

Bermad Australia Pty Ltd ABN 62 093 801 220

1) Governing Terms

- a) These terms and conditions of sale apply to all your purchase of products from Bermad. Any addition, deletion or alternation proposed by you but not expressly agreed and confirmed in writing by Bermad, shall not bind the parties and shall not constitute part of these terms and conditions.
- b) For purposes of these terms and conditions:
 - i) "**Bermad**" means Bermad Australia Pty Ltd ACN 093 801 220.
 - ii) "**You**" means the entity or party that places an order for products from Bermad.
 - iii) "**Order Confirmation**" means the order confirmation or contract issued by Bermad to you, by means of a written order confirmation or sales contract.

2) Purchase Orders

- a) You shall order from Bermad products for purchase by submitting written orders to Bermad, stating the quantities and descriptions of the products required, applicable prices, requested delivery dates, and shipping instructions. Acceptance of orders placed by you with Bermad shall be subject to the delivery of an Order Confirmation by Bermad.

3) Delivery of Products

- a) Bermad shall use reasonable efforts to adhere to the delivery date stated in the Order Confirmation, but Bermad shall not be liable for any loss resulting from any delay in delivery, nor shall you be entitled to cancel the Order Confirmation by reason only of Bermad's failure to deliver at the stated time.
- b) The products shall be delivered in accordance with the provisions of the specific INCOTERM 2010 specified in the Order Confirmation.

4) Risk and Title

- a) Risk or loss or damage to and in the products, including associated risk of hazard, shall pass to you upon delivery.
- b) The products shall remain the property of Bermad unless and until Bermad receives all payments due for the products. You shall not remove or obscure any label or marking which may allow the products to be identified.

5) Personal Property and Securities Act 2009 (Cth)

- a) By accepting these Terms And Conditions, you acknowledge and agree that these terms and conditions constitute a security agreement for the purposes of the Personal Property and Securities Act (“PPSA”) and create a security interest in all of your present and after-acquired products supplied by Bermad.
- b) Until full payment has been made for all products, and any other sums in any way outstanding from you to Bermad from time to time:
 - i) property in the products will not pass to you, and you hold the products as bailee for Bermad (returning the same to Bermad on request):
 - ii) Bermad retains a security interest in all products previously supplied by Bermad to you (if any) and all products that will be supplied in the future by Bermad to you during the continuance of the parties’ relationship:
 - iii) you must not allow any other party to have or acquire any security interest in the products:
 - iv) You agree to store the products on its premises separate from your own or any other person’s goods, and in a manner which makes them readily identifiable as Bermad’s products; and
 - v) the products will nevertheless be at your risk of from the time of dispatch.
- c) If you purchase the products for the purpose of resupply or if you resupply the products:
 - i) the products are inventory for the purposes of the PPSA; and
 - ii) you are only authorized to sell the products (or any portion of them) to third parties as the fiduciary agent of Bermad provided that there will be no right to represent to any third parties that you are acting for t Bermad or bind Bermad to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by you for the products (or any portion of them) will be held on trust for Bermad pursuant to the fiduciary relationship.
- d) In the event that the products (or any portion of them) are attached, fixed, transformed or incorporated into any other goods or products produced by you (or a third party), then title in the products will remain with Bermad until you have made payment for all products, and Bermad will have a security interest in those goods or products, and you must hold a proportion of any payment (relevant proportion) received by you for such goods or products on trust for Bermad, and Bermad will have a security interest in that relevant proportion. You expressly acknowledge that the relevant proportion will be equal to the dollar value of the portion of the products incorporated or transformed and you further acknowledge

that any part payment (not exceeding the relevant proportion) received by you for such goods or products is received as payment first of the relevant proportion.

- e) You undertake to:
- i) promptly and at your own cost, sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) that Bermad may reasonably require to register a financing statement, financing change statement or any other required document on the Personal Property Securities Register:
 - ii) indemnify, and upon demand reimburse, Bermad for all expenses incurred in registering a financing statement, financing change statement or any other required document on the Personal Property Securities Register or releasing any products charged thereby:
 - iii) not register, or permit to be registered, a financing change statement or a financing change statement in respect of a security interest without the prior written consent of Bermad:
 - iv) give Bermad at least 14 business days prior written notice of any proposed change in your name or any other change in your details; and
 - v) immediately advise Bermad of any material change in your business practices that would result in a change in the nature of proceeds derived from any sales of the products.
- f) To the extent permitted by law, you irrevocably waive any rights you may have to:
- i) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135 and 157(1) of the PPSA:
 - ii) reimbursement for any damage caused or contributed to by removal of an accession under section 93 of the PPSA:
 - iii) refuse permission to remove an accession under section 94 of the PPSA:
 - iv) redeem personal property under section 142 of the PPSA; and
 - v) reinstate this charge under section 143 of the PPSA.
- g) Neither party may disclose information of the kind to which section 275(1) of the PPSA refers. You waive any right that you may have or, but for this clause, may have had, under section 275(7) of the PPSA to authorise the disclosure of such information, and otherwise agrees not to exercise any rights you may have under sections 275(7)(c) and (d) without Bermad's written consent. To the extent that it is not inconsistent with this clause 5 constituting a confidentiality agreement for the purpose of section 275(6)(a) of the PPSA, Bermad may disclose information of the kind to which section 275(1) of the PPSA refers to the extent that Bermad is not doing so in response to a request by an interested person.

- h) You further agree that where Bermad has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- i) You unconditionally ratify any actions taken by Bermad under clauses 5(a) to 5(h) under and by virtue of the power of attorney given by You to Bermad, and agree that this clause 5 will survive termination of this agreement or any agreement hereunder for the sale of the products.
- j) In this clause:
 - i) “accession” has the meaning given to it by the PPSA:
 - ii) “financing statement” has the meaning given to it by the PPSA:
 - iii) “financing change statement” has the meaning given to it by the PPSA:
 - iv) “personal property” has the meaning given to it by the PPSA:
 - v) “security agreement” means the security agreement under the PPSA created between you and Bermad; and
 - vi) “security interest” has the meaning given to it by the PPSA.

6) Price and Payment

- a) The purchase price to be paid for the products and the terms of payment shall be as stated in the Order Confirmation. If the terms of payment are not stated there, the terms of payment shall be – 30 days from the end of the month in which the invoice was issued. Bermad may at any time require you to provide security satisfactory to Bermad.
- b) Unless otherwise specified in the Order Confirmation, prices are exclusive of GST, duties, taxes, levies, imposts, deposits, or surcharges related to the importation or otherwise, which shall be paid by you.
- c) You may not, for any reason whatsoever, withhold any payment or claim any right of deduction or offset against any payment payable under your purchases from Bermad.
- d) If you are in default in respect of the payment of any sum payable to Bermad, then without prejudice to Bermad’s other rights and remedies, you shall pay Bermad cumulative interest on all overdue sums at the rate of 12 per cent per annum calculated daily.

7) Claims, Warranty and Limited Liability

- a) You must examine the applicable products immediately upon receipt of shipment. To the extent permissible at law, Claims for partial or total non-delivery due to fault

of Bermad must be made to Bermad within 10 business days of receipt of shipment. In such situations, Bermad shall have the right to examine the applicable products in their original form and shipping records at your location. Failure to make a claim within said 10 business days shall mean the products are deemed delivered in accurate numbers and the full invoice shall be payable.

- b) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law (“**ACL**”). You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- c) Without limiting (b) above Bermad warrants that for a period of 12 months from the time of delivery (the “**Warranty Period**”), the products shall meet in all material respects Bermad’s specifications contained in the documentation supplied with the products.
- d) Except as required under the ACL, under no circumstances shall Bermad be liable for any repair or replacement needed in whole or in part (i) as a result of inappropriate environment, (ii) improper storage, transportation, handling, installation, use, operation, removal, modification, maintenance or repair, negligence or fault, by any party other than by Bermad; or (iii) as a result of accident.
- e) Any enquiries regarding this warranty or to make a claim should be sent to Bermad Australia Pty Ltd at 26 Brand Dr, Thomastown VIC 3074, Australia. Enquiries can also be made by calling 03 9464 2374 or by email to cs.au@bermad.com or by contacting your local sales representative. To make a claim under this warranty, please send the following written details to [*insert email or postal address*]:
 - Your name, address, and telephone number:
 - Email details:
 - Details of where and when you purchased the product affected, including any proof of purchase Bermad may require:
 - If the product has been installed, the address at which it has been installed, the date of installation, the name of the person and the company or other business that installed it; and
 - Description of how you believe the product is defective and when you found out that it was defective. Please also provide photographs showing the defect.
- f) Except where the ACL provides a different remedy, the liability of Bermad in contract, tort or law for loss or damage (other than dead or personal injury) arising from or in connection with these terms and conditions shall not exceed the

difference between the value of the pertinent products at the time of delivery and the Order Confirmation price therefor. Except where the ACL provides otherwise, in no circumstances shall Bermad have any liability for loss of profits or contracts of for any consequential, incidental or indirect loss or damage no matter how arising.

- g) Without limiting any other right or remedy you may have under the ACL, during the Warranty Period Bermad shall, at Bermad's option, repair, replace or give credit for any component that is returned to an authorized service center of Bermad and that is found by Bermad to contain defects in material or workmanship. The amount of Bermad's liability shall not exceed the cost of repairing, replacing or giving credit for the defective item. In the event of replacement, Bermad shall deliver replacement products within a reasonable time. In such an event, except where the ACL mandates an alternative remedy, replacement shall constitute your sole remedy for the breach. To the extent permissible under the ACL, this Warranty shall also apply to the repaired or replacement part during the remaining portion of the Warranty Period, if any.
- h) For avoidance of doubt, unless otherwise required under the ACL, this warranty does not cover any costs and expenses of removal and installation of the product or taxes or shipping cost or any other direct or indirect loss(es) which may result from the Product failure.
- i) Except as otherwise required under the ACL, this Warranty applies only if (i) Bermad has received a written notice from you giving details of the defective item before the end of the Warranty Period, (ii) Bermad has been afforded a reasonable opportunity to inspect the item in question, and (iii) you have provided at your expense all assistance and support needed by Bermad to fulfill its obligations under this Warranty.

8) Default

- a) Without prejudice to other rights and remedies available, Bermad shall be entitled to immediately terminate in whole or in part the contract under the Order Confirmation, or to immediately suspend all or any further deliveries, if:
 - i) Any sum is due and payable under any contract between the parties and remains unpaid; or
 - ii) You fail to take delivery of any products under any contract between the parties; or
 - iii) You become insolvent or you have a winding up resolution or order passed or made or have a receiver appointed or suspends payments of your debts in whole or part or you have proposed or entered into any composition or arrangement with creditors or you are the subject of a bankruptcy order, or

any equivalent proceeding takes place under the laws in which the you are incorporated, carry on businesses or have assents.

- b) Additionally, in the event of any such action, Bermad shall be entitled to require prepayment and such security, as it may deem necessary as a condition to resuming delivery under this or any other contract with you.

9) Intellectual Property

- a) You acknowledge Bermad's sole ownership of all present and future right, title and interest to any and all trademarks and trade names, copyright, homologations, product registrations, domain names, know-how, patents, and all applications relating to any of the foregoing, relating in any way to the Bermad trade name or products. You will not impair Bermad's right, title, or interest to any such intellectual property.
- b) You will not use the trade name "Bermad", and trademarks owned by Bermad, or any deceptively similar trademarks, in any manner or for any purpose except, to the extent permitted by Bermad to designate products purchased by you from Bermad.

10) Force Majeure

Bermad shall not be liable for any delay or failure in the performance of its obligations, when such delay or failure results in whole or in part from circumstances beyond its reasonable control or force majeure preventing or hindering performance, including without limitation, an Act of God, war, riot, fire, flood, industrial or labour disputes, bad weather, failure or delay on the part of sub-contractors, suppliers, carriers or affiliates of Bermad. Any such delay or failure shall

extend the time for performing such obligation to as many days beyond the respective performance date as required to obtain removal of such circumstance.

11) Notices

Notices under any this agreement shall be in writing and shall be deemed to have been duly given 5 business days after being mailed by prepaid registered air mail, or three days after being transmitted manually delivered, addressed to the addresses of Bermad and you, as stated in the Order Confirmation. Where notices are sent by email, they will be deemed to be received when an automated receipt notification is received by the sender, or upon acknowledgment by the recipient.

12) Assignment

You shall not assign the contract or any of your rights or obligations under these terms and conditions without the prior written consent of Bermad.

13) Jurisdiction and Dispute Settlement

These terms and conditions will be governed by and construed in accordance with the law of the State of Victoria, Australia. Any dispute or claim arising out of or relating with these terms and conditions shall be determined by the Courts of Victoria, Australia.

14) Entire Agreement and Amendment

These terms and conditions, together with the terms and conditions stated in the Order Confirmation, contain the entire agreement between the parties with respect to the subject matter hereof; and may not be amended other than by a written agreement signed by Bermad and you.

Date of last revision of document: 28th May 2024