

TERMS AND CONDITIONS OF TRADE

1 Definitions

1.1 In these Terms:

ACL means Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Company means dormakaba Australia Pty Ltd (ABN 14 067 969 466);

consumer is as defined in the ACL and in determining if Customer is a consumer, the determination is made if Customer is a consumer under the Contract;

Contract means any agreement for the provision of goods or services by Company to Customer;

Customer means the person, jointly and severally if more than one, acquiring Products from Company;

GST means the tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Order means an purchase order or order submitted by Customer;

PPSA means *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

Products means any goods, equipment and/or other facilities manufactured and/or services, including maintenance and/or repair of goods, advice, design, procurement and installation accompanying the goods supplied by Company to Customer;

Specification means a specification in force at the time of concluding a Contract;

Tax Invoice has the meaning as in the GST Act;

Terms means these Terms and Conditions of Trade.

2 Application of Terms

2.1 Unless, otherwise agreed by Company in writing, the Terms apply to all quotations, offers and purchase orders made or accepted by Company and to every Contract and cannot be varied or replaced by any other terms, including Customer's terms of purchase (if any).

2.2 The Terms may include additional terms in Company's quotation, which are not inconsistent with the Terms.

2.3 Company may vary or amend these Terms by written notice to Customer at any time. Any variations or amendments will apply to quotations or orders placed after the notice date.

2.4 Where these Terms form part of a contract between Company and Customer, the terms of that contract prevail to the extent of any inconsistency with these Terms.

3 Quotations and Orders

3.1 Any quotation provided by Company to Customer for the proposed supply of Products is valid for 30 days, an invitation to treat only, and only valid if in writing.

3.2 A Contract is accepted by Company when Company accepts, in writing or electronic means, an Order from Customer (Order Confirmation) or provides Customer with Products.

3.3 Each supply which Company makes in response to an Order will be regarded as a separate Contract

3.4 If Customer places the Order subject to finance, Company will not be obliged to procure or supply Products until Customer has provided written evidence to Company's reasonable satisfaction that such finance will be provided.

4 Specification

4.1 Products are supplied in accordance with the Specifications. Specifications shown on the Order Confirmation are deemed to be checked and accepted by Customer.

4.2 Customer is solely responsible, and must itself examine and test Products at its cost, to ensure they are fit or suitable for Customer's purposes. Subject to the ACL, Company accepts no liability for the fitness or suitability of Products for Customer's particular purposes.

4.3 Unless otherwise provided, only the Company's authorised technicians are permitted to install, maintain, service and repair the Products.

5 Prices and Payment

5.1 Price means the cost of Products as referred to in Company's price lists, quotations and/or specific arrangements and is subject to reasonable change from time to time upon written notice to Customer.

5.2 Unless otherwise specified by Company in writing, all prices are:

- (a) quoted ex-works from Company's warehouse, factory or depot and

- (b) exclusive of all freight costs, import charges, customs duties, GST, taxes, imposts and levies relating to Products, which are additionally to Customer's account.

5.3 A freight surcharge fee will apply for orders under AUD\$250.

5.4 Company may require Customer at its discretion to pay a deposit.

5.5 The prices quoted by Company are based on the Specifications provided by Customer at the time of quotation. Company reserves the right to reasonably change the Price if there is any change in the Specifications and drawings.

5.6 Where there is any change in the costs incurred by Company in relation to Products, Company may vary its price to take account of any such change, by notifying Customer.

5.7 Unless otherwise agreed by Company in writing:

- (a) Subject to clause 5.7(b), full payment is due thirty (30) days from end of month of date of invoice (**Payment Date**).

- (b) Company reserves the right to require payment in full on supply of Products.

5.8 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

5.9 Payment terms may be revoked or amended at Company's sole discretion immediately upon giving Customer written notice.

6 Payment Default

6.1 If Customer defaults in the payment of any money due to Company by the Payment Date, or if at any time the credit standing of Customer, in the opinion of Company, is at risk or has been impaired, then in addition to any other rights which may be conferred upon Company by law or equity, all moneys which would have been payable by Customer to Company as a later date on any account becomes immediately due and payable without any notice by Company to Customer and Company may do any or all of the following:

- (a) charge Customer interest on any sum due by Customer at the rate of 1.5% per month calculated daily,
- (b) charge Customer for, and Customer must indemnify Company from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract or to recover any Products,
- (c) cease or suspend the supply of any further Products to Customer,
- (d) by written notice to Customer terminate any uncompleted Contract with Customer.

6.2 Customer may not withhold or set off any payment or make deductions from any amount owing to Company without Company's prior written consent.

7 Cancellation or Variation of Order

7.1 If Company is unable to deliver or provide Products, then it may cancel Customer's Order (even if it has been accepted) by written notice to Customer.

7.2 The Company may cancel the Customer's order if the Customer gives notice to the Company or upon an occurrence in accordance with clause 10.7.

7.3 A notice of cancellation or variation of an Order must be submitted by Customer in writing and is only effective upon the written approval by Company.

7.4 When Customer gives written notice of cancellation or variation and Company approves such a request:

- (a) without prejudice to its other rights, Company reserves the right to charge for all Products it has performed and shall need to perform in fulfilling the Order or, if the work is substantially complete or Products are special ordered or made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs Company incurs; and

- (b) Company will charge Customer for each cancelled Order an administration fee of 25% of the Price, and charge Customer for, and Customer must indemnify Company from, all costs and expenses which Company incurs from any third parties as a

result of the cancellation.

- 7.5 For the avoidance of doubt, if a Product is special ordered or made to order or configured or customised in any way the order cannot be cancelled.
- 7.6 These Terms are subject to the Company's revocation or cancellation at any time, without liability, provided that the Company completes current order in process at the time of cancellation.
- ## 8 Deliveries
- 8.1 Subject to clause 8.5, Company will arrange for the delivery of Products to Customer.
- 8.2 Company's obligation to deliver is discharged on arrival or provision of Products at Customer's nominated delivery destination or nominated agent or carrier.
- 8.3 Any period or date for delivery of Products is an estimate only and is not a contractual commitment. Company will use its reasonable endeavours to meet any estimated dates but, subject to the ACL, will not be liable for any loss or damage suffered by Customer or any third party for failure to meet the estimated date.
- 8.4 Company may make part delivery or provision of Products and may invoice Customer for Products provided.
- 8.5 If agreed that Customer will collect Products:
- (a) Customer must collect Products within 7 days of being advised they are ready;
 - (b) if Customer does not collect Products within this time, Customer is deemed to have taken delivery and is liable for storage charges payable monthly on demand.
- 8.6 If Customer is unable or unwilling to accept physical delivery of Products, Company will be entitled to arrange for storage of Products at Customer's risk and reasonable cost, including all reasonable transportation, storage and other associated costs, payable monthly on demand.
- 8.7 Any obligation of Company to supply Products is subject to its ability to secure labour, materials and other services for the manufacture of the goods. In case of failure to supply, or partial supply, Customer is entitled to a refund of any prepayments made by Customer, but only to the extent that such prepayments relate to the parts of Products which Company fails to supply.
- 8.8 Products are subject to supplier availability and special delivery charges.
- 8.9 Deliveries required to be despatched other than by Company's normal carrier may incur additional freight charges at Customer's cost.
- ## 9 Shortages and Returns
- 9.1 Customer has responsibility to inspect or test the Products within 7 days of delivery or provision of the Products.
- 9.2 If the quantity of Products delivered does not correspond with the quantity stated in an Order Confirmation, Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and in the case of over-delivery (the Customer must permit Company to collect any surplus Products), provided that in no event shall such short or over-delivery entitle Customer to damages or give Customer a right to rescind the Contract.
- 9.3 Any surplus Products delivered shall remain the property of Company and Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by Company.
- 9.4 Subject to clauses 9.6 and 9.9, Company will not be liable for any shortages, damage or non-compliance with the Specifications or this Contract unless Customer notifies Company with full details and description within 7 days of delivery of the Products, otherwise Customer is deemed to have accepted the Products.
- 9.5 Customer must allow Company access to the Products to allow Company to inspect the alleged defect.
- 9.6 When any shortages, claim for damaged Products or non-compliance with the Specifications or this Contract is accepted by Company, Company may, at its option, repair, replace or refund the price of the Products.
- 9.7 Subject to clause 9.9, Company will not under any circumstances accept Products for return that:
- (a) have been specifically produced, fabricated, specially finished, imported or acquired to fulfil the Contract;
 - (b) are discontinued Products or no longer stocked by Company;
 - (c) have been altered or modified in any way;
 - (d) are not in their original condition;
 - (e) have been misused; or
 - (f) has been invoiced for six months or older unless still under warranty
- 9.8 In no circumstances shall any Products be returned to Company without the Company's prior written consent with a goods return authority. Subject to the ACL, all Products for return must first be authorised by domakaba, be in saleable condition and will be subject to a minimum restocking fee of 20% of the purchase price.
- 9.9 If Customer is a consumer, nothing in this clause 9 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 9.10 If the Customer on-sells the Products prior to the expiration of the time period set out in clause 9.1, the Customer is deemed to have accepted the Products.
- ## 10 Passing of Risk and Title
- 10.1 Risk in the Product and all insurance responsibility will pass to Customer immediately on the Products being delivered to Customer.
- 10.2 Title to and ownership of Products shall remain with Company until the price for Products as well as any other amounts Customer may owe Company under this Contract have been paid in full.
- 10.3 Until receipt of payment in full, Customer shall:
- (a) store Products in a manner which makes them readily identifiable as the property of Company;
 - (b) hold Products as bailee of Company;
 - (c) hold the proceeds of any sale of Products on trust for Company in a separate account with a bank to whom Customer has not given security, however failure to do so does not affect Customer's obligation to deal with the proceeds as trustee;
 - (d) keep, and provide Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of Products; and
 - (e) keep Products insured against theft, damage and destruction.
- 10.4 Notwithstanding clause 10.3, Customer is entitled until notified by Company or until the happening of any of the events set out in clause 10.7 to sell Products in the normal course of its business, in which case the proceeds of resale must be held in trust for Company in a separate account.
- 10.5 Company is entitled at any time while any debt remains outstanding by Customer to notify Customer of its intention to take possession of Products and for this purpose Customer irrevocably authorises and licenses Company and its servants and agents to enter upon the land and buildings of Customer with all necessary equipment to take possession of Products.
- 10.6 On receipt of notice from Company or on the happening of any of the events set out in clause 10.7, the following applies:
- (a) Customer's authority to sell or otherwise deal with Products as set out in clause 10.4 is withdrawn;
 - (b) Company may withhold delivering further Products and all invoices issued by Company to Customer become due and payable immediately; and
 - (c) Customer must immediately deliver all Products to Company.
- 10.7 Customer shall give immediate notice to Company if:
- (a) Customer becomes bankrupt or insolvent or if there is a risk of bankruptcy or insolvency;
 - (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of Customer, or for the appointment of a bankruptcy trustee, administrator, receiver, liquidator or similar functionary;
 - (c) Customer resolves to enter into or enters into a scheme of arrangement with or for the benefit of its creditors;
 - (d) Customer becomes unable to pay its debts when they fall due;
 - (e) an event analogous to any of those set out in clause 10.7 occurs.
- ## 11 Queensland – Building and Construction Industry Payment Act 2004, New South Wales – Building and Construction Industry Security of payments Act 1999, Victorian – Building and

Construction Industry Security of Payments Act 2002, Western Australia – Construction Contracts Act 2004, South Australian Construction Industry Security of Payment Act 2009 and Australian Capital Territory Building and Construction Industry (Security of Payment) Act 2009.

11.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the relevant Building and Construction Industry Security of Payment Act listed in the heading (if applicable) may apply.

11.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of any of relevant Building and Construction Industry Security of Payment Act listed in the heading.

12 Personal Property Securities

12.1 Notwithstanding anything to the contrary contained in the Terms, the PPSA applies to the Terms.

12.2 Unless otherwise defined in these Terms, the terms and expressions used in this clause 12 have the meanings given to them in, or by virtue of, the PPSA.

12.3 Customer grants, and Company may register on the Personal Property Securities Register (**PPSR**), a security interest in all Products provided under the Contract, including but not limited to intellectual property and all other present or after-acquired property.

12.4 Customer must do whatever is necessary in order to give a valid security interest over Products which is able to be registered by Company of the PPSR.

12.5 Where permitted by the PPSA, Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

12.6 Customer waives any rights it may have pursuant to, and the parties contract out of, sections 96, 125, 129, 142 and 143 of the PPSA will apply to this contract.

12.7 To the extent permitted by the PPSA, Customer agrees that the provisions of Chapter 4 of the PPSA which are for the benefit of Customer or which place obligations on Company will apply only to the extent that they are mandatory or Company agrees to their application in writing, and where Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

12.8 Company may allocate amounts received from Customer in any manner Company determines, including in any manner required to preserve any Purchase Money Security Interest (**PMSI**) it has.

12.9 This Contract is a security agreement and Company has a PMSI in all present and future Products supplied by Company to Customer and the proceeds and the security interest is a continuing interest irrespective of whether there are monies or obligations owing by Customer at any particular time

12.10 Customer agrees to execute any documents, provide all relevant information and co-operate fully with Company to ensure that Company has a perfected security interest in the personal property charged.

12.11 Customer agrees to notify Company of any change in Customer's structure, including sale or disposition of any part of Customer's business, any change in directorships, shareholders or change in partnership or trusteeship 7 days prior to any such change taking effect.

13 Liability

13.1 Except as the Terms specifically state or as contained in any express warranty provided in relation to Products, the Contract does not include by implication any other term, condition, warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of Products or any contractual remedy for their failure.

13.2 If Customer is a consumer nothing in these Terms excludes, restricts or modifies Customer's rights or remedies against Company for failure of a statutory guarantee under the ACL.

13.3 If Customer on-supplies Products to a consumer and:

- (a) Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Company's liability to Customer; and
- (b) Products are of a kind ordinarily acquired for personal, domestic

or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Company's liability to Customer;

however arising under or in connection with the sale, installation, use, storage or any other dealings with Products by Customer or any third party.

13.4 If clauses 13.2 and 13.3 do not apply, then, other than stated in the Contract or any written warranty statement, Company is not liable to Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealing with Products by Customer or any third party.

13.5 Company is not liable for any indirect or consequential losses or expenses suffered by Customer or any third party, howsoever caused, including but not limited to loss or turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

13.6 For the avoidance of doubt, in circumstances in which the Products supplied are unfinished goods in which the Customer or an agent of the Customer performs further manufacturing, processing or finishing processes, or installation, the Company shall not be liable to the Customer for any fault or defect caused, or contributed to, by any such manufacturing processes, value adding processes, processing installation or finishing and the Customer further indemnifies and holds the Company harmless for all claims, losses, damages, actions, suits and demands (including any consequential and economic loss) from any third parties arising out of or in relation to such goods to the extent that such losses arise from any further manufacturing processes, value adding processes, processing or finishing.

13.7 Customer indemnifies Company against all claims arising out of the installation of Products not performed by Company and where Company's recommended safety measures have not been complied with.

13.8 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any non-excludable State or Federal legislation.

14 Unpaid Company's Rights To Dispose Of Products

14.1 In the event that:

- (a) the Company retains possession or control of the Products; 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 Products, then, whether the property in the Products has passed to the Customer or has remained with the Company, the Company may dispose of the Products and may claim from the Customer the loss to the Company on such disposal.

15 Lien

15.1 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 Products;
- (b) the right to retain them for the Price while the Company is in possession of them;
- (c) a right of stopping the Products 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 Manufacturer shall continue despite the commencement of proceedings or judgment for the price having been obtained.

16 Local Standards

16.1 It is the responsibility of Customer at its own costs to:

- (a) observe any applicable laws in Australia in regard to the use and storage of Products;
- (b) apply for and obtain all necessary certifications, licences, permits or other authorisations required by the local law in relation to the use of Products.

16.2 Where an order in a state or territory requires the Customer to hold a specific license, registration or permit the Customer acknowledges that the Company cannot deliver the Products or any goods until the Customer supplies the Company with a valid license registration or permit number.

17 Force Majeure

17.1 Neither party will be liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control including but not limited to, an Act of God; war; civil disturbance; COVID-19 restrictions (which includes restrictions, regulations or directives imposed by the Federal Government and/or any State Government including but not limited to venue capacity restrictions for indoor and outdoor gatherings, lockdowns, and intrastate or interstate travel restrictions); requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; industrial disputes; difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident. If a force majeure event occurs, either party may suspend or terminate the Contract by giving the other party written notice.

18 Intellectual Property

- 18.1 Company owns or is licensed to use trademarks, confidential information and all other copyright, patent, design or trademark rights in relation to the Products (IP).
- 18.2 Customer acknowledges Company's title to the IP and must not:
- (a) claim any right, title or interest in the IP;
 - (b) register or record or attempt to register or record anywhere in the world any of the IP or any derivations, improvements or variations, or aid or abet anyone else to do so;
 - (c) manufacture or have manufactured or sell or have sold any products, or provide any services, using or taking advantage of the IP.
- 18.3 Customer acknowledges that any derivation, variation, modification or improvement to any of the IP will be and remain Company's property. Customer hereby assigns to Company any intellectual property rights that it may create or obtain in such any derivation, variation, modification or improvement.
- 18.4 Customer must not use, reproduce or copy the software associated with the Products, without the prior written consent of Company.
- 18.5 Customer shall indemnify Company for and in respect of claims by any third party in relation to Products which arise from, or can be attributed to, any special requirements or specifications of Customer.
- 18.6 Customer warrants that it is the owner or licensee of any and all

intellectual property which Customer requires Company to use in fulfilling any Order and shall fully indemnify Company against all liabilities, costs and expenses which Company may incur as a result of any steps taken by Company in accordance with any such order involving infringement of any third party intellectual property rights.

19 Confidentiality

- 19.1 Customer shall not without the written consent of Company disclose to any third party or use for any purpose other than contemplated under this Contract any proprietary or confidential documents, knowledge and information, prices, tools, formulas, samples, models, drawings, data standard sheets, manuscripts and other technical documentation supplied or made known to Customer by Company. Company and Customer shall use all reasonable endeavours to keep confidential (and ensure that their employees and agents keep confidential) all information received by them relating to any part of the business and affairs of the other party provided that these obligations shall not apply to information which is:
- (a) or becomes publicly known through no wrongful act of the party concerned; or
 - (b) required to be disclosed by an order of law or other binding authority; or
 - (c) disclosed to any adviser of either party bound by a professional duty of confidentiality.

20 Assignment

20.1 The Contract may only be assigned by Customer with the prior written and informed consent of Company.

21 Waiver

21.1 No neglect, delay or indulgence on the part of Company in enforcing these Terms shall prejudice the rights of Company or be construed as a waiver of any such rights.

22 Severability

22.1 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of remaining terms.

23 Governing Law

23.1 The Terms and any Contract are governed by the laws of Victoria and the parties submit to the jurisdiction of Victoria.