

Terms and conditions of sale

The following terms and conditions apply to the sale of all Goods by the Company. These and conditions replace and supersede all other terms and conditions between the Company and Purchaser.

1. Interpretation

- (a) "Company" means and includes Datamark Identification Pty Ltd ACN 155 712 995 (ABN 87 155 712 995) and any of its related bodies corporate;
- (b) "Deliver" includes supply as the context requires;
- (c) "Goods" means all products and services sold or supplied by the Company; and
- (d) "Person" includes a firm or corporation; and
- (e) "Purchaser" means any person (either alone or jointly with another party) contracting or offering to contract with the Company.

2. Quotations

Quotations are valid for 30 days from the date of quotation unless some other period is specified in writing by the Company. Quotations are subject to withdrawal or variation by the Company at any time. Any quotation made by the Company is not an offer to sell and no order based on a quotation will bind the Company until the order is accepted by the Company. Unless otherwise agreed in writing, all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order. Any modifications agreed to verbally will only be effective after confirmation by the Company in writing.

3. Offer and Acceptance

Upon acceptance of an offer by the Company, a binding agreement shall arise between the Purchaser and the Company and these terms and conditions will be incorporated into such agreement. If any terms and conditions are contained in any order, offer, acceptance or invoice of the Purchaser then it is specifically agreed between the Purchaser and the Company that such terms and conditions are null and void and shall not apply. All representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in this agreement are expressly excluded to the fullest extent permitted by law.

4. Cost Variation

If between the date of the agreement and the date of Delivery, the cost to the Company of any of the Goods or their components increase for any reason, the Company reserves the right to amend its prices for any undelivered portion of the order, but the Purchaser shall have the right to cancel the outstanding balance of the order within 7 days from the date of notification of the price amendment. The Company reserves its right to amend its purchase price if additional requests are made by the Purchaser in relation to the Goods.

5. Delivery

- (a) Where the Purchaser has not, by the final Delivery date, taken or accepted Delivery of all Goods, the price of the undelivered Goods may be subject to variation (above) and the balance of the price of the undelivered Goods or any instalment(s) shall be paid immediately on Delivery or upon tender by the Company.
- (b) The Company shall use its best endeavours to dispatch the Goods by the agreed date (if any) but any date quoted for Delivery is an estimate only and the Company shall not be liable to the Purchaser for any loss or damage however arising for failure to Deliver on or before the quoted date. Late Delivery or failure to Deliver does not entitle the Purchaser to cancel any order or part order.
- (c) The Company reserves the right to Deliver by instalment(s). If Delivery is made by instalment(s), the Purchaser shall pay to the Company all money owing for each instalment(s) dispatched and the Purchaser shall not be entitled to cancel or otherwise avoid accepting and paying for any instalment(s) dispatched or terminate or cancel any instalment(s) yet to be Delivered.
- (d) The Company reserves the right to suspend the supply of any order in whole or in part or discontinue the supply of Goods without incurring any liability (eg. product recall)
- (e) Every endeavour will be made to Deliver the quantity ordered, however the Purchaser shall accept and pay for, at the agreed price per unit, the Goods actually Delivered, notwithstanding that the number or amount of Goods Delivered may be greater or less than the number or amount ordered, provided that the variation shall not exceed 10%.
- (f) The rights conferred on the Company by this clause are without prejudice to any other rights and remedies of the Company.

6. Cancellation & Returns

- (a) Any order may only be cancelled by mutual agreement and in the event of cancellation of an order, the Purchaser undertakes to reimburse and indemnify the Company for any costs, expenses or charges incurred by the Company in relation to the order.
- (b) A purchaser may, within 7 days of the Delivery Date, return the Goods to the Company for a credit. The Purchaser is responsible for the payment of any costs associated with the return (eg. freight). A 20% handling fee will be deducted by the Company.

7. Tender of Goods

Notice by the Company to the Purchaser that it is ready to Deliver the Goods (or an instalment thereof) shall be sufficient tender to the Purchaser of the Goods but nothing contained in this agreement shall require the Company to provide notice to the Purchaser.

8. Inspection

The Purchaser shall inspect the Goods to confirm that the Goods conform to the specifications and drawings (if any) and that appropriate materials and workmanship have been used in their manufacture. If the Purchaser alleges that the Goods do not conform or that appropriate materials or workmanship have not been used then the Purchaser must give written notice to the Company within 7 days from the date of receipt of the Goods. Goods which are alleged to be defective must then be placed aside for inspection by a representative of the Company. If the Purchaser fails to give such notice, the Goods shall be deemed to be accepted by the Purchaser who shall be bound to accept and pay for the Goods.

9. Description and Specification

Whilst every effort is made to ensure the accuracy of the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, technical data sheets, material safety data sheets or other descriptive matter or advice provided by or on behalf of the Company, the Purchaser acknowledges and accepts that this descriptive matter or advice describes the general nature of the Goods only and does not form a part of any order or agreement or amount to a representation or warranty. The Company reserves the right to modify the design of Goods without notice.

10. Designs and Specifications

- (a) The Company will not be liable for any defect in Goods arising from designs, drawings or specifications supplied to the Company by the Purchaser or its agents.
- (b) The Company reserves the right to make any changes to designs, drawings or specifications supplied to the Company which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Goods by the Purchaser.
- (c) The Company does not warrant or guarantee that any Goods supplied by the Company which are based in whole or in part upon any designs, drawings or specifications supplied to the Company will achieve any standard or performance or be suitable for any specific purpose.

11. Intellectual Property Rights

- (a) All copyright or other intellectual property rights (eg product formulations) in the Goods remain the sole property of the Company. The supply of Goods implies a license to the Purchaser to use the Goods but for no other purpose. The Purchaser undertakes not to utilise, copy, reproduce or disclose or permit others to utilise, copy, reproduce or disclose any intellectual property without the prior written consent of the Company.
- (b) The Purchaser warrants that Goods supplied by the Company which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser do not infringe any intellectual property rights held by a third party.
- (c) The Purchaser agrees to indemnify and keep indemnified the Company, its servants and agents against all actions, liabilities, claims, demands, costs, expenses and damages which the Company, its servants or agents may incur, sustain or be subjected to in consequence of it, having at the request of the Purchaser, applied a design or any other markings on the Goods.
- (d) Where the Purchaser provides information regarding Goods which are to be used for products which require particular identification pursuant to any law or regulation of a competent Government Authority, compliance with any such law or regulation is the sole responsibility of the Purchaser who agrees to indemnify the Company against all liability, claims, costs and expenses of any nature arising from any infringement or non-compliance. No liability is accepted nor warranty given concerning the readability or suitability of symbols, codes or markings on the Goods.

12. Equipment

All equipment and other items used in the manufacture of the Goods shall, in the absence of a written agreement to the contrary, remain the exclusive property of the Company notwithstanding any contribution by the Purchaser in respect of the cost of their production, use or maintenance.

13. Limitation of Liability

- To the extent permitted by law, the Company shall not be liable for any loss (including consequential loss), damage, deterioration, deficiency, defect or other fault or harm arising from, caused by or concerning the supply of Goods by or on behalf of the Company. In particular, the Company shall not be liable for:
 - (a) defects or damage caused in whole or in part by misuse, abuse, neglect, error, electrical or other overload, improper installation, repair, alteration or accident;
 - (b) transport, installation, removal, labour or other costs;
 - (c) modifications or changes to the Goods not authorised in writing by the Company or any other unauthorised acts by the Purchaser or a third party;
 - (d) Goods not manufactured by the Company (although the Company will endeavour to pass on to the Purchaser the benefit of any claim made by the Company and accepted by the manufacturer of such Goods under any warranty given by that manufacturer); and
 - (e) technical advice or assistance given or tendered by the Company to the Purchaser whether or not in connection with the manufacture or supply of the Goods.

The Company's liability shall in all circumstances be limited to:-

- (a) the replacement of the Goods; or
- (b) the supply of equivalent Goods; or
- (c) payment of the cost of replacing the Goods or acquiring equivalent Goods; or
- (d) the repair of the Goods or payment of the cost of having the Goods repaired; as the Company may select in its absolute discretion.

14. No Warranty

The Company gives no warranty as to the fitness of the Goods for any particular purpose or use and shall have no liability in that regard. Goods supplied under this agreement should only be used after the Goods have been properly tested by or on behalf of the Purchaser. The risks involved and any cost of testing the Goods will be the Purchaser's responsibility.

15. Insolvency and Default

If:

- (a) the Purchaser defaults on any payment due to the Company or in the performance and observance of any term or condition set out in this agreement;
 - (b) a resolution is passed or proposed or a petition is presented or an application filed or an order made for the winding up or liquidation of the Purchaser;
 - (c) a receiver, receiver and manager or controller (as defined in the Corporations Law) is appointed to the property or any part of the property of the Purchaser;
 - (d) the Purchaser makes or proposes to make any arrangements with its creditors;
 - (e) the Purchaser is placed under administration or an administrator is appointed;
 - (f) execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and is not satisfied within 7 days;
 - (g) the Purchaser is the subject of a Debtor's or Creditor's Petition in bankruptcy or is the subject of a Bankruptcy Notice;
- the Company may, without prejudice to any other remedy available to the Company, withhold further deliveries or cancel any agreement between the Company and Purchaser.

16. Risk

All risk in the Goods Delivered by the Company to the Purchaser passes to the Purchaser as soon as the Goods have been Delivered to the Purchaser, their carrier or agent.

17. Title

Although risk in the Goods passes on Delivery to the Purchaser or the Purchaser's agent or carrier, title in the goods shall not pass to the Purchaser until the earlier of:

- (a) payment in full in cleared funds of the purchase price for the Goods has been received by the Company and for all other Goods sold by the Company to the Purchaser for which payment is due;
- (b) a bona fide sale of the Goods by the Purchaser in the ordinary course of the Purchaser's business (in that event, the Purchaser irrevocably appoints the Company as its attorney to recover the proceeds of the sale of the Goods and apply any amounts recovered in payment for the Goods and costs associated in recovery). At all times before title in the goods passes to the Purchaser, the Purchaser shall store the goods so that they are clearly identified as the property of the Company. Until title in the Goods has passed to the Purchaser, the Company will be entitled at any time, in its absolute discretion, to retake possession of the Goods and resell them and for that purpose may enter the Purchaser's premises and sever, remove and carry away the Goods.

18. Payment

- (a) Where other terms have not been expressly agreed upon, payment is due immediately upon Delivery of the Goods to the Purchaser or the Purchaser's carrier or agent and is payable upon demand or, if no demand is made, within 7 days after the Goods are Delivered. The Company reserves the right to charge interest at the rate of 15% per annum calculated daily from the due date until payment is received.
- (b) All payments by credit card will attract a 3% + GST surcharge.

19. Force Majeure

The Company will make all reasonable efforts to supply the Goods, but failure to do so for any reason beyond the reasonable control of the Company including, but not limited to, an Act of God, war, strikes, lock-outs, fire, flood or drought, or owing to the Company's inability to procure materials or supplies except at increased prices due to any of the foregoing causes, shall not constitute a breach of contract by the Company and its obligation to supply the Goods will be suspended. In those circumstances, the Company may at any time cancel this agreement or any unfulfilled part, or renew it upon cessation of the reason which previously made it unable to supply the Goods.

20. Colour Match

If the Company is to match any shade or colour then, unless specified tolerances have been agreed between the Purchaser and the Company, the Company's normal colour quality standards and tolerances shall apply (as determined by the Company from time to time in its sole discretion).

21. Goods and Services Tax (GST)

- (a) Unless otherwise stated, all prices quoted for Goods are exclusive of GST and the Company will charge GST on all invoiced items in accordance with the applicable rate at the time the invoice is prepared.
- (b) All duties, taxes, imposts, fees or charges of any governmental, statutory or regulatory body applicable to the Goods are to be paid by the Purchaser and will be added to the price of the Goods. The Purchaser shall indemnify the Company in respect of any claims for such duties, taxes, etc.

22. Recovery of Costs

All costs and expenses incurred by the Company to remedy any breach by the Purchaser of these terms and conditions shall be recoverable from the Purchaser in addition and without prejudice to any other rights, powers and remedies held by the Company.

23. Acknowledgement

The Purchaser acknowledges as a condition of the purchase of the Goods from the Company that:

- (a) The terms and conditions contained in this agreement are reasonable and necessary to protect the legitimate interests of the Company;
- (b) It has read and understands the conditions in this agreement; and
- (c) No undue influence, pressure or unfair tactics were exerted in the formation of the agreement.

24. Waiver

If at any time the Company does not enforce any of these terms and conditions of sale or grants the Purchaser time or other indulgence, the Company shall not be construed as having waived that term or condition or its right to enforce that term or condition.

25. Severability

All clauses, words, phrases, sentences and paragraphs of this agreement are separate and independent, each being severable from the others. If any of them or any parts are declared void, invalid or otherwise unenforceable by any court of competent jurisdiction then they shall be deemed to be severed to the extent that they are void, invalid or unenforceable but the remainder of this agreement shall remain in full force and effect.

26. Jurisdiction

These terms and conditions will be governed by and construed according to the law of Queensland, Australia and the parties agree to submit to the jurisdiction of the Courts and Tribunals of that State.