

**SOLA SPORT PTY LIMITED  
TERMS AND CONDITIONS OF TRADE**

**Definitions**

"**Sola Sport**" means SOLA SPORT PTY LIMITED (ABN 23 000 584 672) and its assignees.

"**Customer**" means the party placing the Order with Sola Sport either directly or through an agent of Sola Sport.

"**Order**" means an offer by a Customer to purchase Products from Sola Sport.

"**Products**" includes any goods, services and materials and any combination thereof.

"**Due date**" means, where goods are sold on credit, the date that payment for the Products (and all other amounts payable by the Customer) is due and payable which shall be the last day of the month following the month in which the invoice was issued by Sola Sport.

"**Settlement discount**" means the discount for early payment as described in clause 5.

"**Late Payment surcharge**" means the charge on all amounts not paid by the Customer by the Due Date as described in clause 6.

"**Restocking Fee**" means the charge as described in clause 14 to cover the costs of handling goods returned (not being goods that are defective or damaged or that do not comply with the order or quote).

**1. Acceptance of Order**

Sola Sport may accept any order in whole or in part. Shipping by Sola Sport of Products for delivery pursuant to an order (whether by single or multiple delivery) shall be taken as acceptance to the extent shipped. Accepted orders (which includes forward orders and back orders) may not be varied or cancelled by the Customer without written approval from Sola Sport and, subject to the provisions set out in clause 14, there is no right of return.

**2. Credit granting**

Sola Sport may accept an order and allow credit for part or all of its value or may accept an order and require pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted or is withdrawn, payment for all Products supplied is required before delivery. Where credit has been approved for the Customer, all invoices issued by Sola Sport are due and payable by the Due date.

**3. Price**

The price of the Products shall be as agreed between the parties, as published, or otherwise such amount as indicated on invoices provided by Sola Sport to the Customer regarding Products ordered. Prior to acceptance of an order, Sola Sport may change its published prices at any time without notice.

Products ordered from Sola Sport are quoted F.O.B. Alexandria, Sydney, NSW or a local distribution centre or agent of Sola Sport where ordered from there.

Handling and administration fees may be charged on sales below certain dollar values as may be determined by Sola Sport from time to time.

**4. Freight and Handling charges**

Sola Sport may charge for freight and handling having regard to the mode of transport, distance and volume of Products supplied. The rates of charge are subject to change at any time without notice.

**5. Settlement Discounts**

Any settlement discounts will be credited to the Customer's account when the associated payment is received. The current Settlement discount is 3% for payments received by Sola Sport within seven (7) days from the end of the month in which the Products were supplied. Sola Sport may vary or discontinue the settlement discount without notice.

**6. Late Payment surcharge**

Sola Sport may impose a Late Payment surcharge on any amounts not paid by the Customer by the Due Date. The Late Payment surcharge is calculated at the rate of 1.5% per calendar month on any overdue amounts as from the Due Date and compounding monthly until paid.

**7. GST**

Sola Sport reserves the right to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products. Unless expressly included all amounts expressed or described in any agreement, price list or in invoices are GST exclusive.

**8. Delivery**

Delivery of Products may not be refused by the Customer after an order has been accepted by Sola Sport. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by Sola Sport. The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable to accept delivery of the Products as arranged, then Sola Sport shall be entitled to charge a reasonable fee for redelivery. Delivery of the Products to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this agreement. The failure of Sola Sport to deliver by a time specified by the Customer shall not entitle the Customer to treat that contract as breached or repudiated. Sola Sport shall not be liable for any loss or damage or expense arising from failure by Sola Sport to deliver the Products promptly or at all. Where only partial delivery of an order is made the Customer shall accept such delivery and be liable for payment thereof notwithstanding that other parts of the order may be related.

**9. Retention of Title to the Products Pending Payment**

Orders are accepted on condition that ownership of the Products shall remain with Sola Sport and shall not pass to the Customer until Sola Sport has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to Sola Sport from the Customer on any account. Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of Sola Sport. The Customer shall store and segregate the Products (at no cost to Sola Sport) in such a way that they can be identified as Sola Sport's property, shall keep them properly stored, protected and insured against loss and damage and shall deliver them to Sola Sport upon request and Sola Sport shall be entitled to enter the premises where they are stored to retrieve them at any time and may resell such Products without the Customer's consent. The Customer will however be entitled to sell such Products within the ordinary course of business on condition that so long as title to such Products remains with Sola Sport, then Sola Sport shall legally and beneficially be entitled to the proceeds of sale which the Customer shall hold on trust for Sola Sport in a separate account or, where still unpaid, the Customer will, on request, assign to Sola Sport the claims the Customer has in respect of such sales.

**10. Passing of Risk**

The Risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery of the Products to the Customer or upon collection of the Products by the Customer, the Customer's agent or any courier (or equivalent) as the case may be.

**11. Personal Properties Securities**

The Customer acknowledges that by virtue of clause 9 Sola Sport has a security interest in the Products (as well as the proceeds of any sale or insurance claim in respect of the Products and monies held in a separate account arising from the sale of the Products) for the purposes of the Personal Property Securities Act 2009 (Cth) as amended (the "PPS Act") and to the extent applicable the PPS Act applies.

The Customer acknowledges and warrants that the Customer conducts a commercial operation and that any goods or materials purchased from Sola Sport are not purchased predominantly for personal domestic or household purposes and the Customer and any guarantors agree to indemnify Sola Sport for any loss or damage arising from any breach of such warranty.

The Customer acknowledges that Sola Sport may do anything reasonably necessary, including but not limited to registering any security interest which Sola Sport has over the Products on the Personal Property Securities Register established under section 147 of the PPS Act Order to perfect the security interest and comply with the requirement of the PPS Act. The Customer agrees to without charge provide all such information and do all things reasonably necessary to assist Sola Sport to undertake the matters set out above. The Customer waives pursuant to s.157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the register.

The Customer and Sola Sport agree that, pursuant to section 115 of the PPS Act, the following provisions in the PPS Act do not apply in relation to a security interest in the goods to the extent, if any, mentioned (words in this provision have the same meaning as in the PPS Act):

- i. section 95 (notice of removal of accession)
- ii. section 125 (obligation to dispose of or retain collateral) in that Sola Sport may extend the time for delay as Sola Sport considers appropriate
- iii. section 129 (disposal by purchase)
- iv. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
- v. paragraph 132(3)(d) (contents of statement of account after disposal)
- vi. subsection 132(4) (statement of account if no disposal);
- vii. section 135 (notice of retention)
- viii. section 142 (redemption of collateral)
- ix. section 143 (reinstatement of security agreement);

**12. Special Ordered Product**

Direct costs may be added to any Product that has been specially ordered for a Customer (whether locally or from overseas) or which does not form part of the range in the current Sola Sport published price list and shall not in any case be eligible for return.

**13. Credit Card recovery of costs**

A service fee may be charged to the Customer where payment is made by way of a credit card. The current service fee for Visa and MasterCard cards is 1.65% (including GST) but this rate may be varied by Sola Sport without prior notice. No other cards are accepted.

**14. Warranty**

Sola Sport warrant that for clothing for a period of (3) three months, and for other Products for a period one (1) year from the date of delivery it will replace or repair, at its sole discretion, any of its Products that are defective in materials or workmanship, as follows:

- a. Sola Sport endeavours to keep spare parts for a number of years. However, due to the nature of many of its Products, Sola Sport reserve the right to replace any faulty part with what it fairly judges to be a similar style as available, should this be necessary;
- b. This warranty does not apply to Products that have been altered, broken or damaged by misuse, tampered with in any way or where the fault arises from a failure to follow the recommended product care or maintenance instructions provided with the Products;
- c. Sola Sport does not warrant against normal wear and tear, accidental damage or scratched or broken parts that were not defective when shipped for delivery;
- d. Sola Sport shall not be liable for consequential losses and in no case shall the liability of Sola Sport for defective goods or

materials exceed the invoiced price of the goods or materials concerned.

**15. Claims, Repairs and Returns**

The Customer shall inspect the Products on delivery and shall notify Sola Sport in writing of any apparent defect, shortage in quantity, damage or failure to comply with the order or quote. No claims for defective Products, shortage in quantity, damage or failure to comply with the order or the quote will be accepted unless Sola Sport is notified in writing within five (5) business days of delivery.

The Customer agrees that it will not return any of the Products without first informing Sola Sport and obtaining a Returns Authority Number (RAN) number issued by Sola Sport. The issue of a RAN is not of itself any kind of admission or acceptance of a return.

No credit or replacement shall be given or repair undertaken unless and until Products so returned have been verified as being defective or otherwise valid for repair or return by Sola Sport.

The Customer shall be liable for a Restocking Fee on all goods accepted for return. The Restocking Fee shall not apply to goods returned for being defective, damaged or for failing to comply with the order or quote. The current Restocking Fee is 15% of the price of the Products returned.

All freight, handling and other charges in relation to returning goods (other than goods defective, damaged or not ordered) are the responsibility of the Customer.

**16. Set-off**

The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by Sola Sport.

**17. Disputed Charges**

If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount but only if, on or before payment or the Due date for payment (whichever first occurs), notice in writing of the dispute is given to Sola Sport, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. Sola Sport will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the invoice date are deemed to be correctly charged.

**18. Credit Policy and Default**

If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify Sola Sport from and against all expenses costs and disbursements incurred by Sola Sport in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees or commission charged to Sola Sport by any mercantile agency. If the Customer fails to pay for the Products in accordance with invoices issued to the Customer, Sola Sport may at its sole discretion do any one or more of the following:

- a. cancel any provision of credit to the Customer;
- b. reverse any discounts allowed;
- c. require cash pre-payment for any further Products ordered;
- d. provide to a credit reporting agency details of the payment default;
- e. commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
- f. decline to supply Products to the Customer (even if the order has been accepted and the goods are in transit);
- g. terminate any other agreement with the Customer; and
- h. exercise any other rights at law.

A certificate of debt signed by a representative of Sola Sport shall be prima facie evidence and proof of money owing by the Customer to Sola Sport at that time.

**19. Recovery**

Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer by the Due date, Sola Sport reserves the following rights in relation to the Products until all amounts owed by the Customer to Sola Sport in respect of the Products and all other Products sold and other fees and charges are fully paid:

- a. legal and equitable ownership of the Products;
- b. to retake possession of the Products; and
- c. to keep or resell any of the Products repossessed.

The Customer hereby grants full leave and irrevocable license without any liability to Sola Sport and any person authorised by Sola Sport to enter any premises where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

**20. Returned cheques**

An administration fee of \$ 55.00 (including GST) plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason.

**21. Disclaimer and Limitation of Liability**

The Trade Practices Act and various State Acts imply certain warranties into transactions which in certain circumstances cannot be excluded ("Non-Excludable Conditions"). Notwithstanding this (but subject to such laws as necessarily apply) the Customer acknowledges that it has not relied, and will not rely, on any advice given or made by or on behalf of Sola Sport in connection with the Products. Sola Sport excludes all implied conditions and warranties from this agreement, except any condition or warranty (such as conditions or warranties implied by the Trade Practices

Act and State Acts) to the extent that they cannot be excluded. To the extent that liability for such breach can be limited, Sola Sport limits its liability:

- a. for breach of any Non-Excludable Conditions to the invoice cost of the Products supplied; and
- b. for any error or omission in delivery of the Products caused by Sola Sport to either the re-supply of the Products so affected or (at the sole discretion of Sola Sport) the payment of the cost of such re-supply.

Subject to this Clause, Sola Sport excludes all other liability to the Customer for any costs, expenses, losses and damages suffered or incurred by the Customer in connection with this agreement whether that liability lies in contract, tort (including Sola Sport's negligence) or under statute. Without limitation, Sola Sport will in no circumstances be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity. The Customer hereby agrees to indemnify Sola Sport and its officers, employees, contractors and agents against any costs, expenses, losses, damages and liability suffered or incurred arising from the Customer's breach of this agreement and any negligent or unlawful act or omission of the Customer in connection with the Products.

**22. Assignment**

The Customer may not assign its rights or its obligations under this agreement nor subcontract any contract for the purchase of Products.

**23. Force Majeure**

Sola Sport will have no liability to the Customer in relation to any loss, damage or expense caused by Sola Sport's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of Sola Sport's suppliers to supply necessary materials or any other matter beyond Sola Sport's control.

**24. Privacy Information**

Sola Sport may give information about the Customer, its guarantors, directors or proprietors to a credit reporting agency for the following purposes:

- a. to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- b. allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors; and
- c. to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

**25. Waiver of terms of agreement**

The failure by Sola Sport to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power.

**26. Proper Law**

The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of the State of New South Wales.

**27. Entire Agreement**

This document represents the entire agreement between the parties and may not be amended except in writing signed by each of the parties and the Customer acknowledges that in entering this agreement it has not relied on any oral or written representation made by any person on behalf of Sola Sport.

**28. General**

Sola Sport may serve any notice or court document on the Customer and on any guarantors by forwarding it by ordinary pre-paid post, in the case of the Customer, to the address of the Customer last known to Sola Sport and, in the case of any guarantor, to the address of the guarantor last known to Sola Sport.

If any term of this agreement shall be invalid, void, illegal or unenforceable, the remaining provisions shall not be affected, prejudiced or impaired.

Sola Sport may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the agreement or consent of the Customer or any guarantor.

Except as otherwise agreed in writing, these terms and conditions shall apply to all sales to Customers by Sola Sport. To the extent that these terms and conditions (as published on the website of Sola Sport) may be varied over time by Sola Sport then the conditions current at the time of acceptance of any specific order or part of an order shall apply both with respect to the Customer and with respect to any guarantor. Sola Sport shall not be required nor responsible to notify the Customer or the guarantor of the existence or content of any such variation.

In the event that the Customer sells its business or any part thereof, the Customer shall be responsible to notify Sola Sport in writing of such sale to enable the Customer's account to be closed and to prove that Sola Sport has received such notification. To the extent that the Customer fails to so notify, or cannot so prove notification, then the Customer and any guarantors shall be jointly and severally liable to Sola Sport for the payment of Products subsequently sold to a third party on the Customer's account as if the Customer had ordered the Products itself.