



 **KEMBLA**  
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**KEMBLA**

STANDARD TERMS OF SALE

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Effective: 20 November 2020

### 1. Application of Terms

- 1.1 These Standard Terms of Sale ("**Terms**") apply to all Goods sold by the Company to each entity ("the Customer").
- 1.2 These Terms, together with the Credit Application, any Trading Agreement, as well as any Quote, Order and tax invoice in relation to the supply of Goods by the Company to the Customer, constitute the entire agreement between the Company and the Customer ("the Agreement"). There are no other terms and, to the extent permitted, all other terms including warranties that may be implied, including statutory terms, are excluded.
- 1.3 In relation to inconsistency:
  - a) to the extent of any inconsistency between these Terms and the terms of the Credit Application, the terms of the Credit Application shall prevail;
  - b) to the extent of any inconsistency between these Terms and the terms of any Trading Agreement, these Terms shall prevail unless otherwise expressly stated in the Trading Agreement; and
  - c) to the extent of any inconsistency between these Terms and a Quote, Order or tax invoice in relation to the supply of Goods by the Company to the Customer, these Terms shall prevail.
- 1.4 These Terms may be varied at any time by the Company. The terms at the time of delivery of Goods will prevail if there is any conflict.
- 1.5 Any modification to these Terms discussed between the Company and the Customer orally will be effective only after confirmation by the Company in writing.

### 2. Definitions

- 2.1 In these Terms:
  - a) "**Collection Notice**" has the meaning given to it in clause 6.2.
  - b) "**Credit Application**" means an application made by the Customer (and any guarantor) to the Company for the Company to supply Goods to the Customer on credit (including the Credit Facility Terms and Conditions attached to a Credit Application).
  - c) "**Credit Limit**" has the meaning given to it in the Credit Application.
  - d) "**Delivery Date**" means:
    - (i) if the ordered Goods are to be collected from the Company's premises, the earlier of:
      - (A) the date on which the Goods are collected; and
      - (B) the date fifteen (15) days after the date of the Collection Notice;
    - (ii) if the ordered Goods are to be delivered to the Customer:
      - (A) by the Company or an agent or contractor of the Company, the date that the Goods are offloaded at the Customer's premises;
      - (B) by an agent or contractor of the Customer, the date that the Goods are preloaded at the Company's premises;
      - (C) directly by a manufacturer in Australia, the date that the Goods are offloaded at the Customer's premises; and
      - (D) directly from outside of Australia, the date that the Goods are offloaded at the Customer's premises.
  - e) "**Due Date**" has the meaning given to it in clause 6.3.
  - f) "**Goods**" means the Goods that the Company supplies in the course of its business.
  - g) "**GST Law**" includes the Act entitled *A New Tax System (Goods and Services Tax) Act 1999*.
  - h) "**Invoiced Amount**" means the amount set out in a tax invoice issued by the Company to the Customer for the relevant Goods, including any charges set out in clause 6.1;
  - i) "**Order**" means an order from the Customer to the Company for the supply of Goods.
  - j) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth).
  - k) "**Payment Term**" has the meaning given to it in the Credit Application.
  - l) "**Quote**" means a price quotation given by the Company to the Customer for the supply of Goods either orally, in writing or via its website.
  - m) "**Quoted Price**" means the price quoted by the Company in a Quote, as varied in accordance with this Agreement.
  - n) "**Trading Agreement**" means any agreement between the Customer and the Company in relation to the supply of Goods to the Customer (including special conditions of order) that is in writing and signed by an authorised representative of the Company and the Customer.

### 3. Quoting and Pricing

- 3.1 Subject to the balance of these Terms, a Quote given by the Company to the Customer will remain valid for the period stated in the Quote, or if no such period is stated, for a period of thirty (30) days.
- 3.2 Without limiting any other right of the Company, the Company may vary the Quoted Price in the following circumstances:
  - a) if the Customer requests any change to the number of Goods to be supplied or the delivery address;
  - b) if the Customer requests any change to the Quoted Price and the Company agrees to the request;
  - c) if the Customer requests to make any change the Quote at a time when new standard prices apply to the Goods as set by the Company; or
  - d) if the wholesale price of a Good referred to in a Quote, or the freight or delivery cost in relation to that Good, increases prior to the date of issue of the tax invoice for that Good;
  - e) if the Customer has not yet ordered the Goods the subject of the Quoted Price;
  - f) in accordance with clause 11.1.

- 3.3 All prices quoted or advised are strictly based on the quantity and the pack sizes at the date of quotation or order. Prices may be varied to those at the date of delivery and will be adjusted accordingly to any change in any costs to the Company or variation in quantity or pack sizes. Prices are exclusive of GST unless otherwise stated.
- 3.4 No other promotion, special offer, discount or bonus shall be applicable to a Quoted Price where a discount has already been applied.
- 3.5 In the event that the Quote is amended in accordance with these Terms, the Company may in its discretion amend any discount applied in a Quote.
- 3.6 Without limiting the rights of the Company, the Customer acknowledges that the price payable by the Customer for all Goods to which a base metal (including but not limited to) copper fluctuating price applies shall depend on the price of the respective base metal at the time that the Company accepts a purchase order for those Goods.

#### **4. Customer Orders**

- 4.1 Orders once received from a Customer are irrevocable unless otherwise agreed to by the Company in writing on a case-by-case basis or cancelled by the Company in its absolute discretion. The Company may withdraw from the supply of Goods ordered or unilaterally cancel any Quote or Order at any time up to delivery without any liability to the Customer (other than to refund any deposit paid by the Customer in respect of that Quote or Order).
- 4.2 Orders once received cannot be deferred or suspended unless otherwise agreed to in writing by the Company and the Customer indemnifies the Company for any loss associated with the deferral. Confirmation of order documents must be clearly marked, otherwise they will be treated as original Orders.
- 4.3 If, after the placement of an Order, the Customer directs that delivery be spread over additional lots to different addresses from those specified in the Order, then each such delivery will be deemed to be a separate quantity and a novation of the original contract and may be priced accordingly. The Customer will be liable for any additional costs incurred in that regard by the Company.
- 4.4 If for any reason the Goods ordered are unavailable, the Company has the right to substitute alternative Goods provided they are reasonably equivalent in all respects (unless the Order specified otherwise). If quantity and pack sizes vary from the date of Quotation or Order the Company may substitute alternative sizes but not so that the Customer is required to purchase in aggregate more Goods than ordered.
- 4.5 If the Company agrees to make available any Goods for the carrying out of any tests or certification processes then those tests or processes will be carried out by the Customer at the Customer's cost and risk. By providing Goods for the undertaking of testing or certification processes pursuant to this clause, the Company expressly does not assume any responsibility for the Goods whatsoever including any liability if the results of the tests or certification processes carried out are wrong.
- 4.6 Where the Agreement is entered into conditional on the Customer's approval of a sample provided by the Company, the Company gives no undertaking, express or implied, that the Goods supplied will be exactly the same as the sample, although reasonable endeavours will be made to supply Goods as close to the sample as possible. The Customer is not discharged from its obligations under these Terms if the Goods are found not to be identical.
- 4.7 The Customer must specify the details of the standard that Orders for Goods must comply with if that standard is different or additional to the applicable Australian or International Standards.

#### **5. Packaging and Delivery**

- 5.1 Delivery will take place at the Company's premises where the Order is accepted unless the Company agrees to effect delivery or arrange freight to an address specified by the Customer, in which case delivery will take place at such address.
- 5.2 If the Goods are being delivered to an address nominated by the Customer, the Customer shall be responsible for the offloading of Goods from the delivery vehicle and the Customer will provide all necessary labour and equipment to safely offload the Goods at a reasonable access point at any nominated delivery address. The Customer must ensure that it meets all applicable workplace health and safety requirements and have all necessary licences and approvals in relation to the offloading of the Goods.
- 5.3 Upon request of the Company, the Customer must return any pallets or cable drums used for the delivery of the Goods to any of the Company's or its agent's warehouses, stores, factories or offices at the Customer's expense. Any pallets or cable drums not returned within 14 days after request are to be paid in full by the Customer to the Company on demand at a valuation determined by the Company. Such valuation shall be final and binding as between the parties.
- 5.4 The Company reserves the right to supply or deliver by instalments, and each instalment will be deemed to be sold under a separate contract. Failure to supply or deliver any instalment will not entitle the Customer to repudiate any order.
- 5.5 The Company shall use its reasonable endeavours to make the ordered Goods available for collection, or to deliver the ordered Goods to the Customer, on the anticipated delivery date. The Company makes no warranty that it will make the ordered Goods available for collection, or deliver the ordered Goods to the Customer, by the anticipated delivery date, and the Company shall be not liable in relation to same.
- 5.6 The Company's delivery note or tax invoice is prima facie evidence of delivery of the Goods identified in that document.

#### **6. Invoicing and Payment**

- 6.1 In consideration for the supply of the Goods, the Customer shall pay to the Company the Invoiced Amount which may include charges for the following (regardless of whether or not they formed part of any Quote):
  - a) altering items to non standard package sizes;
  - b) drums, cases, packages and reels;
  - c) special packaging or tooling requirements;
  - d) insurance for Goods in transit from the Company's premises;
  - e) handling, packaging and processing in the event that the value of an Order is less than any minimum order value or quantity that has been previously stipulated by the Company or agreed to by the parties.;
  - f) service fee or charge determined by the Company from time to time;
  - g) any charge, duty or impost of any kind in connection with the Goods;
  - h) delivery and freight costs, including but not limited to expenses incurred by the Company due to deferral of delivery at the Customer's request beyond the delivery date specified or cancellation of the Customer's invoice (subject to any free freight agreement offered by the Company from time to time); and
  - i) GST and all other statutory taxes and charges.

- 6.2 If the ordered Goods are to be collected, the Company shall notify the Customer in writing or orally once the ordered Goods are available for collection from the Company's Premises ("Collection Notice").
- 6.3 The Customer must pay to the Company the Invoiced Amount on the due date as follows:
- a) if the Goods are to be supplied on credit in accordance with an approved Credit Application, by the last day of the Payment Term; or
  - b) otherwise, by the date of the tax invoice for the relevant Goods.
- 6.4 In the event that the Customer:
- a) has not collected the relevant Goods within fourteen (14) days of the date of the Collection Notice, the Customer must indemnify the Company for all costs (including any storage costs) incurred by the Company in storing the Goods from the Due Date;
  - b) has not collected the relevant Goods within three (3) months of the date of the Collection Notice:
    - (i) the Company may dispose of or otherwise deal with the Goods in any way it sees fit in its absolute discretion without any liability to the Customer for any loss, and the Customer must indemnify the Company for all costs incurred by the Company in disposing or otherwise dealing with the Goods; and
    - (ii) the Customer is deemed to have forfeited, and the Company shall be entitled to retain, any deposit paid to the Company in respect of the Goods.
- 6.5 Notwithstanding any credit arrangement between the Company and the Customer or any other provision in these Terms, if required by the Company, the Customer may be required to pay to the Company a deposit on the Goods upon the order of any Goods that will be made-to-order.
- 6.6 Payment by the Customer under these Terms must be made in cleared funds using the method directed by the Company.
- 6.7 In the event that:
- a) the Customer does not pay the Invoiced Amount by the Due Date; or
  - b) the aggregate of the Invoiced Amount for all Goods, together with the any other costs payable by the Customer to the Company under these Terms, exceeds the Credit Limit,  
then without limiting any other right the Company may have:
  - c) the Company may suspend or cancel undelivered Orders; and
  - d) the Customer must indemnify the Company in respect of any such cancelled Orders.
- 6.8 The Customer must pay interest equal to 1.5% per month for each month or part thereof on overdue amounts payable under these Terms from the Due Date until paid.
- 6.9 The Customer shall pay to the Company all expenses incurred by the Company in collecting or attempting to collect any moneys due and payable by the Customer to the Company as well as preserving the Company's rights under these Terms and the terms of the Credit Application, including the cost of debt collectors and legal fees on a full indemnity basis, commercial agents' commission, bank fees, freight, insurance, registration costs, enforcement costs and loss of profit.
- 6.10 All payments are to be made to the Company without deduction or equitable or other set off whatsoever.
- 6.11 The Company may apply and allocate payments received by, or on behalf of, the Customer in a manner in the Company's absolute discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
- 7. Online purchases and display and description of Goods**
- 7.1 The Customer acknowledges that, while the Company has endeavoured to properly describe Goods on its website, in its catalogues, in its stores and on any other material including textures, appearances, colours, weights and measures of the Goods, such description may vary from the actual Good.
- 7.2 The Company does not guarantee or warrant that the product images are an exact representation of the actual Goods.
- 7.3 The Company may reject an Order placed either through the Company's website or via other means for any reason including without limitation unavailability of a Good, an error in the price, an error in the image or the Good description or error in the Order itself, in which case the Company shall refund to the Customer any amount paid in respect of the rejected Order.
- 7.4 The Customer acknowledges that the prices for the Goods set out on the Company's website may vary between the Company's stores and those set out on its website.
- 8. Risk**
- 8.1 Risk
- a) Notwithstanding delivery or freight arrangements or the date on which title passes, risk (including deterioration, loss or damage) in the Goods ordered by the Customer passes to the Customer as follows:
    - (i) if the Goods are to be collected, on the date of the Collection Notice;
    - (ii) if the Goods are to be delivered by the Company, or an agent or contractor of the Company, at the time immediately prior to the offloading of the Goods at the premises nominated by the Customer;
    - (iii) if the Goods are to be delivered by a contractor or agent of the Customer, at the time of preloading of the Goods at the Company's premises;
    - (iv) if the Goods are to be shipped directly from the manufacturer in Australia, at the time immediately prior to the offloading of the Goods at the Customer's premises;
    - (v) if the Goods are to be shipped directly from outside Australia, at the time immediately prior to the offloading at the Customer's premises.
  - b) The Customer is responsible for all insurance of and relating to the Goods from the point when risk passes.
- 9. Title and Security Interests**
- 9.1 Ownership of, and title in, the Goods will not pass to the Customer until the Customer has paid to the Company the Invoiced Amount payable in respect of those Goods.
- 9.2 Until title in the Goods passes to the Customer in accordance with 9.1:
- a) the Company has the right to call for or recover the Goods at its option and the Customer must deliver up the Goods if so directed by the Company;

- b) the Customer must hold the Goods as bailee for the Company and must store the Goods on its premises separately from other Goods held by the Customer;
  - c) the Customer must maintain proper records of any sale or disposal of the Goods;
  - d) the Customer must keep the Goods fully insured;
  - e) the Customer must hold the Goods in a fiduciary capacity for the Company;
  - f) the Customer must not sell or dispose of the Goods except in the ordinary course of business;
  - g) the Customer will hold the proceeds of any sale or disposal of the Goods (whether tangible or intangible, direct or indirect) to the extent of the amount due to the Company in respect of the Goods on trust for the Company, and will hold such proceeds in a separate account for the Company's benefit and promptly pay that amount to the Company.
  - h) the Company retains a purchase money security interest in the Goods ("PMSI") and the proceeds of sale of the Goods (including any accounts and accessions by virtue of these Terms) under the PPSA;
  - i) the Customer consents to the Company registering a security interest under the PPSA and agrees to do all things reasonably required by the Company to effect such registration;
  - j) the Customer waives any right the Customer has under PPSA to receive notice in relation to registration of the Company's interest in the Goods under the PPSA; and
  - k) the Customer will immediately advise the Company of any changes which may affect the Company's security interest.
- 9.3 At all times the Customer will allow the Company (including its officers, employees, contractors and agents) access to the Customer's premises, to any other premises where the Goods are stored during normal business hours and to the Goods themselves in order to inspect the Goods and retake possession of the Goods under clause 9.2(a), and the Customer grants to the Company an irrevocable licence to enter the aforementioned premises for this purpose. The Customer acknowledges that this access shall be full, free and unhindered and shall not be or constitute trespass by the Company. The Customer indemnifies the Company for any liability or loss it suffers seeking to exercise its rights of access and retaking possession of the Goods.
- 9.4 The Customer acknowledges and agrees that the PMSI has attached or will attach to all Goods supplied to the Customer by the Company now or in the future at the time when the Customer takes possession of the Goods. The Customer shall do all things necessary, including providing all information required, to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR") as a security interest and a purchase money security interest pursuant to the PPSA. The Customer must not change its name, ACN or ABN or other details required on the PPSR without first notifying the Company. The Customer agrees that the Company's security interest over the Customer's future or acquired property has the same priority as present property and is not subordinated in any way. The Customer shall pay the Company's costs of any discharge or necessary amendment of any financing statement or financing change statement. The Customer must immediately notify the Company in writing of any change which may affect the security interests granted by the Customer to the Company.
- 9.5 The Customer waives its right to receive any notice under the PPSA including a verification statement in respect of any financing statement or financing change statement in respect of the security interests created pursuant to these Terms. To the maximum extent permitted by law, the Customer agrees that the sections 118, 121(4), 125, 130, 142, and 143 of the PPSA will not apply. To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and hereby contracts out of sections 95, 118, 121(4), 123, 129(2), 130, 132, 134(2), 135 157 and Part 4.3 of the PPSA.
- 9.6 If the Customer becomes bankrupt or enters into external administration or has a receiver appointed to it, the Customer's right to sell the Goods in the ordinary course of business and any other rights of the Customer in respect of the Goods immediately cease (to the extent permitted by law) and the Customer must immediately return to the Company the Goods in which title has not passed.
- 9.7 Clauses 9.1 to 9.6 apply, mutatis mutandis, to Goods that have been created, reconstituted or manufactured by using or processing the Goods by replacing the word "Goods" with "Reconstituted Products".
- 9.8 The Customer hereby grants to the Company a security interest over all of its present and after acquired property as security for payment of all moneys owing by the Customer to the Company at any time, and as security for the performance of the Customer's obligations under the Agreement.
- 9.9 In addition to the security interests referred to in this clause 9, the Customer, or where the Customer is a partnership, each partner of the partnership, both jointly and severally, hereby charges as beneficial owner all of its freehold and leasehold interest in real property (including land acquired in future) in favour of the Company as security for payment of all moneys owing by the Customer to the Company at any time, and as security for the performance of the Customer's obligations under the Agreement.

## 10. Intellectual Property

- 10.1 As between the Company and Customer, the Company shall at all times retain ownership of and all interest in all intellectual property relating to the Goods, including copyright in all documents, drawings and specifications produced by the Company or on the Company's behalf in connection with the Goods.
- 10.2 The Customer must not reproduce, modify, amend or publish, or allow to be reproduced, modified, amended or published, the Company's registered or unregistered trademarks, names or logos without first obtaining the prior written consent of the Company.

## 11. Warranty and Indemnity

- 11.1 Errors and misprints in computation, typing or otherwise in the Company's documents including catalogues, price lists, delivery docket, tax invoice, Quote or statement or credit note shall be subject to correction by the Company by means of reissue of the document or by adjusting dockets with reference to the original transaction.
- 11.2 The Customer acknowledges that where the Company is a wholesaler or reseller of the Goods, it does not hold sufficient technical expertise or skills to evaluate a Customer's requirement or orders.
- 11.3 Where the Company is the manufacturer or fabricator of the Goods, the Company gives the warranties (subject to the limitations set out therein) as set out on the following webpage amended from time to time – <https://www.kembla.com/support/trading-terms/>.
- 11.4 Warranties and provisions that may be implied by the Competition and Consumer Act 2010 and any other legislation are expressly excluded except to the extent that exclusion is prohibited by the legislation and this overrides these terms.
- 11.5 To the extent permitted by law, unless otherwise set out in these Terms, the Company gives no warranty whatsoever in relation to the Goods sold to the Customer, whether in regard to the quality of the Goods, fitness of the Goods for any purpose or the compliance of the Goods sold with any description or sample produced by either party to the other at any time, whether prior to,

at the time of or subsequent to the Customer placing an order for the Goods with the Company, or otherwise. The Customer warrants that the Goods will be installed and used:

- a) only in applications for which the Goods were manufactured and are able to be satisfied by the Goods specifications; and
- b) in accordance with all manufacturer's instructions and industry standards including being fully tested as safe prior to use.

11.6 To the extent permitted by law, unless otherwise set out in these Terms, the Company's liability under:

- a) any claim that the Customer has or may have against the Company in relation to a Good supplied by the Company, whether that claim is based in contract, common law or statute or otherwise, including law relating to negligence by the Company; or
- b) any implied term, condition or warranty which has not been excluded,

is limited, at the option of the Company, to the repair by the Company of the Good, the re-supply by the Company of the Good or the refund of the price paid by the Customer for the Good giving rise to liability.

11.7 The Company shall not be liable for:

- a) any economic loss, including loss of profits or wasted expenditure, or any loss of goodwill, Customers or any incidental, special or consequential loss arising out of or connected to the supply (or non-supply) of Goods by the Company;
- b) damage suffered by the Customer, including damage to property or personal injury, arising from the supply of Goods.

11.8 In no case will the Company incur liability for any loss or damage exceeding the sale price of the Goods paid by the Customer for the Goods nor on account of losses or damages suffered by the Customer including loss of profit, damage to property or personal injury arising from that supply or that agreement, whether arising directly, incidentally or consequently.

11.9 All information contained in any documents, catalogues, price lists, photographs, brochures and other illustrations or advertising material and drawings represent generally the subject matter of the Goods and will not be taken as necessarily representing the Goods the subject of any quotation or order and will not form part of any contract or agreement for supply.

11.10 Except as otherwise expressly provided in these Terms, the Customer releases the Company from all actions, claims, demands, losses, liability, damages and expenses arising from or in relation to the supply of the Goods and indemnifies the Company for any loss or liability that the Company may suffer (including the legal costs on an indemnity basis in defending or prosecuting any claim) arising from the use by the Customer of the Goods or a breach of these Terms including warranties by the Customer.

11.11 Any advice, recommendation, information, assistance or service provided by the Company in relation to Goods sold by it or their use or application, is given in good faith. However, any advice, recommendation, information, assistance or service provided by the Company in relation to any Goods is provided without liability or responsibility on the part of the Company.

## 12. Return of Goods

12.1 Except for defective Goods supplied by the Company, the Company may determine whether or not to accept a return of the Goods in its absolute discretion.

12.2 The Company may accept the return of Goods which were incorrectly delivered, damaged prior to risk passing or which are defective and the manufacturer's warranty covers the defect and the manufacturer agrees to replace or re-supply the Goods. Any acceptance of delivery back from the Customer by the Company prior to the Company accepting responsibility for incorrect delivery or damage pre risk passing or the manufacturer accepting responsibility for the defective Goods will be by the Company as agents for the Customer and is not to be taken as any acceptance of any liability by the Company or on behalf of the manufacturer.

12.3 Where the Company is not the manufacturer or fabricator of the Goods, to the extent permitted by law:

- a) claims for damaged Goods or incorrect delivery must be made in writing with full supporting explanation and documentation within three (3) business days of collection or delivery .
- b) if the Customer does not make such a claim within three (3) business days of collection or delivery:
  - (i) the Customer shall be deemed to have accepted the condition and correctness of the Goods; and
  - (ii) the Customer is barred for disputing the delivery or condition of the Goods and is deemed to have accepted liability for those Goods in accordance with these Terms.

12.4 The Customer must return any Goods to the Company's nominated premises at the Customer's cost unless otherwise agreed by the Company. The risk in such Goods remains with the Customer until such time as they are accepted for return by the Company.

12.5 Where any Goods are returned to the manufacturer or supplier they remain at the Customer's risk pending acceptance of liability by the manufacturer. The Customer is to pay the freight and other cost of returning the Goods unless the reason for return is directly and wholly caused by an error of the Company or the manufacturer in which case only the freight for the return will be paid for by the Company or manufacturer.

12.6 Except for defective Goods supplied by the Company, Goods returned for credit will only be considered for acceptance subject to the following conditions:-

- a) Goods returned must have been incorrectly supplied or damaged prior to risk passing;
- b) Goods returned must not be obsolete, incomplete, damaged or otherwise imperfect;
- c) Goods must not be returned unless purchase invoice numbers are advised and return freight charges are paid by the Customer and prior arrangement in writing is given by the Company;
- d) Goods accepted for return must be in the original packing or as supplied and remain in good condition;
- e) the amount of credit allowed in respect of Goods returned, if any, may be subject to a service or restocking charge at the Company's rate currently in effect, unless the agreement specifically states otherwise; and
- f) the Customer is responsible for Goods lost or damaged in transit during return to the Company or manufacturer.

12.7 Non-stocked and specially made Goods, or Goods otherwise stated by the Company to be non-returnable, cannot be returned to the Company.

## 13. Company Connection

13.1 The Customer must not advertise or publish that the Customer and the Company have a contract for the supply of Goods or to refer to the Company in any advertising and/or merchandising material without first obtaining the prior written consent of the Company.

## 14. Force Majeure

14.1 The Company is not liable for the cancellation or partial delivery of any Order or part Order if performance by the Company is prevented or delayed directly or indirectly by any cause beyond the reasonable control of the Company whether such cause existed or was foreseeable at the date of acceptance of the Order by the Company or not.

## 15. Breach and Termination

15.1 In the event that:

- a) the Customer breaches these Terms or the terms of any Credit Application (including any warranty) and has not remedied that breach; or
  - b) the Customer commits an act of bankruptcy or insolvency or enters into external administration or has a receiver appointed (to the extent permitted by law); or
  - c) the credit facility provided under any Credit Application is terminated or suspended,
- then, without limiting any other rights of the Company:
- d) any amounts owing to the Company by the Applicant then unpaid whether or not due under these Terms or the terms of any Credit Application shall become immediately due and payable; and
  - e) the Company may immediately terminate or suspend the Agreement or any Quote or Order by written notice to the Customer.

15.2 This clause 15 survives termination of the Agreement.

## 16. Privacy Policy

16.1 The Customer hereby agrees to the terms of the Company's privacy policy, which are available on <https://www.kembla.com/privacy-policy/>

## 17. Trust

17.1 If the Customer is the trustee of a trust (whether disclosed to the Company or not), the Customer warrants to the Company that:

- a) the Customer enters into the Agreement in both its capacity as trustee and in its personal capacity;
- b) the Customer has the right to be indemnified out of trust assets;
- c) the Customer has the power under the trust deed to enter into the Agreement; and
- d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Company.

17.2 The Customer must give the Company a copy of the trust deed upon request.

## 18. GST

18.1 Any consideration or payment obligation in these Terms, any Quote or tax invoice is exclusive of GST unless expressly stated otherwise.

18.2 If a Supply made under or in connection with these Terms is a Taxable Supply for which the consideration is a payment of money:

- a) the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate; and
- b) the additional amount under subclause (a) is payable upon receipt of a tax invoice in a form which complies with the GST Law at the time of payment.

18.3 The Customer must be registered for GST, unless otherwise agreed.

## 19. General

19.1 If any dispute arises in relation to Goods supplied by the Company to the Customer the Company may by notice to the Customer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration according to law. The arbitration is to be conducted in accordance with the relevant Commercial Arbitration Act (of whatever name) of the State or Territory nominated as being the governing law and in the capital city of that State or Territory. The Company may give notice that any dispute with the Customer is arbitrated with any other dispute relating to the same Goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of that State or Territory. The arbitrator's decision is final and binding subject to any right of appeal under the relevant Commercial Arbitration Act.

19.2 The reference of a dispute to arbitration does not affect the Customer's obligation to pay the price of Goods when due which must be paid without deduction or equitable or other set off pending the resolution of any dispute whether referred to arbitration or otherwise.

19.3 All prices provided or advertised by the Company are in Australian dollars unless otherwise expressly stated.

19.4 These terms will be governed by and construed in accordance with the laws of New South Wales or such other State or Territory of Australia as the Company directs and the Customer irrevocably submits to the exclusive jurisdiction of the courts of New South Wales or, if directed the Company, a competent court in the capital city of the State or Territory nominated by the Company.

19.5 Expressions defined in brackets in these Terms will be given the meaning where defined throughout these Terms whether or not the definition is used again before or after where the expression is defined.

19.6 The Company does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19.7 If any of these terms are or later become illegal or unenforceable, the illegal or unenforceable part of those terms are taken to be severed from these terms, but all other terms remain in place.

19.8 In these Terms: (a) a word denoting the singular includes the plural and vice versa; (b) a word denoting a gender includes each other gender; (c) a word denoting a natural person includes an entity and vice versa; and (d) a reference to a clause is a reference to a clause in this form. Headings are for ease of reference only and shall be ignored in construing these Terms.