transport or delivery costs will still be met and payable by the Customer.

9. Indemnity

- 9.1 The Customer indemnifies and will keep indemnified the Company against any loss or damage suffered by the Company as a result of any breach by the Customer of the terms of this Agreement (including legal costs on a full indemnity basis).

10. Costs

- 10.1 The Customer shall be liable to the Company for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceedings for recovery under this Agreement.

11. Severance

- 11.1 If a provision of this Agreement would but for this clause be unenforceable the provision must be read down to the extent necessary to avoid that result. If the provision cannot be read down it is to be severed without affecting the validity and enforceability of the remainder of this Agreement.

12. Applicable Law

- 12.1 The laws of the State of New South Wales shall govern this Agreement and the Courts of that State shall have non-exclusive jurisdiction in connection with this Agreement.

13. GST

- 13.1 All prices and quotations (unless otherwise indicated) are exclusive of Goods and Services Tax (GST).
- 13.2 If GST is imposed or payable on a supply under this Agreement then the Customer shall pay in addition to the price of the Goods or the value of any supply the amount of GST applicable at the time. Payment of GST is to be made at the same time of payment of the relevant taxable supply.

14. Force Majeure

- 14.1 A party is not liable for damage or delay in so far as the damage or delay was due to impediment beyond its control and provided that:
- i It could not reasonably be expected to have taken into account the impediment at the time of the conclusion of the Agreement; and
 - ii It could not reasonably have avoided or overcome its effects.

- 14.2 Such impediment can be for example:

- i Strike, lockout boycott or other action also when a party is itself an object or party thereof;
- ii War or any other conflict or acts of terrorism;
- iii Acts of government or authority whether lawful or unlawful;
- iv Fire or discontinuous energy production, delivery of water, electricity or heating;
- v Exceptional weather conditions or natural disasters including but not limited to storm, cyclone, hurricane, earthquake, landslide, flood, drought, plague etc.;
- vi Partial or total damage of machinery;
- vii Lack of component parts, raw materials fuel; Discontinuance of common transport;
- viii The failure of a supplier to the Company to perform their obligations or the failure of the Company's importation or other arrangements in respect of the Goods; and
- ix Any similar event.

- 14.3 Subcontractors delay shall be deemed to constitute an acceptable force majeure situation should it be due to circumstances described in this clause.

- 14.4 A party shall inform the other party of the event of force majeure as well as of the termination of the force majeure as soon as reasonably practicable.

- 14.5 In the event that force majeure continues longer than three (3) months both parties have the right to terminate this Agreement with immediate effect and without liability.

15. Safety

- 15.1 The Customer must advise the Company Staff of any requisite safety protocols or appropriate procedures that apply to visitors of the Company's premises on or prior to any relevant arrival at the Customer's premises.
- 15.2 The Customer must ensure that its premises are safe in all respects for all purposes upon any visit by the Company Staff.
- 15.3 The Customer must advise the Company immediately upon any concerns that the Customer has in relation to safety on, in or around the premises for purposes of this clause.
- 15.4 If the Company Staff determines that the site is unsafe in any respect, such staff member or contractor may immediately terminate their attendance at the premises, and such termination will not constitute a breach of any agreement with the Customer.

16. Interest

- 16.1 If any amount is not paid by the Customer as and when such payment force due, in addition to all other rights that the Company may have, the Customer shall pay to the Company interest at the rate of 10% per annum, calculated daily on such outstanding amount.
- 16.2 The interest referred to above constitutes a genuine pre-estimate of the damage may be suffered by the Company in respect of such breach.
- 16.3 The interest referred to in this clause shall be payable on demand.

17. Retention of Title

- 17.1 Title to the Goods shall remain vested in the Company and shall not pass to the Customer until the purchase price for those Goods and any Goods previously supplied to the Customer has been paid in full and received by the Company.
- 17.2 Until title to the Goods passes in accordance with clause 17.1:
- i The Company shall have the authority to retake, sell or otherwise deal with or dispose of all or any part of the Goods;
 - ii The Company and its agents and employees shall be entitled at any time and without the need to give notice enter upon any property upon which the Goods or any part stored, or upon which the Company reasonably considered that they may be kept;
 - iii The Customer shall store or mark the Goods in a manner reasonably satisfactory to the Company indicating that title to the Goods remains vested in the Company; and
 - iv The Customer shall insure the Goods to the full replacement value, and arrange for the Company to be noted on the relevant insurance policy as the loss payee.
- 17.3 Notwithstanding whether title to the Goods remain vested in the Company, risk in all respects regarding the Goods shall pass to the Customer upon delivery.
- 17.4 This Agreement may create a registered security interest under the PPSA in the Goods and any proceeds. Neither party has agreed to postpone the time for attachment of the security interest. The Customer agrees that value has been given for the creation of the security interest.
- 17.5 Where the Company has other enforcement rights in addition to the enforcement rights provided for under the PPSA, those other enforcement rights will be continue to apply.

- 17.6 The Customer must ensure that any security interest created is enforceable, that the Company's priority is preserved and that any defect in the security interest is overcome, including by expeditiously executing any documents and doing anything required by the Company.
- 17.7 The Customer must not, without the Company's written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Goods or any interest in them or permit any lien over them. The Customer may only disclose information or documents if the Company has given its prior written consent.
- 17.8 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement, any notice required under the PPSA, and its rights under Sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 135, 142 and 143 of the PPSA.
- 17.9 The Customer shall insure the Goods and maintain such insurance against theft or any damage until such Goods and any associated costs have been paid for in full to the Company. The Customer must provide the Company on demand copies of any insurance policy evidencing such insurance.

18. General

- 18.1 All purchase orders are subject to acceptance by the Company.
- 18.2 No variation of these Terms and Conditions is valid and binding on the parties unless in writing and signed by the parties.
- 18.3 Unless otherwise evidenced in writing and signed by the parties, these Terms and Conditions together with the related quotation, order confirmation, purchase order, sales order form and/or other similar document(s), any relevant Credit Application and terms of any Guarantee & Indemnity comprise the whole agreement ("Agreement") between the parties.



Revisions:

Version	Published and effective since:	
1.0	August 2017	
1.1	2020-04-07	Clause 14; Covid-19 clause (14.6) added.
1.2	2023-04-25	Clause 14; Covid-19 clause (14.6) deleted.