Lelox Australia Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "Seller" shall mean Lelox Australia Pty Ltd and its successors and assigns.
1.2 "Buyer" shall mean the buyer or any person or Seller acting on behalf of and with the authority of the buyer.
1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer if a Limited Liability Buyer on a principal debtor basis.
1.4 "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
1.6 "Price" shall mean the cost of the goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

2.1 Any instructions received by the Seller from the Buyer for the supply of Goods/Services shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
2.2 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Goods / Services

3.1 The Goods/Services shall be as described on the invoices, quotation, work authorisation, sales order or any other work commencement forms as provided by the Seller to the Buyer.

4. Price And Payment

4.1 At the Sellers sole discretion;
(a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods/Services supplied; or
(b) The Price shall be the Price of the Seller's current Price at the date of delivery of the Goods.
(c) The price of the Goods/Services shall be the seller's quoted price which shall be binding upon the Seller provided that the buyer shall accept the Seller's quotation within thirty (30) days.
4.2 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery of the Goods.
4.3 At the Seller's sole discretion, payment for approved Buyers shall be due thirty days from the invoice date.
4.4 Payment will be made by cash, or by cheque, or by bank cheque, or by EFT, or by direct credit, or any other method as agreed to between the Buyer and the Seller.
4.5 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Goods /Services

5.1 Delivery of the Goods/Services shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery, or delivery of the Goods/Services shall be made to the Buyer at the Sellers address.
5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
5.5 When the Goods at the date of this agreement are in possession of a third person there is no delivery by the Seller to the Buyer unless and until such third person acknowledges to the Buyer that the Goods are being held on behalf of the Buyer subject to the issue or transfer by the Seller of documents of title to the Goods.
5.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
5.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods/Services (or any of them) promptly or at all.

6. Risk

6.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable in respect of the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries. The Seller will apply the insurance proceeds as follows:
(i) first, in payment of the Price of the Goods that are damaged or destroyed, if unpaid;
(ii) second, in payment of the outstanding Price of any other Goods supplied to the Buyer by the Seller whether under the terms and conditions or otherwise;
(iii) third, in payment of any other sums payable to the Seller by the Buyer on any account,
(iv) fourth, any balance is to be paid to the Buyer.

7. Defects

7.1 The Buyer shall inspect the Goods/Services on delivery and shall within fourteen (14) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods/Services within a reasonable time following delivery if the Buyer believes the Goods/Services are defective in any way. If the Buyer shall fail to comply with these provisions the Goods/Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.

8. Return Of Goods

8.1 Except as provided in this clause, the Buyer is not entitled to return the Goods to the Seller for any reason. For defective Goods which the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods, or refunding the Price provided that:
(a) the Buyer must notify the Seller within 7 days of delivery that the Goods are defective;
(b) the Seller is given a reasonable opportunity to investigate the Buyer's claim;
(c) the Seller will not be liable for Goods which have not been stored in a proper manner.

9. Warranty

9.1 The warranty period is (unless a different period is agreed to in writing) a period of 90 days from the date of delivery of the Goods to the Buyer.
9.2 The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
(a) Failure by the Buyer to correctly set up, apply or fit the Goods; or
(b) Failure on the part of the Buyer to properly maintain the Goods; or
(c) Failure on the part of the Buyer to follow any instructions or guidelines provided by the manufacturer of the Goods or by the Seller; or
(d) The continued use of the product after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user of the Goods; or
(e) Fair wear and tear on the Goods; or
(f) Human error in operating or using the Goods; or
(g) Any collusion of the Goods and any other thing; or
(h) Any accident; or
(i) An act of God.
9.3 The Warranty shall only be valid if the Sellers "Mounting Products" are used to mount the Goods on installation.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

10.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Default & Consequences Of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.
11.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of EC Credit Control Pty Ltd's costs of collection.
11.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
11.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services the following shall apply: An immediate amount equivalent to $25.00 of the amount overdue levied for administration fees which sum shall become immediately due and payable.
11.5 In the event that:
(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due, Or;
(b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, Or;
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then;
(i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
(ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.

12. Security And Charge

12.1 Notwithstanding anything to the contrary contained herein or any other rights which the Seller may have howsoever:
(a) Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
(b) Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
(c) To give effect to the provisions of clause [12.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee, namely EC Credit Control Pty Limited as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Seller and/or EC Credit Control Pty Limited shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

13. Cancellation

13.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

14. Privacy Act 1988

14.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
14.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
(a) To assess an application by Buyer;
(b) To notify other credit providers of a default by the Buyer;
(c) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
(d) To assess the credit worthiness of Buyer and/or Guarantor/s.
14.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
14.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
(a) provision of Goods & Services;
(b) marketing of Goods and or Services by the Seller, its agents or distributors in relation to the Goods and Services;
(c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods or Services;
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
(e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods and Services.
14.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
(a) to obtain a consumer credit report about the Buyer; and or
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

15. limitation of Sellers liability

15.1 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

16. Buyers Disclaimer

16.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

17. Unpaid Sellers rights to dispose of Goods

17.1 In the event that:
(a) the Seller retains possession or control of the Goods; and
(b) payment of the Price is due to the Seller; and
(c) the Seller has made demand in writing of the Buyer for payment of the Price in terms of this agreement; and
(d) the Seller has not received the Price of the Goods,
then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

18. Lien & Stoppage in Transit

18.1 Where the Seller has not received or been tendered the whole of the Price, or where a bill of exchange or other negotiable instrument or the like has been dishonoured, the Seller shall have:
(a) a lien on the Goods;
(b) the right to retain them for the Price while the Seller is in possession of them;
(c) a right of stopping the Goods in transit whether or not delivery has been made or ownership has passed; and
(d) a right of resale,
(e) the foregoing right of disposal,
provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

19. General

19.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
19.2 All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.
19.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
19.4 The Buyer shall not set off against the Price amounts due from the Seller.
19.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
19.6 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.

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