

## TERMS AND CONDITIONS OF TRADE

AC & PL Way Pty Ltd ACN 140 047 534 as trustee for The AC & PL Way Family Trust Trading As Access Rehabilitation

### Equipment

These Terms and Conditions apply (unless otherwise previously agreed in writing) to the supply of Goods by the Seller to a Client from time to time. Any supply of Goods by the Seller to the Client made after the date of acceptance of these Terms and Conditions is a supply pursuant to the supply contract constituted by these Terms and Conditions and the relevant Order accepted by the Seller (the 'Contract') and any such supply does not give rise to a new or separate agreement.

- 1. Definitions**
  - 1.1. "Seller" means AC & PL Way Pty Ltd ACN 140 047 534 as trustee for The AC & PL Way Family Trust trading as Access Rehabilitation Equipment and its successors and designs.
  - 1.2. "Client" means the person to or for whom the Goods are to be supplied by Seller or appointed agent, or any other person acting for and on behalf of or with the authority of the client.
  - 1.3. "Goods" means all goods supplied by the Seller to the Client under the Contract and includes any Services provided by the Seller to the Client.
  - 1.4. "GST" has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
  - 1.5. "Guarantor" means that person (or persons), institution or entity, agreeing herein to be liable for the debts of the Client on a principle debtor basis.
  - 1.6. "Manufacturer" means the producer or manufacturer of Goods supplied to the Client under the Contract which have been obtained by the Seller for the purposes of resale or remanufacture.
  - 1.7. "Order" means each request for the supply of Goods and/or Services made by the Client to the Seller from time to time.
  - 1.8. "PPSA" means the *Personal Property Securities Act 2009* (Cth), as amended from time to time.
  - 1.9. "Price" means the cost of the Goods and/or Services, determined in accordance with clause 4.1.
  - 1.10. "Proposal" has the meaning given to that term in clause 3.1.
  - 1.11. "Terms and Conditions" means these terms and conditions of trade and incorporating any other terms and conditions amending, varying or supplementing these terms and conditions of trade provided by the Seller to the Client from time to time, including but not limited to the terms of any Proposal, invoice or credit application.
  - 1.12. "Services" means all services provided by the Seller to the Client under the Contract, including but not limited to any advice or recommendations.
- 2. Acceptance**
  - 2.1. The Seller will only supply Goods to the Client on these Terms and Conditions, unless otherwise agreed to in writing. An acceptance of the order by the Seller is then to be an acceptance of these Terms and Conditions by the Seller and the Client and these Terms and Conditions will override any conditions contained in the Client's order. The Seller reserves the right to accept a part only of any order by notifying the Client in writing or by delivering the Goods to the Client. No order is binding on the Seller until accepted by it.
  - 2.2. Where an Order is made by more than one party, all parties will comprise the Client and each shall be jointly and severally liable for the whole (and, if applicable, each instalment) of the Price.
- 2.3.** The Client acknowledges that it does not enter into the Contract on any representation, warranty or statement made by or on behalf of the Seller.
- 2.4.** The Client undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name, ownership and/or other details, including but not limited to changes in the Client's address, contact numbers or business practice.
- 3. Goods and Services**
  - 3.1. For each Order, relevant Goods and/or Services are described on the quotation, or invoice, work authorisation, or other work commencement form (**Proposal**) provided by the Seller to the Client following receipt of the Order from the Client.
  - 3.2. The Seller may license or sub-contract Goods and/or Services, or portion thereof, and all rights and obligations without prior notice to or consent of the Client.
- 4. Price and Payment**
  - 4.1. The Price of the Goods and/or Services shall be:
    - (a) where the Client has accepted a Proposal in writing within 30 days of the date of issue of the Proposal, as indicated in the Proposal; or
    - (b) where no Proposal has been provided, as invoiced by the Seller to the Client in respect of each supply of Goods and/or Services.
  - 4.2. Any additional costs resulting from any variation from the specifications or plan of scheduled works detailed in the relevant Proposal shall be charged in addition to the Price on the basis of the Seller's further quotation, and shall be invoiced as a variation. Payment for all variations must be made in accordance with the terms of the relevant invoice.
  - 4.3. The Price is stated as inclusive of GST (if applicable), and any other taxes, duties or charges (including delivery charges and insurance) which may be applicable, except as expressly indicated in the Proposal or invoice.
  - 4.4. Payment shall be made by cash on delivery, by the Client's cheque or bank cheque, credit card or direct transfer, or by any other method as agreed to by the Seller.
  - 4.5. The Seller may require, in its sole discretion:
    - (a) a deposit on the Order in an amount or percentage of the Price stipulated in the Contract. Where required, the deposit is due and payable immediately upon acceptance of the relevant Order by the Seller; and/or
    - (b) payment of the Price in full prior to delivery of the Goods or performance of the Services.
  - 4.6. Time for payment of the Goods and/or Services is of the essence, and must be made in accordance with the terms of the relevant invoice. If the relevant invoice does not specify a time for payment, then payment must be made on delivery of the Goods and/or performance of the Services.

- 4.7. The Client shall not offset or withhold any amounts or payments due from the Seller against the Price of the Goods.
- 5. Delivery of Goods and Services**
- 5.1. Goods and/or Services shall be delivered by the Seller to the address for delivery specified in the relevant Order. The Client shall make all arrangements necessary to take delivery of the Goods, whenever they are tendered for delivery. Alternatively, if required by the Seller, delivery of the Goods shall be made to the Client at the Seller's premises and the Client shall arrange for transportation of the Goods.
- 5.2. Where the Seller has requested for the Goods to be made available for collection from the Seller's premises, delivery of the Goods to a carrier nominated by the Client, or failing such nomination, to a carrier appointed by the Seller in its sole discretion, shall be deemed delivery of the Goods to the Client under clause 5.1. Any carrier so nominated or appointed shall be deemed to be the Client's agent.
- 5.3. All costs incurred by the Seller in connection with the carriage of Goods (including but not limited to reasonable costs incurred to insure the Goods), shall be reimbursed by the Client to the Seller without any offset or other withholding whatsoever, and shall be due on the due date for payment of the Goods under the Contract.
- 5.4. The Client shall take delivery of the Goods tendered, notwithstanding that the quantity so delivered may be either more or less than the quantity ordered provided that:
- (a) such discrepancy in quantity shall not exceed 5%; and
- (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.5. The times quoted for delivery are estimates only and the Seller accepts no liability for failure or delay in delivery of Goods. The Client is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 6. Ownership and Risk**
- 6.1. Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Seller until payment in full for the Goods and all sums due and owing by the Client to Seller on any account has been made.
- 6.2. Notwithstanding clause 6.1, all risk of loss and damage of the Goods shall pass to the Client on delivery.
- 6.3. If any of the Goods are damaged or destroyed after delivery and prior to title in them passing to the Client, the Seller 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 and Conditions, 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 production of these Terms and Conditions by the Seller shall be deemed sufficient evidence of the Seller's right to receive any such insurance proceeds, without the need for further enquiry by any third party.
- 7. PPSA**
- 7.1. Unless otherwise defined in this Agreement, capitalised terms and expressions used in this clause have the meanings given to them in the PPSA.
- 7.2. The Client acknowledges and agrees that these terms constitute a Security Agreement and entitles the Seller to register a Purchase Money Security Interest in the Goods supplied pursuant to these Terms and Conditions and a security interest over their Proceeds, including any Accounts, and Accessions and Commingled Goods, by virtue of clause 6.1 of this Agreement.
- 7.3. The Client agrees that:
- (a) The Seller, as a Secured Party, is entitled to register its Security Interest(s) in the Goods supplied or to be supplied to the Client pursuant to these Terms and Conditions and in the relevant Proceeds;
- (b) it will immediately on request by the Seller, do all things necessary in the Seller's reasonable opinion, including signing any documents and providing any necessary information and doing anything else required by the Seller, to enable the Seller 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) it 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) it will not change its 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 the Seller in writing;
- (e) it waives its 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) it will pay the Seller's costs of any discharge or necessary amendment of any Registration.
- 7.4. If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, the Client agrees that PPSA sections 129(3), 132(1), 132(3)(d), 132(4), 135, 142 and 143 will not apply.
- 7.5. To the maximum extent permitted by law, the Client contracts out of and waives any rights it 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.
- 7.6. The Client appoints and authorises the Seller as its attorney to sign in the Client's name all documents which the Seller reasonably considers necessary to enforce or protect its rights and powers under the Agreement and to protect, preserve and enforce its rights under the PPSA.
- 8. Client Acknowledgement and Disclaimer**
- 8.1. The Client acknowledges that the Seller is not a medical/allied health professional and does not warranty the suitability of the Goods for the Client. The Client acknowledges that they should seek their own advice from a medical practitioner or qualified allied health professional as to the suitability of the Goods and that the Seller shall not be bound by nor held responsible for any term or condition, representation or warranty other than the warranty given by the Manufacturer of the Goods, which shall be exclusive to the Client and not transferable

(including in the event of on-sale of the Goods) to any subsequent purchaser of the Goods.

## 9. Defects and Returns

9.1. The Client shall inspect the Goods immediately on delivery, and shall, within fourteen (14) days thereafter, notify the Seller in writing of any alleged damage, defect, discrepancy in quantity or failure to comply with the description or Proposal. The Client must then afford the Seller the opportunity to inspect the Goods within a reasonable time following notice being provided to the Seller by the Client. If the Client fails to comply with these provisions, the Goods shall be conclusively deemed to conform to the Proposal and the requirements of the Contract and free from any defect, or damage, discrepancy or non-compliance.

9.2. To the extent permitted by law, where the Seller agrees in writing that any Goods are defective or damaged, the Seller may, in its sole discretion, either replace or repair the Goods, provided that:

- (a) the Client has complied with the provisions of clause 9.1;
- (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 the Client's cost, within fourteen (14) days of the Seller's written confirmation that those Goods are defective or damaged; 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.

9.3. The Seller may, at its sole discretion, accept returned Goods for credit, but may levy a handling and/or restocking fee of ten per cent (10%) of the value of such Goods, plus any freight costs incurred thereby.

9.4. Where Goods are supplied to the Client for demonstration or trial purposes, where the equipment is not in custody of ARE Personal then:

- (a) the trial period shall be limited to twenty-four (24) hours, unless otherwise agreed in writing by the Seller;
- (b) the Goods shall be invoiced according to the Proposal, or at the Seller's current retail price (subject to change without notice) should no alternative arrangement be agreed upon; and
- (c) the Client (being the party liable for payment of the ARE invoice) shall be liable for any cost incurred in connection with the recovery, replacement, repair or service of any missing or damaged Goods contemplated by this clause 9.4.

## 10. Interim Hire

10.1. The Seller may, at its sole discretion, offer to the Client to loan equipment the same or similar to the Goods ordered for an interim period where the Client has placed an Order and is waiting on the supply of the purchased Goods ("Loaned Equipment"). The period of no charge will be for

a maximum of 60 days, after which point in time current rental rates will apply.

10.2. It is the sole responsibility of the Client to ensure the Loaned Equipment is maintained in good working order at all times and to advise the Seller immediately upon becoming aware 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 Loan Equipment.

## 11. Warranty

11.1. The Seller's warranty shall be the current warranty provided by the Manufacturer of the Goods. The Seller shall be under no obligation or liability for the Goods whatsoever, except as expressly detailed and stipulated in the Manufacturer's warranty conditions.

11.2. In the case of second hand Goods, the Client acknowledges that:

- (a) it has had full opportunity to inspect such Goods;
- (b) it accepts the Goods in their condition with any defects or faults;
- (c) no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose; and
- (d) to the furthest extent permitted by law:
  - (i) any implied warranty for the Goods, statutory or otherwise, is expressly excluded; and
  - (ii) the Seller shall not be held responsible for any loss or damage to the Goods or caused by the Goods, or any part thereof however arising.

## 12. Australian Consumer Law

12.1. The provisions of these Terms and Conditions that exclude or limit the Seller's liability will apply only to the extent permitted by law. Provisions of the *Competition and Consumer Act 2010* (Cth) may apply to the Contract and cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent. These Terms and Conditions must be read and construed subject to any such statutory provisions. If any such statutory provisions apply, then to the extent to which the Seller is entitled to do so, its liability under those statutory provisions will be limited at its option to:

- (a) the replacement of the Goods or the supply of equivalent Goods; or
- (b) the repair of the Goods; or
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) the payment of the cost of having the Goods repaired; or
- (e) where the Goods are Services, the supply of the service again or the payment of the cost of having the services supplied again.

## 13. Intellectual Property

13.1. Any intellectual property rights incorporated in the design or manufacture of the Goods and/or Services shall remain vested with the Seller.

- 13.2. The Client warrants that it holds all necessary intellectual property rights in any document or material, design or drawing (**Intellectual Property**), provided to the Seller in connection with the supply of Goods and/or Services, and that such provision is not and will not constitute an infringement of any rights or entitlements held by any third party.
- 13.3. The Client indemnifies and holds harmless the Seller for any claims made against the Seller, however arising from the Seller's use of any Intellectual Property or any other information provided by the Client to the Seller.
- 14. Default**
- 14.1. If at any time the Client is in default or breach of any condition or obligation under the Contract, including but not limited to those terms relating to payment, the Seller may suspend or terminate supply of the Goods and/or Services to the Client, and any of its other obligations under these Terms and Conditions, without prejudice to any other remedies the Seller may have.
- 14.2. If the Client fails to pay any invoice as and when due, the Client shall indemnify the Seller for any and all costs and expenses incurred in connection with its failure to pay in accordance with the Contract, including but not limited to any:
- (a) legal costs incurred (on a solicitor and own client basis); and
  - (b) enforcement costs (including in connection with collection of the debt owing by the Client to the Seller and repossession of any Goods).
- 14.3. Interest on overdue invoices shall accrue daily from and including the due date for payment due until the date payment is actually received by the Seller at a rate of twenty five per cent (25%) per annum, and shall continue to accrue at this rate before and after any judgment at law.
- 14.4. The Seller shall be entitled, at its discretion, to cancel all or any part of any Order which remains unperformed, without prejudice to other remedies the Seller may have, and all amounts owing to the Seller shall immediately become payable whether or not due for payment, in the event that:
- (a) any payment to the Seller becomes overdue, or the Client proves unable to meet payments as they fall due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors, proposes or enters into any arrangement with its creditors or makes an assignment for the benefit of its creditors; or
  - (c) an administrator or receiver, liquidator (provisional or otherwise) or similar person is appointed over the Client or any asset of the Client.
- 14.5. In the event of a default by the Client, then without prejudice to any other rights which the Seller may have at law or under this Contract
- (a) The Seller or its agents may without notice to the Client enter the Client's premises or any premises under the control of the Client for the purposes of recovering the Goods.
  - (b) The Seller may recover and resell the Goods;
  - (c) if the Goods cannot be distinguished from similar Goods which the Client has or claims to have paid for in full, the Seller may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Seller and the Client may be ascertained. The Seller must promptly return to the Client any goods the property of the Client and the Seller is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Client's business howsoever arising from the seizure of the Goods.
- 15. Force Majeure and Termination**
- 15.1. Neither the Seller nor the Client shall be liable for any default in fulfilling their obligations under the Contract where prevented from doing so by any event of Force Majeure, e.g. any act of God, fire, storm, flood or drought, war or terrorism, strike or lock-out, industrial action or other circumstances beyond the reasonable control of either party (**Force Majeure Event**).
- 15.2. If a Force Majeure Event occurs, the Seller may immediately terminate the Contract, or postpone or cancel any delivery of the Goods by giving written notice to the Client.
- 16. Privacy Act**
- The Seller shall comply with its obligations under the Privacy Act 1988 (Cth) and shall handle all personal information collected from the Client and Guarantor In connection with any request for supply of Goods and/or Services in accordance with its Privacy Policy.
- 17. Trustee Capacity**
- 17.1. If Client is the trustee of a trust (whether disclosed to the Seller or not), the Client warrants to the Seller that:
- (a) The Client enters into this Contract in both its capacity as trustee and in its personal capacity;
  - (b) The Client has the right to be indemnified out of trust assets;
  - (c) The Client has the power under the trust deed to enter into this Contract; and
  - (d) The Client will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Seller.
- 18. General**
- 18.1. If any provision in these Terms and Conditions shall become invalid or void, illegal or unenforceable, the validity and existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired in any respect whatsoever.
- 18.2. The Seller reserves the right to review or amend these Terms and Conditions at any time, and to notify any changes to the Client in writing.
- 18.3. To the furthest extent permitted by law, the Seller shall not be liable to the Client for any direct or indirect loss and/or expense whatsoever, including loss of profit, suffered or incurred by the Client or any third party however arising out of or in connection with any breach of any term of the Contract by the Seller or the Seller's exercise of any right under the Contract.
- 18.4. In the event of breach of the Contract by the Seller, the remedies of the Client shall be limited to damages, and under no circumstances shall the total liability of the Seller exceed the Price of the Goods and/or Services.
- 18.5. All Goods and/or Services supplied or provided by the Seller shall be subject to the respective laws of the State of Victoria, Australia.