

**Mexican Express Pty Ltd (ABN 93 053 661 484) (the Supplier)]**

**Terms and Conditions of Sale**

1 **Definitions:**

1.1 **Customer** means any person or entity who purchases Products from the Supplier.

1.2 **Delivery Point** means 87 Harrison Road, Dudley Park, SA 5008.

1.3 **Product** means the products to be supplied by the Supplier to the Customer in accordance with these Conditions from time to time.

2 **General:** The Customer acknowledges and agrees that these terms and conditions of sale as updated from time to time and which can be found at the Supplier's website ([www.mexex.com.au](http://www.mexex.com.au)) (**Conditions**), along with the terms and conditions of approved credit (if any) granted to the Customer, constitute the entire terms of the agreement by the Supplier to supply Product to the Customer (**Agreement**). This Agreement excludes and supersedes all prior discussions, representations and arrangements and any other oral or written terms and conditions whether or not they are endorsed on, delivered with or referred to in any purchase order or other document delivered by the Customer to the Supplier.

3 **Orders:** The Supplier may accept or reject orders it receives. An order submitted by a prospective Customer shall not be binding on the Company unless and until the Supplier has given written acknowledgement of its acceptance. If Products are supplied without a written order confirmation, the invoice shall be deemed to constitute confirmation of the order. Subject to clause 5, accepted orders cannot be cancelled without the Supplier's written consent which may be refused or given with conditions. The supply of Product is subject to availability. The Supplier may dispatch partial shipments and the Customer must not reject such partial shipments unless otherwise agreed by the parties in writing. The Supplier reserves the right to suspend or discontinue the supply of Product to the Customer. If the Supplier is unable to supply all of the Customer's order, this Agreement continues to apply to any part of the order supplied.

4 **Price:** Unless otherwise agreed by the Supplier in writing, prices for Product are:

- 4.1 those stated in a written quotation from the Supplier or otherwise in the Supplier's schedule of pricing provided to the Customer from time to time (where applicable). To the extent of any inconsistency in pricing of a particular Product, the document which is dated the latest prevails;
- 4.2 subject to the price variation by the Supplier in accordance with clause 5 from time to time; and
- 4.3 quoted exclusive of GST and all taxes.

5 **Price Variation:** the Supplier has the right to vary prices for Product from time to time provided that if an order is accepted by the Supplier, the Supplier must notify the Customer of any variation of the prices at least 14 days before issuing an invoice for the Product using the varied prices (**Price Variation Notice**). The Customer has the right to cancel an order that is subject to a price variation by giving the Supplier a written notice within 7 days after the Price Variation Notice is given (**Cancellation**). If the Customer fails to give the Cancellation within 7 days after the Price Variation Notice is given, the Customer is deemed to have accepted the varied price and the Supplier is entitled to issue an invoice for the Product ordered using the varied Price.

6 **Payment:** Unless otherwise stated in an invoice or agreed by the Supplier in writing, the terms of payment for the Product are 30 days from the end of the month of the date of invoice, without deduction or set off. Time is of the essence. Invoices shall be issued and will be payable in respect of every delivery notwithstanding that the balance of the order has not been nor will be delivered for any reason. Where any payment is not made by the due date, the Supplier may charge interest on any overdue portion from the date the payment was due until the date payment is made (both dates inclusive) at a rate equal to 1% above the indicator lending rate for the time being advised by Commonwealth Bank of Australia.

7 **Delivery:** Unless otherwise stated in an order or invoice or agreed by the Supplier in writing, delivery of the Products shall take place when the Customer is deemed to accept the Products on delivery into the care, custody and control of the Customer or its agent, carrier or contractor. Unless stated otherwise, costs of freight from the Delivery Point will be borne by the Supplier. If the Supplier agrees to engage a third party to transport the Products, the Supplier is hereby authorised to engage a third

party on the Customer's behalf and on the terms deemed fit by the Supplier. The Customer hereby indemnifies the Supplier against any claims, cost, expense, loss or liability that the Supplier incurs in connection with engaging such third party. The Customer shall reimburse the Supplier on demand, for any costs and expense incurred in arranging special delivery, including but not restricted to, the cost of necessary disbursements and insurance. All quoted delivery dates are estimates only. The Supplier is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever. If there are any discrepancies in the quantity of Product delivered, the Customer must notify the Supplier promptly. If the Customer does not notify the Supplier of any discrepancy in writing within 2 days of delivery the Customer is deemed to have accepted that the quantity of Product delivered is the same quantity that was ordered by the Customer and invoiced by the Supplier.

- 8 **Safety and access:** If the Supplier or any of its carriers enters the Customer's premises to deliver or collect Product, the Customer must provide full and safe access and will be liable for, and indemnifies the Supplier against the cost of all loss, damage to the property and injury to persons, occurring directly or indirectly as a result of the failure by the Customer to ensure full and safe access. The Customer is responsible for providing adequate labour and/or material handling equipment for the loading and any unloading of Product at the Delivery Point and at its premises. Where the Supplier agrees to collect Product from the Customer's premises (including by a third party carrier), the Customer must ensure that the Product is all available for collection at an easily accessible central point and that it is ready for loading at the time the Supplier (or its third party carrier, as the case may be) arrives to collect them.
- 9 **Acceptance of Product:** If the Customer does not advise the Supplier in writing of any fault, damage or defect in the Product within 7 days of delivery (a) the Customer is deemed to have accepted the Product and is deemed to agree that the Product is not faulty, damaged or defective; and (b) the Customer releases and discharges the Supplier from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Product.
- 10 **Defects:** If the Customer advises the Supplier in writing of a fault, damage or defect in the Product within 7 days of delivery, to the extent permitted by law, then the Supplier may, at its sole discretion, carry out an inspection of the relevant Product and if it is satisfied that the Product is defective, the Supplier has the right to offer the Customer a return and replacement of the part of the Product affected by the defect or a refund for the part of the Product affected by the defect, provided that the Customer has not used the Product affected by the defect other than a reasonable proportion of the Product that has been used to determine whether the Product is defective. This clause 10 sets out the sole remedy that the Customer has with respect to defective Product. To the maximum extent permitted by law, the Supplier disclaims any other liability to the Customer. The Supplier may charge a reasonable handling fee for returns if after its inspection, the Supplier has not detected any defect with the Product.
- 11 **Risk:** Risk in the Product passes to the Customer on delivery. The Customer must insure the Product at its cost, from delivery until paid for in full, against such risks as are usual or common to insure against in a business of a similar nature to the Customer. The Customer holds the proceeds of that insurance on trust for the Supplier up to the amount it owes the Supplier in respect of that Product and must keep such proceeds in a separate account until the liability to the Supplier is discharged and must immediately pay that amount to the Supplier on demand.
- 12 **Title:** Until all monies owing by the Customer to the Supplier are paid in full for the Product and notwithstanding any credit granted to the Customer, legal and equitable title to the Product is retained by the Supplier. Until then, the Customer is a bailee of the Product. The Customer (a) holds the Product as bailee and fiduciary agent of the Supplier; and (b) must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Product is clearly and easily identifiable as the Supplier's property and inform the Supplier of the location of the Product, if requested. Should the Product be lost or damaged after delivery to the Customer and prior to payment the Customer shall indemnify the Supplier for such loss or damage.
- 13 Notwithstanding any other provision to the contrary, the Supplier reserves the following rights in relation to the Product until all amounts owed in respect of the Product and all other Product supplied to the

Customer by the Supplier at any time are fully paid (a) legal and equitable ownership of the Product (b) to retake possession of the Product and (c) to keep or resell any of the Product repossessed.

- 14 **Repossession:** The Customer hereby grants full leave and irrevocable licence to the Supplier and any person authorised by the Supplier to enter upon any premises of the Customer where the Product is stored for the purpose of retaking possession of the Product. The Customer agrees that (a) it will be liable for all expenses incurred or suffered by the Supplier (whether direct or indirect) as a result of the Supplier retaking possession of the Product or otherwise exercising its rights under this clause; and (b) it will indemnify the Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Supplier in connection with retaking possession of the Product or the exercise by the Supplier of its rights under this clause, and the Customer must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 15 **Warranties:** The Supplier warrants that the Product sold is free from defective materials and workmanship. In order to claim under this warranty, the Customer must notify the Supplier of any claim in writing within 7 days after the date of delivery in accordance with clause 9. This warranty does not apply if (a) the Customer fails to notify the Supplier of the defect in writing after within 7 days after the date of delivery in accordance with clause 9; (b) the Product has not been stored in accordance with the instructions issued by the Supplier; (c) the Product has been subject to any alteration by any person other than authorised in writing by the Supplier; or (d) the Customer fails to return the product to the Supplier on its request to do so. The Supplier may comply with a valid claim under this warranty by taking any of the actions described at clause 10. The Supplier's business address is 87 Harrison Road, Dudley Park, SA 5008. Its telephone number is (08) 8340 3117. Its email address is mexex.enquiry@mexex.com.au. The Product comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 16 All other conditions and warranties of any type in relation to the Product are excluded to the maximum extent allowed by the law. In respect of Product which is not subject to consumer guarantees under the Australian Consumer Law, the liability of the Supplier for a breach of any condition or warranty implied by law is limited at the Supplier's option to the repair of Product, or supply of a replacement, or payment of the cost of replacing the Product or of acquiring equivalent goods or payment of the cost of having the Product repaired.
- 17 The Supplier makes no representation as to the fitness of the Product supplied by it for any purpose unless the Supplier otherwise expressly agrees such representation in writing prior to supply.
- 18 **Limitation of liability:** Except for any rights and remedies that the Customer may have in respect of the Product which cannot be lawfully excluded, restricted or modified, the Supplier excludes any liability for any indirect or consequential loss including but not limited to any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill, loss of credit, loss of business reputation, loss of future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity or any other loss or damage suffered by the Customer or any other persons in connection with an act or omission of the Supplier and its employees or contractors, and limits its total aggregate liability to the total cost of the Product supplied under this Agreement. For the avoidance of doubt, nothing in this clause or this Agreement is intended to limit the Supplier's obligations pursuant to Division 1 of Part 3-2 of the Australian Consumer Law, save as permitted by section 64A of the Australian Consumer Law.
- 19 **Termination:** The Supplier may by written notice to the Customer terminate the Agreement if (a) the Customer fails to perform any of its obligations under the Agreement; (b) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business; (c) anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due; or (d) a step is taken to have a receiver, receiver and manager, provisional liquidator or administrator appointed to that person or any of its assets. Clauses 12 to 14; 18 to 28; 32; 34; and 36 (inclusive) survive the termination of the Agreement.

- 20 If the Agreement is ended because of the Customer's default and the Customer owes the Supplier money, the money is immediately payable to the Supplier and bears interest and the Supplier is entitled to enter the Customer's premises and repossess any Product in the Customer's possession or control.
- 21 **Force Majeure:** The Supplier will not be liable for any loss incurred as a result of delay or failure to make any supply of Product or to observe any provisions of this Agreement due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-governmental authorities or embargoes. During the continuance of an event of force majeure the Supplier's obligations under this Agreement will be suspended. The Customer must accept delivery of the Product notwithstanding any delay in delivery caused by any force majeure event.
- 22 **PPSA** The supply of Products by the Supplier to the Customer from time to time in accordance with the terms of this Agreement creates a security interest (**Security Interest**) in favour of the Supplier over the Products and the proceeds of sale of the Products (together the **Collateral**) in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**). The Security Interest attaches to the Products in accordance with the PPSA (and it is not agreed that it will attach at a later time) and continues in the Products even if they are mixed or commingled with other products. For the purposes of the PPSA, this Agreement comprises a security agreement. The Security Interest created under this Agreement applies to all Products supplied under this Agreement. The Products the subject of the security agreement are more particularly described in the relevant purchase order and / or invoice documents.
- 23 Without limiting the application of any other clause of this Agreement, including clause 11 of this Agreement, the Customer grants a security interest to the Supplier in each Product supplied, and any resulting proceeds, to secure the price payable for that Product.
- 24 The Customer must, immediately on request, do whatever the Supplier requires of the Customer to enable the Supplier to better exercise its rights pursuant to the Security Interest, to ensure the Security Interest is fully enforceable, perfected, has the priority required by the Supplier and to enable the Supplier to apply for any registration, give any notification in connection with the Security Interest or exercise any rights over the Collateral.
- 25 The Supplier may apply for any registration, or give any notification, in connection with the Security Interest and for whatever class of collateral the Supplier determines. The Customer consents to any registration or notification by the Supplier. The Customer indemnifies, and on demand will immediately reimburse, the Supplier for its costs, charges and expenses (excluding fees for registration of the Security Interest) incurred in connection with anything the Supplier does to perfect, preserve, enforce or protect or otherwise deal with the Security Interest.
- 26 The Customer agrees (to the extent permitted by law) that: (a) the Supplier does not have to comply with any of the requirements of, and the Customer waives its rights under, sections 95, 120, 121(4), 123, 125, 129, 130, 132(3)(d), 132(4) 134(1) and 135 of the PPSA or any other provision of the PPSA notified by the Supplier to the Customer from time to time; (b) the Customer may not exercise any rights under sections 142 and section 143 of the PPSA; and (c) the Supplier or any receiver (or receiver and manager) appointed by the Supplier does not have to give any notice required under the PPSA (including a notice of verification statement). The Customer agrees that the Supplier has the benefit of all rights and remedies under chapter 4 of the PPSA, without limiting its rights under this Agreement.
- 27 The Customer must only use any confidential information disclosed by the Supplier for the purpose of performing this Agreement and must not disclose the Supplier's confidential information to a third party unless required by law or with the Supplier's prior written consent. The Customer will not request any disclosure be made, disclose or authorise the disclosure of, any information of the kind mentioned in section 275(1) of the PPSA, unless section 275(7) of the PPSA applies and in that case only the Supplier is entitled to make the disclosure.

- 28 Any payment made by the Customer to the Supplier may be applied by the Supplier in any manner it sees fit.
- 29 Miscellaneous: the Supplier waives a right under this Agreement only if it does so in writing.
- 30 The Supplier may assign or otherwise deal with the benefit of any contract made pursuant to this Agreement.
- 31 The rights and remedies provided in these Conditions will not affect any other rights or remedies available to the Supplier.
- 32 This Agreement is governed by and must be interpreted in accordance with the laws of the state of Australia in which the Supplier's head office is located and the parties irrevocably submit to the exclusive jurisdiction of those courts.
- 33 The Supplier may amend or vary this Agreement by notifying the Customer in writing of the amendment or variation, or by uploading the amended Conditions onto the Supplier's website. Each time the Customer places an order with the Supplier, the Customer acknowledges either receiving, or having the opportunity to review, a copy of the Conditions which can be found at the Supplier's website ([www.mexex.com.au](http://www.mexex.com.au)). For the avoidance of any doubt, any amendments made to these terms and conditions only apply to orders placed after the date on which those amended terms and conditions were published on the Supplier's website or were otherwise provided to the Customer in writing.
- 34 If any provision of this Agreement is unenforceable, illegal or void, that provision is severed and the other provisions of this Agreement remain in force.
- 35 Any notice to be given to a party under this Agreement must be in writing and must be sent by post or email to the address of that party shown in the quotation provided by the Supplier or in the last purchase order received by the Supplier, as applicable. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if sent by email, at the time it was actually received.
- 36 The Customer indemnifies the Supplier from and against, and must pay the Supplier on demand for, all actions, costs, claims, demands, losses, expenses and liabilities howsoever arising (including those brought by third parties) sustained or incurred by the Supplier or its related entities or their respective officers, employees, consultants and agents as a result of any breach of this Agreement, negligence, wilful misconduct or fraud by the Customer or its related entities or their respective officers, employees, consultants and agents.