

## TERMS AND CONDITIONS OF SALE

### Scope:

All goods (“Goods”) and services (“Services”) (jointly referred to as “Products”) supplied by Speck Industries Pty Limited (“Speck Industries”) to any of its customers (“Customer”) are supplied on these terms and conditions. Any order placed by the Customer is deemed to be an order incorporating these terms and conditions irrespective of any inconsistencies which may be introduced in the order or any other document provided by the Customer to the Company. Any additional or differing terms or conditions proposed by the Customer are expressly rejected by Speck Industries.

### Order Acceptance:

No order shall be binding on Speck Industries until accepted by Speck Industries issuing an order confirmation to the Customer. An individual contract for the supply of Products, on these terms and conditions, is formed on acceptance by Speck Industries of an order from the Customer. Speck Industries reserves the right to accept any order in whole or in part. Where Speck Industries makes a part delivery of any order, such delivery shall constitute a separate contract. No order may be cancelled or varied after acceptance by Speck Industries. If the Customer cancels an order after its acceptance by Speck Industries the Customer acknowledges and agrees:

- (a) to pay a cancellation fee equal to 15% of the order value of the Products; and
- (b) that the cancellation fee is a genuine estimate of costs that will be incurred by Speck Industries for the commissioning of the ordered Products.

### Prices and GST:

Unless otherwise specified, any price quotations for the Products given by Speck Industries:

- (a) are exclusive of GST (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth));
- (b) do not include transportation or delivery costs;
- (c) are valid for 30 days from the date of the quotation and effective only for orders accepted by Speck Industries within that period; and
- (d) are valid only if the Customer’s requested delivery date is within six (6) months’ of the date on which the order is placed.

### Payment Terms:

All orders are accepted by Speck Industries subject to satisfactory credit check and approval of the Customer by Speck Industries and are governed by Speck Industries' credit terms and conditions as set out in these terms and conditions, including the right to charge interest. Credit approval once granted may be withdrawn by Speck Industries at any time.

Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required on delivery.

Where credit has been granted, payment for the Products is to be made on or before 30 days from the date of invoice, or 15 days from the date of a consolidated monthly statement, whichever is the earlier. Speck Industries reserves the right to change the payment terms at any time when in its opinion the Customer's financial condition or previous payment record so warrants.

Speck Industries may charge the Customer interest at a rate of 10% per annum or the maximum amount permitted by law (if any), whichever is less, on all overdue amounts. Interest accrues daily at the applicable interest rate from the date on which payment was due up until the date on which payment is received in full by Speck Industries.

Payment must be made in full without set off or deduction. Speck Industries will investigate any disputed amounts, and if resolved in favour of the Customer, a credit note will be issued by Speck Industries to the Customer in the amount determined by Speck Industries.

If Speck Industries must take steps or action to recover any amount due to it by the Customer, the Customer is responsible for all costs and disbursements incurred by Speck Industries in recovering the monies due, including but not limited to reasonable legal and / or debt collection fees.

### Title to Goods:

Ownership in Goods supplied by Speck Industries ("Goods") does not pass to the Customer until Speck Industries has received full payment for the Goods and all other amounts owing by the Customer to Speck Industries for any other Products provided by Speck Industries to the Customer.

The Customer acknowledges and agrees that the retention of title referred to above creates a security interest in the Goods and their proceeds in favour of Speck Industries and that such security interest is a *Purchase Money Security Interest* (as that term is defined in the *Personal Property Securities Act 2009* (Cth) ("PPSA")).

The Customer undertakes to:

- (a) sign any documents and/or provide any information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which Speck Industries may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register (“PPSR”);
- (b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of Speck Industries;
- (c) give Speck Industries not less than 14 days written notice of any proposed change in the Customer’s name and/or any other changes in the Customer’s contact details; and
- (d) pay all costs incurred by Speck Industries in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these terms and conditions, including but not limited to executing subordination agreements and obtaining an order pursuant to section 182 of the PPSA.

To the extent permitted by law, the parties agree to contract out of sections 96, 120, 121(4), 123, 125, 126, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.

Without limiting the above, Speck Industries does not need to give the Customer any notice required under the PPSA, unless the requirement for the notice cannot be excluded.

The Customer grants to Speck Industries, its agents and servants, leave and licence to enter at any time on and into any premises occupied by the Customer to inspect, search for and remove any of the Goods. If the Goods are sold by the Customer, the Customer acknowledges that such sale is made by the Customer as bailee for and on behalf of Speck Industries and the Customer must hold the proceeds of sale on trust for Speck Industries, in an account in the name of Speck Industries, until payment in full for the Products is made to Speck Industries.

**Delivery:**

Risk of loss and/or damage to the Goods will pass to the Customer on delivery of the Goods.

Speck Industries reserves the right to charge for delivery of the Goods at any time, notwithstanding that it may not have previously done so. Administrative fees may also be imposed for orders under certain dollar values. Where prices are stated as inclusive of delivery, delivery is to the delivery point specifically accepted by Speck Industries.

Any date quoted for delivery of the Goods and / or performance of the Services is an estimate only and Speck Industries is not liable to the Customer for any loss or damage howsoever arising for failure to deliver the Goods and / or perform the Services on or before the quoted date. The Customer must accept the Goods when delivered and / or the Services when performed irrespective of any failure by Speck Industries to deliver the Goods or to perform the Services by the quoted date.

If on request of the Customer the dispatch or delivery of the Goods is postponed for more than one month after the Goods are cargo-ready, Speck Industries is entitled to invoice the Customer a storage fee for each month of delay started in the amount of 0.5% of the price for the Goods, however, not more than 5% of the price for the Goods in aggregate (or such higher amount of the actual storage costs).

Unless agreed otherwise in writing, the installation of the Goods is the sole responsibility of the Customer.

**Returns:**

Speck Industries will accept returns in accordance with the following:

Goods and Services will be deemed to have been accepted by the Company, unless the Customer notifies Speck Industries within a reasonable period of time (not to exceed 7 days from date of delivery) of a defect ("Rejection"). The Customer must notify Speck Industries in writing or by facsimile of the reason for the Rejection and allow for onsite inspection, repair or replacement by Speck Industries. The return of any Goods is at the Customer's expense and any associated risk of damage for returned Goods is the responsibility of the Customer until received, inspected and accepted by Speck Industries.

The Customer will have the benefit of any applicable manufacturers' warranties in respect of the Goods to the extent permissible and Speck Industries will provide all reasonable assistance to facilitate a Customer's warranty claim. The benefits given by such warranties are in addition to other rights and remedies available to the Customer under the Australian Consumer Law.

For all warranty claims, the Customer may contact the relevant manufacturer or Speck Industries. If the Customer contacts Speck Industries, Speck Industries will liaise with the manufacturer and arrange either an onsite inspection or collection of the Goods for assessment at no cost to the Customer.

If a warranty claim is not covered by an applicable manufacturers' warranty, Speck Industries' liability is limited as set out in these terms and conditions (see section "*Liability*" below).

For product returns or warranty claims please contact our customer service team via phone anywhere from within Australia on **1300 207 380** or from outside of Australia on +61 8 6201 1286, or via email to [sales@speckaustralia.com](mailto:sales@speckaustralia.com).

#### Customer Specific Stock:

Where Speck Industries has agreed to procure, warehouse and/or distribute Goods specifically for the Customer, the Customer must, within 30 days of request, purchase all Goods then warehoused and held at the then prevailing supply price. Where the Customer does not do so, Speck Industries may dispose of the affected Goods without liability for any loss or damage suffered by the Customer as a result. The Customer indemnifies Speck Industries against all claims, demands, loss, costs and expenses incurred by or made against Speck Industries, arising out of any actual or alleged infringement of patents, copyright, trademarks, design rights or other intellectual property rights, by any logo, design, copyright or other material that Speck Industries may use, print or reproduce at the Customer's request.

#### Liability:

To the fullest extent permitted by law, Speck Industries excludes all warranties and representations in respect of the supply of the Products to the Customer.

Where any of the consumer guarantees under the *Competition and Consumer Act 2010* (Cth) ("the CCA") apply to any Products supplied by Speck Industries to the Customer, and the CCA voids or prohibits provisions in a contract excluding, restricting or modifying such consumer guarantees, then, to the fullest extent permitted by law, the liability of Speck Industries under or arising out of the supply of Goods and / or Services for breach of, or failure to comply with, any such consumer guarantees shall be limited, at the option of Speck Industries, to:

- (a) If the breach or liability relates to a supply of Goods:
  - (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent Goods; or
  - (iv) the payment of the cost of having the Goods repaired.

- (b) If the breach or liability relates to a supply of Services:
  - (i) the supplying of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.

To the extent permitted by law, including where applicable the CCA, Speck Industries is not liable to the Customer in contract, tort, law or otherwise for any of the following:

- (a) loss of profit, hire, business contracts, revenues or anticipated savings, financial or economic loss, loss of opportunity;
- (b) damage to the Customer's reputation or goodwill;
- (c) loss resulting from any claim made by any third party;
- (d) special, indirect or consequential loss or damage of any nature whatsoever;
- (e) any defects or damage caused in whole or in part by misuse, abuse, neglect, electrical, mechanical or other overload, non-suitable lubricant, improper installation repair or alteration (other than to the extent caused by Speck Industries);
- (f) any transport, installation, removal, labour or other costs; or
- (g) technical advice or assistance given or rendered by it to the Customer whether or not in connection with the supply of Goods or performance of Services for or to the Customer, provided always that Speck Industries has rendered such Services with due care and skill and that any materials supplied in connection with those Services are reasonably fit for the purpose for which they are supplied.

**Conflicts:**

These terms and conditions constitute the entire agreement between the parties and apply to the exclusion of all other terms and conditions contained in the Customer's order. In the event of any inconsistency, Speck Industries will be deemed, by delivering the Goods to the Customer or supplying Services to the Customer, to have made an offer to the Customer to sell the Goods or supply the Services pursuant to these terms and conditions, which offer will be deemed to have been accepted if the Customer retains the Goods or accepts the Services. Speck Industries reserves the right to change these Terms and Conditions at any time.

**Jurisdiction:**

These terms and conditions are governed by and will be construed in accordance with the laws applicable in Western Australia without reference to provisions concerning conflicts of law and under exclusion of the *United Nations Convention on Contracts for the International Sale of Goods 1980* (CISG). The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Western Australia.

**No Waiver:**

The failure by Speck Industries to exercise, or any delay in exercising, any right, power or privilege available to it under these terms and conditions will not operate as a waiver or preclude any other or further exercise or the exercise of any other right or power.

**Severability:**

If a provision of these terms and conditions would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these terms and conditions.