

Podzapart Pty Ltd (ABN 64 606 292 791)

TERMS and CONDITIONS

These Terms and Conditions will prevail and take precedence over any terms and conditions provided by the Customer, and the Customer's terms and conditions will have no legal effect and will not constitute part of these Terms and Conditions, even if Podzapart Pty Ltd (PODZ) accepts or fulfils the Customer's Order.

1. Definitions and Interpretation

(a) In these Terms and Conditions:

PODZ means Podzapart Pty Ltd (ABN 64 606 292 791) trading as Black Crow Designs (BCD).

Customer means the party to whom a Quote is provided by PODZ or by whom an Order is placed with PODZ.

Delivery means delivery or acceptance of the Goods or the provision of the Services or part thereof pursuant to an Order.

Deposit means a deposit of 30% of the Price, payable upon the placement of the Order of any Goods.

Goods mean the materials, equipment, and/or goods supplied by PODZ pursuant to an Order.

GST means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* and *A New Tax System (Goods and Services Tax) Transition Act 1999* and related tax imposition Acts of the Commonwealth of Australia.

Order means any order placed by the Customer and accepted by PODZ for the Goods and/or Services to be supplied by PODZ, whether in writing or orally.

Price means the cost of the Goods and/or Services as set out in the Quote.

Quote means any quotation issued by PODZ to the Customer for Goods and/or Services.

Services mean the services provided or to be provided to a Customer pursuant to an Order.

Site means the location where the Services are to be performed or the location where the Goods are to be delivered, as nominated by the Customer.

Special Conditions mean any special conditions specified in the Quote.

Specifications mean the drawings, scope of work and/or description of the Goods and/or Services as stated in writing by the Customer to PODZ or developed by PODZ on behalf of the Customer in response to Customer instructions and/or directions either written or orally and accepted and confirmed in the Special Conditions.

T&Cs means these terms and conditions as varied in accordance with clause 21 from time to time.

(b) In these T&Cs, unless the context requires otherwise:

- (i) any reference to a party includes its successors and permitted assigns; headings are for convenience only and have no legal effect.
- (ii) a reference to a day means any calendar day and includes Saturdays, Sundays and Public Holidays in Western Australia.
- (iii) the singular includes the plural and vice versa; and
- (iv) "including" and similar words do not imply any limitation.

2. Quote and Order

- (a) Quotes are valid for a period of 7 days.
- (b) Quotes may be amended or withdrawn by PODZ at any time before the issue of an Order.
- (c) Quotes indicating supply Goods ex-stock are subject to availability of Goods and Delivery may be delayed if Goods are no longer available at the date of the Order.

- (d) Where any Special Condition is in conflict with these T&Cs, the Special Conditions will prevail.
- (e) Orders are deemed to incorporate these T&Cs and any Special Conditions, notwithstanding any inconsistencies which may appear in the Customer's Order or documentation and which will have no legal effect.
- (f) PODZ will provide written confirmation of the Customer's Order and such Orders are final.
- (g) PODZ will provide a tax invoice upon Delivery.

3. Price

- (a) The Price is in Australian dollars and does not include delivery of the Goods to the Site or GST, unless otherwise stated in the Quote.
- (b) The Price is "Ex Works" including standard packaging for shipment. Where special packaging is required this must be set out in the Specifications and an additional charge will be made to cover all additional expenses.
- (c) PODZ reserves the right to increase the Price if during fulfilment of the Order and before Delivery unforeseeable costs are incurred, including by fluctuations in currency exchange of more than 2%. Such price increases will be advised as soon as possible and will be passed on with no additional mark-up.

4. Deposit

- (a) Where PODZ accepts an Order for:
 - (i) non-stocked/capital Goods on behalf of a Customer; or
 - (ii) Goods to be shipped from an overseas supplier, the Customer must pay the Deposit upon placement and before acceptance by PODZ of the Order.
- (b) The Deposit will be deducted from the final payment due to PODZ for the Goods.

5. Payment

- (a) Subject always to clause 4, unless the Customer has an approved 30 day credit account with PODZ, payment is due upon Delivery.
- (b) PODZ accepts payment by electronic funds transfer only unless prior arrangements have been made.
- (c) If payment is not made within the agreed terms, interest on any unpaid balance from time to time outstanding will accrue from the due date until paid in full at a rate of 12% per annum, without prejudice to PODZ's other rights in respect of late or non-payment.

6. GST

If GST is imposed on any supply made under or in accordance with these T&Cs, the customer must pay to PODZ an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount must be made at the same time as payment for the Goods or Services the subject of the taxable supply is required to be made in accordance with these T&Cs; or

7. Cancellations and Variations to Orders

- (a) Orders accepted by PODZ cannot be cancelled by the Customer under any circumstances without PODZ's prior written consent and only then upon terms which will indemnify PODZ against all loss.
- (b) Variations to Orders are not permitted without ASIA's prior written consent and may result in a variation to the Price and Delivery.
- (c) Other than in accordance with clause 11(c), neither all nor any part of an Order may be returned to PODZ without prior written agreement of PODZ.

8. Title & Risk of Loss

- (a) Title to the Goods and any materials used in the supply of Services will pass to the Customer only upon receipt by PODZ of full payment for the Goods in clear funds.
- (b) Subject to clause 9(d), the risk of loss or damage to the Goods passes to the Customer on the date and at the time that:

- (iii) the Goods are collected from PODZ by the Customer or its agent; or
 - (iv) where PODZ is responsible for the delivery, the Goods are delivered to the Site.
- (c) PODZ reserves the right to inspect, recover or repossess the Goods at any time before the title has transferred.
- (d) By placing an Order, the Customer releases and indemnifies PODZ against any costs incurred in enforcing its rights under this clause 8, including freight, storage, debt collection and legal costs on an indemnity basis.
- (e) In the event of a dispute, the Customer agrees that PODZ may enter upon any premises under the Customer's control for the purposes of recovering any Goods for which it has title and, in entering such premises, the Customer agrees that PODZ and its authorised representatives will not be trespassers and indemnifies PODZ against any such claims.

9. Delivery

- (a) The Delivery will constitute acceptance of all Goods, and PODZ will not be liable for any claim by the Customer for any cost, loss, damage, expense, or short delivery unless PODZ is notified in writing within 48 hours of Delivery.
- (b) Unless otherwise agreed in writing, PODZ accepts no responsibility or duty to deliver the Goods but may agree to deliver Goods at its absolute discretion without liability and at the Customer's cost.
- (c) PODZ reserves the rights to Deliver the Goods by instalments and partial deliveries must be accepted by the Customer where this reasonable for the Customer to do so and the Customer agrees to pay such part of the Price as may be applicable to the Goods then delivered.
- (d) Any delivery times notified to the Customer are indicative only and not binding on PODZ. If the Customer requests PODZ to postpone delivery of the Goods beyond the delivery date or dates specified in the Order, PODZ may agree to do for an additional administrative fee for such postponement and with any costs incurred by PODZ being immediately due and payable by the Customer.
- (e) If PODZ does not receive delivery instructions sufficient to enable PODZ to dispatch the Goods within 7 days of the Customer being notified that the Goods are ready for Delivery, the Customer will from the 8th day after notification:
- (i) be deemed to have taken delivery of the Goods;
 - (ii) be liable for storage charges, payable monthly on demand; and
 - (iii) assume risk in the Goods.
- (f) By placing an Order, the Customer releases and indemnifies PODZ against any costs incurred in enforcing its rights under this clause 9, including freight, storage, debt collection and legal costs on an indemnity basis.
- (g) Unless agreed to the contrary in writing PODZ reserves the right to supply an alternative brand or substitute product without reference to the Customer.
- (h) PODZ reserves the right to suspend or discontinue the supply of Goods to the Customer in its absolute discretion without being obliged to give any reason for its actions.

10. Performance of Services on Site

- (a) Where the Services are to be performed on Site, the Customer takes full responsibility for the adequacy, stability and safety of all operations and methods necessary for the performance of the Services. Any losses suffered by PODZ associated with work stoppage by PODZ on the ground of the Customer's noncompliance with any health, safety and environment requirements will be the Customer's liability.
- (b) If PODZ is required to attend the Site, in addition to PODZ's fees for the Services, the Customer will be liable for payment of:
- (i) travel time at the agreed rate or as notified by PODZ;

- (ii) travel costs (including air fares, car hire, accommodation and meals) at cost plus 15%; and
 - (iii) any costs incurred by PODZ arising from a requirement to be inducted prior to entering the Site (including medical tests and accreditations).
- (c) The Customer agrees to allow PODZ, its employees, consultants and agents access to as much of the Site as is necessary for the purpose of performing the Services as assessed and as requested by PODZ in its absolute discretion.
- (d) PODZ will not be liable for any damage or destruction to property located on the Site except such damage or destruction that occurs due to PODZ's wilful misconduct, and the Customer releases and indemnifies PODZ from and against all claims of any kind in respect of such damage or destruction.
- (e) PODZ reserves the right to perform the Services in instalments and invoice separately for such instalments without regard to subsequent provision of Services.

11. Warranties

- (a) PODZ warrants that it will perform the Services with due skill and care.
- (b) For Goods manufactured or sold by PODZ, PODZ warrants that the Goods will be of a merchantable quality.
- (c) If any defect appears within:
- (i) 14 days from delivery of the Goods; or
 - (ii) 14 days from when the Services are performed,
- the Customer must promptly notify PODZ of the defect in writing and PODZ will, if such defects are agreed by PODZ, at PODZ's absolute discretion repair or replace the Goods or refund the relevant part of the Price of the Goods or Services.
- (d) The warranties in clause 11(c) will not apply to, and PODZ is not liable in respect of loss and damage arising from:
- (i) defects or damage resulting from normal wear and tear, negligence, wilful misconduct, improper use, abuse, neglect, improper installation repair or alteration (other than by PODZ), abnormal conditions of temperature dirt or corrosive matter, operation above rated capacities, electrical or other overload, unsuitable lubricants, dismantling or accident, or damage caused by unforeseen events;
 - (ii) use of the Goods beyond the parameters set in the Specifications;
 - (iii) use of the Goods contrary to instructions or advice given by PODZ; or
 - (iv) Goods which are modified, maintained or repaired by any person not authorised to do so by PODZ.
- (e) All other warranties are excluded by PODZ to the extent permitted by law.
- (f) The Customer hereby undertakes and warrants to pay all cost and expenses (including legal costs on an indemnity basis) incurred by PODZ and/or its agents incurred in accordance with these T&Cs in relation to any Order, Quote or as a result of the activities or meetings of the Customer, whether relating to any debt, possession of Goods or otherwise.

12. Representation

- (a) The Customer agrees that the Goods manufactured by PODZ or for which PODZ is the sole Australian distributor, will not be exhibited by any person, firm or company at any show, exhibition, or trade fair without prior written consent from PODZ. The Customer warrants that such Goods will not be misrepresented in any way to the detriment of PODZ.
- (b) The Customer is responsible for ensuring that the Goods and/or Services comply with any requirements of law or as required by any statutory authority and will not rely on PODZ's skill or judgement in relation to any particular purpose for which the Goods and/or Services are supplied other than as

specified in writing by the Customer to PODZ prior to acceptance of an Order.

13. Assignment and Subcontracting

- (a) The Customer may not assign its rights, duties and obligations under these T&Cs without PODZ's prior written consent.
- (b) PODZ may sub-contract the performance of any part of its obligations under these T&Cs to any third party or assign any of its rights or obligations under these T&Cs

14. Liability and Indemnity

- (a) Unless specified in the Quote or as set out in clause 11, PODZ is not liable:
 - (i) for any transport, installation, removal, labour or other costs;
 - (ii) for any loss or damage to the Goods in transit; or
 - (iii) to the Customer or any other party for any direct, indirect, consequential or inconsequential injury loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Goods and/or Services supplied by or on behalf of or in any arrangement with PODZ and whether or not due to the negligence of PODZ its servants or agents.
- (b) To the extent permitted by law, PODZ's total liability in connection with these T&Cs
 - (i) is limited at PODZ's option to one of the following:
 - (A) in the case of the supply of Goods: (1) replacement, repair or resupply of the Goods; or (2) the cost of replacing, repairing or resupplying the Goods;
 - (B) in the case of the supply of Services: (1) re-supply of the Services; or (2) the cost of supplying the Services again;
 - (ii) but in any case, such liability will not exceed the Price paid by the Customer under these T&Cs.

15. Termination

- (a) PODZ may terminate an Order immediately if the Customer:
 - (i) breaches any of its obligations under these T&Cs and it does not immediately remedy such breach within a reasonable time as requested by PODZ in writing; or
 - (ii) becomes insolvent, is wound up or a receiver or creditor is appointed over any part of the Customer's business.
- (b) Upon termination, the Customer will pay PODZ for all costs incurred under this agreement, including all costs associated with the termination, up to the date of termination.

16. Force Majeure

PODZ is not liable for failing to comply with these T&Cs as a result of events beyond PODZ's control (including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, blowouts, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery or industrial conditions or arising out of any other unexpected or exceptional cause, delays in transportation and dispositions or orders of governmental authority, but shall not include lack of funds nor economic hardship). If such events cause a delay in the supply of the Goods and/or Services, the Customer agrees to:

- (a) extend any timeframes specified in the Order to accommodate the delay;
- (b) pay PODZ any additional fees incurred by PODZ to complete the Services, as agreed between the parties; and
- (c) pay PODZ standby rates (at the agreed rate or in its absence as advised by PODZ) if PODZ personnel are retained on Site.

17. Confidentiality

The Customer will treat as confidential all information, data, drawings, pricing, specifications, samples and documentation supplied by PODZ relating to the Goods and/or Services and will not disclose them to any third party without the prior written consent of PODZ.

18. Ownership of Intellectual Property

- (a) All intellectual property created by PODZ relating to the Goods and/or Services is from the time of creation, owned by PODZ unless PODZ otherwise specifies in writing.
- (b) The Customer at all times indemnifies PODZ, its officers, employees and agents, from and against all loss, damage, costs and expenses (including legal costs) arising out of the infringement or alleged infringement of any intellectual property, because of the purchase, possession or use of the Goods or the outcomes of the Services.

19. Governing Law

These T&Cs are governed by, and construed in accordance with the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from these T&Cs.

20. Notices

All notices and consents relating to these T&Cs must be in writing.

21. General

- (a) These T&Cs contain the entire understanding between the parties concerning the Goods and/or Services and supersedes all prior communications.
- (b) These T&Cs may be amended from time to time by PODZ and provided to the Customer. Acceptance of such variation will be deemed after 14 days unless written objection to such variation is received from the Customer.
- (c) The failure of either party to enforce any provisions under these T&Cs will not waive the right of such party thereafter to enforce any such provisions.
- (d) If any term or provision of these T&Cs is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these T&Cs and the remaining terms and conditions will be unaffected.