



QPP PTY LTD ACN 117 283 931 – STANDARD TRADING TERMS

1. DEFINITIONS

In these Terms:

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Data Privacy Legislation" means all applicable data protection or data privacy laws in Australia from time to time, including, but not limited to, the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and State and Territory based health records legislation.

"Discounts or Incentives" are written offers to provide Goods and/or Services on terms or in a way that has been accepted by you.

"Force Majeure Event" means any act, event or circumstances, other than a lack of funds:

(i) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under these Terms; and

(ii) that is beyond the reasonable control of that party, and includes plant and delivery breakdowns, industrial action, raw materials shortages, adverse weather or computer or IT downtime.

"Goods" means any goods supplied or to be supplied by us to you on these Terms.

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

"GST Act" means a *New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

"Insolvency Event" means any one or more of the following events or circumstances occurring in relation to you:

(i) the commission of an act of bankruptcy as defined in the *Bankruptcy Act 1966* (Cth);

(ii) being in liquidation or provisional liquidation or under administration;

(iii) having a controller (as defined in the Corporations Act) or analogous person appointed to you or any of your property;

(iv) being taken under section 459(1) of the Corporations Act to have failed to comply with a statutory demand;

(v) being unable to pay debts as and when they fall due;

(vi) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;

(vii) entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors; and

(viii) any analogous event or circumstance under the laws of any jurisdiction.

"Loss" includes, but is not limited to, loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

"Order" means an oral or written order for Goods and/or Services.

"Services" means any services supplied or to be supplied by us to you on these Terms.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Terms" means these trading terms, as varied under clause 16.

"we" means QPP Pty Ltd ACN 117 283 931 and our successors and assigns ("us" and "our" have corresponding meanings).

"Website" means www.qualityplasticproducts.com.au/tradingterms.

"you" means a party requesting supply of Goods and/or Services.

2. FORMATION OF CONTRACT AND EXCLUSIVITY OF CONDITIONS

2.1 You acknowledge that each and every Order submitted to us (including both oral and written Orders):

(a) is a separate offer all or part of which we may accept or reject at our absolute discretion; and

(b) to the extent accepted by us, gives rise to a binding agreement between you and us for the supply of Goods and/or Services on these Terms ("Contract").

2.2 These Terms replace any other terms previously in force.

2.3 We may vary these Terms at any time in accordance with clause 16. Your continued purchase of Goods and/or Services after these terms are varied constitutes your acceptance of the varied terms applying to all Orders after the date of variation.

3. ORDERS

3.1 You may order Goods by submitting an Order to us.

3.2 Once submitted, an Order cannot be cancelled, or Delivery deferred, without our consent.

3.3 We are not bound by an Order except to the extent we accept an Order, either by you notifying you of acceptance or by commencing performance of the accepted part of the Order. We are not obliged to accept any Order.

4. WARRANTES

4.1 You warrant that you or the person making an Order on your behalf has sufficient power and authority to enter into a Contract with us on these Terms.

4.2 You warrant that no statement or representation made by you or on your behalf to us prior to entering into any Contract with us is misleading or deceptive in any respect, and you warrant that you will be truthful and accurate in your dealings with us.

4.3 Any application for credit by you will be on our Trade Account Application Form ("**Application Form**"). You warrant that the contents of the Application Form are true and correct and you acknowledge that we rely upon its contents.

5. OUR FEES AND POLICIES

5.1 We reserve the right to charge service and other fees from time to time in the amounts and on the conditions listed in our most recent published product catalogue or as otherwise notified to you or posted on the Website from time to time ("**Fees and Charges**").

5.2 You agree Goods may only be returned to us in accordance with our returned goods policy, available at the Website.

5.3 You agree that the policies referred to in this clause 5 (as amended from time to time) form part of the Terms.

6. OUR PRICES

6.1 Goods and/or Services which are supplied at the price current on the date of Supply which price may differ from the price the Goods were last supplied. The prices for Goods and/or Services are subject to alteration without notice.

7. DELIVERY OF GOODS

7.1 Delivery of Goods is to the location identified as the delivery address listed on your Application Form or when the Goods are collected by your nominated carrier ("**Delivery**"), unless otherwise specified in writing.

7.2 You must take delivery of goods within 7 days of us notifying you they are ready for Delivery. If you fail to do so, we may arrange suitable storage for such Goods at our premises or elsewhere and you must pay and/or indemnify us for all costs of such storage, including insurance, handling and pro-rata premises rental.

7.3 We are not liable for any Loss suffered by you or any third party arising out of late or staged Delivery or non-Delivery of Goods. We are not liable for any Loss or damage to Goods in transit caused by any event of any kind by any person (whether we have arranged for Delivery or not).

7.4 We reserve the right to make part Deliveries of any Order and each part Delivery constitutes a separate Contract upon these Terms.

7.5 Within 48 hours of any Delivery, you must arrange for an inspection of the delivered Goods. You acknowledge that by accepting Delivery and not contacting us in writing within this time period, you irrevocably confirm that the Delivered Goods have been received in accordance with the requirements of the Order and forever release us from any contrary claims.

8. PAYMENT

8.1 You must pay:

(a) the agreed charges in respect of each item of Goods and each Service supplied by us (which may include our cost of arranging Delivery or freight of Goods);

(b) any other amounts owing under these terms or our pricing policies, (in each case without deduction or set-off) to us within the relevant timeframe set out in this clause 8.

8.2 If one or more invoices are outstanding, we may elect to apply and allocate all of the proceeds of any payment made by you (or on your behalf) firstly to any late payment fees accrued on any outstanding invoices, secondly to the oldest invoice outstanding and then to each more recent invoice (in order from the oldest to the most recent) until all invoices are paid in full.

8.3 Unless we agree to supply Goods and/or Services to you on credit, the following terms apply

(a) you must pay us the full amount of any Order prior to Delivery of relevant Goods or Services;

(b) we have no obligation to Deliver, and no liability for failure to Deliver, any Order unless and until full payment has been received in cleared funds.

8.4 If we agree to supply Goods and/or Services to you on credit the following terms apply:

(a) Unless another date is indicated on your statement or otherwise agreed by us and subject to 8.4(b), your payments will be due by the 25th day of each month following the month in which the Services are provided and/or the Goods are Delivered to the location identified as the delivery address on your application Form.

(b) no Discounts or Incentives will apply to payments made after the due date; and

(c) where the due date falls on a day that is not a business day, payments are due the prior business day.

8.5 You have not paid our invoice for Goods and/or Services ("**Invoice**") until the entire amount due at any time by you to us under that Invoice has been received by us.

8.6 If you object to any item or calculation on an Invoice, you must (i) notify us of your objection in accordance with our relevant policies; and (ii) pay the full amount of the Invoice less the disputed amount by the due date.

8.7 If you fail to give notice by the prescribed time and using the prescribed method, you are deemed to have accepted the contents of the Invoice as being true and correct.

8.8 We may take any objection made in accordance with clause 8.6 into account in a subsequent Invoice to you. Payment of subsequent Invoices from us incorporating any adjustments resulting from an objection constitutes a final determination of the objection as between you and us.

9. GST

9.1 In this clause 9:

(a) the expressions Consideration, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and

(b) Supplier means any party treated by the GST Act as making a Supply under a Contract.

9.2 Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms are exclusive of GST.

9.3 If GST is imposed on any Supply made under or in accordance with these Terms, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.

9.4 Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply as required by these Terms.

10. ADDITIONAL REQUIREMENTS

10.1 We reserve the right to require a guarantee and indemnity (in a form satisfactory to us) from the directors of, or other persons acceptable to us associated with, that entity.

10.2 If an amount is payable by us to you under a Contract, or under any other account, arrangement or agreement between you and us, we are entitled to set off that amount against any amount you owe us under another Contract or under any other account, arrangement or agreement.

10.3 We may register any security interest in connection with these Terms for the purposes of the PPSA (including a security interest under a Contract) for whatever class of classes or collateral we think fit. You must do anything (such as obtaining consents, signing and producing receipts and documents and supplying information) which we ask and consider necessary for the purposes of

ensuring that each such security interest is enforceable, perfected and otherwise effective.

10.4 In relation to any security interest in connection with these Terms:

(a) we need not give any notice under the PPSA (including a notice of a verification statement) in relation to a security interest in connection with these Terms unless the notice is required by the PPSA and cannot be excluded;

(b) we need not comply with any of the provisions of the PPSA that would otherwise apply to the extent the law permits them to be excluded; and

(c) you may not exercise rights under sections 142 (redemption of collateral) or 143 (reinstatement of security interest) of the PPSA to the extent the law permits them to be excluded.

11. DEFAULT

11.1 In the event that:

(a) there is a breach by you of any of these Terms;

(b) any moneys payable to us become overdue, or in our opinion you will be unable to meet your payments as they fall due;

(c) you are subject to an Insolvency Event;

then we may, without limitation to our other remedies under these Terms or at law and without notice to you:

(d) require that all amounts owing to us, whether or not due for payment immediately, be paid;

(e) revoke Discounts or Incentives and recalculate outstanding amounts on standard prices;

(f) continue with a Contract and recover all amounts outstanding under that Contract and damages suffered by or as a consequence of your failure to perform your obligations under that Contract;

(g) suspend all future Deliveries;

(h) suspend or permanently cancel credit terms;

(i) charge you late payment fees on any moneys unpaid on the due date in accordance with the rate published from time to time in our Fees and Charges from the due date until you pay in full;

(j) terminate a Contract in accordance with clause 13 and require payment in full for all Goods and/or Services supplied up to the date of termination, or require the return of those Goods;

(k) where you have more than one Contract or account with us for which you are liable (including any Contract or account for which you are jointly and/or severally liable):

(i) transfer overdue amounts owing on one Contract or account to any other Contract or account; and

(ii) take any of the steps specified in clauses 11.1(d)-(k) in respect of any other Contract or account.

11.2 You will indemnify us for all costs (including legal costs on a full indemnity basis), and Losses incurred by us out of or in connection with recovery of any unpaid account, including charges for any dishonoured cheques received.

12. RISK AND TITLE

12.1 Goods supplied by us to you are at your risk immediately on Delivery.

12.2 You are responsible for insuring the Goods from the time they are dispatched from our premises for Delivery, and are responsible for maintaining such insurance until you have paid for the Goods in full.

12.3 Proper title to Goods supplied by us to you under a Contract does not pass to you until all Goods supplied by us under any Contract have been paid for in full as identified in clause 8.5.

12.4 Where you do not make payment in respect of all Goods supplied under any Contract, we can elect to treat any payment as having been made first in respect of Goods which have passed out of your possession.

12.5 Until all Goods have been paid for in full:

(a) you must store Goods separately and in such manner as to show clearly that they are not your property and that we are the owner of the Goods; you may, unless you have failed to make payment in respect of any Goods when due or an Insolvency Event occurs, sell Goods, in the ordinary course of your business, and you must hold all proceeds of sale on trust for us and must keep the proceeds of such sale(s) separately;

- (c) you authorise us (and our representatives) to enter any premises (at any time, whether or not monies are immediately due and payable under these Terms) upon which Goods are stored to enable us to inspect Goods, to reclaim possession of Goods, and to sell or otherwise dispose of the Goods in any way and on any terms (including price) that we choose, and you warrant that the landlord of those premises (if applicable) has provided consent to such access. These rights are in addition to any rights we may have under Chapter 4 of the PPSA;
- (d) we have a security interest (for the purposes of the PPSA) in the Goods and any proceeds until title passes to you in accordance with clause 12.3. This security interest secures all moneys owing by you to us under these Terms and each Contract in connection with the Goods. Each security interest is a 'purchase money security interest' under the PPSA to the extent that it secures payment of the amounts owing in relation to the Goods;
- (e) the security interest arising under this clause 12.4 attaches to the Goods when you obtain possession of the Goods and the parties to the Contract confirm that they have not agreed that any security interest arising under this clause 12.4 attaches at any later time.
- 12.6 If you sell or otherwise dispose of the Goods supplied by us before title to them has passed from us to you:
- (a) that part of the proceeds of any sale or dealing as is equal to the amount outstanding to us or, if the proceeds of sale or dealing are less than the amount outstanding to us, the whole of the proceeds of sale or dealing (in either case, our **Entitlement**) must be held by you in a separate identifiable account on trust for us and must not be mixed with any other moneys held by you; and
- (b) you must account to us for our Entitlement, until all your liabilities to us have been discharged.
- 12.7 You have no right to sell the Goods or deal with the Goods if:
- (a) an Insolvency Event occurs in relation to you or a guarantor of your obligations under these terms of a Contract;
- (b) you are in breach of these Terms or a Contract; or
- (c) a Contract is terminated for any reason.
- 12.8 You must notify us in writing and provide us with any information or documents that we reasonably require, no less than 14 days before a proposed change of ownership, change of business structure, incorporation, change of business name or business premises or closing your account with us.
- 12.9 You indemnify and must keep us indemnified against all actions, claims, proceedings, demands, Losses, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of the exercise by us of our rights, or your breach of your obligations, under this clause 12.
- 13. TERM AND TERMINATION OF A CONTRACT**
- 13.1 A Contract commences upon our acceptance of an Order, in accordance with clause 2.1(b) and expires 7 days after the date of payment for the Order.
- 13.2 We may terminate a Contract:
- (a) at any time upon 14 days' notice, at our sole discretion;
- (b) if you breach any provision of a Contract and fail to remedy the breach within 7 days of receiving written notice from us requiring you to do so; and
- (c) immediately if an Insolvency Event occurs.
- 13.3 On termination, all amounts owing to us on any account (whether the due dates have passed or not, and including any credit amounts) become immediately due and payable.
- 13.4 On termination, all Orders (whether or not accepted by us at the time of termination) will be automatically cancelled, except to the extent otherwise directed in writing by us.
- 13.5 On termination of a Contract we retain accrued rights against you in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 13.6 We will not be liable to you for any claims by you for any Loss or damage for, or on account of, or arising from, any termination of a Contract under this clause or for any suspension, withholding or retention by us in accordance with clause 11.1.
- 14. LIMITATION OF LIABILITY**
- 14.1 To the maximum extent permitted by law and subject to clauses 14.2 and 14.3:
- (a) we exclude all conditions and warranties expressed or implied whether by statute, the common law, equity or otherwise howsoever; we are not liable to you for any Loss, damage, liability, expense, injury or death sustained or incurred by you or any other party, including without limitation any loss of profits, or economic, special, indirect or consequential loss or damage, whether resulting directly or indirectly out of any negligence by us, the supply, performance or use of any Goods or Services or out of any breach by us under any Order incorporating these Terms, even if notified of the possibility of that potential loss or damage;
- (c) where liability cannot be excluded, we limit liability to the resupply (or at our election, paying for the cost of resupply) of that part of the relevant Goods and/or Services subject to any claim;
- (d) we accept no liability in relation to or on behalf of third parties, including liability to your customers.
- 14.2 If despite clauses 14.1(a), (b), (c) and (d), we are held or found to be liable to you for any matter, our maximum aggregate liability for all claims under or relating to these Terms or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the price paid by you under the relevant Order to which the claim relates.
- 14.3 Pursuant to and subject to the applicability of the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010* (Cth))(the **ACL**), where we are not able to exclude a guarantee, term, condition, warranty or similar imposed by legislation in relation to these Terms or an Order (**Non-Excludable Provision**), and we are able to limit your remedy for a breach of the Non-Excludable Provision is limited to (at our election):
- (a) in the case of goods, the repair or replacement of the Goods that relate to the breach or the supply of substitute Goods that relate to the breach (or the cost of doing so); or
- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 14.4 In the case of Goods sold but not manufactured by us, we will to the extent permitted by law and contractual terms applicable to us extend the manufacturer's warranty to you in full exclusion to any warranty provided by us.
- 14.5 Nothing in this clause 14 excludes, restricts or modifies the application of any law, the exercise of any right or any liability which cannot, by law, be excluded, restricted, or modified or any right to rely on any exclusion or limitation of liability or any defence provided for by any such law.
- 14.6 In no event shall we be liable to you or any other party for any Loss which is indirect, consequential or special in nature, including without limitation loss of profit, loss of income, loss of revenue, loss of opportunity, loss of production, any economic loss or financial costs, in each case whether arising in contract, tort (including negligence), equity or any other legal principle or doctrine.
- 15. PRIVACY**
- 15.1 Our privacy policy described how we manage the collection, disclosure and use of personal information. Our privacy policy, as amended from time to time, forms part of these Terms and is available from the Website.
- 15.2 You consent to us collecting your personal information in order to provide you with the Goods or Services you have requested.
- 15.3 We may contact you with marketing material about us and our related businesses that may interest you. We may disclose your personal information to our related companies and to third parties who provide us with (or help us provide) products and services. We may provide

- information to our information technology providers in locations outside your state or territory and overseas.
- 15.4 Except where we may refuse access as permitted by law, you can gain access to the personal information we hold about you. Our privacy policy (available at www.qualityplasticproducts.com.au) states how you can seek to access or correct any personal information we hold about you, how to complain about a privacy breach by us and how we will deal with a privacy complaint. You can contact us at privacy@qualityplasticproducts.com.au.
- 16. VARIATIONS**
- 16.1 We reserve the right to amend or vary these Terms from time to time at our discretion.
- 16.2 You will be given notice of any change or variation to these Terms by us publishing the amended Terms on the Website or by being sent a copy of the amended Terms by email, post or facsimile.
- 16.3 Any amended Terms will take effect seven (7) days after the date on which they are published or are sent to you in accordance with clause 16.2 (whichever is the earlier). The amended Terms apply and are incorporated into each and all Orders from that time.
- 16.4 You may elect not to proceed under the amended Terms. If so, you must give notice to us in writing clearly expressing your non-acceptance of the amended Terms at any time before they take effect in accordance with clause 16.3. If no notice is given and in any case by continuing to Order from us after that time, you are deemed to irrevocably accept the amended Terms and are bound by them.
- 16.5 If you elect not to proceed under the amended Terms, we reserve the right not to provide further credit, accept further Orders from or supply Goods or Services to you.
- 16.6 If you fail to sign these Terms or any amended Terms, but place or continue to place Orders with us, such failure to sign does not affect the enforceability or application of these Terms or amended Terms (as relevant) to an Order.
- 17. TRUSTS**
- 17.1 This clause applies if you are a trustee and whether or not we have notice of the trust.
- 17.2 Where you comprise two or more persons and any of those persons is a trustee this clause applies to such trustee.
- 17.3 You agree that even though you enter into these Terms as trustee of the trust, you also shall be liable personally for the performance and observance of every covenant to be observed and performed by you expressed or implied in these Terms.
- 18. DISPUTES**
- 18.1 If any dispute, controversy or claim arises between the parties, except a claim for payment by us (which we may seek any available remedy or commence legal proceedings in relation to), it must be dealt with in accordance with this clause.
- 18.2 Any party claiming that a dispute exists must notify the other party (the **Second Party**) in writing of the nature of the dispute. If the dispute is not resolved by agreement within five (5) business days of the Second Party receiving the notice referred to in the preceding sentence, either party may refer the matter to mediation conducted by a mediator agreed between the parties or failing agreement appointed by the Resolution Institute at the request of either party within a further five working days. The costs of the mediator shall be borne equally between the disputing parties. The chosen or appointed mediator shall determine the procedures for the mediation. The mediator will not have the power or authority to make any other determination in relation to the dispute.
- 18.3 If, after using reasonable endeavours, the parties have not mediated a resolution of the dispute within (20) working days of the selection or appointment of a mediator, neither party shall be obliged to continue mediation under this clause, and either party may commence legal proceedings.
- 19. MISCELLANEOUS**
- 19.1 You may not assign or otherwise deal with a Contract except with our prior written consent. We may assign, otherwise deal or sub-contract the performance of the whole or any part of our obligations under a Contract.
- 19.2 Our failure to insist, or delay in insisting, upon strict performance of these Terms will not be deemed to be a waiver of any of our rights or remedies.
- 19.3 If any of these Terms is unenforceable, illegal or void then it is severed and the rest of the Terms remain in force.
- 19.4 Our obligations will be suspended during the time and to the extent that we are prevented from or delayed in complying with those obligations as a result of a Force Majeure Event.
- 19.6 If we are affected by a Force Majeure Event, we must:
- as soon as reasonably possible after being affected, give you particulars of the Force Majeure Event and the manner in which our performance of our obligations will be prevented or delayed; and
 - take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that we are not obliged to settle a strike, lockout or other labour difficulty.
- 19.7 You agree to indemnify us against all actions, claims, proceedings, demands, liabilities, Losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or which we may pay, sustain or incur as a direct or indirect result of any one or more of the following:
- any breach of non-performance of these Terms by you, including any breach of warranty;
 - any wrongful, wilful or negligent act or omission by you or by any of your employees, agents or contractors;
 - the storage, handling or use of any Goods sold under or in connection with these Terms, except to the extent caused by the wrongful, wilful or negligent act or omission of use or of any of our employees, agents or contractors; and
 - any injury or loss sustained by any person who is employed or engaged by you as an employee, agent or contractor for the purpose of (among other things) the performance by you of your obligations under these Terms and who suffers any injury or loss arising out of or in the course of such employment or engagement.
- 19.8 You will pay to us and all of our expenses including any legal costs (on a full indemnity basis), stamp duties and other expenses payable under these Terms incurred in connection with the enforcement of, or preservation of any rights under these Terms.
- 19.9 Service by us of any document will be treated as having been effected when sent to: (a) the mail address shown in the Trade Account Application; (b) the fax number, by facsimile transmission; or (c) the email address, by email.
- 19.10 Any agreement, deed, covenant, representation, or warranty given by two or more persons in connection with these Terms or a Contract is given jointly and severally.
- 19.11 To the extent that there is any inconsistency between these Terms and any other agreement (including your standard terms or any earlier terms between us), these Terms will prevail and these Terms (and the incorporated policies) contain the entire agreement between us in relation to the supply of Goods or Services by us to you.
- 19.12 These Terms, our policies, any Contract and any communications we have with you regarding our terms of supply (including without limitation our pricing and Discounts or Incentives) are our confidential information. You or your employees must not disclose this confidential information to any person (except to the legal, financial, or business advisers for the purpose of seeking advice relating to the terms and conditions), without our prior written consent. You must notify us immediately of any unauthorised use or disclosure of our confidential information. Nothing in this clause prevents you from disclosing our confidential information if you reasonably believe it is required by law (except this paragraph does not permit you to disclose or authorise the disclosure of any information under section 275(1) and (4) of the PPSA unless section 275(7) of the PPSA applies), as long as you notify us immediately when you become aware that such a disclosure may be required. The obligations of confidentiality will survive expiration or termination of these Terms and will continue until the information ceases to be confidential.
- 19.13 These Terms and each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the Queensland courts and any courts with appellate jurisdiction from the Queensland Courts.
- 19.14 All indemnities in a Contract are continuing and will not be released by our neglect or forbearance or by a Contract being terminated or otherwise ceasing to operate.
- 19.15 Time is of the essence to these Terms.