

**TERMS AND CONDITIONS**  
**LUBRIMAXX PTY LTD ABN 25 006 850 415**

**1. Definitions**

In these terms and conditions, unless expressed or implied to the contrary:

"Account" means the provision of credit facilities by the Seller to the Buyer;

"Account Application Form" means the account application form completed by the Buyer and given to the Seller at the time of applying for an Account.

"Buyer" means the Purchaser of the Goods as detailed in the Invoice.

"Consideration" means any consideration payable pursuant to these Terms and Conditions in return for a Taxable Supply, but does not include the Price or any amount on account of GST.

"Contract" means the contract for the sale of Goods by the Seller to the Buyer, comprised in the Invoice, these terms and conditions and, where goods are sold by the Seller to the Buyer on Account, the Account Application Form.

"Deliver" means the handing over of possession, and the words "Delivery", "Delivering", "Delivered" and the like shall have a corresponding meaning.

"Delivery Date" means the date upon which the Buyer and the Seller have agreed, as stated in the Invoice, that the Buyer (or a third party with express or implied consent of the Buyer) shall collect the Goods from the premises of the Seller, or alternatively the date upon which the Buyer and Seller have agreed, as stated in the Invoice, that the Seller shall transport the Goods to the Buyer.

"Goods" means the goods named and described on the Invoice.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

"GST" has the same meaning given to that term in the GST Act.

"Input Tax Credit" has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

"Invoice" means the invoice attached to or printed on the reverse side of these terms and conditions, issued by the Seller to the Buyer.

"Price" means, unless otherwise agreed in writing, the price specified on the Invoice, which shall include any applicable GST.

"Seller" means Lubrimaxx Pty Ltd ABN 25 006 850 415.

"Supply" has the same meaning given to that term in the GST Act.

"Taxable Supply" has the same meaning given to that term in the GST Act.

**2. Sale**

The Seller agrees to sell and the Buyer agrees to purchase the Goods from the Seller subject to the following terms and conditions.

**3. Credit Facilities**

3.1 Accounts are only available to Buyers who have completed an Account Application Form, which has been processed and approved by the Seller. Until an Account Application Form is approved, all sales are strictly cash on delivery.

3.2 The provision of an Account to a Buyer may be withdrawn at any time.

3.3 Completion of an Account Application Form entitles the Seller to:

3.3.1 make all necessary inquiries and contact business referees of the Buyer to obtain information to enable the Seller to determine whether or not to offer credit facilities; and

3.3.2 use the services of a mercantile agency who may contact the Buyer for more information.

3.4 Where a company or partnership is provided with credit facilities, those who sign the Account Application form on behalf of the company or partnership:

3.4.1 are jointly and severally responsible for all amounts payable in connection with goods purchased on credit;

3.4.2 agree to indemnify the Seller against any loss by reason of failure to make any payment in connection with Goods purchased on credit; and

3.4.3 are jointly and severally responsible for all costs, charges, legal fees, expenses and interest incurred by the Seller in the recovery or attempted recovery from the signatories to the Account Application Form.

3.5 The Seller may compound or compromise with or release those persons who are signatories to the Account Application Form from any debt or obligation or arrange for new terms or extension of the credit arrangements or for the payment of any outstanding amounts without releasing, discharging or affecting their liability.

**4. Price**

4.1 The Seller will forward to the Buyer a Tax Invoice detailing the Price in respect of all Goods purchased by the Buyer from the Seller.

4.2 Payment of the Price for Goods sold on Account must be received by the Seller within 30 days from the statement date. Any amount outstanding beyond 30 days will be subject to an account keeping fee.

4.3 Unless otherwise agreed in writing, payment of the Price for Goods not sold on Account shall be made in full by the Buyer to the Seller on the Delivery Date.

4.4 If the Price referred to in clause 4.3 of these terms and conditions is not paid in full within the time stipulated in that clause, the Buyer must pay to the Seller on demand interest computed on the unpaid amount of the Price, calculated from the Delivery Date to the date on which the Price is paid in full, at the rate of 1.25% per month.

**5. GST**

5.1 Except as otherwise provided by this clause, all Consideration payable pursuant to these Terms and Conditions in relation to any Supply is exclusive of GST.

5.2 To the extent that any Supply pursuant to these Terms and Conditions constitutes a Taxable Supply, the Consideration payable by the Buyer to the Seller will be increased by the applicable amount of GST (**GST Amount**), which shall be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

5.3 Any GST Amount must be paid by the Buyer to the Seller at the same time and in the same manner as the relevant Price is paid pursuant to these Terms and Conditions, without any right of set-off or deduction (unless otherwise provided in these Terms and Conditions).

5.4 If these Terms and Conditions require the Buyer to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Seller (**Relevant Expense**), the amount which the Buyer must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Seller is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Seller to the Buyer.

**6. Quotations**

6.1 Any quotations given by the Seller to the Buyer remain valid for a period of 30 days from the date the quotation was given.

6.2 If the Buyer has been given a quotation by the Seller and the Buyer subsequently decides to purchase the goods for which the quotation was given, then the Seller must be advised of such quotation at the time when the Buyer places an order for the Goods.

**7. Delivery**

7.1 The Seller shall use reasonable endeavours to Deliver the Goods to the Buyer on or before the Delivery Date.

7.2 If the Seller is unable by reason of any industrial dispute, or by reason of shortage of material or labour, shipping delays, war, riot, act of God, or any other cause whatsoever beyond the reasonable control of the Seller to Deliver the Goods to the Buyer on or before the Delivery Date, then the Seller shall have the option:

7.2.1 to Deliver the Goods to the Buyer after cessation of any such disabling cause or event and in this case these terms and conditions shall have full force and effect as though the Goods had been Delivered on or before the Delivery Date; or

7.2.2 without prejudice to its other rights, rescind the Contract and in this case the Buyer shall have no recourse, claims or actions whatsoever against the Seller except for a refund of any part of the Price paid in respect of the Goods.

7.3 The Buyer acknowledges that the Seller does not warrant or represent that the Goods will be Delivered on the Delivery Date, and failure to Deliver the Goods by the Delivery Date shall not avoid or give the Buyer the right to avoid the Contract or render the Seller liable in any way for any direct or

consequential loss arising from such failure, and that the Seller is at liberty to make Deliveries within a reasonable period before or after the Delivery Date.

7.4 The Seller agrees that if it fails or refuses to take Delivery of the Goods on or before the Delivery Date or within 24 hours thereafter, then all monies paid to the Seller shall be forfeited to the Seller and the Seller may (without prejudice to its other rights) terminate the Contract and resell any goods the subject of the Contract, or store the goods at the risk and expense of the Buyer.

7.5 Where the Invoice refers to a request by the Buyer to the Seller to arrange for transportation of the Goods then, unless otherwise stated by the Seller in writing, Delivery of the Goods in the Melbourne Metropolitan area shall be on a free in-store basis, and Delivery of the Goods outside this area shall be on a free on-board basis.

7.6 Where the Seller arranges transportation of the Goods by an independent carrier, the Seller shall have absolute discretion as to the appointment of the independent carrier.

7.7 Where the Goods are transported by the employees, servants or agents of a contractor engaged by or on behalf of the Seller, the Goods shall be deemed to be delivered when they leave the premises of the Seller and shall thereafter be at the risk of the Buyer.

**8. Limitation of Claims by Buyer**

8.1 The Buyer acknowledges that the Buyer has not, in acquiring the Goods for any particular purpose, relied upon the skill, judgment or recommendation of the Seller or any of its servants or agents.

8.2 The Buyer agrees to inspect the goods thoroughly within two days after the Goods are Delivered by the Seller to the Buyer.

8.3 Any claims by the Buyer in respect of the Goods must be notified in writing by the Buyer to the Seller within 7 days after the Goods are Delivered, and if not so notified, the Buyer forever releases and discharges the Seller from all actions, suits, charges, claims and demands relating directly or indirectly to the purchase by the Buyer from the Seller of the Goods.

8.4 Upon receipt of any complaint in respect of the Goods, the Buyer shall examine the Goods and provide a report to the Seller setting out the nature of the complaint and the Buyer's assessment of the complaint before the Seller inspects and examines the Goods.

**9. Return of Goods**

9.1 Goods purchased by the Buyer from the Seller may be returned by the Buyer to the Seller for credit provided that the Goods are returned within **14 days** from the date of the Invoice.

9.2 The Seller reserves the right to charge a re-stocking fee for any Goods returned for credit.

9.3 Goods must be returned to the Spotswood depot at the Buyers cost.

9.4 The Seller will only credit Goods returned against future purchases by the Buyer.

**10. Liability and Indemnity**

10.1 The Seller acknowledges that under applicable State, Territory and Commonwealth Laws including in particular the *Goods Act (Vic) 1958* and the *Trade Practices Act (Cth) 1974*, certain conditions and warranties may be implied into the Contract and rights may be conferred upon the Buyer which cannot be excluded, restricted or modified. Nothing in the Contract, whether express or implied, shall be taken to exclude, restrict or modify any such non-excludable conditions, warranties or rights.

10.2 Subject to the preceding clause, the Buyer acknowledges and expressly agrees with the Seller that the:

10.2.1 Buyer is satisfied that the Goods are fit for the purpose for which they were purchased; and

10.2.2 implied warranty or condition, whether statutory or otherwise, and whether as to quality, condition or fitness for any particular purpose, is expressly excluded from these terms and conditions to the full extent permitted by law.

10.3 The Buyer agrees and acknowledges that the Seller, to the full extent permitted by law, accepts no liability or responsibility arising for any direct or consequential loss, damage or expense of any kind or nature and the Buyer releases and forever discharges the Seller from any such responsibility and liabilities and any claims, demands or causes of action in respect thereof.

10.4 The Buyer shall, to the full extent permitted by law, indemnify and keep indemnified the Seller against all actions, proceedings, claims or demands for loss or damage of whatsoever nature made or threatened against the Seller by any third party or by any of the Buyer's employees, agents or contractors arising directly or indirectly out of, or in respect of, the use, custody or purchase and supply of the Goods.

10.5 If the Seller accepts liability for a claim or is held liable by a court of competent jurisdiction for a breach of a condition or warranty implied by statute and not negated pursuant to these terms and conditions, any liability for such breach shall be limited at the Seller's option to replacement of the Goods or the supply of equivalent Goods, and/or the repair or restoration of the Goods, and/or the payment of the value of the Goods or of replacing the Goods or of acquiring an equivalent of the Goods, and/or the payment of the costs of having the Goods repaired or restored.

**11. Retention of Title**

11.1 Risk in the Goods supplied by the Seller to the Buyer shall pass on Delivery. However, title to Goods (both legal and equitable) remains with the Seller until all monies owing by the Buyer to the Seller have been received in full.

11.2 Before payment is received in full, the Buyer holds the Goods as fiduciary bailee for the Seller and must return the Goods if required by the Seller. Notwithstanding the above, the Buyer may, in its ordinary course of business, sell or deal with the Goods. The Buyer must not represent in any way to third parties that it is acting for the Seller, nor will the Seller be bound by any contract between the Buyer and third parties.

11.3 If the Buyer fails to make payment for any Goods supplied by the Seller to the Buyer, commits an act of bankruptcy, becomes insolvent or bankrupt or has a receiver or a receiver and manager appointed over any of its assets, the Seller may, without prejudice to any other rights it has, be entitled to enter any premises where the Goods for which payment has not been made are stored and retake possession of such Goods.

**12. Interpretation**

**12.1 General**

In the interpretation of these terms and conditions:

12.1.1 words importing the singular shall (where appropriate) be deemed to include the plural and vice versa;

12.1.2 words importing any one gender shall (where appropriate) be deemed to include the feminine and neuter genders and vice versa;

12.1.3 words importing natural persons shall (where appropriate) be deemed to include corporations, firms, government departments, statutory authorities, and other entities recognised by law and vice versa;

12.1.4 all references in these terms and conditions to any statutory enactment or law shall mean and be construed as reference to that enactment or law as amended or modified or re-enacted from time to time and the corresponding provisions or any similar enactment or law or any relevant jurisdiction; and

12.1.5 if more than one person is named or described as the Buyer, the obligations of those persons shall be joint and several.

**12.2 Governing Law**

The Contract shall be governed by and construed in accordance with the laws of Victoria, and the Buyer and the Seller agree to submit to the jurisdiction of the Victorian Courts in respect of any dispute arising in connection with the Contract.

**12.3 Severance**

If any provisions of these terms and conditions are found to be invalid or unenforceable, then that provision will be read down or severed and that invalidity or unenforceability does not affect the validity or enforceability of the other terms and conditions.

**12.4 Whole Understanding**

The Contract represents the entire understanding between the Seller and the Buyer. The Contract must not be amended, varied or waived unless such amendment, variation or waiver is in writing signed by the Buyer and by a person authorised to sign such amendment, variation of waiver on behalf of the Seller.