

1. Definitions

In this agreement the following terms have the corresponding meanings:

"Goods" means all products and services agreed to be supplied by Qenos to the Buyer under any contract, arrangement or understanding between Qenos and the Buyer;
"Buyer" means the person to whom any quotation is made, any person offering to contract with Qenos on these terms and conditions and any person who purchases Goods from Qenos;
"Contract" means any contract for the sale or supply of Goods entered into between Qenos and the Buyer;

"Qenos" means Qenos and its agents, servants, and employees, and any related bodies corporate as defined in the Corporations Law (if such related body corporate is named as the party making or accepting the order).

2. Statutory Provisions

These terms and conditions:

- 2.1 shall be subject to the provisions of the Trade Practices Act 1974, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation ("the Statutory Provisions");
- 2.2 unless Qenos otherwise agrees in writing, are the only terms and conditions of sale to which Qenos will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and
- 2.3 supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

3. Quality & Claims

Subject to the Statutory Provisions:

- 3.1 Qenos warrants that the Goods supplied are of merchantable quality.
- 3.2 Upon delivery of the Goods, the Buyer shall promptly examine them. If they are not of merchantable quality, do not conform with any agreed specification, or have defects, the Buyer will notify Qenos in writing within 30 days of delivery. If the Buyer does not so notify Qenos, the Buyer shall be deemed to have accepted the Goods as being of merchantable quality, free from defects, and compliant with the agreed specification.
- 3.3 Qenos shall have the right to examine the Goods and the Buyer must either return the Goods concerned to Qenos, or where they are not capable of redelivery, the Buyer must make them available for inspection by Qenos and permit Qenos to take samples.
- 3.4 If Qenos determines that the Buyer's claim under clause 3.2 is valid, then:
 - (a) the cost of the returning the Goods which are capable of being returned shall be borne by Qenos;
 - (b) if Qenos elects to replace the Goods, the cost of delivery of replacement Goods shall be borne by Qenos;
 - (c) where the Goods are not capable of being returned, the cost of disposing of them shall be borne by Qenos;
- 3.5 Qenos's liability for breach of a condition or warranty contained in this Contract or implied into this Contract by the Statutory Provisions (other than a condition implied by Section 69 of the Trade Practices Act) is limited to any one of the following as determined by Qenos:
 - (a) the replacement of the Goods or supply of equivalent Goods;
 - (b) the repair of the Goods or payment of the cost of having the Goods repaired; or
 - (c) the refund of the price paid by the Buyer for the Goods.
- 3.6 Qenos will not be liable for any special, indirect, or consequential loss or damage including but not limited to loss of anticipated profits arising in any manner, directly, or indirectly, out of the Goods or the supply of the Goods to the Buyer.
- 3.7 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or to others arising out of the use or possession of any of the Goods sold to the Buyer, whether such Goods are used singularly, or in combination with other substances, or any process.
- 3.8 As from the date upon which the Goods or any part have been treated, processed, or changed in any manner whatsoever, subject to the Statutory Provisions, the Buyer shall have no claim of any nature whatsoever arising directly or indirectly or however out of those Goods or the sale to the Buyer. The Buyer has the sole responsibility of determining whether the Goods are suitable for the use of the Buyer or any contemplated use of the Buyer, whether or not such use is known to Qenos.

4. Advices

The Buyer hereby acknowledges that it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Qenos in relation to the Goods or their use or application.

5. Delivery and Risk

- 5.1 Qenos will, at its discretion, arrange for the delivery of the Goods to the Buyer and shall designate the route and the means of transportation for the delivery of the Goods. In the event that the Buyer requires a more expensive route and/or means of transportation, the Buyer will reimburse Qenos for any extra costs involved;
- 5.2 Unless otherwise agreed, all prices for the Goods are for delivery free into store at the premises of the Buyer as stated overleaf.
- 5.3 The risk of loss and damage in respect of the Goods shall pass to the Buyer on delivery by Qenos or its carrier (as the case may be).
- 5.4 Each delivery is a separate contract.
- 5.5 Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or its agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Qenos that, in the storage and handling of the Goods, the Buyer shall comply with all relevant environmental laws and regulations, and does or on the acquisition of the Goods will possess and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer is familiar with and adheres to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.
- 5.6 If Qenos does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.

6. Title

- 6.1 Title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.
- 6.2 The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of Qenos and that a fiduciary relationship exists between the Buyer and Qenos.
- 6.3 Until title in and to the Goods passes to the Buyer in accordance with this clause 6, the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of Qenos. Qenos shall be entitled at any time to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.
- 6.4 The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause 6, it sells them as a fiduciary agent of Qenos, provided that such sales shall not give rise to any obligations on the part of Qenos. The Buyer shall hold the proceeds of sale on trust for Qenos and in a separate account.
- 6.5 If title in and to the Goods has not passed to the Buyer in accordance with this clause 6, the Buyer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 11.2.

7. Quantity

- 7.1 The obligation of Qenos to deliver Goods shall be satisfied by the delivery by Qenos of the quantity of Goods ordered (more or less 10%) or if delivery is to be by instalments, by the delivery of the quantity of Goods to be delivered in each instalment (more or less 10%).
- 7.2 The Buyer shall only be required to pay for the actual quantity of Goods delivered by Qenos.

8. Delay in Delivery

- 8.1 Qenos shall seek to deliver to the Buyer on any date specified overleaf, however, any date of delivery is an estimate only. Qenos will not be liable for any loss or damage arising as a result of or in consequence of any failure by Qenos to deliver by any specified date.
- 8.2 Failure by Qenos to deliver the Goods by reason of any circumstances of whatever nature including but not limited to fire, flood, explosion, strike, lock-out or other industrial act or dispute, the break down of or accident to plant, unavailability or shortage of raw material, labour, power supplies or transport facilities, a shortage of product, an act of God, or any order or direction of any local, state or federal government or governmental authority or instrumentality shall not constitute a breach of these terms and conditions or involve Qenos in any liability.
- 8.3 In the event that Qenos is prevented from delivering the Goods for one calendar month or more after any date specified for delivery by reason of the matters set out in clause 8.2, then either Qenos or the Buyer shall have the option of cancelling the agreement as it relates to the Goods for which delivery has been delayed. Any cancellation shall be by written notice to the other party within 14 days of the expiration of the said calendar month.

9. Description

Any description of the Goods overleaf is given by way of identification only and the use of such description shall not constitute a contract of sale by description.

10. Licences

All Goods are sold on the understanding that:

- 10.1 All licences and permits under all relevant laws and regulations have been obtained by the Buyer;
- 10.2 No licence, express or implied, is conferred under any patent.

11. Price, Payment, Default and Taxes

- 11.1 Unless otherwise agreed in writing:
 - (a) the price charged for the Goods shall be the price ruling as determined by Qenos at the date of delivery. Any price indication or price list is subject to alteration in accordance with the price ruling at the delivery date.
 - (b) payment for the Goods shall be made within 30 days of delivery or as otherwise identified in any statement of account issued by Qenos;
 - (c) the price payable does not include sales tax, goods and services tax, or any other taxes and duties and the Buyer shall indemnify Qenos from and against any direct or indirect liability for such taxes or duties;
 - (d) prices are subject to change without notice at any time and in the event that the price of the Goods is increased, Qenos will, before making the delivery, notify the Buyer of the increase in the price of the Goods and the Buyer shall have the right to cancel the delivery of the Goods to which the increase in price applies;
 - (e) Qenos reserves the right to require payment in advance or cash on delivery from the Buyer.
 - 11.2 If any of the events set out in sub-clauses (a) to (e) below occur, Qenos may at its option, withhold further deliveries or cancel this Contract without notice to the Buyer, and without prejudice to any other action or remedy which Qenos has or might otherwise have had, and all monies owing and outstanding to Qenos on any account whatever, and irrespective of whether the due date on any statement of account has occurred or passed, shall immediately become due and payable:
 - (a) The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
 - (b) The Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;
 - (c) The Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
 - (d) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;
 - (e) The Buyer experiences any analogous event having substantially similar effect to any of the events specified above.
 - 11.3 Notwithstanding anything contained in this clause 11, Qenos may at all times in its sole and unfettered discretion, without being under any duty or obligation to assign reasons, review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of this clause 11.3, the decision of Qenos shall be final and Qenos accepts no liability or responsibility for any loss, however arising, incurred by the Buyer due to the operation of this condition.
 - 11.4 Notwithstanding any other provision in this Contract, if at any time during the term of this Contract a goods and services tax (GST) or any similar tax is imposed in Australia, and has application to any supply made under this Contract, Qenos may, subject to being registered for GST purposes and issuing a valid tax invoice for GST purposes, recover from the Buyer, in addition to any amounts or consideration expressed as payable elsewhere in this Contract, an amount on account of GST calculated by multiplying the amount or consideration payable by the Buyer for the supply, by the prevailing GST rate.
- ## 12. Returnable Packaging
- Returnable Packaging in which and on which Goods are delivered, remain the property of Qenos (or may be in possession of Qenos under agreements with third parties) and must not be used for any other commodity than that contained at the time of delivery. The Buyer shall return all Returnable Packaging delivered by Qenos as soon as practicable after the Goods have been removed. The Buyer shall compensate Qenos for the replacement cost of any Returnable Packaging that is not returned or for the repair cost of Returnable Packaging that is returned in poor order or condition.
- ## 13. General Lien
- In addition to any right of lien to which Qenos may be entitled under the common law, Qenos shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Qenos of the Buyer. Qenos may in its sole discretion sell any item that is subject to the said lien, provided that Qenos shall pay to the Buyer any surplus proceeds that are realised by it from a sale of the said items after discharging in full all monies outstanding to Qenos in respect of Goods that have been delivered by it to the Buyer.
- ## 14. Severance
- If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.
- ## 15. Waiver
- The failure by Qenos to insist upon strict performance of any term or condition of the Contract shall not be deemed a waiver thereof or of any rights Qenos may have and no express waiver shall be deemed a waiver of any subsequent breach of any term or condition.
- ## 16. Notices
- Notices to Qenos to be given or made under this Contract:
- (i) must be in writing;
 - (ii) must be delivered to Qenos by prepaid post, by hand, or by facsimile to the address or facsimile number appearing overleaf, or the address or facsimile number last notified by Qenos;
 - (iii) will be taken to be duly given or made:
 - (a) in the case of delivery in person when delivered;
 - (b) in the case of delivery by post, two business days after the date of posting, or seven business days after the date of posting, if posting to an address in another country;
 - (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine transmission was made without error.

17. Governing Law

This Contract shall be governed by the laws of the State of Victoria notwithstanding the place in which the Goods or any part of them are to be delivered. The Buyer submits to the exclusive jurisdiction of the courts of the State of Victoria.