



**CUBED3 LIMITED  
TERMS & CONDITIONS OF TRADE**

These Terms & Conditions of Trade are to be read in conjunction with an Application for Credit Account by the “customer” hereafter referred to as “you”.

**1. Doing business with us**

We always strive to produce quality products that satisfy your needs. We have written our Terms and Conditions in plain English to make them clear and easy to read and we have used “we” for Cubed3 Limited and “you” for the customer. Any products we supply to you will be supplied on these terms and conditions. If you order products from us, you will be deemed to have accepted these terms and conditions, which may be varied only if we agree in writing.

**2. Delivery of the products**

We will use our best endeavors to meet agreed delivery times but will not be liable for late delivery. Late delivery does not entitle you to cancel any order and nor shall we be liable for any loss or damage resulting from any delay. We will arrange delivery of products to you at the address advised by you in writing to us.

**3. Internal use only**

The products sold by us to you are intended for consumption by you in the manufacture of your own products and other than in such manufactured form are not intended for your resale unless otherwise specified by us in writing. We disclaim all liability and you agree to indemnity and hold us harmless against claims relating to any unauthorized resale by you.

**4. Paying for the products**

Products supplied will be invoiced at the quoted price plus GST. In some cases a deposit might be payable, if so this will be outlined in the quote. Payment is due no later than the 20<sup>th</sup> of the month following the date of invoice. However, we reserve the right to require payment in cash before the products are delivered. If payment is not made on or before the due date, we may charge interest on the overdue amount calculated on a daily basis from the due date until the actual payment, at a rate 5% per annum above the current overdraft rate charged by our bankers. The charging of interest shall in no way imply the granting of or any extension of credit to you. You may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any monies owing to us. You shall pay on demand all costs, charges and expenses including legal costs incurred by us in recovering any monies payable by you to us. If you commit any act of bankruptcy, become insolvent, have a receiver, a receiver and manager, administrative receiver or similar officer appointed in respect of you, or all or some of your assets, make or are likely to make an arrangement with your creditors, or have a liquidator (provisional or otherwise) appointed, or are placed under statutory or

official management, all amounts outstanding under any contract with us shall, whether or not due for payment, immediately become due and payable.

## **5. Warranty for the products**

We warrant that all products sold are free from quality problems at the date of delivery. Any claims for errors or damage in transit must be made within 14 days of delivery. Except for the foregoing warranty and any warranties which cannot be excluded by reason of the application of the Consumer Guarantees Act 1993, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise are, and all liability of us, whether in tort (including negligence) contract or otherwise excluded to the fullest extent permitted by law. For the avoidance of doubt, the guarantees contained in the Consumer Guarantees Act are expressly excluded where you acquire or hold yourself out as acquiring the products for the purposes of a business. To the fullest extent permitted by law (a) the total liability of us for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any products, or any other breach of our obligations, shall in any case be limited to the lesser of the purchase price of the products complained of, or the actual loss or damage suffered by you; and (b) we shall not be liable for any consequential, indirect or special damage, loss or injury of any kind suffered by you or any other person. No products will be accepted for return unless previously agreed in writing by us.

## **6. Risk and ownership of the products**

Risk of loss, damage or deterioration of or to the products shall pass to you immediately upon dispatch of the products by us. Ownership of the products shall not pass to you until all amounts owing by you to us in respect of those products and all other products (if any) supplied by us have been paid in cleared funds. Until such payment, you shall hold the products as bailee on behalf of and in a fiduciary capacity for us. If the products are mixed with other products and or sold before we have been paid, the proceeds of the sale shall be placed in a separate account of yours in such a way as to be clearly identifiable as our property. We reserve the right for ourselves or our agents to enter your property in the event of any default by you under any of these terms and conditions.

## **7 Personal Property Securities Act 1999 (PPSA)**

7.1 You acknowledge that:

- (a) this agreement is a security agreement for the purposes of section 36 of the PPSA;
- (b) we take a security interest in the products that we have previously supplied to you (if any) and the products that we will supply to you in the future, to secure (with equal priority) payment of all amounts that the you owe to us;
- (c) the security interest will continue until you have paid all amounts owing; and
- (d) you waive your right to receive a verification statement under Section 148 of the PPSA.

7.2 You:

- (a) will promptly sign any further documents, provide any further information, or do any other thing that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement);
- (b) indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing any products charged by the statement; and
- (c) will give us 14 days prior written notice of any change in your name, address, contact details, trading name, business practice or any other details and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.

7.3 To the fullest extent permitted by law, we and you contract out of section 114(1)(a) of the PPSA. If and for so long as we are not the secured party with priority over all other secured parties in respect of any products, we and you agree that section 109(1) of the PPSA does not apply to those products.

**8. Price quotations**

Any price quotations shall only remain open for acceptance 20 days from its date unless we extend the time for acceptance. We shall have the right to correct any clerical error appearing on the face of any quotation.

**9. Enforcing our terms and conditions**

If at any time we do not enforce any of these terms and conditions, or grant you time or other indulgence, we shall not be construed as having waived that term or condition or our right to later enforce that or any other term or condition. Where any provision of these terms and conditions is rendered void, unenforceable or otherwise ineffective by operation of law that shall not affect the enforceability or effectiveness of any other provisions of these terms and conditions.

**10. Our obligation to supply**

In the event of any happening beyond our reasonable control and in consequence of which we cannot fulfill our obligations, we shall be entitled to either extend the delivery time of products, or cancel our obligation to supply and in the event of such extension or cancellation we shall not be liable for any damages or other compensation.