

## 1. Definitions

- 1.1 "ERPS" means Electronic Rust Prevention Systems (Australia) Pty Ltd (as trustee for Premium Products Trust) T/A Electronic Rust Prevention Systems (Australia) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Electronic Rust Prevention Systems (Australia) Pty Ltd (as trustee for Premium Products Trust) T/A Electronic Rust Prevention Systems (Australia) Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by ERPS to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between ERPS and the Client in accordance with clause 4 below.

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with ERPS' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and ERPS.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 None of ERPS' agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the general manager of ERPS in writing, nor is ERPS bound by any such unauthorised statements.

## 3. Change in Control

- 3.1 The Client shall give ERPS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by ERPS as a result of the Client's failure to comply with this clause.

## 4. Price and Payment

- 4.1 At ERPS' sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by ERPS to the Client; or
  - (b) the Price as at the date of Delivery, according to ERPS' current price list; or
  - (c) ERPS' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. Any variation from the Goods quoted and accepted will be charged for on the basis of ERPS' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.2 ERPS reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) in the event of increases to ERPS in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond ERPS' control.
- 4.3 At ERPS' sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by ERPS, which may be:
- (a) on, or before, Delivery;
  - (b) by way of instalments/progress payments in accordance with ERPS' payment schedule;
  - (c) thirty (30) days following the end of the month in which any invoice/s and/or statement is furnished to the Client by ERPS;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to the Client by ERPS.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and ERPS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to ERPS an amount equal to any GST ERPS must pay for any supply by ERPS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 5. Delivery

- 5.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at ERPS' address; or
  - (b) ERPS (or ERPS' nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address.
- 5.2 At ERPS' sole discretion, the cost of Delivery is in addition to the Price.
- 5.3 The Client must take Delivery, by receipt or collection of the Goods, whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery, as arranged, then ERPS shall be entitled to charge a reasonable fee for redelivery and/or storage.

- 5.4 ERPS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by ERPS to the Client is an estimate only. The Client must still accept Delivery even if late and ERPS will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery, and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery, but prior to ownership passing to the Client, ERPS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by ERPS is sufficient evidence of ERPS' rights to receive the insurance proceeds without the need for any person dealing with ERPS to make further enquiries.
- 6.3 If the Client requests ERPS to leave Goods outside ERPS' premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7. Title**
- 7.1 ERPS and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid ERPS all amounts owing to ERPS; and
  - (b) the Client has met all of its other obligations to ERPS.
- 7.2 Receipt by ERPS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then ERPS' rights and ownership in relation to the Goods, and this agreement, shall continue.
- 7.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 7.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to ERPS on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for ERPS and must pay to ERPS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for ERPS and must pay or deliver the proceeds to ERPS on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of ERPS and must sell, dispose of or return the resulting product to ERPS as it so directs.
  - (e) the Client irrevocably authorises ERPS to enter any premises where ERPS believes the Goods are kept and recover possession of the Goods.
  - (f) ERPS may recover possession of any Goods in transit whether or not Delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of ERPS.
  - (h) ERPS may commence proceedings to recover the Price, notwithstanding that ownership of the Goods has not passed to the Client.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by ERPS to the Client.
- 8.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ERPS may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, ERPS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of ERPS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of ERPS;
  - (e) immediately advise ERPS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 ERPS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by ERPS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by ERPS under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**9. Security and Charge**

- 9.1 In consideration of ERPS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Client indemnifies ERPS from and against all ERPS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ERPS' rights under this clause.
- 9.3 The Client irrevocably appoints ERPS and each director of ERPS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

**10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 10.1 The Client must inspect the Goods on Delivery and must within seven (7) days of such time notify ERPS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow ERPS to inspect the Goods.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 10.3 ERPS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, ERPS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. ERPS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, ERPS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If ERPS is required to replace the Goods under this clause or the CCA, but is unable to do so, ERPS may refund any money the Client has paid for the Goods.
- 10.7 If the Client is not a consumer within the meaning of the CCA, ERPS' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by ERPS at ERPS' sole discretion;
  - (b) limited to any warranty to which ERPS is entitled, if ERPS did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 10.1; and
  - (b) ERPS has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, ERPS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by ERPS;
  - (e) fair wear and tear, any accident, or act of God.
- 10.10 In the case of second-hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by ERPS as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that ERPS has agreed to provide the Client with the Goods, and calculated the Price thereof, in reliance of this clause 10.10.
- 10.11 ERPS may, in its absolute discretion, accept non-defective Goods for return, in which case ERPS may require the Client to pay handling fees of up to five percent (5%) of the value of the returned Goods, plus any freight costs.
- 10.12 Notwithstanding anything contained in this clause if ERPS is required by a law to accept a return then ERPS will only accept a return on the conditions imposed by that law.

**11. Intellectual Property**

- 11.1 Where ERPS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of ERPS.
- 11.2 The Client warrants that all designs, specifications or instructions given to ERPS will not cause ERPS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify ERPS against any action taken by a third party against ERPS in respect of any such infringement.
- 11.3 The Client agrees that ERPS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which ERPS has created for the Client.

**12. Default and Consequences of Default**

- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ERPS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes ERPS any money the Client shall indemnify ERPS from and against all costs and disbursements incurred by ERPS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ERPS' contract default fee, and bank dishonour fees).

- 12.3 Further to any other rights or remedies ERPS may have under this agreement, if the Client has made payment to ERPS by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ERPS under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 12.4 Without prejudice to any other remedies ERPS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions ERPS may suspend or terminate the supply of Goods to the Client. ERPS will not be liable to the Client for any loss or damage the Client suffers because ERPS has exercised its rights under this clause.
- 12.5 Without prejudice to ERPS' other remedies at law ERPS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ERPS shall, whether or not due for payment, become immediately payable if:
- any money payable to ERPS becomes overdue, or in ERPS' opinion the Client will be unable to make a payment when it falls due;
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 13. Cancellation**
- 13.1 ERPS may cancel any agreement to which these terms and conditions apply, or cancels Delivery at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice ERPS shall repay to the Client any money paid by the Client for the Goods. ERPS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels any agreement to which these terms and conditions apply, or Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by ERPS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 13.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.
- 14. Privacy Act 1988**
- 14.1 The Client agrees for ERPS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by ERPS.
- 14.2 The Client agrees that ERPS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
  - to notify other credit providers of a default by the Client; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 14.3 The Client consents to ERPS being given a consumer credit report to collect overdue payment on commercial credit.
- 14.4 The Client agrees that personal credit information provided may be used and retained by ERPS for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 14.5 ERPS may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 14.6 The information given to the CRB may include:
- personal information as outlined in 14.1 above;
  - name of the credit provider and that ERPS is a current credit provider to the Client;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and ERPS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of ERPS, the Client has committed a serious credit infringement;
  - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 14.7 The Client shall have the right to request (by e-mail) from ERPS:
- a copy of the information about the Client retained by ERPS and the right to request that ERPS correct any incorrect information; and
  - that ERPS does not disclose any personal information about the Client for the purpose of direct marketing.
- 14.8 ERPS will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 14.9 The Client can make a privacy complaint by contacting ERPS via e-mail. ERPS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**15. Unpaid Seller's Rights**

- 15.1 Where the Client has left any item/s with ERPS for repair, modification, exchange or for ERPS to perform any other service in relation to the item/s and ERPS has not received or been tendered the whole of any moneys owing to it by the Client, ERPS shall have, until all moneys owing to ERPS are paid:
- (a) a lien on the item/s; and
  - (b) the right to retain or sell the item/s, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 15.2 The lien of ERPS shall continue despite the commencement of proceedings, or judgment for any moneys owing to ERPS having been obtained against the Client.

**16. General**

- 16.1 The failure by ERPS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ERPS' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which ERPS has its principal place of business, and are subject to the jurisdiction of the Southport Court in that state.
- 16.3 Subject to clause 10, ERPS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ERPS of these terms and conditions (alternatively ERPS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 16.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by ERPS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 16.5 ERPS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.6 The Client agrees that ERPS may amend these terms and conditions at any time. If ERPS makes a change to these terms and conditions, then that change will take effect from the date on which ERPS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for ERPS to provide Goods to the Client.
- 16.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.