

**The following terms shall be incorporated into each contract entered into between the Customer and ATHENA for the supply of Goods.**

## **1. PRICE**

1.1 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 ATHENA.

1.2 The price may be increased by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of ATHENA's acceptance of the Customer's order and the date of delivery.

1.3 In addition, the price may be increased by an amount necessary to take account of any costs incurred by ATHENA as a result of the method of payment used by the Customer, including, without limitation, any credit card transaction costs.

1.4 The Customer is bound to pay the price from the time that ATHENA accepts the Customer's order such acceptance to be in writing. Each accepted order shall, subject to clause 3.2, constitute a separate contract. A quotation does not give rise to a binding contract until the Customer places an order which is subsequently accepted by ATHENA.

1.5 Alterations to any price list shall be effective from the date specified by ATHENA at the time of giving notice to the Customer.

## **2. PAYMENT**

2.1 Payment is due by the 20th of the month following the date of delivery pursuant to clause 3 unless ATHENA has agreed otherwise in writing.

2.2 ATHENA may impose a credit limit at its discretion, and alter the credit limit without notice. Where the credit limit is exceeded, ATHENA reserves the right to refuse to supply Goods to the Customer.

2.3 The Customer may not withhold payment or make any deductions from or set off any amount against any Amount Owing without ATHENA's prior written consent.

## **3. DELIVERY**

3.1 Delivery shall be made at ATHENA's premises and shall take place at the time when the Goods are made available for despatch at ATHENA's premises. If at the Customer's request, ATHENA subsequently arranges transportation, storage or insurance of the Goods, ATHENA does this as the Customer's agent. The Customer shall indemnify ATHENA for any liability or cost incurred by ATHENA in providing this service, and shall pay ATHENA the amount of such liability or cost immediately

6.5 To the extent permitted by law, ATHENA accepts no liability for any Claim by the Customer or any other person, including without limitation any Claim relating to or arising from:

(a) any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise;

(b) any representations, warranties, conditions or agreement made by any agent or representative, or by the Customer, which are not expressly confirmed by ATHENA in writing, and the Customer agrees to indemnify ATHENA against any such Claim. In any event, ATHENA's liability under any Claim shall not exceed the price of the Goods.

6.6 The Customer agrees to indemnify ATHENA upon demand against any liability or cost incurred by ATHENA under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of any of its obligations pursuant to these standard terms and conditions.

6.7 Nothing in these standard terms and conditions of sale is intended to have the effect of contracting out of the provision of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these standard terms and conditions of sale are to be modified to the extent necessary to give effect to that intention.

## **7. DEFAULT**

7.1 If an Event or Default occurs:

(a) ATHENA may suspend or terminate any contract; and  
(b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen; and  
(c) ATHENA is entitled to recover from the Customer all costs that ATHENA may incur in attempting to collect the Amount Owing and other moneys owing by the Customer to ATHENA from time to time, whether in relation to any contract or on any other account whatsoever.

7.2 If the Customer does not pay the Amount Owing by the due date:

(a) ATHENA may charge the Customer a penalty of 1.5% per month calculated on a daily basis on the unpaid portion of the Amount Owing from due date until payment in full is received; and  
(b) any discounts may be disallowed.

## **8. PAYMENT VALIDITY**

8.1 The Customer acknowledges that ATHENA continues to supply the Customer on condition that all payments are received by ATHENA from the Customer are valid and made in the ordinary course of the Customer's business.

8.2 The Customer further acknowledges that ATHENA receives all payments in the ordinary course of the Customer's business, in good faith and in the reasonably held belief as to the validity

upon receiving notice from ATHENA of such amount (except where the parties agree in writing that ATHENA is responsible for such costs).

3.2 ATHENA may deliver the Goods by instalments, and each instalment shall be treated as a separate contract under these standard terms and conditions of sale.

3.3 If ATHENA fails to deliver or makes defective delivery of part of the Goods, this does not entitle the Customer to cancel the separate contract for that particular instalment (if applicable), or the contract for all of the Goods or any other contract.

3.4 Any time stated for delivery is an estimate only. ATHENA is not liable for any delay in delivery.

#### **4. RISK AND OWNERSHIP**

4.1 Risk of any loss, damage or deterioration of or to the Goods passes to the Customer on delivery in accordance with clause 3.1.

4.2 Subject to clause 5.1 and the following provisions, ownership of the Goods remains with ATHENA and does not pass to the Customer until the Customer:

(a) pays the Amount Owing and any other moneys owing by the Customer to ATHENA from time to time, whether in relation to any contract entered into on these standard terms and conditions of sale or on any other account whatever ("Customer's Indebtedness"); or

(b) resells the Goods pursuant to the authority granted by these terms.

4.3 Where Goods are processed prior to repayment of the Customer's Indebtedness, ownership of those products and/or such part or parts as are identifiable as being substantially derived from Goods supplied by ATHENA ("Processed Goods") shall remain with ATHENA until the earlier of payment of the Customer's Indebtedness or such time as such Processed Goods have been sold by the Customer pursuant to these standard terms and conditions of sale.

4.4 While ownership of the Goods or Processed Goods remains with ATHENA:

(a) the Customer must store them separately and clearly identify them as belonging to ATHENA;

(b) ATHENA authorises the Customer in the ordinary course of its business to use the Goods and the Processed Goods or sell them for full consideration. This authority is revoked from the time that:

(i) an Event or Default occurs; or

(ii) ATHENA notifies the Customer in writing that this authority is revoked.

(c) as the Customer's agent, ATHENA may enter the premises where the Goods or Processed Goods are stored and removed them, without being responsible for any damage caused in doing so. ATHENA may resell any of the Goods or Processed Goods and applying the proceeds of sale in reduction of the Customer's Indebtedness; and

(d) the Customer must advise ATHENA immediately of any Event of Default or any action by third parties (including any

of those payments unless and until the Customer gives notice in writing to ATHENA:

(a) of the Customer's then inability to pay its due debts; and  
(b) that the Customer's intention or purpose in making any such payment is to enable ATHENA to receive more towards satisfaction of its debt than it would otherwise have received or have been likely to have received in any liquidation of the Customer,

and until receipt of such notice, ATHENA shall be entitled to assume that all payments received from the Customer are made in the ordinary course of the Customer's business.

#### **9. FORCE MAJEURE**

9.1 Without limiting any other provisions of these standard terms and conditions of sale, neither ATHENA nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under these standard terms and conditions of sale or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event. Nothing in this clause shall excuse payment of the Amount Owing as it becomes due under these standard terms and conditions of sale.

9.2 The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the force majeure event, and either party claiming to be affected by the force majeure event shall give immediate notice to the other party containing full particulars of the force majeure event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the force majeure event and remove such force majeure event provided that neither party shall be required to remove any such force majeure event if to do so would require it contrary to its judgment to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

#### **10 USE OF INFORMATION**

10.1 The Customer agrees that ATHENA may obtain information about the Customer from the Customer and any credit or debt collection agencies in the course of ATHENA's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing ATHENA with such information.

10.2 The Customer agrees that ATHENA may use any information it has about the Customer relating to the Customer's credit worthiness and give that information to any other person, (including any credit or debt collection agency) for credit assessment and debt collection purposes.

10.3 The Customer must notify ATHENA of any change in circumstances that may affect the accuracy of the information provided by the Customer to ATHENA. If the Customer is an individual, (i.e. a natural person) the Customer has rights under the Privacy Act 1993 to access and request the correction of any personal information which ATHENA holds about the

of its creditors) affecting ATHENA's interest in the Goods or the Processed Goods.

4.5 ATHENA may apply any payments received from or on behalf of the Customer in reduction of the Customer's Indebtedness as ATHENA thinks fit.

4.6 If the Customer resells or uses any Goods or Processed Goods before ownership of the Goods or the Processed Goods has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and ATHENA. ATHENA's interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Customer's Indebtedness to ATHENA. The balance of the proceeds (if any) shall be the Customer's beneficial interest under the trust.

4.7 ATHENA may bring an action for the Price of the Goods or Processed Goods sold even where ownership of the Goods or any Processed Goods may not have passed to the Customer.

## **5. SECURITY INTEREST**

5.1 Notwithstanding clause 4, the Customer will grant ATHENA a security interest over all of the Goods delivered to the Customer and ATHENA may register a financing statement pursuant to the Personal Property Securities Act 1999 in respect of the Goods.

5.2 The Customer will, upon request by ATHENA, execute all documents and do all things necessary to enable ATHENA to create the security interest pursuant hereto.

5.3 The Purchaser shall:

- (a) Immediately notify ATHENA in writing of any change in name;
- (b) Provide any information ATHENA reasonably requires to complete a financing change statement;
- (c) Waive any right to receive a copy of a verification statement under the Personal Property Securities Act 1999.

5.4 The Customer agrees that these terms and conditions constitute a Security Agreement for the purposes of the Personal Properties Securities Act 1999, and that they have received a copy of this Agreement.

## **6. GUARANTEES**

6.1 If the Goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply to the contract in respect of those Goods.

6.2 Where the Customer supplies the Goods to a person acquiring them for business purposes, it must be a term of the Customer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.

6.3 The Customer acknowledges that ATHENA does not provide any express guarantees (as defined in the Act) other than those expressly confirmed by ATHENA in writing.

6.4 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the contract between the Customer and ATHENA, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:

Customer.

## **11. WAIVER**

11.1 If ATHENA exercises or fails to exercise any right or remedy available to it, this shall not prejudice ATHENA's rights in exercising that or any other right or remedy. Waiver of any term of these standard terms and conditions of sale must be specified in writing and signed by an authorised officer of ATHENA.

## **12. PRODUCT RETURNS**

12.1 Where ATHENA at its discretion allows the Customer to return Goods other than defective or non-complying Goods, ATHENA reserves the right to charge a return fee equal to 15% of the price of such Goods.

## **13. ASSIGNMENT**

13.1 ATHENA is entitled at any time to assign to any other person all or any part of the debt owing by the Customer to ATHENA.

## **14. REVIEW OF TERMS**

14.1 ATHENA reserves the right to review any of these standard terms and conditions of sale at any time and from time to time. If, following any such review, there is to be any change to such terms and conditions, that change will take effect from the date on which ATHENA notifies the Customer of such change.

## **15. WORDS USED IN THESE STANDARD TERMS AND CONDITIONS OF SALE**

15.1 "Amount Owing" means the price charged by ATHENA for the Goods, and any other sums which ATHENA is entitled to charge under these standard terms and conditions of sale.

15.2 "ATHENA" means ATHENA Limited, including its successors and assigns.

15.3 "Claim" includes any claim:

- (a) for damages of any kind, including, but not limited to damages for breach of contract;
- (b) for loss of profits;
- (c) for any consequential, indirect or special loss, damage or injury of any kind suffered by any person arising directly or indirectly from:
  - (i) any breach of ATHENA's obligations under these standard terms and conditions of sale; or
  - (ii) any cancellation of any contract; or
  - (iii) any negligence, misrepresentation or other act or omission by ATHENA or its employees, agents or contractors; or
- (d) for compensation, demand, remedy, liability or action.

15.4 "Customer" means the person purchasing the Goods from ATHENA pursuant to these standard terms and conditions of sale, including that person's successors and assigns.

15.5 An "Event of Default" means an event where:

- (a) the Customer fails to comply with these standard terms and conditions of sale or any other contract with ATHENA; or

(a) any right which the Customer may have to reject non-conforming or defective Goods shall only be effective if the Customer notifies ATHENA in writing within seven days following delivery and ATHENA is given the opportunity to inspect the Goods;

(b) defective Goods or Goods which do not comply with the order shall at ATHENA's discretion be repaired or replaced, or ATHENA will refund the price. ATHENA may, at its discretion, delay the repair or replacement of, or refund of the price of, any Goods for so long as the Customer is in default in relation to the Customer's Indebtedness;

(b) the Customer commits an act of bankruptcy; or

(c) the Customer enters into any composition or arrangement with its creditors; or

(d) if the Customer is a company:

(i) the Customer does anything which would make it liable to be put into liquidation; or

(ii) a resolution is passed or an application is made for the liquidation of the Customer; or

(iii) a receiver or statutory or official manager is appointed over all or any of the Customer's assets.

15.6 "force majeure event" means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these standard terms and conditions of sale, provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of either party.

15.7 "Goods" means all goods ordered by the Customer and supplied by ATHENA from time to time under these standard terms and conditions of sale (as detailed on each invoice issued to the Customer) and includes any services forming part of the supply of such goods.

15.8 "person" includes a corporation, association, firm, company, partnership or individual.

15.9 "price" means the purchase price of the Goods and any costs payable by the Customer under clause 1 and 3.1 of these standard terms and conditions of sale.

15.10 References to the Personal Property Securities Act 1999, the Consumer Guarantees Act 1993 and the Privacy Act 1993 include such legislation from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

**Receipt of a copy of ATHENA's Terms and Conditions of Sales is hereby acknowledged.**

**Signed by:**

**Signature:**

**Name in Full:**

**Date:**