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CONDITIONS OF SALE

1. General

- 1.1 In these conditions of sale (unless the context requires otherwise):
- (a) **"Customer"** means any person who enters into a contract with the Seller for the purchase of Goods and/or Services and includes:
 - (i) any successors or permitted assigns;
 - (ii) if the Customer consists of more than one person, each of them jointly and severally;
 - (b) **"Goods"** means any goods supplied or to be supplied by the Seller as specified in an Order accepted by the Seller.
 - (c) **"Order"** means an order placed with the Seller for the supply of Goods and/or Services.
 - (d) **"Other Property"** means all present and after-acquired property of the Customer (except the Goods) whether acquired alone or jointly as a tenant in common or as a joint tenant;
 - (e) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended;
 - (f) **"Security Agreement"** and **"Security Interest"** have the meaning ascribed to them in the PPSA;
 - (g) **"Seller"** means **Bellowflex Australia Pty Ltd ACN 080 990 432**; and
 - (h) **"Services"** means any and all services supplied by the Seller to the Customer.
- 1.2 These conditions of sale apply to each and every sale of Goods by the Seller and all offers made by the Seller in relation to the Goods.
- 1.3 The Customer is deemed to have accepted these conditions of sale by placing an Order.
- 1.4 The Seller's failure to insist upon strict performance of any of the terms of these conditions of sale or to object to any term or condition contained in any communication, whether written or oral, from the Customer, shall not be deemed a waiver of these conditions of sale and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 1.5 These conditions of sale supersede all previous conditions imposed by the Seller and override any terms used or submitted by the Customer. The Seller may vary these conditions of sale provided it first gives 30 days written notice to the Customer. Any Order placed, or Goods or Services supplied, after such 30 day period, will be deemed to be the Customers acceptance of the varied conditions of sale.

2. Quotes by the Seller

- 2.1 Subject to sub-clause 4.2, all quotations made by the Seller are valid for the period specified in the quotation, or if no such period is specified, for a period of thirty (30) days from the date of the quotation. Following the expiration of this period, each quotation is subject to written confirmation by the Seller.
- 2.2 Any Goods offered ex-stock by the Seller are subject to prior sale.

3. Orders

- 3.1 The Seller may require the Customer to provide written Orders. All quotations given and Orders accepted by the Seller are given or accepted by the Seller subject to these conditions of sale, and to the exclusion of all other terms. A contract will be made only upon the acceptance of an Order in writing by the Seller, which may be by supply of all or part of the Goods ordered.
- 3.2 The Customer must purchase at least the minimum order value and the minimum order quantity per line item determined by the Seller in its sole discretion and notified to the Customer from time to time.

4. Prices

- 4.1 Subject to sub-clause 4.2, and unless otherwise agreed in writing, the purchase price for Goods and Services shall be the Seller's list prices as at the date of the Seller's acceptance of an Order. The Customer acknowledges and agrees that, in the event that any price quoted by the Seller is calculated on the basis of a per unit price or is based on minimum or specific quantities, the Seller may amend that price if there is any variation in the total quantity of Goods or Services ordered from that upon which the quotation was based.
- 4.2 All quoted prices of imported Goods are based upon the FOB price of the Seller's supplier and the rates of exchange, freight, insurance and customs or primage duty as at the date of quotation. The quoted prices may be varied by the same percentage amount by which the Seller's actual costs of satisfying an Order vary as a result of any change in the said price or in any of these rates or duties. In the case of variations in rates of exchange, the Seller reserves the right to increase its quoted price in relation to Goods supplied to the Customer by the same percentage as the percentage devaluation (if any) of the Australian dollar against the currency in which payment for the relevant Goods is required to be made by the Seller to its supplier, calculated from the date of quotation by the Seller to the date of invoice, as disclosed by the variation in the ANZ Bank Ltd Spot Selling Rate in the relevant period.
- 4.3 In the event that the Seller agrees to deliver Goods in accordance with further directions of the Customer, the agreed price of the Goods shall only apply if the quantity delivered is delivered in accordance with the Customer's directions as specified in its Order or, if no directions are so specified, if the whole of the Goods are delivered no later than twelve (12) months from the date of the Order. If a lesser quantity is scheduled for delivery during the relevant period, the Seller reserves the right to charge for those Goods, at its option, either at the Seller's standard prices in effect at the time of delivery or at the Seller's standard prices in effect at the time of the Order.
- 4.4 In addition to the prices specified above, the Seller will charge the Customer for the cost of delivery of the Goods ex Sellers store together with its standard packaging and handling charges from time to time. In addition, the Seller shall be entitled to charge separately for packing, which is not in accordance with the Seller's customary standard of packing.



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4.5 The Customer must pay the Seller the amount of the price for the Goods and / or Services plus GST. The consideration payable by the Customer for Goods and / or Services represents the value of any taxable supply for which payment is to be made. If a taxable supply is made to the Customer, then the Customer must also pay at the same time and in the same manner as the value is otherwise payable the amount of any GST payable in respect of the taxable supply. Expressions used in this clause 4.5 bear the same meaning as those expressions in the A New Tax System (Goods and Service Tax) Act 1999 (as amended).

4.6 The Seller reserves the right to correct clerical errors without notification.

5. Payment

5.1 Where credit facilities have been approved by the Seller, payment for Goods and Services shall be due and payable 30 days from end of month of invoice.

5.2 The Seller reserves the right to terminate all or part of the Customer's credit facility at any time and to require full or part payment prior to delivery. The Seller may charge interest on any overdue payments at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) for the length of any such delay in payment. The Seller reserves the right to withhold further deliveries of Goods or the provision of Services until all arrears from the Customer have been paid.

5.3 The Seller also reserves the right to the extent permitted by law to charge all bank and other credit provider or facility fees and charges incurred by the Seller in processing the Customer's payment, including (without limitation) by credit card or for dishonoured payment.

5.4 The Customer agrees to pay all costs incurred by the Seller for the collection of any monies owing by the Customer to the Seller which are not paid when due, including (without limitation) commission charges by collection agencies and legal costs and disbursements (on an own solicitor/client basis).

5.5 The Seller may apply any payment by the Customer in any manner as the Seller sees fit.

6. Delivery of Goods

6.1 Whilst the Seller will use its best endeavors to meet all quoted delivery or consignment dates the Seller shall in no event be liable to the Customer by reason of delays in delivery caused by any reason whatsoever.

6.2 If the Customer uses its own carrier for delivery, such delivery shall be ex-Seller's store and the Customer shall pay all freight and insurance costs ex-Seller's store and shall indemnify the Seller against all actions, suits, proceedings, claims or demands and all losses, expenses and liabilities, howsoever arising, from the transportation of the Seller's Goods delivered ex-Seller's store once delivery has been made by the Seller to the Customer's carrier.

6.3 In the event of any delay caused by the Customer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller, at its option, may extend the quoted delivery or consignment dates or consign part of an Order or suspend consignment during that period of delay or may cancel the Order and the Customer shall not be relieved of its obligation to accept and pay for an Order, or any part of an Order, in accordance with clause 5, as a result of any such extensions, partial consignments or suspensions.

6.4 The delivery time made known to the Customer are estimates only and the Seller will not be liable for late delivery or non-delivery and under no circumstances will the Seller be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery of the Goods.

6.5 The Seller will be conclusively presumed to have delivered the Goods in accordance with this agreement if the Goods are delivered to the consignment address, whether or not the Seller obtains a receipt or signed delivery docket for the Goods from any person.

6.6 If delivery cannot be effected, the Seller may store the Goods or redeliver the Goods to the Customer and the Customer must pay or indemnify the Seller for all costs and expenses incurred.

6.7 The Seller will not be responsible for any loss or damage to Goods in transit. The Seller will render the Customer such assistance as may be necessary to press claims on any carrier provided the Customer must have notified the Seller and the carrier in writing immediately loss or damage is discovered on receipt of Goods and must lodge a claim on the carrier within 3 days of the date of receipt of the Goods.

6.8 In the event of the Seller agreeing to the return of the Goods by the Customer, the Goods will be at the Customer's risk until such time as the Goods reach the Sellers' place of business. The expense of return will be borne by the Customer.

7. Storage of Goods

In the event that, after notification to the Customer that the Goods are ready for delivery, delay in delivery is caused by the Customer or caused by industrial disputes, including strikes and lockouts, circumstances such as fire, war, mobilisation or any other cause beyond the reasonable control of the Seller, the Seller shall be entitled, at its option, and without limiting its rights under sub-clause 5.2, to arrange suitable storage, whether at its premises or elsewhere, and shall take reasonable steps to protect the Customer's interest in the Goods. The Customer shall pay all costs of storage, insurance, demurrage, handling and other charges associated with such storage.

8. Risk and Supply

8.1 All Goods and/or Services sold to the Customer shall be at the Customer's risk immediately upon delivery to or collection by the Customer, the Customer's nominee, the Customer's carrier, except where Goods are held for the Customer in accordance with clause 7, in which case risk shall pass to the Customer on the earlier of (i) the date being seven (7) days from the date of notification to the Customer that the Goods are ready for delivery, or (ii) the delivery to, or collection by, the Customer, the Customer's nominee or carrier.



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8.2 The Seller reserves the right to: (1) withhold supply to the Customer where: (i) the Seller has insufficient Goods to fulfill the Order, (ii) the Goods and/or Services ordered have been discontinued, (iii) the Customer is in breach of any contract with the Seller, or (iv) the Seller otherwise considers it appropriate for any other reason; (2) supply by installments. The exercise of these rights by the Seller or delay in supply for any other reason does not entitle the Customer to: (i) terminate any contract with the Seller; or (ii) claim any loss or damage.

9. Security Agreement

9.1 The Customer agrees:

- (a) that these conditions of sale constitute a Security Agreement for the purposes of the PPSA;
- (b) that these Conditions create a Security Interest in all Goods (and the proceeds of the Goods) in favour of the Seller to secure the purchase price for the Goods;
- (c) that the following sections of the PPSA do not apply: 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, and, to the extent section 115(7) applies, each section of Part 4.3 of the PPSA is excluded unless the Seller elects in writing to retain Part 4.3 (which the Seller may elect to do either in whole or in part); and
- (d) to waive its right to receive notice of a verification statement in relation to registration of a Security Interest.

9.2 The Customer:

- (a) further agrees that these Conditions also create a Security Interest in all of the Customer's Other Property, although such Security Interest is not intended to prevent the Customer from transferring such Other Property in the ordinary course of the Customer's business; and
 - (b) separately charges all land owned now and in the future by the Customer whether owned alone or jointly as a tenant in common or as a joint tenant,
- in favour of the Seller to secure payment and performance of all the Customer's obligations under these conditions of sale.

9.3 To assure performance of its obligations under these conditions of sale, the Customer hereby grants the Seller an irrevocable power of attorney to do anything the Seller considers should be done by the Customer pursuant to these conditions of sale. The Seller may recover from the Customer the cost of doing anything under this clause 9, including registration fees.

10. Title of Goods

10.1 Title to and property in the Goods supplied by the Seller shall not pass to the Customer until the Seller has received payment in full of the price of all Goods supplied by the Seller to the Customer at any time and the Customer has discharged all existing indebtedness to the Seller, whether for the price of the Goods supplied or for any other amount which may be owing by the Customer to the Seller on any other account (some of which may not necessarily be due for payment); provided however that the Customer shall bear the risk of any loss or damage to or deterioration of the Goods from whatever cause arising following delivery of the Goods to the Customer. If the Customer fails to honour any of these terms and conditions of sale, the Seller, without notice, will have the right to take possession of the Goods which are the subject of this reservation of title, or trace the proceeds of the sale thereof, as the case may be, and to recover the full amount owing to the Seller together with interest and costs, if any.

10.2 The Customer acknowledges that until property and ownership in the Goods passes to the Customer in accordance with sub-clause 10.1, the Customer is in possession of those Goods for and on behalf of the Seller as a fiduciary bailee and agent and is only authorised to sell the Goods (in the Customer's own name and not as agent of the Seller) in the ordinary course of the Customer's ordinary business.

10.3 The Customer shall keep and safely store the Goods on its premises separately and in such manner that the Goods are readily identifiable as the property of the Seller and shall display such identification as may from time to time be requested by the Seller.

10.4 The Seller will have the right, at any time and without prejudice to any other remedies: (i) to repossess the Goods and to enter into any premises upon which the Goods are stored (forcibly if necessary), without notice, for this purpose and will not be liable for trespass or any resulting damage; and (ii) to require the Customer not to resell or part with possession of, or otherwise dispose of, charge or otherwise encumber the Goods until payment is made in full on any account.

10.5 Until such time as the Seller receives payment in full for any Goods on any account, if the Customer sells or receives any payment from a customer or insurer in respect of the Goods, (1) the Customer must: (a) deposit the proceeds of any such sale or disposition and any insurance proceeds (or claim thereto) into a separate and identifiable bank account which shall not be overdrawn; (b) not mix such proceeds with any other moneys; and (c) account to the Seller for such proceeds, and (2) the Seller will be entitled to trace all proceeds of sale of the Goods received by the Customer through the relevant account or any other account maintained by the Customer.

10.6 If the Customer incorporates or mixes Goods supplied by the Seller (the property in which has not passed to the Customer in accordance with this clause 9) with other Goods not supplied by the Seller, the resulting product shall be the property of the Seller. The rights of the Seller in respect of the resulting product shall be the same as those provided for in this clause 9 in respect of Goods the property in which has not passed to the Customer, except that in exercising these rights the Seller shall account to the Customer (on a pro rata basis) for that part of the realised value of the resulting products which is attributable to: (1) the Goods not supplied by the Seller; and (2) the Customer's cost of manufacture.

11. Return of Goods and Cancellation of Orders

11.1 The Customer may within ten (10) days of receipt of any Goods claim the right to reject any Goods which are wrongly supplied or oversupplied, or which are not in accordance with any express or implied representations, warranties, terms or conditions of the contract of sale, without limiting the Seller's right to dispute any such claim. If the Customer fails to notify the Seller in writing of its claim for rejection and reasons therefore within such period, the Customer will, subject always to clause 15 of these conditions of sale, be deemed to have accepted such consignments.



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- 11.2 Return of any of the Goods cannot be made by the Customer:-
- (a) without prior written authorisation of the Seller, and
 - (b) unless accompanied by the delivery docket showing the Seller's authorisation reference number.
- 11.3 In the event that the Customer returns Goods other than in accordance with these conditions of sale, the Seller shall re-consign those Goods to the Customer, freight collect.
- 11.4 The Customer shall not cancel any Order without the prior written consent of the Seller, which consent may or may not be granted in the Seller's sole discretion and on terms that will indemnify the Seller for all losses.
- 11.5 In the event that the Seller agrees to the cancellation of an Order, the Seller may as a condition of such cancellation, require the payment by the Customer of a cancellation fee of an amount determined by the Seller in its reasonable discretion to compensate it for the loss suffered by it arising out of the cancellation.
- 11.6 At the Seller's option, any Order may be terminated by the Seller in the event of the insolvency of the Customer or in the event of execution being levied against any of the property of the Customer or in the event of the Customer being placed in liquidation, whether voluntary or otherwise, or a receiver and manager or administrator being appointed in respect of the assets or undertaking of the Customer or the Customer entering into a deed of composition or arrangement with its creditors or any of them, or in the event that for any reason, in the Seller's reasonable opinion, the Customer is unlikely to be able to make payment for the Goods and/or Services on the due date.

12. Use of Goods

The Customer will not use the Goods or Services for any purpose other than that for which the Goods or Services were sold to it and will use the Goods or Services strictly in accordance with any instructions or supporting documentation supplied with the Goods or Services, or as directed by the Seller.

13. Export and/or Re-export Limitation

The Customer must have regard to and take responsibility for all current statutory or other government regulations in force from time to time concerning export rules, regulations and restrictions in force from time to time and regardless of any disclosure made by the Customer to the Seller of an ultimate destination for any Goods or products, the Customer will not export or re-export directly any Goods or other products without first obtaining all such written consents or authorisations as may be required by any applicable government rules or regulations.

14. Intellectual Property

- 14.1 The Customer acknowledges that all rights in respect of patents, copyrights, design rights, trade marks or other industrial or intellectual property rights connected with the Goods and / or Services shall not pass to the Customer. The Customer shall indemnify the Seller against any and all liabilities, claims and costs incurred by or made against the Seller as a direct or indirect result of carrying out of any work required to be done on or to the Goods and / or Services in accordance with the requirements or specifications of the Customer involving any infringement or alleged infringement of any rights of any third party.
- 14.2 Subject to Clause 15, the Seller shall not be liable for any loss arising from the production of Goods where the specification, method of construction or design has been provided to the Seller by the Customer and the Seller has not materially deviated from those specifications when producing those Goods. The Customer acknowledges the Seller's right to vary the material or construction specification of the Goods provided that their performance specification is not adversely affected.
- 14.3 The Customer warrants to the Seller that the production and delivery of Goods to the Seller will not infringe any patent, copyright, trade mark, design or other right of any third party and the Customer agrees to notify the Seller in the event of such an infringement and further agrees to indemnify the Seller in respect of any loss suffered or incurred by the Seller for any claim, action or proceeding commenced by any person in connection with such infringement.
- 14.4 Unless otherwise agreed in writing, if the Seller is requested to provide services in respect of programming or other enhancements then the cost of such items shall be to the account of the Customer and the Customer agrees that the property in such items is to remain with the Seller.
- 14.5 Any preliminary work undertaken by the Seller at the Customer's request in relation to design or construction of Goods or products in respect of designs or programming shall be considered an Order and the Seller may in its discretion charge the Customer in respect to such work undertaken or services provided.
- 14.6 Other than disclosures by the Seller to other customers and potential customers and as required by law, the Customer and Seller agree to keep confidential the terms of these conditions of sale including the price of the Goods.

15. Warranty and Exclusion of Liability

- 15.1 Except as specifically set out herein, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods and/or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 15.2 The Seller is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused arising from the supply of the Goods and/or Services, including but not limited to loss of turnover, profits, business or goodwill.
- 15.3 The Seller will not be liable for any loss, damage or claim suffered by the Customer where the Seller has failed to meet any delivery date or cancels or suspends the supply of Goods or for any Goods that display a "use-by" date that are sold or distributed by the Customer after that date.



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- 15.4 Nothing in these conditions of sale is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods and/or Services which cannot be excluded, restricted or modified. If any of these conditions of sale is inconsistent with State or Federal legislation, such conditions of sale must be read down only to the extent necessary to comply with such legislation and will otherwise apply to the fullest extent legally possible.
- 15.5 If the Customer is a "consumer" within the meaning of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the Goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Seller's liability for a breach of a condition, warranty or guarantee (whether express or implied) is limited to any one of the following as determined by the Seller:
- (a) the replacement of the Goods or the supply of equivalent Goods; or in the case of Services, supply the Services again or pay the costs of having the Services supplied again
 - (b) the payment of the cost or replacement of the Goods or of acquiring equivalent Goods.
- 15.5 The Customer acknowledges that it has not relied on any representation made by the Seller, which has not been expressly stated in these conditions of sale. The Customer indemnifies the Seller against all loss incurred by the Seller in connection with any act or omission of the Customer including, but not limited to, negligence of the Customer or any unauthorised representation made or warranty given by the Customer in connection with the Goods and/or services.
- 15.6 Where the Seller is not the manufacturer, the Seller relies on the specifications and warranties supplied by the manufacturer.

16. Infringement of Intellectual and Industrial Property Rights

If any action, suit, proceeding, claim or demand is brought or made alleging that the sale, use or any other dealing with the Goods infringes the trade mark, trade name, patent, copyright, registered design or any other intellectual or industrial property rights of third parties, the Customer shall forthwith notify the Seller thereof and give every assistance to the Seller in connection therewith as the Seller may reasonably require and shall not itself handle, deal with or compromise any such action, suit, proceedings, claim or demand except with the prior written consent of the Seller.

17. Governing Law

These conditions of sale shall be governed by, and construed in accordance with, the laws of the State of Victoria Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

18. Specifications

- 18.1 The Seller's policy is one of continuous development and the Seller therefore reserves the right to improve, alter or discontinue specifications without prior notice. All illustrations or samples are intended as approximate representations only and are not binding in detail with regard to finishes, colour and specifications. The Seller accepts no liability whatsoever for any loss or damage (including, without limitation, consequential loss or damage) directly or indirectly arising out of or in connection with same.
- 18.2 In the event the Customer provides the Seller with specifications for the manufacture of Goods by the Seller for the Customer, the Customer warrants to the Seller that the specifications and any Goods manufactured by the Seller based on the said specifications will not infringe the copyright, patent, design or other intellectual property rights of any third party, and the Customer will indemnify and keep indemnified the Seller from and against any and all claims, liabilities, obligations, expenses or damages the Seller may suffer or incur as a result of the use by the Seller of the specifications.

19. Termination

- 19.1 The Seller will be entitled to terminate any Order with the Customer or revoke any credit terms granted if the Customer fails to punctually pay monies due to the Seller, has any security enforced against it, has an Administrator appointed under the Corporations Act, commits an act of bankruptcy or, being a company passes a resolution for winding up (except for the purposes of reconstruction) or an application is made for the winding up of the Customer.
- 19.2 Upon the occurrence of termination event referred to in Clause 19.1, the Seller reserves the right to cancel an Order with the Customer (to the extent that the Order remains unperformed) in whole or in part without any liability attaching to the Seller, any Goods in transit and dispose of the Goods produced for the Customer to a third party and all monies owing to the Seller in respect of any Order will be immediately payable.
- 19.3 Termination by the Seller is without prejudice to any other right or obligation, which may have accrued prior to termination.

20. Force Majeure

- 20.1 The Seller shall not be liable for any direct or indirect loss arising from non-delivery or delay in delivery of any Goods or services caused by act of God, riot or civil commotion, strike, lock out, labour disputes, fire, flood, drought, power restrictions, act of government, delays in transport, breakdowns in machinery, failure to obtain or shortages of raw materials or other supplies obtained from 3rd parties or any cause whatsoever beyond its control.
- 20.2 During the continuance of an event of force majeure affecting the Seller, its obligations hereunder will be suspended and will resume as soon as possible after the cause or circumstance has ceased to have effect.

21. Severability

If any of the terms of these conditions of sale infringes any law in Australia it must be read down so that it does not infringe that law, otherwise it will be deemed void and severable.