

## TERMS AND CONDITIONS OF TRADE

### AC & PL Way Pty Ltd ACN 140 047 534 Trading as Access Rehabilitation Equipment

These Terms and Conditions (**Terms**) apply to the supply of goods and services by Access Rehabilitation Equipment. Any supply of goods or services by Access Rehabilitation Equipment made after the date of acceptance of these Terms is a supply pursuant to the supply contract constituted by these Terms and the relevant Order accepted by Access Rehabilitation Equipment, and any such supply does not give rise to a new or separate agreement.

#### 1. Definitions

- 1.1. "We" or "Us" or "Our" means AC & PL Way Pty Ltd ACN 140 047 534 trading as Access Rehabilitation Equipment and its successors and assigns.
- 1.2. "You" or "Your" or "Yourself" means the person or legal entity purchasing the Goods or Services.
- 1.3. "Terms" means these terms and conditions of trade and incorporating any other terms amending, varying or supplementing these Terms of trade provided by Us to You from time to time, including the terms of any Proposal, invoice or credit application.

#### 2. Placing an order

- 2.1. We can provide you with a quote, estimate, work authorisation, other work commencement form or proposal (**Proposal**) for the Goods or Services you require. We will place an order for the Proposal if You agree to the terms of the Proposal. Otherwise, you can place an order with us directly.
- 2.2. All orders must be in writing. The order will specify the accepted terms of the Proposal, or otherwise must include the order number, date of order, goods required, requested delivery date, quotation reference number, place of delivery and full name and title of the person placing the order (**Order**).
- 2.3. An Order is binding on Us and You, if:
- (a) we provide you with written acceptance of the Order; or
  - (b) we supply the Goods or Services in accordance with the Order.
- 2.4. An acceptance of Your Order by Us is an acceptance by the parties of these Terms and these Terms will override any inconsistent conditions contained in the Order.
- 2.5. The Order will specify the Goods We are to provide to You (**Goods**) or the Services we are to provide to You (**Services**).
- 2.6. We reserve the right to accept a part only of any Order by notifying You in writing or by delivering the Goods to You.
- 2.7. Where an Order is made by more than one party, each party is jointly and severally liable for the whole (and, if applicable, each instalment) of the Price.

#### 3. Cancellation of an Order

- 3.1. An Order which has been accepted in whole or in part by Us cannot be cancelled without obtaining Our prior written approval, which We may refuse in Our absolute discretion.

#### 4. Goods and Services

- 4.1. We will supply Goods and Services to You on these Terms, unless otherwise agreed in writing.
- 4.2. You agree that We may license or subcontract any part of the Goods and/or Services.

#### 5. Price

- 5.1. The Price of the Goods and/or Services shall be:
- (a) where We have accepted an Order, as indicated in the Order;
  - (b) where no Order has been provided, as invoiced by Us to You in respect of each supply of Goods and/or Services

(**Price**).

- 5.2. Any changes in specifications or plan of scheduled works in the Order will incur additional costs and will be invoiced separately.

- 5.3. The Price is inclusive of GST (if applicable), and any other taxes, duties or charges which may be applicable, unless otherwise indicated in the Order or invoice.

- 5.4. Payment shall be made by cash on delivery, by cheque or bank cheque, credit card or direct transfer, or by any other method as agreed by Us.

#### 6. Payment

- 6.1. We may require, in our sole discretion:
- (a) a 20% deposit as outlined in the Order, due and payable immediately upon acceptance of the relevant Order by Us. For customised items, special order and/or non-stock items, the deposit is non-refundable; and/or
  - (b) payment of the Price in full prior to delivery of the Goods or performance of the Services.
- 6.2. Payment shall be made by cash on delivery, by cheque or bank cheque, credit card or direct transfer, or by any other method as agreed by Us.
- 6.3. Time for payment is an essential term of these Terms, and must be made in accordance with the invoice. If the invoice does not specify a time for payment, then payment must be made on or before delivery of the Goods and/or performance of the Services.
- 6.4. You cannot offset or withhold any amounts or payments due from Us against the Price of the Goods or Services.
- 6.5. If You are in default or fail to pay any amount owing when due, We may at our option withhold further deliveries or cancel the agreement without prejudice to any of our existing rights.

#### 7. Credit

- 7.1. If we have agreed to grant credit to you, all payments are due within 30 days of the date of the invoice.

#### 8. Interest on late payments

- 8.1. Any payments due to us that are not paid by the due date will accrue daily interest at the rate of 10% per calendar month.

#### 9. Delivery of Goods and Services- General

- 9.1. You are responsible for all delivery costs, including any insurance costs. If required, payment for any delivery and insurance costs must be made with the first payment of the Goods under these Terms.
- 9.2. The times quoted for delivery are estimates only and We accept no liability for failure or delay in delivery of Goods. You are not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 9.3. Unless otherwise agreed, delivery is deemed:
- (a) if collected from our Premises:
    - (i) just prior to the Goods being loaded onto the carrier organised by You; or
    - (ii) at the time and date when the Goods are scheduled to be collected by You, whichever occurs first,
  - (b) If delivery to Your Address, then just prior to the Goods being unloaded from the carrier at the nominated address.
- 9.4. If there is a discrepancy in the Goods delivered by 5% or less, than You must accept delivery of the Goods.

However, We will adjust the Purchase Price, to be pro-rated accordingly.

#### **10. Delivery to your premises**

- 10.1. Goods and/or Services will be delivered by Us to the address for delivery specified in the relevant Order.
- 10.2. You must make all necessary arrangements to take delivery of the Goods, including providing suitable access for unloading and appropriate labour or mechanical means to unload the Goods upon delivery to Your nominated premises.
- 10.3. Signature of any delivery note by any agent, employee or representative of You or where delivery is to any independent carrier, by such carrier or its agent, shall be conclusive proof of delivery.
- 10.4. Where we have scheduled a delivery for large or bulky items (e.g. beds & mattress) or delivery to a rural or remote area, and you or another authorised person has confirmed this delivery, a minimum of 24 hours' notice must be provided for the cancellation of the delivery or a cancellation fee will be charged. The cancellation fee will be equivalent to the cost of the delivery, and the delivery fee will be charged for the re-scheduled date.

#### **11. Collection from Premises**

- 11.1. If required by Us, You must collect the Goods from Our premises and You shall arrange for transportation of the Goods, if necessary.
- 11.2. You must collect the Goods yourself or nominate a carrier, otherwise we will nominate a carrier at our sole discretion. Any carrier nominated or appointed shall be deemed to be Your agent.

#### **12. Inspection of Goods**

- 12.1. You must inspect the Goods on delivery and notify Us in writing within 14 days of delivery of any alleged defect, damage or failure of the Goods. If no notice is given within 14 days of delivery, You will be deemed to have accepted that the Goods are free from defect, damage, discrepancy or non-compliance at the time of delivery.
- 12.2. If a notice of defect or damage is given, You must allow Us access to inspect the Goods and determine whether or not that notice is valid. If We accept that the Goods are defective or damaged, we will provide you with assistance in accordance with these Terms.

#### **13. Ownership and Risk**

- 13.1. Ownership, title and property in the Goods remains with Us until payment in full for the Goods and all sums due and owing by You has been made.
- 13.2. All risk of loss and damage of the Goods shall pass to You on delivery.
- 13.3. You must, from the date the risk in the Goods passes to You until the date that title to the Goods passes to You, insure the Goods against all reasonably insurable risks for their full replacement value and, if required by Us, store the Goods separately from any other goods and in a way that enables the Goods to be clearly identifiable as Our Property.
- 13.4. If any of the Goods are damaged or destroyed after delivery but prior to title in the Goods passing to You, We shall be entitled to receive all insurance proceeds payable in respect of the damaged Goods, without prejudice to any of its other rights or remedies under these Terms, including the right to receive payment of the balance of the Price for the undamaged Goods, whether or not the Price has become payable under the Contract. The parties agree that production of these Terms by Us shall be deemed sufficient evidence of Our right to receive any such insurance proceeds, without the need for further enquiry by any third party.
- 13.5. You agree to do all things necessary and sign and complete any necessary documents to ensure any insurance proceeds in accordance with clause 13.4 is provided to Us.

#### **14. PPSA**

- 14.1. Unless otherwise defined in these Terms, capitalised terms and expressions used in this clause have the

meanings given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

- 14.2. You acknowledge and agree that these Terms constitute a Security Agreement and entitles Us to register a Purchase Money Security Interest in the Goods supplied pursuant to these Terms a security interest over their Proceeds, including any Accounts, and Accessions and Commingled Goods, by virtue of clause 6.1 of this Agreement.

- 14.3. You agree that:

- (a) We, as a Secured Party, are entitled to register a Security Interest(s) in the Goods supplied pursuant to these Terms and in the relevant Proceeds;
- (b) You will immediately on request by Us, do all things necessary in Our reasonable opinion, including signing any documents and providing any necessary information and doing anything else required by Us, to enable Us to register a Financing Statement or any Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest;
- (c) You will not permit the creation or registration, or enter into any agreement which permits the creation or registration, of a Security Interest in the Goods or any Proceeds of the Goods which would rank in priority to the Security Interests granted under the Agreement;
- (d) You will not change your name or ABN or other details required in respect of registration, or maintenance of registration, of each Security Interest on the Register without first notifying Us in writing;
- (e) You waive your right to receive a copy of a Verification Statement confirming registration of a Financing Statement, or any Financing Change Statement, relating to any Security Interest created under the Agreement; and
- (f) You will pay Our costs of any discharge or necessary amendment of any Registration.

- 14.4. If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, You agree that PPSA sections 129(3), 132(1), 132(3)(d), 132(4), 135, 142 and 143 will not apply.

- 14.5. To the maximum extent permitted by law, You agree to contract out of and waive any rights You may have pursuant to sections 95 and 96, and if the provisions of Chapter 4 of the PPSA would otherwise apply, sections, 121(4), 123, 129(2) and 130 of the PPSA.

- 14.6. You appoint and authorise Us as Your attorney to sign in Your name all documents which We reasonably consider necessary to enforce or protect Our rights and powers under these Terms and to protect, preserve and enforce its rights under the PPSA.

#### **15. Client Acknowledgement and Disclaimer**

- 15.1. You acknowledge and agree that, to the extent permitted by law:
  - (a) We are not registered health practitioners or qualified, allied health professionals and we make no representations as to the suitability of the Goods for You;
  - (b) You should seek your own advice from a registered health practitioner or a qualified allied health professional as to the suitability of the Goods.

#### **16. Defects and Returns**

- 16.1. We hope that you are completely satisfied with your purchase with Us. Should you experience any problems and concerns, please refer to this clause 16.
- 16.2. Our Goods come with guarantees that, if applicable, cannot be excluded under the Australian Consumer Law. If the Australian Consumer Law applies:
- (a) You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage.
  - (b) 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.
  - (c) If your Goods have a major failure or are found to be not of acceptable quality then you are entitled to a refund or a replacement (as the case may be). You must notify Us of the faulty or damaged Goods within a reasonable period from when you were aware of the damage.
- 16.3. Subject to clause 16.4 below, you are not entitled to return the Goods if you have changed your mind and do not want the product, you have ordered the wrong product, you have found it cheaper elsewhere, you have found another product elsewhere, you have damaged the product, you have not stored or used the Goods in a proper manner, or the defect or damage was caused by your misuse or negligent action.
- 16.4. We may, at Our sole discretion, accept returned Goods for credit, but may levy a handling and/or restocking fee of a minimum twenty per cent (20%) of the value of such Goods, plus any freight costs incurred, as long as:
- (a) You have complied with the provisions of clause 12.1
  - (b) the Goods have only been used and operated in accordance with the instructions of the manufacturer of the Goods and have been stored in a proper manner;
  - (c) the Goods are returned at Your cost, within fourteen (14) days of Our written confirmation that We will accept a return; and
  - (d) the Goods are returned in the condition in which they were delivered, with all the packaging materials and instructions, in as new condition as is reasonably possible in the circumstances.
- 17. Demonstration and Trial Products**
- 17.1. Where Goods are supplied to You for demonstration or trial purposes, then you agree that:
- (a) the trial period is limited to twenty-four (24) hours, unless otherwise agreed in writing by Us;
  - (b) the Goods for the trial period shall be invoiced according to the Order, or otherwise at Our current retail price (subject to change without notice); and
  - (c) You are liable for any cost incurred in connection with the recovery, replacement, repair or service of any missing or damaged Goods provided to you during the trial period.
- 18. Interim Hire**
- 18.1. Where You have placed an Order and You are waiting on the supply of the purchased Goods, We may, at Our sole discretion, offer to loan You the same or similar Goods ordered for an interim period (**Loaned Equipment**). There will be no charges for a maximum of 60 days, after which point in time current rental rates will apply.
- 18.2. It is Your sole responsibility to ensure the Loaned Equipment is maintained in good working order at all times and to advise Us immediately of any sign of wear and tear or damage that could result in failure of the equipment or injury to the user, or any loss of the Loaned Equipment. You are liable for any cost incurred in connection with the recovery, replacement, repair or service of any missing or damaged Loaned Equipment while in Your possession.
- 19. Warranty**
- 19.1. We warrant that the Goods When delivered to You will comply with any description and specifications which We have provided to You in the Order.
- 19.2. Other than the specific warranties that We provide to You accompanying the Goods, any applicable manufacturer's warranty and any applicable laws, we give no other representations or warranties for the Goods.
- 19.3. You warrant that in placing an Order You have:
- (a) satisfied Yourself as to the description and condition of the Goods and their fitness for the purpose for which You will use them; and
  - (b) not relied on any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided of given by We or anyone on Our behalf in respect of the Goods, other than those expressly contained in these Terms, Our specific warranties accompanying the Goods or any other document that We have provided to You.
- 19.4. In the case of second hand Goods, You acknowledge that:
- (a) you have had full opportunity to inspect such Goods and accept the Goods "as is" with any defaults, defects or faults;
  - (b) to the extent permitted by law, no warranty is given by Us as to the quality or suitability of the Goods for any purpose;
  - (c) to the furthest extent permitted by law any implied warranty for the Goods, statutory or otherwise, is expressly excluded; and
  - (d) you agree that We shall not be held responsible for any loss or damage to the Goods or caused by the Goods, or any part thereof however arising.
- 20. Australian Consumer Law**
- 20.1. If the Australian Consumer Law applies to these Terms, then these Terms are subject to the Australian Consumer Law and must be read and construed subject to any such statutory provisions.
- 20.2. Our liability for a breach of a condition or warranty implied by Part 3-2 Division 1 of the Australian Consumer Law is limited to:
- (a) in the case of Goods, any one or more of:
    - (i) the replacement of the Goods or the supply of equivalent goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
    - (iv) the payment of the cost of having the Goods repaired; or
  - (b) in the case of services:
    - (i) the supplying of the Services again; or
    - (ii) the payment of the cost of having the Services supplied again.
- 21. General exclusion and operation of laws**
- 21.1. Nothing in these Terms excludes, restricts or modifies any condition, warranty, right or liability implied in this Terms or protected by law to the extent that such exclusion, restriction or modification would render this Terms or any provision of this Agreement void, illegal or unenforceable. Subject to that, any condition, warranty, right or liability which would otherwise be implied in this Terms or protected by law is excluded.
- 22. Intellectual Property**
- 22.1. The Goods may contain intellectual property rights that belong to Us. Property, right and title in that intellectual property will remain with Us despite You acquiring the Goods.
- 22.2. You agree to do all things reasonably required and execute all documents to ensure We retain ownership in the intellectual property.

- 22.3. You must not pass any intellectual property to third parties without Our prior written approval.
- 22.4. You agree to indemnify and keep indemnified Us against any claim for infringement of intellectual property where the claim arises out of information supplied by Us or as a result of Us complying with Your order.
- 23. Default**
- 23.1. If You are:
- (a) in default of any payment obligation and fail to remedy a breach of any non-payment within 14 days of receipt of written notice to remedy the breach;
  - (b) become unable to pay Your debts as and when they fall due; or
  - (c) commit an act of bankruptcy or, being a company, enter into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up;
- then We may, without prejudice to any other rights or remedies available to it under these Terms or otherwise, by notice in writing to You:
- (d) suspend further supply of the Goods and require payment in advance for any future supply;
  - (e) recover possession of any Goods for which payment has not been made;
  - (f) terminate all or any Orders which have been accepted by Us;
  - (g) claim immediate payment of all moneys due by You in respect of all Goods which will then be immediately due and payable notwithstanding the due date or dates for payment; and/or
  - (h) continue to enforce Our rights against and recover from You such payments and any other amounts owing as and when they fall due.
- 23.2. You agree to indemnify Us for any and all costs and expenses incurred in connection with Your failure to pay, including legal costs incurred and enforcement costs.
- 24. General**
- 24.1. You must provide Us within fourteen (14) days written notice of any proposed change in Your name, ownership and/or other details, including but not limited to changes to Your address, contact numbers or business practice.
- 24.2. Neither party will be considered to be in breach of these Terms or liable to the other for any loss or damage resulting from an event that is not within that party's reasonable control (a "force majeure" event) provided the affected party notifies the other in writing as soon as is practicable of the nature of that event or circumstance.
- 24.3. We shall comply with our obligations under the *Privacy Act 1988 (Cth)* and will ensure that we handle all personal information collected from You.
- 24.4. If any part of these Terms is held to be invalid, illegal or unenforceable in any respect, under any applicable law, the remaining parts of these Terms will remain in full force and effect.
- 24.5. We reserve the right to review or amend these Terms at any time, and to notify any changes to You in writing.
- 24.6. These Terms contain all of the Terms of the agreement between the parties and may only be varied by agreement in writing between the parties.
- 24.7. No waiver of any of these Terms or failure to exercise a right or remedy by Us will be considered to imply or constitute a further waiver by Us of the same or any other term, condition, right or remedy.
- 24.8. You must keep confidential all information including these Terms, the price of the supply of the Goods, and any information which We may reasonably consider is confidential, unless required by law to disclose, the information has become public or with Our prior written consent.
- 24.9. You must not assign or otherwise deal with any of Your rights or obligations under these Terms without Our prior written consent.
- 24.10. No failure to exercise or delay in exercising any right under these Terms constitutes a waiver and any right may be exercised in the future. A waiver of any right these Terms must be in writing and is only effective to the extent set out in that written waiver.
- 24.11. These Terms are to be construed in accordance with the laws of Victoria.