

The following terms and conditions (also referred to as the “**agreement**”) shall apply to each agreement for the sale of Goods and/or the supply of Services:

## 1. Interpretations

For the purpose of this agreement and unless otherwise stated in writing.

- 1.1 “**Buyer**” shall mean Robway Safety Pty Ltd being the trustee for Andrew Powell Trust and Gavin Stiffle Trust ABN 99 568 505 482 and its respective successors and assigns.
- 1.2 “**Seller**” shall mean the Supplier named on any invoice, purchase order, or any other documentation produced in relation to this agreement, or any person acting on behalf of and with the authority of the Seller.
- 1.3 “**Price**” shall mean the cost of the Goods/Services as agreed between the Seller and the Buyer subject to clause 5 of this agreement.
- 1.4 “**Goods**” shall mean all Goods supplied by the Seller to the Buyer and/or ordered by the Buyer but not yet supplied and includes Goods described on any quotation, invoice, purchase order, or any other document including any recommendations and advice.
- 1.5 “**Services**” shall mean all services supplied by the Seller to the Buyer and includes installation, and any other services outlined on any quote, invoice, purchase order, or any other documentation produced in relation to this agreement including any recommendations and advice.
- 1.6 “**PPSA**” means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

## 2 Jurisdiction

- 2.1 This agreement shall be governed by and construed in accordance with the laws of the Courts of South Australia.
- 2.2 The Buyer submits to the jurisdiction of the Courts of South Australia.

## 3 Offer and Acceptance

- 3.1 These terms and conditions become binding upon acceptance and may thereafter only be altered or revoked with the written consent of the Buyer.
- 3.2 Any changes to the Seller’s details, including name, address, telephone, email, or any changes in ownership structure of the Seller requires written notice within ten (10) business days of such changes being made.
- 3.3 Goods/Services are supplied by the Seller only on the terms and conditions herein to the exclusion of any document or documents issued by the Seller to the contrary even where such document or documents are expressed in terms that purport to override these terms of conditions of trade.

## 4 Price

- 4.1 The Buyer agrees to pay the Seller the price of the Goods/Services within the agreed time for payment.
- 4.2 The Price will be determined by the Seller’s quotation, or indicated on invoices, purchase order forms, or any other documentation as provided by the Seller to the Buyer.
- 4.3 The Seller’s quoted price will be binding on the Seller for a period of thirty (30) days after the date of the quotation.
- 4.4 Any variation from the original agreed works or specifications may affect the price, and any variations of the price will be shown on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.5 GST and other taxes and duties that may be applicable shall be added to the price except when they are expressly included in the price.

## 5 Payment Terms

- 5.1 Unless otherwise agreed in writing, in the event that the Buyer has been granted a credit account, the Buyer agrees to pay all amounts in full by the due date shown on the invoice.
- 5.2 At the Seller’s sole discretion, a non-refundable deposit may be required before the supply of any Goods or Services.
- 5.3 Payment will be made by cash, direct deposit, or by any other method as agreed to between the Buyer and the Seller.

## 6 Delivery

- 6.1 The Buyer shall be responsible for making any necessary arrangements to take delivery of the Goods, including preparation, security, and access to the site.
- 6.2 Delivery of the Goods to any third party nominated by the Buyer, (including carriers), is deemed to be delivery to the Buyer for the purposes of this agreement.
- 6.3 Should the Seller, with or without notice, cancel and/or reschedule and/or make further appointments for the delivery of any Goods/Services, such circumstances shall not entitle either party to treat this contract as repudiated.
- 6.4 Should the Seller need to arrange carriage for the Goods, any additional costs incurred by the Seller, including insurance, shall be added to the Price and will be due and payable on the agreed date for payment.

## 7 Title

- 7.1 Ownership, Property, and Title in all Goods shall remain vested in the Seller until the Buyer has paid all monies owing to the Seller for all Goods and/or Services provided.
- 7.2 The Goods shall be kept separate and clearly identifiable as property of the Seller until property in the Goods has passed to the Buyer.
- 7.3 Until such time as property in the Goods passes to the Buyer, the Buyer shall hold the Goods as bailee for the Seller and shall hold any proceeds from the sale or

disposal of the Goods up to the amount owed to the Seller in a separate account for which separate records are kept.

- 7.4 The Seller may request in writing that the Buyer return the Goods or any part of them at any time until property in the Goods has passed to the Buyer.
- 7.5 Should the Buyer fail to return the Goods to the Seller upon such notice the Seller, without prejudice to any of its other rights and remedies under these terms and conditions, reserves the right of entry to the Buyer’s premises or any other premises where the Goods may be stored, by its servants or agents for the purpose of recovering or re-selling the Goods, and any cost incurred as a result of such action will be the responsibility of the Buyer.
- 7.6 If the Goods are attached, fixed or incorporated into any property of the Buyer, by way of any manufacturing or assembly process by the Buyer or any third party, title of the Goods shall remain with the Seller until the Buyer has made payment for all Goods and where those Goods are mixed with other property so as to be part of or constituent of any new Goods title to those new Goods shall be deemed to be assigned to the Seller as security for the full satisfaction by the Buyer for the full amount owing by the Buyer to the Seller.
- 7.7 In the event of non-payment or if payment of the Buyer’s account is overdue the Seller shall be entitled without prejudice to any right it has at law or in equity to enter the place where the Goods are stored whether at the Buyer’s premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.
- 7.8 The Seller may resell the Goods and apply the proceeds towards payment of the Buyer’s outstanding account with the Seller. Any shortfall will remain the liability of the Buyer. The Buyer indemnifies the Seller for all costs and expenses including legal costs as between solicitor and client which the Seller may incur in recovering the Goods and any monies owed to it.

## 8 Personal Property Securities Act (“PPSA”)

In consideration of the Seller supplying the Goods to the Buyer, at the request of the Buyer, the parties, by agreeing to these terms and conditions:

- 8.1. Grants to the Seller a purchase money security interest (“**PMSI**”) as defined by the PPSA in the Goods.
- 8.2. Agrees that any of the Goods or proceeds of the sale of the Goods coming into existence after the date of these terms and conditions will come into existence subject to the PMSI granted herein and the terms of these terms and conditions without the need for any further action or agreement by any party.
- 8.3. Acknowledges that the Buyer has received valuable consideration from the Seller and agrees that it is sufficient.
- 8.4. Agrees that the PMSI has attached to all Goods supplied now and in the future to the Buyer and that the attachment of the PMSI has in no way been deferred or postponed from the date recorded herein.
- 8.5. The Seller reserves the right to register a financing statement in respect of any Goods supplied by the Seller to the Buyer pursuant to these terms and conditions and in respect of which credit has been extended by the Seller to the Buyer. The costs of registering a financing statement or a financing change statement shall be paid by the Seller and may, where applicable, be debited against the Buyer’s account, with the Seller.
- 8.6. The Buyer does not waive their right to receive a copy of the verification statement confirming registration of a financing statement, or a financing change statement relating to the security interest under these terms and conditions.
- 8.7. The Buyer shall promptly, on request by the Seller, execute all documents and do anything else reasonably required by the Seller to ensure that the PMSI created by these terms and conditions constitutes a perfected security interest over all Goods supplied.
- 8.8. The Buyer shall not agree to allow any person to register a financing statement over any of the Goods supplied by the Seller without the prior written consent of the Seller and will immediately notify the Seller if the Buyer becomes aware of any person taking steps to register a financing statement in relation to such Goods.
- 8.9. The Buyer shall not allow the Goods to become accessions or commingled with other goods unless the Seller has first perfected any security interest that the Seller has in relation to the Goods.
- 8.10. If the Seller perfects any security interest that the Seller has in relation to the Goods, the Buyer shall not do anything that results in the Seller having less than the security or priority granted by the PPSA that the Seller has assumed at the time of that perfection.
- 8.11. The Buyer irrevocably grants to the Seller the right to enter upon the Buyer’s property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if the Seller has cause to exercise any of the Seller’s rights under the PPSA, and the Buyer shall indemnify the Seller from any claims made by any third party as a result of such exercise.

## 9 Notification of Defects

- 9.1 The Buyer shall inspect the Goods and or Services upon receipt and notify the Seller within seven (30) days of a failure to fulfil the quote. The Seller will be given access to any Goods within a reasonable time after delivery in order to inspect any alleged deficiencies in this regard.
- 9.2 Should the Buyer fail to give such notification, the Goods/Services will be deemed to be delivered in compliance with the quote but noting that nothing in this sub-clause is meant to override any protections which may be afforded to the Buyer due to the Australian Consumer Law or any other law.

## 10 Warranty

- 10.1 Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, we are entitled:
  - 10.1.1 to cancel your service contract with us; and
  - 10.1.2 to a refund for the unused portion, or to compensation for its reduced value.

10.1.3 We are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a Service does not amount to a major failure, we are entitled to have the failure rectified in a reasonable time. If this is not done, we are entitled to a refund for the Goods and to cancel the contract for the Service and obtain a refund of any unused portion. We are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

- 10.2 In addition to guarantees that cannot be excluded under any law, all Goods supplied are covered by a standard eighteen (18) month warranty against defects from the date of dispatch or twelve (12) months from installation, whichever occurs sooner, but subject to the conditions of warranty as specified in clause 11 herein.
- 10.3 A return of goods under warranty will comply with our goods return procedure in effect at the time, current procedures are as outlined in clause 12.2.
- 10.4 Where the Seller has agreed in writing that the Buyer is entitled to claim under warranty for a defect in the Goods which is not a major failure, and the Buyer has not rejected the Goods under the Australian Consumer Law, the Seller's liability is limited to (at the Seller's discretion), repairing the Goods, replacing the Goods, or refunding the purchase price.
- 10.5 In addition to the warranty against defects outlined herein, any repaired component of any system is covered by an additional three (3) month warranty in accordance with this clause 10 and clauses 11-12.
- 10.6 The Buyer warrants that the Buyer is aware that a repair of goods which contain data may result in loss of the data.

## **11 Conditions of Warranty**

- 11.1 The Seller's standard warranty, outlined in clause 10.2, and additional three (3) month warranty will not be applicable in a situation where:
- 11.1.1 The Buyer has outstanding invoices for monies payable to the Seller in respect of the Goods/Services.
- 11.1.2 The Buyer has failed to follow instructions supplied by the Seller in relation to proper installation and use of the Goods or Services.
- 11.1.3 The Goods or Services have been used in a manner other than their original intended use.
- 11.1.4 The Buyer fails to maintain the Goods in a condition fit for their intended purpose.
- 11.1.5 The Goods continue to be used after any fault or defect has become known to the Buyer or would have become known to a reasonable person.
- 11.1.6 The defect or fault has occurred from reasonable wear and tear in use.
- 11.1.7 The defect or fault has occurred as a result of circumstances beyond the control of either the Buyer or the Seller.
- 11.2 The Seller accepts no responsibility for loss or damage to the Buyer, financial or otherwise, arising from a delay in the time taken for the Seller to replace or repair any Goods covered by the abovementioned warranties.
- 11.3 The abovementioned warranties will become void if any maintenance or alteration is made to the Goods without the Seller's knowledge and consent.

## **12 Non-Warranty Related Return of Goods**

- 12.1 The Buyer may only return Goods for non-warranty related reasons in accordance with the Buyer's goods return procedures in effect at the time. The Buyer's current procedures are as outlined in clause 12.2.
- 12.2 The current goods return procedure is as follows:
- 12.2.1. The Buyer will advise the Seller in writing, and among any other relevant details, will specify why the goods are sought to be returned and whether the return is a warranty related return or a non-warranty related return.
- 12.2.2. The returnable goods will be wrapped in suitable protective packaging to prevent damage in transit and should include the original (or equivalent) packaging.
- 12.2.3. The Buyer bears the risk of loss or damage in transit; and
- 12.2.4. Unless otherwise prohibited by law, all costs to return a product to the Seller's authorised location is at the Buyer's expense. For the avoidance of doubt, non-warranty related returns will be at the Buyer's expense in all things.

## **13 Buyer's Disclaimer**

- 13.1 The Buyer acknowledges that the Buyer buys the Goods/Services relying solely upon the Buyer's own skill and judgement and has not relied on any representation made by the Seller beyond those made in these terms and conditions.

## **14 Intellectual Property**

- 14.1 Where any designs or specifications have been supplied by the Buyer for manufacture by the Seller, the Buyer warrants that the use of those designs or specifications for the manufacture, assembly or supply of the Goods/Services shall not infringe the rights of any third party and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 14.2 Where the Seller produces any design, pattern, or specification during the supply of Goods/Services, intellectual property in them remains with the Buyer, and may only be reproduced or copied with the written consent of the Buyer. The Seller warrants that the use of those designs or specifications for the manufacture,

assembly or supply of the Goods/Services shall not infringe the rights of any third party and the Seller agrees to indemnify the Buyer against any action taken by a third party against the Buyer in respect of any such infringement.

## **15 Default**

- 15.1 The Buyer hereby agrees that if it should:
- 15.1.1 As an individual, commit an act of bankruptcy; or
- 15.1.2 As a company, pass a resolution for winding up or have a summons to wind up served upon it; or
- 15.1.3 Become subject to any form of external administration; or
- 15.1.4 Enter into an arrangement regarding outstanding payment with any of its creditors; or
- 15.1.5 Allow any invoice to remain in arrears beyond the agreed payment period, all monies currently owed to the Seller shall become due and payable immediately, and the Seller reserves the right to terminate the supply of Goods and Services to the Buyer.
- 15.2 Should the Buyer fail to pay any invoice when due, the Buyer will be responsible for any additional costs associated with recovery of the outstanding amounts, including but not limited to the cost of a solicitor, and any cost incurred by the Seller's nominated collection agency.
- 15.3 The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

## **16 Unpaid Sellers' Rights**

- 16.1 If payment has not been received by the Seller when due, and the Seller has made a verbal or written demand for payment, and the Goods are in possession or control of the Seller, the Seller reserves the right to dispose of the Goods and claim from the Buyer any loss arising as a result of such disposal.
- 16.2 At the sole discretion of the Seller, storage costs may be incurred for any Goods which remain uncollected at the Seller's premises, for a period of more than seven (30) days after the agreed date for collection.
- 16.3 Where the Buyer has left any item with the Seller for repair, modification or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- 16.3.1 A lien on the item.
- 16.3.2 The right to retain the item for the price while the Seller is in possession of the item; and
- 16.3.3 A right to sell the item.
- The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.

## **17 Risk**

- 17.1 Notwithstanding retention of title as specified in this agreement, all risk passes to the Buyer upon delivery.

## **18 Force Majeure**

- 18.1 If circumstances beyond the Buyer's or Seller's control prevent or hinder its provision of the Goods or Services, the Seller is free from any obligation to provide the Goods or Services while those circumstances continue. The Buyer or Seller may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- 18.2 Circumstances beyond either party's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.
- 18.3 Neither party shall be liable for any loss or damage whatsoever arising from the application of this clause.

## **19 Limitation of Liability**

- 19.1 Neither party will be responsible for consequential losses, howsoever arising.
- 19.2 The Seller accepts no liability for Goods manufactured based on any specifications supplied by the Buyer which are subsequently found to be incorrect, and the Buyer shall be responsible for any additional costs associated with the alteration of such Goods.

## **20 Privacy Act 1988**

- 20.1 The parties agree that any personal information provided may be used and retained by the recipient for the following purposes and for other purposes as agreed to between the Buyer and Seller or required by law from time to time:
- 20.1.1 Provision of Goods/Services
- 20.1.2 Providing instruction to subcontractors
- 20.1.3 Marketing of Goods/Services by the parties, their agents, distributors, or contractors.
- 20.1.4 Assessing the credit worthiness of the Buyer in relation to extending credit.
- 20.1.5 Exchanging of information with a credit reporting agency or trade reference named by the Buyer.
- 20.1.6 Processing of any payment instructions, direct debit facilities and/or credit facilities requested by buyer.
- 20.1.7 Collection of amounts outstanding in the Buyer's account by the Seller's nominated Collection agent or solicitor.

**21 Government Approvals**

The Seller is responsible, at their own cost, for arranging all licences, government consents, and approvals which may be required for the performance of any works under this agreement.

**22 Competition and Consumer Act and Fair-Trading Act**

The Seller's warranty contained in this agreement in clause 10 is in addition to any rights and remedies the Buyer may have under any statute and in particular under the *Competition and Consumer Act 2010* (Cth) and the *Fair-Trading Act 1987* (SA).

**23 General**

If any Terms or Conditions contained in this document are found to be unenforceable for reasons of invalidity or illegality, the remaining provisions shall not be affected in any way whatsoever.

- 23.1 The Buyer assumes no responsibility for changes in the laws of South Australia, or the Commonwealth of Australia which may affect the supply of Goods/Services under this agreement.
- 23.2 The Seller may only sub-contract part or all of its obligations under this agreement with the Buyer's express consent.
- 23.3 If any Terms or Conditions contained in this document are found to be unenforceable for reasons of invalidity or illegality, the reprovisions shall not be affected in any way whatsoever.