

Tufftex, Terms and Conditions of Trade

1. **Definitions**
- 1.1 "Company" shall mean 3meg.com Pty Ltd (ACN 096 195 390) trading as Tufftex and its successors and assigns.
- 1.2 "Customer" shall mean the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees in the credit application from the Customer to the Company to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean goods and/or materials supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined).
- 1.6 "Price" shall mean the cost of the Goods and/or Services as agreed between the Company and the Customer subject to clause 4 of this contract.
2. **Acceptance**
- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of a director of the Company.
- 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements unless expressed by the Company in writing, nor is the Company bound by any such unauthorised statements.
- 2.5 The Customer undertakes to give the Company not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).
3. **Goods**
- The Goods are described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Company to the Customer.
4. **Price**
- 4.1 At the Company's sole discretion;
 - (a) the Price shall be as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (b) the Price of the Goods shall be (subject to clause 4.2) the Company's estimated Price which shall be binding upon the Company provided that the Customer shall accept in writing the Company's estimation within fourteen (14) days; or
 - (c) Whilst all Prices quoted are accurate at the time of delivery of a quotation the most recent valid Price for the Goods or Services shall prevail. Any subsequent change in Price will be notified by the Company to the Customer as soon as is reasonably practicable and in any event the Price shall be the Company's Price as at the date of despatch.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Company'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 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.
5. **Payment**
- 5.1 At the Company's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.

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- 5.2 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 5.3 The Company may withhold delivery of the Goods until the Customer has paid for them, in which event payment shall be made before the delivery date.
- 5.4 At the Company's sole discretion, payment for approved Customers shall be made by instalments in accordance with the Company's delivery/payment schedule.
- 5.5 At the Company's sole discretion, for certain approved Customer's payment will be due thirty (30) days following end of month.
6. **Delivery/Risk**
- 6.1 If the Company retains property in the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 Delivery of the Goods shall be made at the address advised by the Customer in the Perth metropolitan area. Outside of the Perth metropolitan area by agreement.
- 6.3 Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery, or if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 6.4 In the event that the Customer fails to take delivery of the Goods when tendered, the Customer is liable for any costs incurred after the date of delivery (including, but not limited to storage costs, additional transportation costs that exceed those costs contemplated by the agreement between the parties, increased costs of freight and insurance rates not contemplated in the quotation).
- 6.5 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Customer, is deemed to be a delivery of the Goods to the Customer.
- 6.6 The costs of carriage and any insurance which the Customer reasonably directs the Company to incur shall be reimbursed by the Customer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 6.7 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 6.8 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.9 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 6.10 The Company shall not be liable for any loss or damage whatsoever due to the failure by the Company to deliver the Goods (or any of them) promptly or at all.
7. **Customer's Disclaimer**
- 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer of the Goods which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
- 7.2 Where the Company provides Services to the Customer relating to testing, process development, Goods selection, design, detail, contract supervision and contract management, the Company shall exercise its best skill, competence and experience to undertake such services but except as otherwise provided by State and Federal law makes no warranty with respect to such Services.
8. **Defects/Returns**
- 8.1 The Customer shall inspect the Goods on delivery and shall within twenty-eight (28) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply

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with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

- 8.2 For Goods which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Customer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Customer's cost within twenty-eight (28) days of the delivery date;
 - (c) the Company will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.

- 8.3 The Company may (in its discretion) accept the Goods for credit but this may incur a handling fee of 25% of the value of the returned Goods plus any freight costs associated with the return of the Goods.

9. **Warranty**

- 9.1 The Company gives no warranty other than that contained herein, in connection with the sale or use of its Goods or Services. The Company's liability on its warranty shall in no event exceed the contract order value in correcting defects in the Goods and/or the Services supplied.

- 9.2 No warranty is expressed or implied as to fitness or purpose, or operating performance of the Goods where such performance is conditional on empirical factors or on the whole installation or on the individual or overall operation or on the skills of an operator. When suitability, performance, size, number or capacity of the Goods (and if applicable, ancillary attachments whether supplied by the Company or not) is recommended, quoted or selected by the Company to perform a duty either specified by the Customer or estimated by the Company, such recommendation, quotation, or selection shall be based on the Company's best experience, but liability for failure to perform the specified or estimated duty will not be accepted by the Company.

- 9.3 Subject to the conditions of warranty set out in Clause 9.4 the Company warrants that if any defect in any workmanship manufactured by the Company becomes apparent and is reported to the Company in writing within twelve (12) months of the date of delivery (time being of the essence), or in the case of repaired or replaced Goods, within three (3) months from the date of delivery (time being of the essence), then the Company will either (at the Company's sole discretion) repair or replace the defected Goods.

- 9.4 The conditions applicable to the warranty given by Clause 9.3 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) Failure on the part of the Customer to properly install or maintain any Goods; or
 - (ii) Failure on the part of the Customer to follow any instructions or guidelines provided by the Company; or
 - (iii) Any use of any Goods otherwise than for the original intended application for which the Goods has been specifically designed, including modifications to the Goods or changes in operation which have not been specifically approved by the Company in writing; or
 - (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) Ingress of damp or extraneous material; or
 - (vi) Fair wear and tear, any accident, or act of God.
- (b) The warranty shall cease and the Company shall thereafter, in no circumstances be liable under the terms of the warranty if the Goods are repaired, altered or overhauled without the Company's approval in writing.
- (c) The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.

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- (d) Any defective part replaced will become the Company's property and the repaired or new part will be delivered to the Customer's site by means selected by the Company.
 - (e) In respect of all claims the Company shall not be liable to compensate the Customer for any delay in either replacing or repairing the Goods or in properly assessing the Customer's claim.
 - (f) Where the Company elects to replace faulty parts, this warranty covers the supply of the replacement parts only and does not cover the change over costs of replacement parts.
 - (g) The Company does not provide any warranty with regard to any Customer specified or supplied Goods or materials unless specifically approved in writing and will endeavour to have the supplier provide any warranties on these Goods direct to the Customer.
- 9.5 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 9.6 In the case of second hand Goods, the Customer acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
10. **Australian Consumer Law**
- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law except to the extent permitted by that Act where applicable.
11. **Intellectual Property**
- 11.1 Where the Company has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 11.2 The Customer warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order.
- 11.3 All catalogues, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.
12. **Default & Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 12% per annum.
- 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on an indemnity basis and in addition all of the Company's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 12.4 In the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (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

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- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; then without prejudice to the Company's other remedies at law:

Then:

- (i) the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

13. Title

13.1 It is the intention of the Company and agreed by the Customer that property in the Goods shall not pass until:

- (a) The Customer has paid all amounts owing for the particular Goods; and
- (b) The Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer, and that the Goods shall be kept separate until the Company shall have received payment and all other obligations of the Customer are met.

13.2 It is further agreed that:

- (a) Until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.
- (c) The Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company.
- (d) The Customer shall not deal with the money of the Company in any way which may be adverse to the Company.
- (e) Receipt by the Company 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 the Company's ownership of rights in respect of the Goods shall continue.
- (f) The Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company.
- (g) The Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.
- (i) Until such time the Customer has the Company's authority to convert the Goods into other products and if the Goods are so converted, the parties agree that the Company will be the owner of the end products.

14. Security and Charge

14.1 Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be

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entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

- (b) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on an indemnity basis.
- (c) To give effect to the provisions of clause 14.1 (a) and (b) inclusive hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

15. **Cancellation**

- 15.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 At the Company's sole discretion the Customer may cancel delivery of Goods and/or Services. In the event that the Customer cancels delivery of Goods and/or Services the Customer shall be liable for any costs incurred by the Company up to the time of cancellation.

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

- 16.1 The security interests created by this agreement attach to the Goods in accordance with the PPSA and the parties confirm that they have not agreed that any security interest granted by this agreement attaches at any later time.
- 16.2 This agreement shall be a security agreement for the purposes of the PPSA.
- 16.3 The Customer agrees to do anything the Company asks the Customer to do to ensure the security interest granted under this agreement is perfected.
- 16.4 The Company may register this agreement as a security agreement or a notice in respect of it at your expense.
- 16.5 The Customer will be responsible for all of the Company's costs in preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPSA).
- 16.6 The Customer shall not:
 - a. Allow the Goods or the Customer's business to move outside Australia;
 - b. Change its name without notifying the Company;
 - c. Change any ownership or alter the Customer's registered particulars without notifying the Company; or
 - d. Grant any other security interest over the Goods.
- 16.7 If the Customer makes new Goods or other Goods from or with the Goods, which have not been paid for, these new supplied Goods are Goods for the purposes of this agreement
- 16.8 The parties agree not to disclose information of the kind mentioned in Section 275(i) of the PPSA and except in the limited circumstances described in Section 275(7) and neither party will authorise the disclosure of such information.

17. **Privacy Act 1988**

- 17.1 The Customer and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Company.
- 17.2 The Customer and/or the Guarantor/s agree that the Company may exchange information about Customer and Guarantor/s with those credit providers named in the Application for

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Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Customer;
 - (b) To notify other credit providers of a default by the Customer;
 - (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
 - (d) To assess the credit worthiness of Customer and/or Guarantor/s.
- 17.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 19K (1)(h) Privacy Act 1988).
- 17.4 The Customer agrees that Personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Customer and Company or required by law from time to time:
- (a) provision of Services & Goods;
 - (b) marketing of Services and/or Goods by the Company, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services/Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
 - (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 Services and Goods.
- 17.5 The Company 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; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

18. **Unpaid Company's Rights To Dispose Of Goods**

18.1 In the event that:

- (a) the Company retains possession or control of the Goods; and
- (b) payment of the Price is due to the Company; and
- (c) the Company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
- (d) the Company has not received the Price of the Goods,

then, whether the property in the Goods has passed to the Customer or has remained with the Company, the Company may dispose of the Goods and may claim from the Customer the loss to the Company on such disposal.

19. **Lien & Stoppage in Transit**

19.1 Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:

- (a) a lien on the Goods;
- (b) the right to retain them for the price while the Company is in possession of them;
- (c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale,
- (e) the foregoing right of disposal

provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.

20. **Limitation of Liability**

20.1 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

20.2 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Services.

20.3 Under no circumstances shall the Company have any liability whatsoever for:

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- (a) Losses, costs, expenses, liabilities and damages (including loss of profits, all liabilities of the Customer to third persons, and all other consequential damages), whether direct or indirect, and whether or not resulting from, or contributed to, by the default or negligence of the Company, its agents, employees and sub-contractors, which might be claimed as the result of the use or failure of the Goods sold, or the Services supplied; or
 - (b) Site erection or re-installation costs as a result of rectifications to Goods under a supply only sale; or
 - (c) Any descriptions, illustrations, specifications, figures as to performance, drawings, and particulars of weights and dimensions submitted by the Company, or contained in the Company's catalogues, price lists or elsewhere, since they are merely intended to represent a general idea of the Goods, and not to form part of the Contract or be treated as representations; or
 - (d) Any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made.
- 20.4 In the absence of specific detailed design criteria and specifications supplied in writing from the Customer, the Company will design in accordance with the relevant Australian standards and codes.
21. **General**
- 21.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 All Goods supplied by the Company are subject to the laws of Western Australia and the Company takes no responsibility for changes in the law which affect the Goods supplied.
- 21.3 The Customer shall not set off against the Price amounts due from the Company.
- 21.4 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.5 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.
- 21.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.7 The headings in the Contract are for reference only and shall not affect the interpretation hereof.
- 21.8 Any notice to be given under the Contract shall be in writing and sent by facsimile transmission, email transmission or forwarded by regular post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the facsimile transmission or email transmission or on two business days following that on which the notice was posted.