

TERMS AND CONDITIONS OF SALE

(Version 1/07)

1 Definitions - the following terms have the following respective meanings:

"Approved Buyer" means a Buyer approved by TenCate Australia for payment within the Specified Period.

"Buyer" means the buyer specified in a Credit Application or an Order Confirmation.

"Credit Application" means a written application submitted by the Buyer to TenCate Australia to be an Approved Buyer.

"TenCate Australia" means TenCate Australia Pty Limited, its successors and assigns.

"Goods" means goods supplied by TenCate Australia to Buyer.

"Services" means services supplied by TenCate Australia to Buyer in connection with the sale of Goods, if any, including but not limited to advice.

"Order Confirmation" means a confirmation of an order submitted by a Buyer, setting out amongst other things the Goods ordered, the Price, the means of delivery and any delivery costs payable, the nominated delivery address and an estimated (non-binding) delivery date.

"Price" means the amount payable for the Goods as specified in the Order Confirmation

"Specified Period" if Buyer is an Approved Buyer, means the period specified in the Order Confirmation, or, if the Order Confirmation is silent, a period of 30 days from the date of TenCate Australia' statement.

2 Application - This document constitutes the whole agreement between TenCate Australia and Buyer and no other terms of sale, purchase order or other document will apply excepting those terms agreed in writing by TenCate Australia and those terms implied by statute, which cannot be excluded or modified.

3 Variation of these Terms and Conditions – These terms and conditions cannot be varied for orders accepted by TenCate Australia unless TenCate Australia agrees in writing. TenCate Australia may vary these terms and conditions at any time by notice to the Buyer, so that the varied terms and conditions apply to future orders accepted by TenCate Australia, but not orders already accepted

4 Orders and Order Confirmations – Upon receipt of an order from the Buyer TenCate Australia will provide the Buyer with an Order Confirmation. TenCate Australia shall not accept any order unless it has first received an Order Confirmation agreed by the Buyer. The Order Confirmation is deemed to be agreed by the Buyer if:

- (a) it is signed by the Buyer and returned to TenCate Australia or acknowledged in any other manner approved by TenCate Australia from time to time; or
- (b) if the Buyer does not object to its content within seven (7) days of receipt of the Order Confirmation.

5 Acceptance of Orders – An order is deemed to have been accepted by TenCate Australia only if it gives written notice to the Buyer or if it delivers the Goods, whichever is the earlier. If TenCate Australia accepts an order it will sell and the Buyer will purchase the Goods specified in the Order Confirmation subject to and on the terms and conditions contained in this agreement. .

6 Supply Subject to Availability – Until TenCate Australia accepts an order it shall have no obligation to supply the Goods and even if TenCate Australia accepts an order by notice, TenCate Australia's obligation to supply the Goods is subject to their availability. If TenCate Australia is unable to supply the Goods specified in the schedule, TenCate Australia shall refund any monies paid by Buyer and this shall be the sole and exclusive remedy of Buyer.

7 Delivery – The Buyer may take delivery from TenCate Australia' warehouse or, if so specified in the Order Confirmation, TenCate Australia will deliver the Goods to the kerbside as close to Buyer's nominated delivery address as practicable at the time of delivery or, if truck access is available, onto the nominated address, unless otherwise agreed.

The Buyer warrants that TenCate Australia or its carrier is entitled to deliver and deposit the Goods at kerbside or at the nominated address as aforesaid and the Buyer has obtained all permission from any local council or other authority necessary for Buyer to validly authorise the delivery of the Goods as aforesaid without breach of any laws or regulations. The Buyer will take all responsibility for delivery being effected in the aforesaid manner and will indemnify TenCate Australia against any liability to any third party arising from the same.

Delivery is deemed to have occurred when Buyer or its carrier or agent takes possession of Goods at TenCate Australia' warehouse, or when the Goods have been left at or near the nominated delivery address, as aforesaid, as the case may be or as otherwise agreed. The Buyer must pay TenCate Australia the delivery costs specified in the Order Confirmation.

8 Delivery Dates - All delivery dates quoted to the Buyer by TenCate Australia for the supply of Goods (including but not limited to any delivery date(s) specified in the Order Confirmation) are estimates given in good faith only and are not binding on TenCate Australia. TenCate Australia will not be liable for any delay or non-delivery.

9 Price and Payment – TenCate Australia may vary its prices from time to time as it deems fit. The Buyer agrees to pay the prices specified in the Order Confirmation or otherwise as agreed by TenCate Australia in writing.

The Buyer must pay the Price and all other monies payable to TenCate Australia in respect of an order in cash or by approved credit card or eftpos transaction immediately on delivery of the Goods, provided that if Buyer is an Approved Buyer, the Buyer must pay all monies payable within the Specified Period.

10 Payment Default - If the Buyer does not pay monies owing to TenCate Australia by the due date, without limiting TenCate Australia' other rights and remedies, TenCate Australia may exercise any or all of the following rights:

- (a) The Buyer must pay interest on the unpaid amount unpaid at the rate which is 2% above the rate quoted by TenCate Australia' bank on commercial overdrafts of \$100,000.00;
- (b) At the option of TenCate Australia, TenCate Australia may suspend the supply of any Goods (including other orders accepted by TenCate Australia) until such time as full payment is made by Buyer; and/or
- (c) TenCate Australia may require that the Buyer pays for Goods supplied by cash on delivery and may reduce, cancel or suspend any "credit limit" enjoyed by the Buyer.

11 Title and Risk – TenCate Australia remains owner of the Goods until all monies owing by Buyer (for the Goods, delivery costs or insurance and any Installation Services and on any other account) are paid in full. TenCate Australia may take possession of Goods if they are not paid for in full by the due date. Risk in the Goods will pass on delivery and Buyer will insure Goods for their full value.

12 Buyer to Notify TenCate Australia of Defective Product – The Buyer must inspect the Goods on delivery and notify TenCate Australia in writing within 7 days if it considers that Goods are defective or not as specified in the Order Confirmation.

13 Exclusion/Limitation of Liability – Other than terms implied by statute (such as the Trade Practices Act) which may not be excluded or modified, all terms other than those expressly contained in this document are excluded. This agreement does not purport to exclude or modify liability where such statutes do not permit.

To the extent permitted by law, TenCate Australia' liability for breach of this agreement, statutory implied terms and warranties, negligence and other torts is limited at its option to repair or replacement of the Goods, or payment of the cost of replacing the Goods or of obtaining similar Goods or, where Services are concerned, resupplying them or paying the cost of resupplying them. Without limiting the generality of this limitation, TenCate Australia will not be liable for loss of profit, lost cost savings, lost business opportunity or consequential or indirect loss

materials that make a difference

The Buyer agrees that TenCate Australia does not promise that repair facilities or spare supplies matching the Goods supplied will be available for the Goods. .

14 Information Supplied by TenCate Australia – The Buyer acknowledges and agrees that information, design or installation suggestions provided by TenCate Australia or its resellers (other than TenCate Australia' product specifications) to the Buyer or its contractors is general in nature and is given without detailed knowledge of the site at which the Goods are to be used or installed and without detailed knowledge of the proposed use of the Goods. If TenCate Australia provides any such information it is given in good faith but on the basis that the Buyer must not rely on it and must rely on its own, independent judgement or advice from experts engaged by the Buyer independently of TenCate Australia.

15 Proper Law - The proper law of these terms is that of New South Wales and the parties submit to the non-exclusive jurisdiction of the New South Wales courts.

16 Trusts - If the Buyer is a trustee it enters into this agreement in its own capacity and in its capacity as trustee of the relevant trust. The Buyer warrants that it has disclosed to TenCate Australia the existence of all trusts of which it is a trustee and that it is entitled to enter into this agreement under the relevant trust.

17 GST and Taxes – The Buyer must pay any and all taxes imposed on this agreement and the sale and purchase of Goods. All sums specified by TenCate Australia as consideration for a supply of goods or services under this agreement is specified exclusive of GST unless the contrary is clear and the amount of that consideration will be increased by an additional amount equal to the GST on that taxable supply. If an amount is payable as compensation or reimbursement for an expense, the consideration must be calculated after excluding any amount for which the supplier is entitled to an input tax credit as recipient of the item to which the expense loss or liability relates.
