

Remax Terms & Conditions

1. Interpretation

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended.

"**Agreement**" means these terms and conditions and any Schedule.

"**Customer**" means the party listed on the credit application or invoice attached to this Agreement or, if no party is named, the party to whom **Remax** provides this Agreement.

"**Delivery**" means Delivery of Products or Services at or to a Site by **Remax**.

"**GST**" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Act) 1999* (Cth) as amended.

"**Installation Date**" means any date or date range agreed between the parties at which time Products will be installed by **Remax**.

"**Party**" means a party to this Agreement.

"**Order**" means any request made by the Customer for a Product or Service from **Remax**.

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended.

"**Products**" means any products which **Remax** sells or provides to the Customer from time to time.

"**Price List**" means the list prices for Products and Services kept and updated from time to time by **Remax**.

"**Schedule**" means a schedule to this Agreement.

"**Services**" means any services which **Remax** sells or provides to the Customer from time to time.

"**Site**" means any location to which the Customer requests that Product be delivered or at which Services are to be performed and **Remax** has agreed to such request.

"**Remax**" means **Remax** Pty Ltd ACN 626 481 150.

2. Acceptance of Agreement

The Customer may enter into this Agreement with **Remax** by either:

- a) signing a copy of this Agreement; or
- b) requesting Products or Services from **Remax** after having received a copy of this Agreement at some prior time.

3. Entire Agreement

- a) This Agreement shall constitute a full and complete statement of the agreement between **Remax** and the Customer and upon acceptance shall replace any prior agreement between **Remax** and the Customer in relation to the ongoing provision of Products and Services to the Customer.
- b) No variations or modifications of any term of the Agreement shall be binding unless agreed to in writing by **Remax**.
- c) This Agreement shall not be modified or varied by the acknowledgement, receipt or acceptance by **Remax** of a purchase order form or other document containing terms and conditions put forward by the Customer.
- d) **Remax** may vary or amend this Agreement by written notice to the Customer at any time. Any variations so made will only apply to orders placed by the Customer after the time that the variation has been brought to the Customer's attention.

4. Term of Agreement

This Agreement shall apply to all future dealings between the Parties, including all future supply by **Remax** of Products or Services, until it is replaced by an alternate written Agreement or is terminated in accordance with its terms.

5. Supply of the Products and Services

- a) The Customer may Order from **Remax** from time to time such quantities of Products and Services it requires, with Orders to be in such format (whether written or otherwise) as **Remax** may require.
- b) **Remax** reserves the right at any time to decline to accept an Order at its sole discretion. No binding agreement to supply comes into existence merely the Customer having placed an Order.
- c) Whilst **Remax** will use its best endeavours to ensure that it is able to provide Products and Services to the Customer when required, it does not warrant or guarantee that it will be able to do so and will not be responsible for any losses alleged to have been suffered by the Customer as a result of failure to supply or delay in supplying Products and Services, regardless of the reason for the failure to supply.
- d) **Remax** retains the absolute discretion at all times to refuse to accept any order made by the Customer for Products or Services, including but not limited to circumstances where Products are unavailable for any reason, the Customer has failed to make payment for previous orders or payment has been made outside payment terms or where the Customer is otherwise in breach of this Agreement.
- e) Any period or date for delivery of Product or Services stated by or on behalf of **Remax** shall be regarded by the Customer as an estimate only and not a contractual commitment or representation which may be relied upon. **Remax** shall not be liable therefore for any delays in delivery.
- f) **Remax** shall be entitled to deliver Products in instalments and the Customer shall not be entitled to terminate or cancel the Order or to any claim, loss or damage howsoever arising from any failure by **Remax** to deliver any instalments on or before the estimated date of Delivery.
- g) The Customer shall notify **Remax** in writing within 7 days of Delivery if it holds any concerns whatsoever in regard to the quality, specifications or suitability of any Products. In the event of such notification the Customer shall provide **Remax** with reasonable and prompt access to the Products for the purpose of inspection and testing.
- h) Should the Customer fail to give written notice of any concerns in regard to the Products pursuant to and within the time frame referred to in clause 5.g) then, to the extent permitted by law, the Customer agrees to and is deemed to have waived any and all entitlement to bring a claim of any kind against **Remax** in respect of the concern related to the Products and the Products are deemed to have been accepted by the Customer.
- i) Products are not sold on a consignment basis unless **Remax** specifically agrees in writing to do so.

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- j) The Customer must inform **Remax** in writing within 7 days of any change to its ownership structure including any change majority share ownership of any corporate structure.

6. Site Requirements

- a) The Customer shall provide suitable and practical means of access to the Site and ensure that the Site is suitable to allow the efficient and safe delivery of Products and Services. In the event that the Site is unsafe for Delivery, **Remax** reserves the right to refuse to deliver the Products and the Customer shall be charged for all expenses (if any) incurred as a result of an unsafe Delivery Site including but not limited to the cost of **Remax** delivering to another Site or re-delivering the Product.
- b) The Customer shall advise **Remax** in advance of Delivery if there are any potential hazards, risks or difficulties which may be encountered either at, or close to, the Site including but not limited to narrow roads, low hanging electrical wires, traffic islands and a lack of parking. **Remax** reserves the right to refuse to deliver to the Customer at a Site designated by the Customer in the event that it is unsuitable and it will be the Customer's responsibility to provide an alternative suitable location for Delivery and the Customer shall be charged for all incurred as a result of such a change.
- c) The Customer must provide and operate any machinery required to unload any Products at the Site and in the event the Customer authorises **Remax** to operate any machinery at the Site, **Remax** does not take or accept any responsibility for the machinery and all risk and liability in and relating to the machinery remains with the Customer at all times.
- d) For the sake of certainty, the Customer shall not be entitled to cancel its Order in the event that the Delivery is not made pursuant to this clause 6.
- e) For the sake of certainty and without limiting any other clause in this Agreement, the Customer acknowledges that any amount charged by **Remax** for Delivery to the Site originally nominated by the Customer will still be charged where **Remax** is unable to access the Site and that **Remax** shall be entitled to charge additional reasonable amounts where the Site is changed due to **Remax** refusing to deliver to the Site nominated at the time of the Order in accordance with this Agreement or if through no fault of **Remax**, time delays in dropping off the Products occur at the Site.
- f) Delivery shall be kerbside to the address of the Site unless otherwise agreed between the Parties. In the event that Delivery is within the Site, (that is, beyond the kerbside), the Customer accepts all responsibility and liability for any damage, loss, injury or claim of any sort which results from **Remax** being instructed to deliver the Products within the Site including where such damage, loss, injury or claim is made/suffered by **Remax**. **Remax** shall be entitled to charge additional reasonable amounts in respect to delays caused in accessing the Site including but not limited to by reason of induction requirements and the Customer accepts that these amounts will be in addition to any amounts the Customer is required to pay for any Products or Services, and these additional amounts relating to delay may be invoiced after such time as the Products or Services have been provided.
- g) The Customer warrants that it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow

for Services being performed at the Site and/or for Products to be installed or delivered to the Site.

- h) The Customer shall ensure that either the Customer or the Customer's agent are present at the time of the Delivery to receive the Products or Services. In the event that the Customer or the Customer's agent are not present but have consented to **Remax** delivering the Products or Services in their absence, the Customer acknowledges that without limiting the application of any other terms of this Agreement, clause 13(13.a) of this Agreement applies to such deliveries.
- i) **Remax** shall not be obliged to obtain a signed receipt or other acknowledgment at the place of Delivery. However, if a signed receipt or other acknowledgment of Delivery is obtained by a person at the place of Delivery who appears to be authorised by the Customer to sign or otherwise take delivery, then, to the extent permitted by law, such signed receipt or other acknowledgment shall be conclusive evidence of Delivery, the quantity of Products delivered and otherwise compliance with the Order.
- j) The Customer shall ensure that any other parties performing works at the Site do not interfere with or otherwise hinder **Remax**'s provision of Products or Services. In this regard the Customer shall provide to **Remax** any information reasonably required by it in respect to the activities or proposed activities of any other party performing works at the Site.
- k) At no time does **Remax** take or accept any responsibility for the Site and all risk and liability in and relating to the Site remains with the Customer at all times.

7. Installation

- a) Remax may agree to install the Products or Services delivered either by Remax staff or assigned contractors.
- b) The Customer acknowledges that **Remax** is reliant upon the agreed Installation Date being adhered to and that it is likely to suffer loss and inconvenience if the Customer is unable to allow installation to occur on or about the agreed Installation Date.
- c) The Customer will pay to **Remax** upon receipt of invoice any costs incurred or losses suffered by **Remax** by reason of the Customer not being in a position to allow installation to occur on the agreed Installation Date. Such costs may include, without limitation:
- i) Time spent or wasted by staff;
 - ii) Storage costs;
 - iii) Travel, accommodation, meals; and
 - iv) Administration costs.

8. Pricing and payment

- a) The Customer agrees that in return for **Remax** supplying Products or Services, the Customer shall be charged for the Products and Services as quoted or, if no prior quote is provided, as set out in **Remax**'s Price List as it applies at the time of the Customer placing an Order for Products and or Services or at such other price as agreed between the Parties in writing prior to the supply of the Products or Services. If a Product or Service does not appear on the Price List, or if the Price List does not or ceases to exist, then **Remax** shall be entitled to charge a reasonable amount for that Product or Service.
- b) The Customer acknowledges that the Products and the prices may be modified by **Remax** from time to time

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without notice throughout the currency of this Agreement and it shall be the responsibility of the Customer to check with **Remax** as to the availability and price of any particular Product immediately prior to placing any Order.

- c) **Remax** may, at its sole discretion.
 - i) Provide credit to the Customer for Products or Services up to a nominated amount;
 - ii) Require payment from the Customer for the Products or Services at the time of pick up / Delivery; or
 - iii) Require payment from the Customer for the Products or Services prior to the Products or Services being delivered by **Remax**.
- d) The terms of payment shall be as notified by **Remax** at the time an Order is placed and where not notified otherwise, payments terms will be 30 days from the end of the month of any tax invoice issued by **Remax** to the Customer.
- e) **Remax** shall be free at any time, at its sole discretion, to revoke payment terms in regard to any future Orders and require payment in advance of supply of further Product or Services.
- f) If **Remax** agrees to the Customer making payment by a cheque, payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- g) **Remax** may at its sole discretion receive payment by way of credit card.
- h) All prices are in Australian Dollars (AUD) and unless otherwise stated quotes for Products or delivery are exclusive of GST and any other applicable taxes or duties. In addition to the price for the Products and Services the Customer shall also pay any applicable GST, taxes or duties.
- i) Any quotation provided by **Remax** to the Customer shall, unless otherwise stated in the quotation, be valid only for 7 days from the time it was made and may be withdrawn at any time by **Remax** within that period.
- j) In respect of payments required to be made by the Customer under this Agreement time shall be of the essence.

9. Breach by Customer

- a) Interest shall be payable on any amounts unpaid outside payment terms by the Customer to **Remax** from the date of the invoice at the rate of 3% per annum over and above the cash rate set from time to time by the Reserve Bank of Australia.
- b) **Remax** shall be free to suspend or cancel any Order in circumstances where the Customer has failed to make any payment within the payment terms.
- c) **Remax** shall be free to refuse to complete any Order made by the Customer where any money is overdue to **Remax** pursuant to this Agreement.
- d) The Customer hereby indemnifies **Remax** in respect of any costs incurred by **Remax** (including legal costs on a solicitor/client basis) as a result of any breach of this Agreement by the Customer, including but not limited to any breach of terms of payment for Products or Services. Such costs include but are not limited to the costs of any demands made of the Customer to remedy any breach, and any legal proceedings to recover unpaid money.

10. Retention of Title to Products

Until **Remax** receives full payment (in the form of clear funds) for any Products supplied by it to the Customer together with any other amounts owing by the Customer to **Remax**-

- a) Title and property in all of the Products yet to be paid for remains vested in **Remax** and does not pass to the Customer;
- b) The Customer must hold the goods as bailee for **Remax**;
- c) The Customer must ensure it holds insurance for the Products in the event of theft, fire or any other kind of damage which may occur to the Products;
- d) The Customer must not grant security of any kind over the Products;
- e) The Customer must hold the proceeds of any sale of the Products on trust for **Remax**; and
- f) In addition to its rights under the PPSA, **Remax** may without notice, enter any premises where it suspects that the Products are and remove them, and for this purpose the Customer irrevocably licenses **Remax** or its agents to enter onto such premises and also indemnifies **Remax** from and against all costs, claims, demands or actions by any party arising from such action.

11. Security

- a) For the purposes of the PPSA:
 - i) terms used in this clause have the corresponding meaning to their use in the PPSA;
 - ii) this Agreement constitute a Security Agreement between **Remax** and the Customer and **Remax** has a Purchase Money Security Interest in all present and future Products supplied by **Remax** to the Customer and the proceeds of those Products;
 - iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to **Remax** at any particular point in time; and
 - iv) by entering into this Agreement the Customer agrees to grant to **Remax** a Security Interest in the Products and **Remax** shall be entitled to register the Security Interest on the relevant Security Register
- b) The Customer must do whatever shall be necessary in order to give a valid Security Interest over the Products and their proceeds which is able to be registered by **Remax** on the Personal Property Securities Register. Without limiting the Customer's obligations under this clause, the Customer must immediately upon **Remax's** request:
 - i) execute all documents and do any other things necessary to give effect to the security interest created under these terms; and
 - ii) Procure from any person considered by **Remax** to be relevant to its security position such Agreements and waivers as **Remax** may require at any time.
- c) The security interest arising under this clause attaches to the Products when the Products are collected from or dispatched from **Remax's** premises and not at any later time.
- d) **Remax** shall be free to allocate sums received from the Customer in any manner **Remax** determines, including in any manner required to preserve any Purchase

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Money Security Interest or any other security interest it has arising by virtue of supply of Products to the Customer.

- e) To secure the Customer's obligations under this Agreement, the Customer hereby grants a charge to **Remax** over any real property owned by the Customer and acknowledges and agrees that **Remax** may lodge a caveat pursuant to such charge.
- f) The Customer, if a company, agrees that it will, if called upon at any time by **Remax** to do so, procure from any one or more of its directors or other interested party (as directed by **Remax**) a personal guarantee and or indemnity of the Customer's obligations pursuant to this Agreement in a form acceptable to **Remax**, with such guarantee to cover both future liabilities and any liabilities of the Customer to **Remax** which predate the signing of the guarantee.

12. Contracting out of PPSA

- a) The Customer:
 - i) waives its right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a Security Interest created under the Contract; and
 - ii) waives its right to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in paragraph (b)).
- b) To the fullest extent permitted by the PPSA, the parties agree to the contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

13. Risk, Insurance and Liability

- a) The risk in the Products and all insurance responsibility for theft, fire or damage of any other kind shall pass to the Customer immediately upon Delivery of the Products to the Customer or upon collection by the Customer from the point of sale (whichever is applicable), regardless of whether there is any further work to be completed by **Remax** in regard to those Products.
- b) The Customer warrants that it has and will have at the time of making any particular order for Products all necessary licenses or permits under all relevant laws and regulations to possess and use the Products.
- c) **Remax** makes no warranties, either expressed or implied as to the merchantability, fitness for a particular purpose or otherwise with respect to the Products or Services other than as implied by law and which may not be excluded, restricted or modified.
- d) If **Remax** is liable for a breach of a guarantee implied by the ACL in respect to the provision of the Products or Services and those Products or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then, to the extent permitted by the ACL, its liability to the Customer will be limited to –
 - i) the replacement of the Products or the supply of equivalent Products;
 - ii) the repair of the Products;
 - iii) the payment of the costs of replacing the Products or acquiring equivalent Products;
 - iv) the supplying of the Services again; or

v) the payment of the cost of having the Services supplied again.

- e) The Customer is not entitled to return any Products because of a change of mind.
- f) If a Customer has modified any Products following Delivery, to the extent permitted by law, **Remax** shall not be liable to provide any remedy in accordance with this agreement or otherwise, and shall not be liable in contract, tort including negligence or otherwise for any loss of prospective profits of production, wasted overheads or expenses, special, indirect or consequential damages, machine work or labour charges or for any expense resulting from any Products which have been modified or the inability to use that modified Product.

14. Cancellation of Orders

No purported cancellation, variation or suspension of an Order for Products or Services (or any part of an order for Products or Services) shall be binding upon **Remax** once the Order has been placed with **Remax** unless accepted in writing by **Remax**.

15. Force Majeure

Remax shall not be liable in any manner whatsoever to the extent that it has been prevented from performing any obligation under this Agreement by reason of matters beyond its control, including without limitation-

- a) Inability to source Products;
- b) Inability to access the Site or part of the Site;
- c) Lack of access to electricity or other required resources at the Site;
- d) Lack of availability for whatever reason of staff or contractors;
- e) Acts of God, accidents or machinery breakdown;
- f) Pandemics or epidemics;
- g) Acts or threats of terrorism or war; or
- h) Industrial disputes or strikes.

16. Waiver

Any failure or delay by **Remax** to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. The rights of **Remax** under this Agreement are cumulative and not exclusive of any other rights that **Remax** may have under statute or by virtual common law.

17. Reading down of Agreement

If a clause in this Agreement is unenforceable it must be read down so as to be unenforceable or, if it cannot be so read down, it must be severed from this Agreement without affecting the enforceability of the remaining terms of the Agreement.

18. Jurisdiction

This Agreement shall be governed by the laws of Victoria.