

## 1. Interpretation

In these terms and conditions (**Terms**) and in any contract to which these Terms apply, unless inconsistent with the context:

- a. **Act** means the Competition and Consumer Act 2010 (Cth) as amended from time to time;
- b. **Business Day** means any day except Saturday or Sunday or a day that is a public or bank holiday in South Australia;
- c. **Claim** means any claim, demand, action, expense, cost, loss, damages or proceeding;
- d. **Consequential Loss** means loss, expense or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or in equity including, but without limitation, the following: (a) to loss of profits; (b) loss of revenue; (c) loss of contracts or anticipated contracts; (d) loss or denial of opportunity; (e) loss of access to markets; (f) loss of goodwill; (g) loss of business reputation, future reputation or publicity; (h) damage to credit rating; (i) loss of use; (j) indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of formation of the Contract;
- e. **Contract** means the contract between Quantum Blast and the Purchaser for or in relation to the sale and purchase of goods and services;
- f. **Force Majeure Event** includes (but is not limited to) any acts of God, war, military action, terrorist attack, riots, strikes, lock outs, trade disputes, fires, flood, break downs, mechanical failures, interruptions of transport, Government action or any other cause whatsoever that is beyond the reasonable control of Quantum Blast, whether or not of a like nature to those specified above;
- g. **Goods** means any item of whatsoever nature which is sold or to be sold by Quantum Blast to the Purchaser;
- h. **Government** means, whether local or overseas, a government or government department or other body; a governmental semi-governmental or judicial person; international organisation regulating international trade; or a person who is charged with the administration of a law;
- i. **Insolvent** means any application, agreement, resolution or appointment being made for a distress, execution, composition, or arrangement with creditors, insolvency proceedings, winding up,

dissolution, administration, liquidation, receivership (administrative or otherwise), bankruptcy, the suspension of payments, any form of seizure not lifted within two months, a moratorium of indebtedness, or any similar proceedings in any jurisdiction in each case in respect of that party;

- j. **PPSA** means the Personal Property Securities Act 2009 as amended from time to time;
- k. **PPS Register** means the personal property securities registered established under section 146 of the PPSA;
- l. **Purchaser** means the person or corporation who buys or has agreed to buy the Goods from Quantum Blast;
- m. **Quantum Blast** means Quantum Blast Pty Limited (ACN 630 122 235) or such other company related to Quantum Blast Pty Limited which accepts the Purchaser's order by the issue of a Sales Confirmation;
- n. **Security Interest** has the meaning given under the PPSA;

## 2. General

- a. These Terms together with the relevant Terms and Conditions of Sale on the invoice embody the sole terms and conditions of the Contract between Quantum Blast and the Purchaser and supersedes all other conditions, representations and agreements between the parties (whether oral or in writing and whether made prior to the date of the Contract), unless expressly amended in writing by Quantum Blast. In the event of any inconsistency arising between these Terms and the relevant Sales Confirmation, the terms of the relevant Sales Confirmation shall prevail to the extent of such inconsistency.
- b. These Terms shall without further notice apply to all future transactions between Quantum Blast and the Purchaser in relation to the sale and purchase of the Goods, whether or not this document is delivered or executed in the course of the transaction, except to the extent otherwise agreed in writing by the parties.
- c. None of the terms and conditions contained in any document or other instrument supplied by or on behalf of the Purchaser (including without limitation those included in any purchase order or like document from the Purchaser) shall apply to or form part of the Contract, except and to the extent otherwise agreed in writing by Quantum Blast.
- d. All purchase orders provided by the Purchaser are subject to acceptance by Quantum Blast and no Contract between Quantum Blast and the

Purchaser comes into existence until Quantum Blast issues a Sales Confirmation in relation to each and every purchase order. The Purchaser must notify Quantum Blast in writing within two (2) Business Days if a Sales Confirmation contains any errors or omissions.

- e. Quantum Blast may vary these Terms from time to time with notice by republishing them online on the Quantum Blast website [www.quantumblast.com.au](http://www.quantumblast.com.au) together with the date on which the new terms and conditions of sale become effective. It is the Purchaser's obligation to check the Quantum Blast website or ask Quantum Blast to provide a copy of the most up to date terms and conditions of sale at the time the Purchaser enters into a Contract. By placing a purchase order after the date upon which the new terms and conditions of sale become effective, the Purchaser accepts and is bound by the changed terms and conditions of sale for that Contract. If the Purchaser does not accept the changes to the new terms and conditions, it may notify Quantum Blast to request amendments or to close its account. No variation or abrogation of these Terms, other than amendment or variation to these Terms as set out in this clause 2.e), is valid or binding on a party unless made in writing and signed by both parties.
- f. **(Small business and remedies)** If the Purchaser is a small business (as defined under the Australian Consumer Law or other relevant legislation), the Purchaser is hereby given the express opportunity to negotiate these Terms. Without limiting any remedies available under the Act, if the Purchaser believes a term contained in these Terms is "unfair" as defined under the Australian Consumer Law, any dispute will be addressed at first instance via the process set out in clause 21.

### 3. Payment

- a. Unless credit terms have been approved and advised in writing by Quantum Blast, all payments shall be made in advance prior to the supply of the goods.
- b. Time for payment of the price of the Goods shall be of the essence of the Contract and if the Purchaser fails to pay the price when due Quantum Blast may treat the Contract as repudiated by the Purchaser or may, unless payment in full is made, suspend delivery of the Goods and any goods the subject of any other Contract with the Purchaser without incurring any liability whatsoever to the Purchaser in respect thereof. In addition, without prejudice to such rights of Quantum Blast, the

Purchaser shall (if required by Quantum Blast) pay interest to Quantum Blast on the outstanding amount of the price at the rate of 24% per annum for the period from the due date until the price is paid in full. In the event that Purchaser's credit is refused at any time during the Contract, Quantum Blast may, at its discretion, suspend delivery of Goods until the Purchaser pre-pays for each delivery or the Purchaser's credit has been approved.

- c. Notwithstanding any rights of lien to which Quantum Blast may otherwise be entitled, Quantum Blast shall have a specific lien (including a right of sale) over the Goods and any goods the subject of any other Contract with the Purchaser until the price of the Goods has been paid in full. The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any off-set or counter claims without prior written consent of Quantum Blast.

#### **4. Delivery**

- a. Any time or date specified and accepted by Quantum Blast for completion delivery, despatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the Contract or part of the description of the Goods and is not of the essence of the Contract.
- b. Unless otherwise stated in writing Quantum Blast may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these Terms shall apply to each partial delivery or delivery by instalments.
- c. Quantum Blast is not responsible for damage to the Goods caused by or which arises from ordinary wear and tear, misuse, abuse (including improper or unsuitable use, storage or handling) by or on behalf of the Purchaser.

#### **5. Risk and Title**

- a. Except as otherwise provided herein, the Goods shall be at the Purchaser's sole risk immediately on their delivery into the care, custody and control of the Purchaser or its agent, carrier or contractor.
- b. Property and title in the Goods will not pass to the Purchaser until such time as the Goods and all other goods supplied by Quantum Blast to the

Purchaser have been paid for in full. Until that time, the Purchaser shall store the Goods, including goods into which the supplied Goods have been mixed, in such a manner as to show clearly that they are the property of Quantum Blast and shall upon Quantum Blast's demand deliver up such Goods to Quantum Blast. In default of such delivery, Quantum Blast may by its servants and agents enter the Purchaser's premises at any time without notice to repossess the Goods (and the Purchaser irrevocably grants Quantum Blast the right and licence to enter any premises or property of the Purchaser without notice) without being in any way liable to the Purchaser or any other party, and the Purchaser agrees to indemnify Quantum Blast against any such liability, including Claims made by any third party.

- c. Subject to the PPSA, until such time as the Goods have been paid for in full the Purchaser is at liberty to sell the Goods, including goods into which the Goods have been mixed, in the ordinary course of its business, and the Purchaser shall hold the proceeds thereof on trust for Quantum Blast and promptly account to Quantum Blast for those proceeds in payment of the purchase price for the Goods.
- d. The Purchaser and Quantum Blast agree that the provisions of this clause 5 apply notwithstanding any agreement between the parties under which Quantum Blast grants credit to the Purchaser.

## **6. Personal Property Securities Act 2009**

- a. For the purpose of this clause, the defined terms used in this clause have the meanings given in the PPSA.
- b. The Purchaser acknowledges and agrees that acceptance of these Terms which form part of the Contract constitutes a Security Agreement that covers the Collateral for the purposes of the PPSA:
  - i) Quantum Blast holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by Quantum Blast to the Purchaser, any goods into which such goods are commingled by the Purchaser, any goods which were manufactured by the Purchaser with the aid of the Goods but do not form part of the end goods, and any Proceeds of the sale of those goods ("Collateral");
  - ii) that any purchase by the Purchaser on credit terms from Quantum Blast or retention of title supply pursuant to clause 5 hereof will

constitute a purchase money security interest as defined under section 14 of the PPSA ("PMSI");

iii) the PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence;

iv) Quantum Blast will continue to hold a Security Interest in the Goods in accordance with and subject to the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods.

v) any Quantum Blast Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all over registered or unregistered Security Interest;

vi) until title in the Goods pass to the Purchaser, it will keep all goods supplied by Quantum Blast free and ensure all such goods are kept free of any charge, lien or other Security Interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of Quantum Blast under the Contract or the PPSA; and

vii) in addition to any rights Quantum Blast may have under these Terms and Chapter 4 of the PPSA, Quantum Blast may, without notice, enter any premises where it expects the Goods may be located and remove them without committing a trespass, and the Purchaser authorises Quantum Blast to enter onto the premises where the Goods are kept to take possession of the Goods for that purpose at any time. The Purchaser indemnifies Quantum Blast from and against all Claims as a result of exercising rights under this clause 6.

c. The Purchaser undertakes to:

i) sign any further documents and provide such information which Quantum Blast may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;

ii) indemnify and upon demand reimburse Quantum Blast for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests; and

iii) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of Quantum Blast. Quantum Blast and the Purchaser agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under the Contract.

- d. The Purchaser acknowledges and agrees that it waives its rights to receive any notices under the PPSA (including the notice of a verification statement) unless the notice required by the PPSA cannot be excluded.
- e. The Purchaser shall unconditionally ratify any actions taken by Quantum Blast under this clause 6.
- f. This clause 6 will survive the termination of the Contract to the extent permitted by law.

## **7. Warranties and Exclusions of Liability**

- a. Quantum Blast warrants that the Goods when delivered to the Purchaser will comply with any description for the Goods contained in the relevant Sales Confirmation and with the Specifications. Quantum Blast is not required to supply goods with any specifications or characteristics that are outside any such description for the Goods or the Specifications.
- b. The Purchaser acknowledges, agrees, represents and warrants that:
  - i) as the use of the Goods is outside the control of Quantum Blast, the Purchaser is satisfied that the Goods will have the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those Goods, even if that purpose is made known to Quantum Blast at any time;
  - ii) the Purchaser has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the Goods (whether for the purpose of using the Goods in the course of production or manufacture or repairing or treating other goods) and any product that is produced from them will be without defect and suitable or fit for any purpose required for the Purchaser; and
  - iii) the Purchaser has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by Quantum Blast or anyone on

its behalf in respect of the Goods, other than those that are expressly contained in the Contract.

- c. The Purchaser releases and indemnifies Quantum Blast and its officers, employees, consultants and agents from and against any Claims (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Purchaser and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of any breach by the Purchaser of any warranty provided by it under clause 7.b).
- d. Except as expressly set out in the Contract to the full extent permitted by law:
  - i) all conditions, warranties, guarantees, terms and obligations expressed or implied by law or otherwise relating to the Contract or the performance of Quantum Blast's obligations under the Contract or to any goods or services supplied or to be supplied by Quantum Blast under the Contract are excluded, except for those conditions and warranties as to title in the Goods; and
  - ii) including without limitation, Quantum Blast gives no condition, warranty or guarantee whatsoever as to the suitability, performance or fitness of the Goods for their ordinary or any special use or purpose, and the description of the Goods in any Contract or any other document shall not import any such condition, warranty or guarantee on the part of Quantum Blast.
- e. Notwithstanding anything to the contrary herein contained, Quantum Blast's liability in respect of any Claim arising in any way out of the Contract or its performance or from any failure to perform the Contract including (without limitation) for breach of any condition, warranty or guarantee contained in the Contract and whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:
  - i) if any guarantee under the Act is applicable to any good or service supplied by Quantum Blast and Quantum Blast's liability is due to a failure to comply with the guarantee and such failure cannot be remedied or is a major failure as defined in the Act (each such failure

hereafter referred to as a “Relevant Failure”), Quantum Blast’s liability is as stated in the Act in respect of that Relevant Failure;

ii) if the liability is due to a failure to comply with any condition, warranty or guarantee in respect of any good or service supplied by Quantum Blast under the Contract and such failure is not a Relevant Failure, Quantum Blast’s liability is limited as follows in respect of such failure to whichever is the lowest amount: (A) if the failure is in respect of the Goods, Quantum Blast’s liability is limited to replacement of the Goods or the supply of equivalent goods, the repair of the Goods, payment of the cost of replacing the Goods or of acquiring equivalent goods, or payment of the cost of having the Goods repaired, as determined by Quantum Blast in its sole discretion; and (B) if the failure is in respect of services, Quantum Blast’s liability is limited to the supply of the services again or payment of the cost of having the services supplied again, as determined by Quantum Blast in its sole discretion;

iii) in respect of all other liability (if any), Quantum Blast’s liability is limited in the aggregate to the amount of \$1000.

- f. To the extent permitted by law, Quantum Blast will have no liability to the Purchaser however arising and under any cause of action or theory of liability, in respect of special or Consequential Loss arising out of or in connection with the Contract or its performance.

## **8. Return of Goods**

- a. Goods supplied to the Purchaser are not returnable except as provided in clause 7 above.
- b. In the event the Purchaser requests to return the Goods after delivery, despite the Goods being in accordance with clause 7.a) Quantum Blast may, at its absolute discretion, accept the return of the Goods, provided that the Purchaser pays a cancellation fee (comprising of, where applicable, handling, storage, transport, interest (in respect of any delayed payments for the Goods) and disposal costs.

## **9. Indemnity**

The Purchaser shall keep Quantum Blast indemnified against all Claims and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and

Consequential Loss which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such Claims or liabilities shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, Quantum Blast or its duly authorised employee or agent.

## **10. Health, Safety and Environment**

It is the Purchaser's responsibility to ensure that all applicable health, safety and environment regulations are observed and other appropriate steps taken in relation to the storage, handling, transport, disposal and the use of the Goods and potential hazards and the relevant information relating to the Goods, are brought to the attention of its employees, agents, sub-contractors, visitors and customers. Without prejudice to the foregoing, it is also the Purchaser's responsibility to provide safe facilities for the reception of the Goods into storage.

## **11. Goods and Services Tax (GST)**

- a. In this clause the terms 'GST' and 'supply' have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.
- b. Unless expressly stated otherwise, all prices quoted are exclusive of GST.
- c. GST will be charged on those goods that attract GST at the applicable rate and the Purchaser must pay the GST inclusive amount on the supply.

## **12. Industrial Property Rights**

- a. The Purchaser shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of Quantum Blast attached to or placed upon the Goods.
- b. The Purchaser agrees that nothing in the Contract grants the Purchaser any right, title or interest in any trade or other marks or numbers of Quantum Blast that are attached to or placed upon the Goods and covenants not to claim any right, title or interest to the trade or other marks or numbers that are attached to or placed upon the Goods by virtue of any rights granted to the Purchaser by the Contract.

## **13. Force Majeure**

- a. Quantum Blast shall not be under any liability whatsoever for the consequences of any failure on its part to perform or delay in performing any obligation under the Contract when due, whilst and to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event. This includes any liability whatsoever for any delay in completion, delivery, despatch, shipment or arrival of the Goods or in the tender of any documents or the like or total or partial suspension of deliveries by Quantum Blast.
- b. If there is a Force Majeure Event, Quantum Blast will notify the Purchaser of the event and the likely impact on its performance under the Contract.
- c. If a Force Majeure Event continues for more than sixty (60) consecutive Business Days, either party may terminate the Contract by giving the other party a seven (7) days' written notice.
- d. Nothing in this clause 13 will excuse a Purchaser from any obligation to make a payment when due under the Contract or from performing its obligations under the Contract due solely to lack of funds.

#### **14. Notices**

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given

- (i) upon the second Business Day after mailing, if sent by registered or certified mail, return receipt requested;
- (ii) upon delivery, if delivered by hand or by courier;
- (iii) when received, if sent by facsimile or email as indicated on the receipt of transmission to the parties at the designated address, or at such other address as may be designated by notice given in accordance with this provision.

#### **15. Assignment**

Neither party may assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever without written consent of the other party.

#### **16. Sub-contract**

Quantum Blast reserves the right to sub-contract (for example, delivery) the performance of any Contract or part thereof to any other party or person or corporation it may determine.

## **17. Proper Law and Jurisdiction**

All Contracts made between Quantum Blast and the Purchaser shall be governed by and construed in accordance with the laws of New South Wales, Australia. The Purchaser agrees to submit to the non-exclusive jurisdiction of the South Australia Courts and courts of appeal therefrom for all purposes of or in connection with such Contracts.

## **18. Cost Recovery**

Any expenses, costs or disbursements incurred by Quantum Blast in recovering any outstanding monies owing by the Purchaser including debt collection fees and legal costs shall be paid by the Purchaser plus any reasonable out of pocket expenses as a debt due and payable.

## **19. Termination**

- a. Each party may terminate the Contract immediately if the other party:
  - i) commits a breach of any material term of the Contract or these Terms and such breach: (A) is not capable of remedy; or (B) is capable of remedy but the other party fails to remedy that breach within thirty (30) days from the date of receiving notice in writing of any such breach; or
  - ii) becomes Insolvent.
- b. If the Purchaser cancels or terminates a purchase order (whether written or verbal) which has been accepted by Quantum Blast, the Purchaser agrees to pay for the Goods, which are held by Quantum Blast as floor stock or which are in transit from the manufacturer to Quantum Blast, ordered pursuant to that purchase order prior to cancellation or termination and the Purchaser will also reimburse Quantum Blast for any storage, transport, interest (in respect of any delayed payments for the Goods) or disposal charge (if applicable).
- c. If a purchase order (whether written or verbal) is cancelled or terminated by the Purchaser:
  - i) prior to its acceptance by Quantum Blast, no contractual obligation exists between the parties; or

ii) after its acceptance by Quantum Blast, the Purchaser shall pay Quantum Blast for such Goods in accordance with these Terms. Any deposit paid by the Purchaser shall be forfeited by Quantum Blast.

- d. If, under the Contract, the Purchaser is obliged to take the agreed quantity of the Goods ("Agreed Goods") within the agreed period, and the Purchaser fails to do so, then the Purchaser must pay Quantum Blast for the Agreed Goods as a debt due and payable within twenty (20) days from the date of receiving notice in writing from Quantum Blast.

## **20. Hardship**

- a. For the purposes of this clause, "Hardship Event" means:

i) any changes in raw material inputs which leads to increased costs to Quantum Blast in sourcing the Goods from an international manufacturer, including but not restricted to increases in fuel prices, energy costs, or freight and transport costs; and/or

ii) any changes to or introduction of new central or regional laws, regulations or policies which lead to increased costs to Quantum Blast in sourcing the Goods from the international manufacturer; and/or

iii) any changes to the Specifications from Quantum Blast's supplier during the term of the Contract, with which the Purchaser does not agree.

- b. If, at any time during the supply period to which the Contract relates, a Hardship Event occurs, Quantum Blast may notify the Purchaser of such occurrence, and request a meeting to discuss appropriate changes to the terms of the Contract (including pricing terms or delivery dates) or adjustments to the supply price in light of such Hardship Event ("Hardship Notice").
- c. The Purchaser and Quantum Blast will discuss possible options to minimise the impact of the Hardship Event, having regards to Quantum Blast's discussion with the manufacturer. If the parties are unable to reach agreement on appropriate changes to the Contract price or other terms of the Contract within fourteen (14) days of the date of the

Hardship Notice, then Quantum Blast may increase the price of the Goods to the extent required to pass on such increased costs resulting from the Hardship Event. Such cost increase shall take effect from the date of the Hardship Notice. The Purchaser is not obliged to agree to any change to the terms of the Contract as a result of a Hardship Event, however, if the parties are unable to reach agreement on appropriate changes to the Contract price or other terms of the Contract within fourteen (14) days of the date of the Hardship Notice, and Quantum Blast is not prepared to continue supplying the Goods, then Quantum Blast may suspend supply of the Goods for the balance of the term of the Contract.

## **21. Dispute Resolution**

- a. Before court or arbitration proceedings other than for urgent interlocutory relief may be commenced, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with the Contract (including any dispute as to the validity, breach or termination of the contract, or as to any claim in tort, in equity or pursuant to any statute).
- b. Notice ("Dispute Notice") must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) to the Contract specifying the nature of the dispute.
- c. Upon receipt of the Dispute Notice, the parties must attempt to agree upon an appropriate procedure for resolving the dispute.
- d. If within 10 Business Days of receipt of the Dispute Notice the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the parties shall refer the dispute to Resolution Institute (ACN 008 651 232; Level 2, 13-15 Bridge Street, Sydney NSW 2000) for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- e. The parties must co-operate with Resolution Institute as facilitator. Any mediation meetings and proceedings under this clause 21 must be held in Sydney.
- f. The parties must continue to perform their obligations under these Terms notwithstanding the existence of any dispute.

- g. This clause will remain operative after the Contract has been performed and notwithstanding its termination.