

Acetek Trading Terms and Conditions

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Provisions

1. Definitions

- 1.1 “Acetek” means Acetek Systems Pty Ltd ACN 085 186 278, its successors and assigns or any person acting on behalf of and with the authority of Text Pty Ltd.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Acetek to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ must be interchangeable for the other).
- 1.4 “GST” means Goods and Services Tax imposed under the A New Tax System (Goods) and Services Tax) Act 1999 (Cth).
- 1.5 “Guarantor” means that person (or persons) or entity who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.6 “Intellectual Property” means patent rights, copyright, trade marks, trade secret rights, whether registered or not and other intellectual property rights recognised by the law of each applicable jurisdiction.
- 1.7 “Price” means the Price payable for the Goods as agreed between Company and the Customer in accordance with clause 4 below.
- 1.8 “Warranty Card” means the Warranty Card provide by Company to the Customer, if any.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Acetek’s consent in writing and must prevail to the extent of any inconsistency with any other document or agreement between the Customer and Acetek.
- 2.3 The Customer acknowledges and accepts that Acetek at its discretion, reserves the right not to supply Good, for any reason (including but not limited to, where the Goods are not or cease to be available, account disputes or conditions placed on Acetek’s by its suppliers). Acetek will not be liable to the Customer for any loss or damage the Customer suffers due to Acetek exercising its rights under this clause.
- 2.4 Where there is more than one Customer that has entered into the Terms and Conditions, the Customers must be jointly and severally liable for all payments.
- 2.5 The Goods are as described on the invoices, quotations, work authorisation or any other work commenced or performed as provided by Acetek to the Customer.

3. Change in Control

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

4. Price and Payment

- 4.1 The Price will be Acetek's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 4.2 Acetek reserves the right to change the Price if a variation to Acetek's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to hidden or unidentifiable, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, inaccurate measurements provided by the Customer or as a result of increases to Acetek in the cost of materials and labour) will be charged for on the basis of Acetek's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At Acetek's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods is of the essence, the Price will be payable by the Customer on the date/s determined by Acetek, which may be:
- (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (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 given to the Customer by Acetek.
- 4.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Acetek.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Acetek an amount equal to any GST Acetek must pay for any supply by Acetek under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer 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.
- 4.7 Acetek may withhold delivery of the Goods until the Customer has paid for them, in which event payment must be made before the delivery date.

5. Delivery of Goods

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at Company ‘s address; or
 - (b) Acetek (or Acetek’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 5.2 At Acetek’s sole discretion the cost of delivery of Goods must be either included in the Price being Ex Works (pickup from Acetek’s premises) or must be in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Acetek must be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Acetek may deliver the Goods in separate instalments. Each separate instalment will be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Acetek to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Acetek will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 5.6 The failure of Acetek to deliver will not entitle either party to treat this Contract as repudiated.
- 5.7 Backorders will be shipped as soon as they are available.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer 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 Customer, Acetek is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Acetek is sufficient evidence of Acetek’s rights to receive the insurance proceeds without the need for any person dealing with Acetek to make further enquiries.
- 6.3 If the Customer requests Acetek to leave Goods outside Acetek’s premises for collection or to deliver the Goods to an unattended location then such Goods must be left at the Customer’s sole risk.

7. Title

- 7.1 Acetek and the Customer agree that ownership of the Goods must not pass until:
- (a) the Customer has paid Acetek all amounts owing to Acetek; and
 - (b) the Customer has met all of its other obligations to Acetek.
- 7.2 Receipt by Acetek of any form of payment other than cash must not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

7.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to Acetek on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Acetek and must pay to Acetek the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Acetek and must pay or deliver the proceeds to Acetek on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Acetek must sell, dispose of or return the resulting product to Acetek as it so directs.
- (e) the Customer irrevocably authorises Acetek enter any premises where Acetek believes the Goods are kept and recover possession of the Goods.
- (f) Acetek may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer must 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 Acetek.
- (h) Acetek may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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 Customer 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 Acetek to the Customer.
- 8.3 The Customer 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 Company 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, Acetek 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 Acetek;
 - (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 Acetek;
 - (e) immediately advise Acetek 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 Acetek and the Customer 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 Customer 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 Customer 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 Acetek, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by Acetek 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 the PPSA.

9. Security and Charge

- 9.1 In consideration of Acetek agreeing to supply the Goods, the Customer and the Guarantor 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 Customer and/or Guarantor either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer and the Guarantor indemnifies Acetek from and against all Acetek's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Acetek's rights under this clause.
- 9.3 The Customer and/or the Guarantor irrevocably appoints Acetek and each director of Acetek as the Customer'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 Customer's behalf.

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

- 10.1 To the extent that the Customer is a consumer, as that term is defined in the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 Cth (the Australian Consumer Law) Acetek's Goods come with guarantees that cannot be excluded under the Australian Consumer Law.
- 10.2 The Customer must inspect the Goods on delivery and must within fourteen (14) days of delivery notify Acetek in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Acetek to inspect the Goods.
- 10.3 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**).
- 10.4 Acetek acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.5 Except as expressly set out in these terms and conditions, or any Warranty Card provided by Acetek or in respect of the Non-Excluded Guarantees, Acetek makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Acetek's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.6 If the Customer is a consumer within the meaning of the CCA, Acetek's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.7 If Acetek is required to replace the Goods under this clause or the CCA, but is unable to do so, Acetek may refund any money the Customer has paid for the Goods.
- 10.8 If the Customer is not a consumer within the meaning of the CCA, Company's 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 Customer by Company in Acetek's sole discretion;
 - (b) limited to any warranty to which Acetek is entitled, if Acetek did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 10.9 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.2; and
 - (b) Acetek has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer'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.
- 10.10 Notwithstanding clauses 10.2 to 10.9 but subject to the CCA, Acetek must not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
- (b) the Customer using the Goods for any purpose other than that for which they were designed;
- (c) the Customer 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 Customer failing to follow any instructions or guidelines provided by Company ;
- (e) fair wear and tear, any accident, or act of God.
- 10.11 Acetek may in its absolute discretion accept non-defective Goods for return in which case Acetek may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 10.12 Notwithstanding anything contained in this clause if Acetek is required by a law to accept a return then Acetek will only accept a return on the conditions imposed by that law.

11. Default and Consequences of Default

- 11.1 Interest on overdue invoices must accrue daily from the date when payment becomes due, until the date of payment, at a rate of one percent (1%) per calendar month (and at Acetek's sole discretion such interest must compound monthly at such a rate) after as well as before any judgment.
- 11.2 If the Customer owes Acetek any money the Customer must indemnify Acetek from and against all costs and disbursements incurred by Acetek in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Acetek's collection agency costs, and bank dishonour fees).
- 11.3 Without prejudice to any other remedies Acetek may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Acetek may suspend or terminate the supply of Goods to the Customer. Acetek will not be liable to the Customer for any loss or damage the Customer suffers because Acetek has exercised its rights under this clause.
- 11.4 Without prejudice to Acetek's other remedies at law Acetek must be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Acetek must, whether or not due for payment, become immediately payable if:
- (a) any money payable to Acetek becomes overdue, or in Acetek's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer 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

- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. Cancellation

- 12.1 Acetek may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Acetek must repay to the Customer any money paid by the Customer for the Goods. Acetek must not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of Goods the Customer must be liable for any and all loss incurred (whether direct or indirect) by Acetek as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

13. Privacy Act 1988

- 13.1 The Customer agrees for Acetek to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Acetek.
- 13.2 The Customer agrees that Acetek may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

- 13.3 The Customer consents to Acetek being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 13.4 The Customer agrees that personal credit information provided may be used and retained by Acetek for the following purposes (and for other purposes as must be agreed between the Customer and Acetek or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Acetek, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or

- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 13.5 Acetek may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 13.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that Acetek is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Acetek, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100.00) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by Acetek has been paid or otherwise discharged.

14. General

- 14.1 The failure by Acetek to enforce any provision of these terms and conditions must not be treated as a waiver of that provision, nor must it affect Acetek's right to subsequently enforce that provision. If any provision of these terms and conditions must be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions must not be affected, prejudiced or impaired.
- 14.2 These terms and conditions and any contract to which they apply must be governed by the laws of the state in which Acetek has its principal place of business, and are subject to the jurisdiction of the Court of New South Wales.
- 14.3 Subject to clause 10 Acetek must be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the

Customer arising out of a breach by Acetek of these terms and conditions (alternatively Acetek's liability must be limited to damages which under no circumstances must exceed the Price of the Goods).

- 14.4 The Customer must not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Acetek nor to withhold payment of any invoice because part of that invoice is in dispute.
- 14.5 Acetek may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 14.6 The Customer agrees that Acetek may amend these terms and conditions at any time. If Acetek makes a change to these terms and conditions, then that change will take effect from the date on which Acetek notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Acetek to provide Goods to the Customer.
- 14.7 Neither party must 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.
- 14.8 The Customer 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.