

Terms of Trade – Mondolux Pty. Ltd.

1. DEFINITIONS

Agreement means these general 'Terms of Trade' and any accepted Order or Tax Invoice for Goods or Services;

Additional Charge means: (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided;

Claim means any claim, notice, demand, costs (including legal costs) debts, liabilities, damages, losses, taxes, duties, fees, suits, actions, demands, proceedings, litigation or judgment, however it arises;

Customer means the person identified on a Quote or Order as the Customer and includes the Customer's agents and permitted assigns;

Due Date means the due date shown on the relevant Tax Invoice (or within 7 days if not displayed) unless otherwise agreed in writing;

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services;

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs;

Interest Rate means 2% (Two Percent) per calendar month;

Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, an award of damages, personal injury and property damage;

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties;

PPS Law means:

(a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Privacy Act means the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth);

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work;

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms of Trade;

Supplier means the entity specified as the Supplier of Goods or Services on the Quote and includes the Supplier's agents and permitted assigns; and

Trading Account means an account where a Customer applies for the supply of Goods or Services on credit that is operated by the Supplier that is used to supply, sell or hire Goods and Services to a Customer from time to time on credit.

1.1 INTERPRETATION

Agreement means these general 'Terms of Trade' and any accepted Order or Tax

In these Terms of Trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade;
- (d) references to money and currency are to Australian money and currency;
- (e) references to time are references to time in the jurisdiction;
- (f) references to any law are references to that law as amended, consolidated, supplemented or replaced and includes references to regulations and other instruments;
- (g) a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (h) a reference to a document includes the document as modified from time to time and any document replacing it;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) a warranty, representation, obligation, covenant, liability or agreement given or entered into by more than one person binds them jointly and severally;
- (k) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms of Trade; and
- (l) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (ii) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (iii) in all other cases, must be done on the next Business Day.

2. GENERAL

- (a) These Terms of Trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts

and variations. These Terms of Trade take precedence over Terms of Trade contained in any document of the Customer or elsewhere.

- (b) The variation or waiver of a provision of these Terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3. QUOTES

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.
- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer completing and submitting a Purchase Order form to the Supplier (unless otherwise agreed to in writing between the Supplier and the Customer).
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these Terms of Trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

4. ORDERS

- (a) When placing an Order with the Supplier, the placing of the Order is evidence that the Customer has accepted these Terms of Trade;
- (b) Every Order by the Customer for the provision of Goods or Services must be submitted in writing on a Purchase Order referencing the Quote (unless otherwise agreed).
- (c) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.

- (d) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (e) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms of Trade and the most recent Quote provided by the Supplier relating to that Order.
- (f) The Supplier may in its absolute discretion refuse to provide Goods or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (g) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (h) If the Customer does not make payment to the Supplier in full before the cash due date or the Credit Due Date (whichever is applicable), the Customer's account will be considered overdue.
 - (i) Failure to comply with the terms of payment set out in this clause 4 shall constitute a breach of contract and the Supplier may treat the whole contract as repudiated and act accordingly, including taking any necessary enforcement action without notice to the Customer.
 - (j) Each order submitted by the Customer to the Supplier will be deemed to include a representation that the Customer is solvent and able to pay all the debts of the Customer as and when they fall due. The Customer must inform the Supplier if there are any facts that might reasonably affect the decision of the Supplier to accept an order or grant approved credit to the Customer.

5. VARIATIONS

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original

Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6. INVOICING AND PAYMENT

- (a) The Supplier may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
- (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;
 - (ii) at the end of each week before the Order is completed, the Supplier may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
 - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
- (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
 - (ii) where no Quote has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order.
- (c) The Customer must pay an invoice issued by the Supplier to the Supplier within 7 days of a valid Tax Invoice being issued to the Customer (unless otherwise agreed to in writing).
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph

affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

- (g) The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these Terms of Trade.

The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7. ADDITIONAL CHARGES

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The Customer will either collect the Goods or, if the Goods are to be delivered by the Supplier, the Customer must pay all delivery charges incurred by the Supplier for delivery of the Goods to the address nominated by the Customer;
- (c) The imposition of Additional Charges may also occur as a result of:
- (i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (ii) storage costs for Goods not collected from the Supplier upon the Supplier giving 4 weeks' notice of the date on which the Goods are manufactured, fabricated, created, formed or being available for collection;
 - (iii) photocopying, courier, packing or handling charges not included in the Quote;
 - (iv) Government or council taxes or charges not included in the Quote; or
 - (v) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

8. ACCEPTANCE OF GOODS

- (a) If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 24 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

- (b) If the Supplier accepts a return of goods from the Customer, any amount payable to the Customer by the Supplier as a result of that return of Goods, will not be payable in cash by the Supplier to the Company but may only be applied in the reduction of the price paid by the Customer to the Supplier for future Goods sold by the Supplier to the Customer.

9. TITLE AND RISK

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property and title in Goods supplied to the Customer under these Terms of Trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
- (i) is a Bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) must not allow any person to have or acquire any security interest in the Goods;
 - (v) agrees that the Supplier may repossess the Goods if payment is not made within 7 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the agreed payment Terms set out in the accepted Quote or Purchase Order, whichever is the latter;
 - (vi) may immediately terminate this Agreement upon notice to the Customer and take such action as the Supplier deems necessary to recover all amounts due;
 - (vii) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
- (i) the Customer makes a new object from the Goods, whether finished or not;
 - (ii) the Customer mixes the Goods with other goods; or
 - (iii) the Goods become part of other goods (**New Goods**),
- the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these Terms of Trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph 9(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 9(c), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
- (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owned by the Customer to the Supplier have been paid; or
 - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) If:
- (i) a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
 - (ii) in the Supplier's opinion, the PPS Law:
 - a. does or will adversely affect the Supplier's security position or obligations; or
 - b. enables or would enable the Supplier's security position to be improved without adversely affecting the Customer, the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these Terms of Trade or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 9(h)(ii)a or improve the security position as contemplated in paragraph 9(h)(ii)b. The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as

required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these Terms of Trade have been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these Terms of Trade. If this occurs, the Customer must pay to the Supplier any money owed to the Supplier by the Customer immediately.

- (i) Whilst the Supplier takes reasonable care in packaging the Goods, unless otherwise agreed between the parties or is required by law, the Supplier will take no responsibility in relation to Goods that are lost or damaged during transit.

10. INTELLECTUAL PROPERTY RIGHTS

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms of Trade for the purposes contemplated by the Order.

11. AGENCY AND ASSIGNMENT

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these Terms of Trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms of Trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms of Trade without the prior written consent of the Supplier.

12. DEFAULT BY CUSTOMER

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these Terms of Trade for any reason (including, but not

limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;

- (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - a. a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - b. a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - c. the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - d. any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these Terms of Trade without the Supplier's prior written consent; or
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
 - (i) terminate these Terms of Trade;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
 - (c) In addition to any action permitted to be taken by the Supplier under paragraph 12(b), on the occurrence of an event of default all invoices will become immediately due and payable.

13. TERMINATION

In addition to the express rights of termination provided in these Terms of Trade, a party may terminate these Terms of Trade by giving 7 days written notice to the other party.

14. EXCLUSIONS AND LIMITATION OF LIABILITY

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms of Trade by any law is excluded.
- (b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the

Customer to reject the Goods upon delivery, or to make any claim in respect of them.

- (c) The Supplier gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Supplier or any of its Suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
 - (i) any Goods or Services supplied to the Customer;
 - (ii) any delay in supply of the Goods or Services; or
 - (iii) any failure to supply the Goods or Services.
- (d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms of Trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (f) The Customer acknowledges that the Goods or Services being purchased may include Goods or Services that are able to be used for personal, domestic or household purposes.
- (g) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

15. WARRANTY

In addition to any applicable manufacturer's warranty, the Supplier warrants that all Goods or Services supplied by the Supplier will be free from defects in workmanship and in good working order for a period of 1 year from installation, unless an extended warranty period has been granted by the Supplier in its absolute discretion (Warranty Period).

Notwithstanding the above, the Supplier's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

The Supplier does not warrant the operation of Goods or Services, the Customer must read and follow all instruction manuals and instructions. If the Customer fails to do so it may invalidate this warranty.

This warranty does not apply to any third-party goods or services not provided by the Supplier.

During the Warranty Period the Supplier will replace or repair any defective Goods or Services provided by the Supplier without charge, so long as the damage does not arise from:

- (a) improper use, adjustment or operation of the Goods or Services by the Customer or any other third party not engaged by the Supplier;
- (b) the use of accessories or equipment including hardware not authorised by the Supplier in writing;
- (c) any contamination or foreign materials caused or induced by the Customer;
- (d) any modification of the Goods or Services which is not authorised by the Supplier including tampering or any attempt to disassemble the Goods or Services;
- (e) any misuse of the Goods or Services by the Customer or anyone for who the Customer has legal responsibility;
- (f) any use of the Goods or Services outside the specifications for those Goods or Services including electrical power, temperature, humidity or dust;
- (g) failure for any reason to follow the directions for use in any instructions or manual;
- (h) inadequate or improper maintenance of the Goods or Services; and
- (i) normal wear and tear including from cleaning, accidents, acts of God, force majeure event, theft, vandalism or misuse beyond the reasonable control of the Supplier.

To obtain the benefit from this warranty:

- (a) the Goods and Services must have been supplied or provided by the Supplier;
- (b) the Customer must:
 - (i) have complied with any manual or operating instructions in using the Goods and Services; and

(ii) contact the Supplier within the Warranty Period or within 7 days of discovery of the claimed problem whichever is earlier.

- (c) The Customer must send a notice in writing to the Supplier enclosing proof of purchase and any other relevant documentation issued by the Supplier upon providing or installing the Goods and Services.
- (d) Upon receipt of the notice, the Supplier will contact the Customer to determine the extent of the issue.
- (e) If there is an issue with the Goods and Services covered by this warranty and that cannot be remedied by the Customer, the Customer must arrange with the Supplier a time for a representative of the Supplier to visit the Customer's premises or other location upon which the Goods and Services are located.
- (f) to the extent the Supplier is liable in relation to any defective Goods or Services, the Customer's remedies are limited to, in the Supplier's absolute discretion:
- (i) in relation to Goods:
- replacement of Goods;
 - repair of Goods;
 - the Customer may have a liability to pay the reasonable costs of returning the Goods to the Supplier's premises for replacement or repair;
 - the cost of replacing the Goods or acquiring equivalent Goods; or
 - costs of having the Goods repaired,
- (ii) in relation to Services:
- repeating the Services or component of the Services found to be defective; or
 - costs of having the Services re-performed.
- (g) Any service outside the scope of the warranty will be charged at the rates and on the Terms confirmed by the Supplier in writing.
- (h) All transportation or other ancillary charges incurred in the repair, replacement or re-performance of the Goods or Services, or any of its component parts, to the Supplier for repair or inspection, and the cost of returning them to the Customer must be paid by the Customer.
- (i) Subject to any statutory provisions to the contrary, this warranty does not extend to cover any consequential loss either directly or indirectly due to the defective Goods or Services after the Customer pays.
- (j) Any notice or other communication including any request, demand, consent or approval, to or by the Customer must be in legible writing and in English addressed as shown below:

Mondolux Pty Ltd

Address: 10 Plane Tree Avenue, Dingley Village, Victoria
3172

Telephone: 1300 601 931

Email: sales@aglosystems.com.au

16. INDEMNITY

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms of Trade including:
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these Terms of Trade.

17. FORCE MAJEURE

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

18. DISPUTE RESOLUTION

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
- A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause;
 - A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph; and
 - A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 7 Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to

settle the dispute by mediation administered by the Melbourne Commercial Arbitration and Mediation Centre - <http://www.mcamh.com.au/venue/melbourne-commercial-arbitration-and-mediation-centre/> (**MCAM**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the **MCAM** Guidelines for Commercial Mediation which operate at the time the matter is referred to **MCAM**. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The Terms of the Guidelines are incorporated into these Terms of Trade. This paragraph survives termination of these Terms of Trade.

- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms of Trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

19. MISCELLANEOUS

- (a) These Terms of Trade are governed by the laws of the state where the Supplier's registered office is situated, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These Terms of Trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these Terms.
- (c) These Terms of Trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms of Trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms of Trade.
- (e) If any provision of these Terms of Trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this

paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.

- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.
- (j) The Customer must not assign any of the rights of the Customer pursuant to these Terms of Trade without the prior written consent of the Supplier, which may be refused in the absolute discretion of the Supplier. Any consent given by the Supplier will not release the Customer from any obligation of the Customer pursuant to these Terms of Trade.
- (k) The Customer will not by virtue of these Terms of Trade be, or for any purpose be deemed to be, an agent of the Supplier.
- (l) Notwithstanding and other provision, if there is any inconsistency or conflict between an order for the supply of Goods between the Supplier to the Customer, or any other document between the Supplier and the Customer and these Terms of Trade, then these Terms of Trade will prevail.
- (m) The personal information of Customers is collected and managed in accordance with the Australian Privacy Principles as set out in the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (*Cth*).

Signed by [*name of Customer*] in the presence of [*name of witness*]

[Signature of witness]

[Signature of Customer]

Signed by [*name of Supplier*] in the presence of [*name of witness*]

[Signature of witness]

[Signature of Supplier]