

TERMS AND CONDITIONS OF TRADE



The following terms and conditions shall apply to each agreement for the sale of Goods and/or the supply of Services:-

1. Interpretations

For the purpose of this agreement and unless otherwise stated in writing:

- a. "Seller" shall mean The Trustee for the Andrew Powell Trust and the Trustee for the Gavin Stiffle Trust trading as Robway Safety Pty Ltd ABN 99 568 505 482, and its respective successors and assigns.
- b. "Buyer" shall mean the Buyer named on any quote, invoice, purchase order, or any other documentation produced in relation to this agreement, or any person acting on behalf of and with the authority of the Buyer.
- c. "Price" shall mean the cost of the Goods/Services as agreed between the Seller and the Buyer subject to clause 5 of this agreement.
- d. "Goods" shall mean all Goods supplied by the Seller to the Buyer or ordered by the Buyer but not yet supplied and includes Goods described on any quotation, invoice, purchase order, or any other document including any recommendations and advice.
- e. "Services" shall mean all Services supplied by the Seller to the Buyer and includes Installation, and any other Services outlined on any quote, invoice, purchase order, or any other documentation produced in relation to this agreement including any recommendations and advice.

2. Jurisdiction

- a. This agreement shall be governed by and construed in accordance with the laws of the Courts of South Australia.
- b. The Buyer submits to the jurisdiction of the Courts of South Australia.

3. Offer and Acceptance

- a. Any requests from the Buyer to the Seller for the supply of Goods/Services however made shall constitute acceptance of the terms and conditions contained herein.
- b. Where more than one Buyer has entered into this agreement, all Buyers shall be jointly and severally liable for all payments of the Price.
- c. These terms become binding upon acceptance, and may thereafter only be altered or revoked with the written consent of the Seller.
- d. Any changes to the Buyer details, including name, address, telephone, email, or any changes in ownership structure of the Buyer requires written notice within ten (10) business days of such changes being made.

4. Goods / Services

- a. The Goods/Services are as described on the quotation, work authority form, invoice, purchase order, or any other document provided to the Buyer, from the Seller.

5. Price

- a. The Buyer agrees to pay the Seller, the price of the Goods/Services, within the agreed time for payment.
- b. The Price will be determined by the Sellers quotation, or indicated on invoices, purchase order forms, or any other documentation as provided by the Seller to the Buyer.
- c. The Sellers quoted price will be binding for the Seller for a period of thirty (30) days after the date of the quotation.
- d. Any variation from the original agreed works or specifications may affect the price, and any variations of the price will be shown on the invoice. Payment for all variations must be made in full at their time of completion.
- e. GST Conditions will apply to all goods purchased and services supplied by the Seller.

6. Payment Terms

- a. Unless otherwise agreed in writing, in the event that the Buyer has been granted a credit account, the Buyer agrees to pay all amounts in full by the due date shown on the invoice.
- b. At the Seller's sole discretion, a deposit may be required before the supply of any Goods or Services.
- c. Payment will be made by cash, cheque, direct deposit, or by any other method as agreed to between the Buyer and the Seller.

7. Delivery

- a. The Buyer shall be responsible for making any necessary arrangements to take delivery of the Goods.
- b. Delivery of the Goods to any third party nominated by the Buyer, (including carriers), is deemed to be delivery to the Buyer for the purposes of this agreement.
- c. The failure of the Seller to deliver shall not entitle either party to treat this contract as being cancelled.
- d. Should the Seller fail to deliver all or part of the Goods, the Seller shall not be liable for any loss or damage incurred by the Buyer, or any of the Buyers agents, customers, related companies, or contractors.
- e. Should the Seller need to arrange carriage for the Goods, any additional costs incurred by the Seller, including insurance shall be added to the price, and will be due and payable on the agreed date for payment.

8. Notification of Defects

- a. The Buyer shall inspect the Goods upon delivery and notify the Seller within seven (7) days of any alleged defect, or failure to fulfil the quote. The Seller will be given access to any Goods within a reasonable time after delivery in order to inspect any alleged defects in the Goods/Services.
- b. Should the Buyer fail to give such notification, the Goods/Services will be deemed to be in compliance with the quote, and free from any defects whatsoever.

9. Return of Goods

- a. All goods returns are subject to our prior written consent and must comply with our goods return procedures then in effect. Before returning or exchanging goods, you must contact us directly to obtain an authorisation number to include with your return. You must return goods to us in their original or equivalent packaging and you are responsible for risk of loss, as well as shipping fees back to the Seller.
- b. For approved returns the Seller may (at its sole discretion), issue a refund but this may incur a handling fee of 20% of the value of the Goods.
- c. Custom software is not returnable.

10. Warranty

- d. The Seller hereby warrants that subject to the conditions of warranty as specified in clause 11 herein, all Goods supplied are covered by a twelve (12) month warranty against defects arising from workmanship or materials from the date of dispatch from Adelaide.
- e. Where the Seller has agreed in writing that the Buyer is entitled to claim under warranty, the Seller's liability is limited to (at the Seller's discretion), replacing the Goods or refunding the purchase price.
- f. The Seller does not accept responsibility for the dismantling or re-installing of any new, repaired or replaced components or travelling time and standby time, nor for any consequential damage whatsoever.
- g. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Buyer.
- h. The Seller may (at its sole discretion), issue a refund but this may incur a handling fee of 20% of the value of the Goods/Services.
- i. If the buyer requires the seller's attendance on site the following will apply:
 - Within Australia, travel time from Adelaide, time on site, fares and expenses will be charged at the current rate.
 - Outside Australia, travel time from the nearest authorised centre that has the technical capability to provide support, time on site, fares and expenses will be charged at the current rate.

11. Warranties On Repairs

- a. Any repaired component of any system is covered by a three (3) months warranty. Any subsequent component faults occurring later are not covered under this warranty and must be treated as a new repair.

12. Conditions of Warranty

- a. The Sellers warranty will not be applicable in a situation where:
 - The Buyer has failed to follow instructions supplied by the Seller in relation to proper installation and use of the Goods or Services.
 - The Goods or Services have been used in a manner other than their original intended use.
 - The Buyer fails to maintain the Goods in a condition fit for their intended purpose.
 - The Goods continue to be used after any fault or defect has become known to the Buyer, or would have become known to a reasonable person.
 - The defect or fault has occurred from reasonable wear and tear in use.
 - The defect or fault has occurred as a result of circumstances beyond the control of either the Buyer or the Seller.
- b. The Seller accepts no responsibility for loss or damage to the Buyer, financial or otherwise, arising from a delay in the time taken for the Seller to replace or repair any Goods covered by the warranty.
- c. The warranty will become void if any maintenance, or alteration is made to the Goods without the Sellers knowledge and consent.

13. Buyer's Disclaimer

- a. The Buyer hereby disclaims any right to cancel the contract, or to seek compensation for loss or damages arising from any misrepresentation made to them by the Seller, or any related corporations of the Seller, and their respective officers, employees, agents and contractors.
- b. The Buyer acknowledges that the Buyer buys the Goods/Services relying solely upon his own skill and judgement.

14. Intellectual Property

- a. Where any designs or specifications have been supplied by the Buyer for manufacture by the Seller, the Buyer warrants that the use of those designs or specifications for the manufacture, assembly or supply of the Goods/Services shall not infringe the rights of any third party.
- b. Where the Seller produces any design, pattern, or specification during the manufacture of the Goods, intellectual property in them remains with the Seller, and may only be reproduced or copied with the written consent of the Seller.

15. Registered Security

- a. The Buyer hereby charges in favor of the Seller all its estate and interest in any land and in any other assets, whether tangible or intangible, in which it now has any legal or beneficial interest or in which it later acquires any such interest, with payment of all monies owed by the Buyer, and consents to the lodging by the Seller of a caveat or caveats which note its interest in that real property.

16. Default

- a. The Buyer hereby agrees that if it should:
 - As an individual, commit an act of bankruptcy; or
 - As a company, pass a resolution for winding up or have a summons to wind up served upon it; or
 - Become subject to any form of external administration; or
 - Enter into an arrangement regarding outstanding payment with any of its creditors; or
 - Allow any invoice to remain in arrears beyond the agreed payment period; all monies currently owed to the Seller shall become due and payable immediately, and the Seller reserves the right to terminate the supply of Goods and Services to the Buyer.
- b. Should the Buyer fail to pay any invoice when due, the Buyer will be responsible for any additional costs associated with recovery of the outstanding amounts, including but not limited to the cost of a solicitor, and any cost incurred by the sellers nominated collection agency.
- c. Interest on overdue accounts may be charged at a rate not exceeding the prevailing bank overdraft rate and, further, the Customer expressly undertakes to pay all such interest.
- d. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

17. Retention of Title

- a. Ownership, Property, and title in all Goods shall remain with the Seller until the Buyer has paid all monies owing to the Seller for all Goods and Services provided
- b. The Goods shall be kept separate and clearly identifiable as property of the Seller until property in the Goods has passed to the Buyer.
- c. Until such time as property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Bailee for the Seller, and hereby assigns all legal and equitable right and title to the proceeds of sale of the Goods to the Seller.
- d. The Seller may request in writing that the Buyer return the Goods or any part of them at any time until property in the Goods has passed to the Buyer.
- e. Should the Buyer fail to return the Goods to the Seller upon such notice, the Seller, without prejudice to any of its other rights and remedies under this agreement, reserves the right of entry to the Buyers' premises or any other premises where the Goods may be stored, by its servants or agents for the purpose of recovering or re-selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Buyer.

18. Unpaid Sellers' Rights

- a. If payment has not been received by the Seller when due, and the Seller has made a verbal or written demand for payment, and the Goods are in possession or control of the Seller, the Seller reserves the right to dispose of the Goods, and claim from the Buyer any loss arising as a result of such disposal.
- b. At the sole discretion of the Seller, storage costs may be incurred for any Goods which remain uncollected at the Sellers premises, for a period of more than seven (7) days after the agreed date for collection.

19. Risk

- a. Notwithstanding retention of title as specified in clause 15 hereof, all risk passes to the Buyer upon delivery.
- b. If any of the Goods or Services are damaged or destroyed prior to title in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights and remedies under this agreement, to any insurance proceeds payable for the Goods or services.

20. Cancellation

- a. The Seller may cancel delivery of Goods/Services at any time before delivery by giving written notice to the Buyer.
- b. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- c. At the Sellers sole discretion, the Buyer may cancel delivery of Goods/Services.
- d. In the event that the Buyer cancels delivery of Goods or Services, the Buyer shall be liable for any costs incurred by the Seller up to the time of cancellation, including but not limited to any re-stocking fees incurred by the Seller.

21. Limitation of Liability.

- a. The liability of the Seller to the Buyer for any reason related to the performance of the Goods/Services under this agreement shall be limited to the amount paid by the Buyer to the Seller pursuant to this agreement.
- b. The Seller accepts no liability for Goods manufactured based on any specifications supplied by the Buyer which are subsequently found to be incorrect, and the Buyer shall be responsible for any additional costs associated with the alteration of such Goods.

22. Privacy Act 1988

- a. The Buyer hereby gives consent to the Seller obtaining a credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).
- b. The Buyer agrees that Individual Data provided may be used and retained by the Seller for the following purposes and for other purposes as agreed to between the Buyer and Seller or required by law from time to time:
 - Provision of Goods/Services
 - Marketing of Goods/Services by the Seller, its agents, distributors, or contractors.
 - Assessing the credit worthiness of the buyer in relation to extending credit.
 - Exchanging of information with a credit reporting agency or trade reference named by the Buyer.
 - Processing of any payment instructions, direct debit facilities and/or credit facilities requested by buyer.
 - Collection of amounts outstanding in the Buyer's account by the Seller's nominated Collection agent or solicitor.

23. Government Approvals

- a. The Buyer is responsible, at their own cost, for arranging all licences, government consents, and approvals which may be required for the performance of any works under this agreement.

24. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- a. The warranties, conditions, rights and remedies of the Buyer as outlined in the Commonwealth Trade Practices Act 1974 and the relevant Fair Trading Act of South Australia are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by those acts.

25. General

- a. The Seller assumes no responsibility for changes in the laws of South Australia, or the Commonwealth of Australia which may affect the supply of Goods/Services under this agreement.
- b. The Seller may sub-contract part or all of its obligations under this agreement without the Buyer's consent.
- c. The Seller reserves the right to review these terms and conditions at any time, and if any changes are deemed necessary, the Buyer will be advised of such changes upon them being made.
- d. No parties to this agreement shall be liable for any breach of any provisions of this contract arising from an act of God, natural disaster, terrorism, war, or any other occurrence beyond the control of any party.
- e. If any Terms or Conditions contained in this document are found to be unenforceable for reasons of invalidity or illegality, the remaining provisions shall not be affected in any way whatsoever.