

## Powerblast Global Pty Ltd trading terms and conditions

These Terms, as amended or replaced from time to time, apply to any and all Goods and/or Services supplied or to be supplied to the Customer, or any third party on the Customer's behalf, notwithstanding any provision to the contrary which may appear on an order form or other communication issued by the Customer.

### 1. DEFINITIONS

- 1.1 **Credit Application Form** means a credit application form in a form nominated by Powerblast from time to time.
- 1.2 **Customer** means the person or other entity to whom a Quotation is addressed.
- 1.3 **Force Majeure Event** means an event beyond the reasonable control of the Supplier including, but not limited to, strikes, fires, explosions, flood, riot, lock-out, injunction, interruption of transportation, accidents, war, pandemic, governmental action or other circumstances beyond the Supplier's control
- 1.4 **Goods** means the goods the subject of an Order.
- 1.5 **GST** means the goods and services tax under the Goods and Services Act 1999 ('GST Act') and terms used in these Terms have the meanings contained in the GST Act.
- 1.6 **Insolvency Event** means (a) a receiver, receiver and manager, administrator or liquidator being appointed to the Customer, (b) an application made for the Customer to be wound up, dissolved or administered, (c) the Customer entering into any arrangement, compromise or assignment for the benefit of creditors, (d) the Customer ceasing, suspending, or threatening to cease or suspend the conduct of all or material part of its business, or dispose of or threaten to dispose of a material part of its assets, (e) the Customer being, or under legislation is presumed or taken to be, insolvent, (f) any form of legal process being levied or enforced against the Customer or its assets and not discharged or stayed within 14 days, or (g) a security interest becoming enforceable or being enforced.
- 1.7 **Order** means the acceptance of a Quotation in whole or in part by the Customer.
- 1.8 **PPSA** means the Personal Property Securities Act 2009.
- 1.9 **Powerblast** means Powerblast Global Pty Ltd (ABN 27 636 676 189) of Unit 2, 1 Precision Drive, Pakenham, Victoria, 3810.
- 1.10 **Quotation** means an estimate (verbal or written) issued by Powerblast to the Customer.
- 1.11 **Premises** means the property and delivery location nominated by the Customer where the Goods are to be delivered.
- 1.12 **Price** means the amount detailed in a Quotation for the supply of Goods and/or Services the subject of a communicated Order.
- 1.13 **Services** means the services the subject of an Order.
- 1.14 **Terms** means these terms and conditions.
- 1.15 **Website** means <https://www.powerblast.com.au/>.

### 2. ACCEPTANCE OF A QUOTATION IS BINDING

- 2.1 These Terms, together with a Quotation and an accompanying Order, constitute the entire contract between Powerblast and the Customer ('Contract'). To the extent of an inconsistency between these Terms and an Order, these Terms shall prevail.
- 2.2 No communication (written or verbal) between Powerblast and the Customer shall modify or vary these Terms unless such modification or variation is in writing and signed by Powerblast.
- 2.3 If the Customer constitutes more than one person, these terms and conditions bind each of them jointly and severally.

### 3. PLACING ORDERS & DEPOSIT/PROGRESS PAYMENT REQUIREMENTS

- 3.1 Each Order placed by the Customer in response to a Quotation received will be considered valid when placed verbally or in writing.

- 3.2 Any person who places an Order on behalf of a Customer warrants that he/she is duly authorised to do so and that, by placing an Order, the Customer is deemed to have read and understood these Terms.
- 3.3 All prices are based on taxes and statutory charges current at the time a Quotation is provided. Should these vary from the date of a Quotation and the date an Order is placed, the difference will become the responsibility of the Customer.
- 3.4 Powerblast may agree to provide, on request from the Customer, additional/alternate Goods and/or Services not included in a Quotation or Order. In such an event, Powerblast shall be entitled to increase the Price for the Goods and/or Services.

#### **4. PRICE**

- 4.1 A Quotation provided by Powerblast shall expire 30 days after the date the Quotation is provided however Powerblast reserves the right to vary any Price quoted by Powerblast prior to any Order being placed.
- 4.2 Subject to other rights under these Terms, Powerblast may revise the Price which are the subject of an Order, at any time after that Order was placed, to take into account any rise in costs to Powerblast in supplying the Goods and/or Services the subject of that Order, after the date that Order was placed, or as a result of any additional product or work which Powerblast determines is required in order to fulfil the Order, and in that case, Powerblast will notify the Customer of the revised Price as soon as practicable after Powerblast becomes aware of the rise in costs to Powerblast.
- 4.3 Powerblast reserves the right to change the Price in the event of a variation to an Order.

#### **5. ABILITY TO SUPPLY**

- 5.1 Any obligation of Powerblast to supply Goods and/or Services is subject to its ability to secure supply of the Goods and/or provision of the Services.
- 5.2 Powerblast shall not be liable in any way for failure to deliver the Goods and/or Services within the stated time and the Customer may not reject the Goods and/or Services on account of such failure to deliver within the stated time.
- 5.3 Powerblast shall not be liable for any failure to supply or deliver the Goods and/or Services due to a Force Majeure Event.
- 5.4 If for any reason Powerblast is unable to perform its obligations under a Contract, then Powerblast may at any time by notice in writing to the Customer cancel the Order whereupon the Contract will be at an end and neither party will have any claim against the other.
- 5.5 To the extent services are provided by a Powerblast authorised service agent, that supply shall be solely governed by the terms of engagement between that authorised service agent and the Customer.

#### **6. DELIVERY OF GOODS**

- 6.1 The Customer represents that it is either the owner of the Premises or has authority of the Premises owner for delivery of the Goods to or at the Premises.
- 6.2 Delivery of the Goods shall be deemed to be complete when the Goods are collected by the Customer or are delivered to the Customer to the Premises or to the carrier as nominated by Powerblast and/or Customer.
- 6.3 The Customer shall ensure that, for the purposes of delivery, the Customer (or a representative nominated by the Customer) shall be present at the Premises at all times during delivery of the Goods, shall ensure that adequate instruction is provided to Powerblast in connection with the precise location and position of the Goods to be delivered, and shall sign all documents as required by the Supplier evidencing delivery of the Goods to the Customer.
- 6.5 If for whatever reason Powerblast is unable to deliver the Goods at the Premises, the Customer must nominate an alternate delivery time and address. In all such cases, the Customer shall be liable to Powerblast for all additional delivery, storage, handling and associated costs and expenses incurred as a result and as advised by Powerblast.
- 6.6 The Customer is responsible for ensuring that the Goods are secured at the Premises and warrants that it will be solely responsible for any loss, damage or theft of the Goods delivered by Powerblast to the Premises.
- 6.7 Powerblast shall not be liable for any delay in the delivery of Goods due to matters beyond its control or a failure of the Customer to comply with these Terms.
- 6.8 Nothing in these Terms shall affect Powerblast's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with its obligations under the Contract.

## **7. CLAIMS FOR DEFECTIVE/INCORRECT DELIVERED GOODS**

7.1 The Customer must, on delivery of the Goods to the Premises, check:

- (a) that the Goods match the specifications set out in the Order;
- (b) whether the Goods are damaged or defective; and
- (c) the quantity of the Goods delivered against the quantity due to be supplied.

7.2 Powerblast will not be required to consider any claim by the Customer in respect of any of the matters referred to in clause 7.1 or any other claim in respect of any delivered Goods, and the Customer will be deemed to have accepted the Goods as having been supplied:

- (a) in good condition;
- (b) in accordance with the Order for the delivered Goods; and
- (c) with no shortages;

unless the Customer gives Powerblast written notice of the damage, defect, shortage or other claim within 7 days after delivery of the Goods.

## **8. PAYMENT, TITLE & THE PPSA**

8.1 Goods are at the Customer's risk from collection or delivery but title in Goods supplied to the Customer will not pass to the Customer until all monies owing with respect to those Goods, together with all other monies owing by the Customer to Powerblast, has been fully paid. Until such time the Customer has custody of the Goods as fiduciary agent and bailee of Powerblast.

8.2 Until Goods have been paid for in full the Customer:

- (a) must safely store and properly cover/protect the Goods to avoid any exposure to damage;
- (b) must store the Goods in such a manner as to show clearly that they are the property of Powerblast;
- (c) must keep all Goods insured against theft, damage, and destruction (and if the Customer fails to insure the products, Powerblast may do so and invoice the Customer for the cost of insurance); and
- (d) the Customer agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use or resale of the Goods.

8.3 If any payment (including by way of cheque) proffered by the Customer, or by any third party in payment of the Price, is dishonoured, Powerblast may treat the dishonour as a repudiation of the Contract and elect to terminate the Contract in which case Powerblast is entitled to compensation for all loss or damage suffered by Powerblast as a consequence.

8.4 The Customer irrevocably authorises Powerblast at any time, to enter the premises upon which the Goods are stored to enable Powerblast to (a) inspect the Goods, or (b) to retake possession of the Goods where the Customer has breached these Terms.

8.5 The Customer acknowledges that the PPSA applies to all transactions pursuant to these Terms (or otherwise) and grants a security interest in all present and after acquired Goods as security for all monies now and in the future owing by the Customer to Powerblast.

8.6 The Customer agrees to do all such things and sign all such documents as are necessary and reasonably required to enable Powerblast to acquire a perfected security interest in all Goods supplied, and to provide such information as is required to enable registration of a Purchase Money Security Interest ('PMSI') under the PPSA.

8.7 The Customer acknowledges that a PMSI is granted in priority to all other creditors by the Customer in favour of Powerblast and in all Goods that are supplied from time to time as security for the Customer's obligations to Powerblast.

8.8 The Customer indemnifies Powerblast for any liability for any costs of registration, maintenance, enforcement or discharge or security interest and such other costs and expenses as Powerblast may incur.

8.9 The Customer agrees to waive or exclude such sections of the PPSA as Powerblast may require, subject to those sections being capable of exclusion.

## **9. CREDIT FACILITY**

9.1 Customers are either a Non-Account Customer or an Account Customer.

### **Non-Account Customers**

- 9.2 A Non-Account Customer must make full payment of the Price prior to or on delivery of Goods and/or Services (unless Powerblast has otherwise agreed in writing).

#### **Account Customers**

- 9.3 Subject to the following clauses under the heading 'Credit', an Account customer must make full payment of the Price within 30 days from the date of issue of invoice by Powerblast for Goods (unless Powerblast has otherwise agreed in writing).

#### **Credit**

- 9.4 A Customer may apply to become an Account Customer by completing and providing to Powerblast a Credit Application Form.
- 9.5 The Customer acknowledges and agrees that these Terms comprise and form part of the Credit Application Form.
- 9.6 Credit will only be granted at the sole discretion of Powerblast and the Customer acknowledges that Powerblast has no obligation to provide or continue to provide any credit facility to the Customer. The Customer is not entitled to any credit facility until it receives written notification from Powerblast to that effect and Powerblast may, at any time, reduce, vary or terminate any credit facility. Any credit limit or other facility that may apply from time to time in respect of any credit facility does not constitute a provision of these Terms or any Contract between Powerblast and the Customer.
- 9.7 Without limiting the above, Powerblast reserves the right to reduce, vary or terminate withdraw any credit facility upon any breach by the Customer of these Terms, any Contract between Powerblast and the Customer, or upon the Customer becoming subject to an Insolvency Event.
- 9.8 In the event that Powerblast reduces, varies or terminates any credit facility, the Customer agrees that any and all monies owing on account to Powerblast shall become immediately due and payable.
- 9.9 The Customer declares that any credit to be provided to it by Powerblast is to be applied wholly or predominantly for (a) business purposes, and/or (b) investment purposes other than investment in residential property, and acknowledges that this declaration may result in loss of protections under the National Credit Code.

### **10. WEBSITE – CONDITIONS OF USE**

- 10.1 The Website identifies Goods and Services offered by Powerblast from time to time. All purchases of Goods and/or Services from Powerblast via the Websites are subject to these Terms.
- 10.2 All content included in or made available through the Website such as text, graphics, logos, images, audio clips, digital downloads and data compilations is the property of Powerblast or its content suppliers and is protected by Australian and international copyright and authors' rights laws and (where applicable) database right laws.
- 10.3 Other than in accordance with these Terms, a person (including a Customer) may not copy, extract and/or re-utilise any content of the Website without Powerblast's written consent.
- 10.4 Powerblast disclaims, and does not make, any representation or warranty of any kind in respect of the Website, including without limitation any representation or warranty that it is (or they are) free of viruses or other harmful components, that the Customer's use of the Website will be uninterrupted or error-free, or as to the suitability or availability of the Website. Powerblast will not be responsible for losses arising from the unavailability of, or the Customer's inability to use the Website, or any other loss or damage of any kind whatsoever including without limitation, any indirect or consequential loss (including loss of profits, business, revenue, opportunity, goodwill, or loss arising from any failure, breakdown, defect or deficiency in the Website) even if due to the negligence of Powerblast.
- 10.5 The Customer releases Powerblast and its agents to the fullest extent permitted by law from any and all claims arising out of or related to the use of material or information made available through the Website.
- 10.6 Powerblast reserves the right to cease providing, change or alter any service or function under the Website at any time. A Customer's access to the Website may be suspended, restricted or cancelled at any time at the sole discretion of Powerblast including, but not limited to, for necessary business operational reasons.

### **11. GOODS AND SERVICES TAX**

- 11.1. The Customer acknowledges and agrees that, to the extent that the supply of Goods and/or Services by Powerblast to it is subject to GST, the Customer shall, unless the Price expressly states that GST is included, pay an additional amount to Powerblast equal to GST with respect to such supply. Additionally, the Customer must pay to Powerblast all other charges, duties, imposts, taxes and similar amounts payable in relation to the supply of all Goods and/or Services by Powerblast to the Customer.

11.2 Powerblast shall deliver to the Customer a tax invoice for the supply of all Goods and/or Services in a form which complies with the GST Act.

## **12. DEFAULT**

12.1 The Customer is not entitled to defer, offset or withhold payment in whole or in part for any reason unless agreed to by Powerblast in writing.

12.2 If at any time any monies are overdue, then at the option of Powerblast all monies (including any account balance pursuant to a credit facility granted to the Customer) shall become immediately due and payable by the Customer.

12.3 Powerblast may charge interest on all overdue accounts calculated on a daily basis until paid in full at the rate prescribed by the *Penalty Interest Rates Act 1983* and to charge for any expenses incurred in collecting or attempting to collect any overdue monies, including any debt collector's expenses and/or legal costs incurred, or to be incurred.

12.4 Powerblast may charge an administration fee for any payment made by credit card and the amount to be charged will be advised to the Customer.

12.5 A certificate signed by an authorised representative of Powerblast shall be prima facie evidence of the amount of indebtedness of the Customer to Powerblast at that time.

12.6 The Customer is liable to pay to Powerblast and Powerblast may recover in full from the Customer all costs, expenses and disbursements incurred and/or payable by Powerblast (including debt collection agency fees and legal costs of a solicitor and own client basis) arising from or as a result of Powerblast's exercising or enforcing or seeking or exercise or enforce a right under these Terms, and in particular, in collecting or attempting to collect amounts due to Powerblast. Such costs, expenses and disbursements may be recovered by Powerblast from the Customer as a liquidated debt. Powerblast may apply payments received from the Customer firstly to any costs, expenses and disbursements, then to interest and then to other amounts owed by the Customer.

12.7 The Customer shall have no right of set-off in any claim or proceeding brought by Powerblast against the Customer for any default in payment and the Customer acknowledges that Powerblast may produce these Terms in any claim by the Customer for set-off.

## **13. FITNESS FOR PURPOSE**

13.1 The Customer must ensure that the Goods are suitable for their intended purpose and warrants and represents that the Goods, the subject of an Order, are both suitable for their intended purpose and shall conform with all legal requirements associated with that intended purpose.

13.2 The Customer is responsible to ensure that Powerblast is made aware in writing of any specific requirements pertaining to the Goods prior to any Order placed. Powerblast shall not be liable for any damage, loss or injury suffered as a consequence of any inaccurate or insufficient information concerning such requirements as provided by the Customer in writing.

13.3 Powerblast shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is expressly stated in the Quotation the subject of the Goods, and the Customer acknowledges and agrees that it has not relied on, nor will it rely on, any representation or warranty with respect to the merchantable quality, description, quality, suitability or fitness for purpose of the Goods unless expressly provided for in the Quotation.

13.4 The Customer must inspect the Goods on delivery to ensure that the Goods conform to the Customer's requirements. Powerblast shall not be liable for any shortage, discrepancy, defect, incorrect specification, unsuitability (or similar) unless the Customer has notified the Supplier within 7 days of delivery.

13.5 Powerblast shall not be liable for damage, loss or injury suffered as a result of any person failing to follow instructions relating to Goods, modifying the Goods, failing to appropriately maintain, service or store them or using them for a purpose not disclosed to Powerblast in writing in accordance with these Terms.

## **14. LIMITATION OF LIABILITY**

14.1 The only conditions, guarantees and warranties which are binding on Powerblast in respect of the state, quality, condition, suitability or fitness of the Goods and/or Services are those imposed and required to be binding by statute (including the Australian Consumer Law) which cannot be excluded. All other conditions, guarantees and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and/or Services which may apart from this clause be binding on Powerblast are hereby expressly excluded.

14.2 To the extent permitted by law, the liability, if any, of Powerblast arising from the breach of such conditions, guarantees or warranties shall, at Powerblast's option, be limited to and completely discharged by the replacement or repair by Powerblast (in the case of

Goods, the re-supply by Powerblast (in the case of Services), or the granting of credit in favour of the Customer up to the value of the Goods and/or Services. The Customer acknowledges and agrees that Powerblast has no liability to any person for any loss or damage of any kind whatsoever including without limitation, for any costs associated with replacing or rectifying the Goods and/or Services other than Powerblast's actual costs associated with same, or any indirect or consequential loss (including loss of profits, business, revenue, opportunity, goodwill, or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or Services) even if due to the negligence of Powerblast arising out of or in connection with the Goods and/or Services.

## **15. TERMINATION AND CANCELLATION**

### **Cancellation by Powerblast**

15.1 Without limiting other rights provided for in these Terms, Powerblast may cancel any Order, or cancel delivery of Goods or supply of Services, the subject of an Order, at any time before delivery by written notice to the Customer. On the giving of such notice Powerblast shall repay to the Customer any sums paid in respect of the Price. Powerblast shall not be liable for any loss or damage or consequential loss or damage whatever arising from such cancellation.

15.2 Powerblast may cancel all or any part of any Order which remains unfulfilled and all amounts owing to Powerblast by the Customer shall, whether or not due for payment, become immediately payable in the event that (a) any monies due and payable to Powerblast become overdue, or (b) the Customer becomes subject to an Insolvency Event.

### **Cancellation by Customer**

15.3 The Customer is not entitled to cancel any Order once accepted by Powerblast unless expressly agreed to by Powerblast in writing.

15.4 In the event that the Customer cancels any Order (unless as permitted in accordance with these Terms) the Customer shall be liable to Powerblast for all loss or damage suffered by Powerblast as a consequence including, but not limited to, any loss of profits, costs, charges, expenses or similar.

## **16. RETURNS**

Goods may not be returned by the Customer to Powerblast unless agreed to by Powerblast in writing (in its sole discretion) and upon such conditions as it sees fit, prior to return of the Goods. The return of Goods is entirely at the Customer's risk and upon the return of Goods the Customer must pay to Powerblast on request a re-stocking charge of 15% (or such other amount) of the Price of the Goods returned.

## **17. GOVERNING LAW & JURISDICTION**

These Terms shall be construed according to the laws of Victoria and all disputes arising as and between Powerblast and the Customer shall be determined by the Courts in that State.

## **18. PRIVACY**

18.1 Powerblast collects the personal information of the Customer to enable it to provide a Quotation for its Goods and/or Services and to provide those Goods and/or Services to the Customer. Powerblast may disclose the personal information of the Customer to third parties that assist in providing the Goods and/or Services.

18.2 Where Goods and/or Services are supplied, or intended to be supplied, to the Customer on credit the Customer authorises Powerblast, its employees and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Customer including (without limitation) making enquiries with trade referees, financial institutions, credit providers and credit reporting agencies and the Customer authorises the disclosure of all such information obtained to Powerblast. Without limiting this clause the Customer agrees to:

- (a) Powerblast obtaining a credit report containing personal credit information about the Customer;
- (b) Powerblast exchanging information concerning the Customer with trade referees, financial institutions and/or credit providers; and
- (c) Powerblast being provided a consumer credit report to collect all overdue payments.

## **19. ENTIRE AGREEMENT**

19.1 These Terms (and any Contract as and between Powerblast and the Customer) constitute the whole agreement made between Powerblast and the Customer.

19.2 These Terms can only be amended in writing signed by each of the parties.

19.3 The Customer expressly waives all prior discussions, communications, negotiations and representations that may have been made by Powerblast that are in conflict with these Terms (and any Contract as and between Powerblast and the Customer).

## **20. GENERAL**

20.1 If any provision of these Terms shall be declared or held to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions of these Terms shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms.

20.2 Powerblast may assign, license or sub-contract out all or any part of its rights and obligations under a Contract at any time without the Customer's consent.

20.3 A failure by Powerblast to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect Powerblast's right to subsequently enforce that provision.

20.4 These Terms (or any part of these Terms) shall be available at <https://www.powerblast.com.au/> and may be amended, modified, added to or deleted at any time by Powerblast. Any such amendment, modification, addition or deletion to these Terms shall be legally effective from the date the amended Terms are displayed at <https://www.powerblast.com.au/>.

**VERSION DATED:** September 2021