

Lorbrand Asia Pacific Pty Ltd T/As Lorbrand Australia (“Lorbrand AP”) Conditions of Sale

1. DEFINITION

In these terms and conditions:

“**Goods**” means all products and service agreed to be supplied by Lorbrand AP to the buyer under any contract, arrangement or understanding between Lorbrand AP and the Buyer;

“**Buyer**” means the person to whom any quotation is made, any person offering to contract with Lorbrand AP on these terms and conditions and any person who purchases goods from Lorbrand AP; “**Contract**” means any contract for the sale or supply of Goods entered into between Lorbrand AP and the Buyer,

“**Lorbrand AP**” means Lorbrand AP Equipment Pty Ltd and its agents servants and employees and any related bodies corporate as defined in the Corporations Act (If such related body corporate is named as the party making or accepting the Buyer’s order of Goods); and

“**Quoted date**” means the date of delivery as agreed between the Buyer and Lorbrand AP.

2. STATUTORY PROVISIONS

These terms and conditions:

(a) Shall be subject to the provisions of the Trade Practices Act 1974, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation (“the Statutory Provisions”);

(b) Unless Lorbrand AP otherwise agrees in writing, these are the only terms and conditions of sale to which Lorbrand AP will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer’s terms and conditions of purchase (if any); and

(c) Supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the result that ought to be expected from using the Goods.

3. WARRANTIES

Subject to the Statutory Provisions:

(a) Lorbrand AP warrants that the Goods supplied are of merchantable quality;

(b) Lorbrand AP’s Liability for breach of sub-clause 3(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by section 69 of the Trade Practices Act) is limited to any one of the following as determined by Lorbrand AP:

- (i) The replacement of the Goods or the supply of equivalent Goods;
- (ii) The repair of the Goods or payment of the cost of having the Goods repaired; or
- (iii) The refund of the price paid by the Buyer for the Goods.

The Buyer will examine the Goods for defects and shall notify Lorbrand AP of any defects in writing within 30 days of delivery. If the Buyer does not notify Lorbrand AP within 30 days of delivery the Buyer shall be deemed to have accepted the Goods.

To the extent the law permits and notwithstanding any other clause of these terms and conditions, Lorbrand AP excludes all liability whatsoever to the Buyer arising out of or in anyway connected with a contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence of other tort. Consequential or indirect losses will be taken to include but not be limited to:

- (a) Any loss of income, profit or business;
- (b) Any loss in the nature of overhead costs and expenses; and
- (c) Any loss of goodwill or reputation.

4. ADVICES

The Buyer hereby acknowledges that it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Lorbrand AP in relation to the Goods or their use or application other than such has been provided by Lorbrand AP in writing to the Buyer.

5. DELIVERY

Lorbrand AP will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between parties as the quoted Date, but Lorbrand AP shall not be liable for any failure to deliver or delay in delivery for any reason.

6. RISK

(a) Unless otherwise agreed in writing, all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or his agent or to a carrier commissioned by the Buyer.

(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Lorbrand AP that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of Goods.

(c) If Lorbrand AP does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be liable to storage charges payable monthly on demand.

7. TITLE

(a) Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.

(b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Lorbrand AP and that a fiduciary relationship exists between the Buyer and Lorbrand AP.

(c) Until Title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Lorbrand AP. Lorbrand AP shall be entitled at any time until title in and to the goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.

(d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as a fiduciary agent of Lorbrand AP provided that such sales shall not give rise to any obligations on the part of Lorbrand AP. The Buyer shall hold the proceeds of sale on trust for Lorbrand AP in a separate account.

(e) If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer’s implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in paragraph 10(b)(i)-(v) hereof.

8. PRICE

Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by Lorbrand AP at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

9. FORCE MAJEURE

Deliveries may be totally or partially suspended by Lorbrand AP during any period in which Lorbrand AP may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Lorbrand AP’s reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Lorbrand AP shall not incur any liability to the Buyer in respect of such suspension.

10. PAYMENTS AND DEFAULT

(a) Subject to sub-clause 10(c) hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by Lorbrand AP.

(b) If any of the events set out in (i) to (v) below occur, Lorbrand AP may at its option withhold further deliveries or cancel the contract without notice to the Buyer and without prejudice to any other action or remedy which Lorbrand AP has or might otherwise have had and all moneys owing and outstanding to Lorbrand AP on any account

Whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:

- (i) The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- (ii) The Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the

(c) All accounts trading outside of terms and not settled within 7 days of initial contact from Lorbrand AP, will accrue interest at an annualised rate of 22% calculated daily from the invoice due date

Buyer's property or assets;

- (iii) The Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- (iv) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the buyer;
- (v) The Buyer experiences any analogous event having substantially similar effect to any of the events specified above.

(c) Notwithstanding sub-clause 10(a) hereof Lorbrand AP may at all times in its sale and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Lorbrand AP shall be final and Lorbrand AP accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

11. CONTAINERS

(a) Containers in which Goods are delivered and for which a deposit charge is made remain the property of Lorbrand AP and must not be used for any other commodity than that contained therein at the time of delivery. On their return in good order and condition by the Buyer and at the Buyer's expense, to the factory or store of Lorbrand AP from which the Goods were delivered, the full amount of any deposit which will be repaid to the Buyer. Containers will be deemed to be still in the Buyer's hands until received at such factory or store. In the case of containers, which are received at a factory or store of Lorbrand AP otherwise, than in good order and condition, only such part of the deposit as in the opinion of Lorbrand AP is reasonable, having regard to their actual condition will be allowed to the Buyer.

(b) Containers in which Goods are delivered and for which a separate charge other than a deposit charge is shown to the face of the invoice are, unless otherwise specified therein, sold with the Goods and the price as shown on the invoice must be paid with the price of the Goods.

(c) No deposit charges are made for cylinders or drums containing compressed gases but such cylinders and drums are not sold to the Buyer and always remain the property of Lorbrand AP. Cylinders and drums must be returned at the Buyer's expense in good order and condition to the factory or store of Lorbrand AP from which they were delivered. Cylinders and drums will be deemed to be still in the Buyer's hands until received at such factory or store. To the extent the law permits, all risks whatsoever associated with the deterioration of those cylinders or drums becoming defective rests with the Buyer absolutely and the Buyer agrees to indemnify Lorbrand AP in respect of any cylinder or drum that is not returned in good order or condition to Lorbrand AP within one month of any demand being made by Lorbrand AP for the return of the cylinder or drum.

12. GENERAL LIEN

In addition to any right of lien to which Lorbrand AP may be entitled under the common law, Lorbrand AP shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Lorbrand AP to the Buyer. Lorbrand AP may in its sole discretion sell any item that is subject to the said lien, provided that Lorbrand AP shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Lorbrand AP in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by Lorbrand AP.

13. SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired

14. GOVERNING LAW

The supply of Goods under these terms and conditions is governed by the law of the State of Western Australia and Lorbrand AP and the Buyer submit to the non-exclusive jurisdiction of the courts of the State of Western Australia.

15. TRANSACTION TAX

Where a transaction tax, including a goods and services tax („GST“) and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, Lorbrand AP may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 10.