

## 1. General

Unless the context otherwise requires:

**Agreement** means the agreement between Wormald and Customer for the supply of Goods and/or Services, comprising these Terms and Conditions and any Quotation;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Customer** means the party named as the customer in Wormald's Quotation;

**Goods** means any goods supplied by Wormald to Customer under the Agreement;

**GST** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Proprietary Information** means all information and intellectual property relating to the Goods or Services or the installation or operation of the Goods including but not limited to patents, designs, drawings, instruction booklets, specifications, circuit drawings, componentry, trade secrets, trademarks and copyright in such information and intellectual property;

**Related Bodies Corporate** has the meaning given in the *Corporations Act 2001* (Cth);

**Services** means any services supplied by Wormald to Customer under the Agreement;

**Warranty Period** means a period of 12 months, commencing on:

- (a) in the case of Goods, the day the Goods are delivered or deemed to have been delivered in accordance with clause 5; or
- (b) in the case of Services, the day on which the relevant service is completed.

**Wormald** means Wormald Australia Pty Ltd ABN 80 008 399 004 with its registered address at Level 9, 132 Arthur Street, North Sydney NSW 2060;

## 2. Quotations and Agreement

- (a) Wormald may issue a quotation to Customer for Goods and/or Services (**Quotation**). Subject to clause 3(d), Quotations are valid for 30 days from the date of issue unless otherwise agreed. Prices given in a Quotation are applicable to that Quotation only.
- (b) To purchase the Goods and/or Services, the Customer must direct Wormald to proceed with providing the quoted Goods and/or Services. The Customer may nominate the date (or dates) for delivery of Goods (**Delivery Date**) and/or supply of Services (**Supply Date**) and the point of delivery (**Delivery Point**).
- (c) Once the Customer directs Wormald to provide the Goods and/or Services an individual Agreement is formed under which Wormald agrees to provide the Goods and/or Services and the Customer agrees to pay Wormald the purchase price in the Quotation.
- (d) Any conditions or terms submitted by Customer will not bind Wormald, notwithstanding any statement by Customer in its purchase order or other documents.

## 3. Payment and price

- (a) The total purchase price, unless otherwise stated in this Agreement, includes delivery charges and packaging cost of Goods and GST. All costs and charges that are not specified in the Quotation are additional and payable by the Customer.
- (b) Invoices issued by Wormald for Goods and/or Services provided under this Agreement must be made in full, and without set-off, within 30 days after the date of the invoice.
- (c) If Customer does not pay money by the due date for payment, without prejudice to any other rights which it may have against Customer, Wormald may require Customer to pay on demand interest at the Westpac Indicator Lending Rate effective from time to time plus 4% per annum calculated from the due date on daily balances of amounts unpaid.
- (d) Notwithstanding anything else in this Agreement, the price will be increased at any time to reflect any increase in costs to Wormald with respect to any Goods, Services, materials, supplies or equipment to be provided by Wormald under this Agreement at the time of those increases, including, without limitation, any increased costs associated with COVID or other disease related compliance requirements such as testing.

## 4. Cancellation of orders

Unless Wormald is in default of an Agreement, Customer may not alter or cancel an Agreement without Wormald's prior written consent. If Wormald agrees to alter or cancel the Agreement, Customer is fully liable for and indemnifies Wormald against any loss, damage and expense incurred by Wormald in relation to the alteration or cancellation of that Agreement, including the cost of return freight, return shipping to factory of origin, items purchased from third parties for inclusion in the Goods and all labour and engineering costs incurred by Wormald in the execution or part execution of the Goods and/or Services and including compensation payable to any of Wormald's suppliers.

## 5. Return of Goods

- (a) Customer is deemed to have accepted the Goods unless it makes a claim in accordance with clause 5(b).
- (b) Customer may reject any Goods that have been wrongly supplied or oversupplied by notifying Wormald of the claim and providing full particulars of the claim in writing within 5 days of receipt of those Goods. Wormald may dispute any such claim.
- (c) Goods referred to in clause 6(b) may be returned to Wormald for credit if all of the following is complied with:
  - (i) the Goods are returned to Wormald's premises by prior arrangement, at no cost to Wormald, unless delivered as the result of an administrative error by Wormald, in which case Wormald will bear the cost of return;
  - (ii) the Goods are accompanied by a dispatch note stating Wormald's original invoice number and reason for return; and
  - (iii) the Goods are returned in an unsoiled, undamaged and re-saleable condition in their original packing.
- (d) Customer must not return any Goods to Wormald unless it has complied with clauses 5(b) and 5(c) and has done all things necessary to permit Wormald to examine the Goods to Wormald's satisfaction within that period.

## 6. Delivery, Storage and Use of Goods

- (a) The Delivery Date and Supply Date are estimates only unless agreed by the parties in writing. Wormald will use its best endeavours to meet such dates but unless otherwise agreed will

not be liable to Customer by reason of delays caused by any reason whatsoever.

- (b) Wormald is deemed to have delivered the Goods when the Goods are made available to Customer for physical collection by or on behalf of Customer at the Delivery Point (**Delivery**). Any unloading or loading is Customer's responsibility, unless Wormald otherwise agrees in writing.
- (c) Wormald may deliver the Goods by instalments (where, in Wormald's opinion, this is reasonable) and issue interim invoices to Customer.
- (d) Without limiting any other provision of the Agreement, Wormald may withhold or delay delivery of any Goods if Customer fails to pay any instalment, or any other amount, when due.
- (e) If Customer is unable to collect the Goods at the Delivery Point on the actual delivery day as notified to Customer, Wormald may (at its option and without limiting its other rights and remedies) arrange suitable storage of the Goods, and Customer must pay or reimburse Wormald for all costs and expenses of storage, insurance, demurrage, handling and other charges associated with such storage. Notwithstanding Customer's inability to collect the Goods, Delivery is deemed to have occurred.
- (f) The Customer acknowledges that it has the sole responsibility to confirm the suitability of the Goods for their intended purpose and that Wormald makes no representation or warranty in this regard.

## 7. Title and risk

- (a) Title to the Goods remains with Wormald until paid in full by the Customer.
- (b) Until such time, Customer shall:
  - (i) store the Goods separately and mark them in a clear and identifiable manner as Wormald's property and inform Wormald of the location of the Goods;
  - (ii) hold the Goods as bailee for Wormald, subject to Customer's right to deal with the Goods in the ordinary course of its business (**Bailment**);
  - (iii) indemnify Wormald against any claim arising out of the possession, use or disposal of the Goods by Customer or repossession or attempted repossession by Wormald.
- (c) If Customer commits a breach of the Agreement (including where Customer fails to make a payment under the Agreement, becomes insolvent as defined in the *Corporations Act 2001* (Cth) or commits an act of bankruptcy) and fails to rectify that breach within seven (7) days of being notified, then without prejudice to any other rights or remedy available to it, Wormald may immediately:
  - (i) terminate the Agreement and the Bailment;
  - (ii) suspend some or all its obligations to Customer under the Agreement; and/or
  - (iii) enter upon any premises owned or occupied by Customer where the Goods are stored and repossess the Goods (including uninstalling the Goods) without being liable for any damages caused.
- (d) If this Agreement is terminated:
  - (i) Wormald will not be liable to Customer for any costs or expenses incurred or loss suffered by Customer because of termination; and
  - (ii) Customer will only be required to pay Wormald the purchase price of Goods or Services supplied under the Agreement prior to termination.
- (e) If Customer sells the Goods before payment in full to Wormald, or uses the Goods in a manufacturing or construction process of its own or some third party, Customer holds the proceeds on trust for Wormald in respect of those Goods, and must keep such proceeds in a separate account until the liability to Wormald is discharged and must immediately pay that amount to Wormald.
- (f) The risk in the Goods passes to Customer at the time of Delivery.
- (g) Wormald reserves the right to register a security interest for the purposes of the *Personal Property Securities Act 2009*, as amended. Customer must provide Wormald with all information that Wormald requires to register a security interest as requested, and must immediately advise Wormald of any changes which may affect Wormald's security interest.

## 8. Insurance

Customer must keep the Goods insured against all risks from Delivery until the time that title to the Goods passes to Customer. Customer holds any proceeds of that insurance on trust for Wormald up to the amount it owes Wormald in respect of those Goods and must keep such proceeds in a separate account until the liability to Wormald is discharged and must immediately pay that amount to Wormald.

## 9. Warranty and Limitation of liability for Goods and Services

- (a) Other than is provided for in this clause 9, Wormald makes no warranties or representations to Customer, and to the extent permitted by law, all conditions, warranties and representations (including as to the fitness for purpose of the Goods and Services) are expressly excluded
- (b) Wormald warrants the Goods and/or Services to be free from defects in workmanship and materials under normal use and service during the Warranty Period. This warranty does not cover:
  - (i) any costs associated with recovery of the Goods from the Customer, with the Customer responsible for returning any defective Goods to Wormald at its cost; or
  - (ii) damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation (unless installed by Wormald), failure to comply with Wormald's or the original manufacturer's instructions, failure to perform required preventative maintenance or normal wear and tear.
- (c) During the Warranty Period, to the extent permitted by law, Customer's sole remedy with respect to breach of a warranty set out in clause 9(b) will be to have any such defective Goods or Services repaired or replaced (as Wormald may elect) at Wormald's expense. Replaced or repaired Goods or Services shall be covered by the unexpired portion of the Warranty Period in respect of the original Goods and/or Services or for a period of 90 days, whichever is the greater.

- (d) For any part of the Goods that is not manufactured by Wormald, the original manufacturer's warranty will apply and Wormald's liability for such parts shall not exceed the liability of the manufacturer.
- (e) In respect of Goods or Services that are not ordinarily acquired for personal, domestic or household use or consumption, the liability of Wormald for a breach of any condition or guarantee applied by law is limited at Wormald's option to the repair of the Goods or Services, the supply of replacement Goods or Services or payment of the cost of having the Goods or Services supplied again.
- (f) Wormald's liability under the Agreement will be reduced by the amount of any contributory loss or damage to the extent caused by Customer's act or omission.
- (g) Some Goods and Services come with consumer guarantees that cannot be excluded under the Australian Consumer Law. Where these consumer guarantees apply, Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the Goods or Services repaired or replaced if the Goods or Services fail to be of acceptable quality and the failure does not amount to a major failure;
- (h) Any warranty claim must detail the basis of the alleged warranty breach in writing and be delivered to Wormald by email to [warranty@wormald.com.au](mailto:warranty@wormald.com.au) attention to 'The Manager';
- (i) To the extent permitted by law, Wormald has no liability in contract, tort (including negligence or breach of statutory duty), by statute or otherwise for loss or damage (whether direct or indirect) of profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption or destruction of data or for any indirect, special or consequential loss or damage whatsoever;
- (j) Subject to clause 9(g), Wormald's total liability under this Agreement or contract formed pursuant to this Agreement shall not exceed the total dollar amount of the Goods and/or Services under each contract.

#### **10. Proprietary Information**

- (a) All Proprietary Information and all right, title and interest therein is the sole property of, or licensed by, Wormald and Customer has no right, title or interest in the Proprietary Information whatsoever. Customer specifically acknowledges Wormald's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon, whether developed, supplied, installed or paid for by or on behalf of Customer or any buyer of Customer or otherwise.
- (b) Customer must not and must not permit any person reasonably within its control, to modify, copy, clone or reverse engineer any Goods or Services, or copy, modify or decompile any of Wormald's documentation relating to Goods or Services.

#### **11. Privacy**

- (a) Customer acknowledges and agrees that Wormald may collect personal information about Customer in provision of Goods and Services, and that without limitation Wormald may:
  - (i) use Customer's personal information:
    - (A) to assess the Customer's credit worthiness;
    - (B) to collect amounts that are overdue under any Agreement;
    - (C) to provide Goods and Services to Customer (including administration and the investigation or resolution of disputes);
    - (D) to provide information to Customer about other goods and services which Wormald or its Related Bodies Corporate may offer to the Customer; and
    - (E) to send the Customer publications of Wormald;
  - (ii) disclose the Customer's personal information to:
    - (A) other service providers such as subcontractors engaged by Wormald to assist Wormald in providing the Goods and/or Services;
    - (B) Wormald's Related Bodies Corporate so that they can provide information to Customer about goods and services they offer; and
    - (C) governmental bodies such as the police, fire brigades and other providers of emergency services; and
  - (iii) use or disclose Customer's personal information as required by law.
- (b) The Customer has a right to access most personal information Wormald holds about the Customer, and a fee may apply for access. If Wormald denies access in some circumstances, Wormald will tell Customer why.

#### **12. Miscellaneous**

- (a) A failure or delay by Wormald to require strict performance of the Agreement does not amount to a waiver of its right to do so.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Agreement, but the rest of the Agreement is not affected.
- (c) Wormald shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising under the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain the Goods, parts, supplies or raw materials or fuel, fire or explosion, any government action or any other cause beyond Wormald's reasonable control and not as a consequence of Wormald's negligence.
- (d) Any notice given under the Agreement must be in writing and sent by post or email to the address of that party shown in this Agreement. 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 otherwise given at the time it was actually received.
- (e) The Agreement is governed by the laws of New South Wales, and the parties agree to unconditionally submit all disputes arising between them under the Agreement to the courts of New South Wales.
- (f) Where there is more than one Customer then the liability of each shall be joint and several.
- (g) The rights and remedies provided in the Agreement will not affect any other rights or

remedies available to Wormald.

- (h) Customer shall not assign this Agreement without Wormald's prior written consent.
- (i) If the Customer is a trustee, then the Customer is bound by the Agreement both personally and in its capacity as a trustee.
- (j) Goods and/or Services supplied are intended for use only in Australia unless Wormald otherwise agrees. If Customer exports Goods it does so at its own risk.
- (k) The Agreement constitutes the entire agreement and understanding between the parties with respect to the Goods and/or Services and contains all representations, agreements, arrangements, understandings undertakings, warranties and covenants of the parties.