



**M & P MAC Pty Ltd T/A Toner on Demand
-Terms & Conditions of Trade**

1. Definitions

- 1.1 "Seller" shall mean M & P MAC Pty Ltd T/A Toner on Demand 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 "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).
- 1.4 "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).
- 1.5 "PPSA" means the *Personal Property Securities Act 2009* (Cth) and associated Regulations as amended
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.

2. Goods / Services

- 2.1 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.

3. Price and Payment

- 3.1 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 supplied; or
 - (b) The Price shall be the Seller's current price at the date of delivery of the Goods according to the Sellers current Price list**.
 - (c) The price of the Goods shall be the seller's quoted price which shall be binding upon the seller provided that the Buyer shall accept in writing the seller's quotation within thirty (30) days.
- 3.2 Time for payment for the Goods 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 despatch of the Goods.
- 3.3 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or any other method as agreed to between the Buyer and the Seller.
- 3.4 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.

- 3.5 At the sole discretion of the Seller a deposit from the Buyer may be required.
- 3.6 The Seller may withhold delivery of Goods until the Buyer has paid for them in full, in which event payment shall be made before the delivery date.
- 3.7 At the Seller's sole discretion, payment may be made by instalments in accordance with the Seller's delivery/payment schedule.

** errors and omissions excepted

4. Risk

- 4.1 If the Seller retains property in the Goods nonetheless all risk for the Goods passes to the Buyer on delivery.
- 4.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, to receive all insurance proceeds payable in respect of the Goods. 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;

5. No Reliance

- 5.1 The Buyer acknowledges that no further or other term arise between the Seller and the Buyer by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either party to the other. The Buyer acknowledges that the Buyer buys the Goods relying solely upon their own skill and judgment.

6. Default & Consequences of Default

- 6.1 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.
- 6.2 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.
- 6.3 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.

7 The Australian Consumer Law

7.1 Subject to the consumer guarantees provided for in consumer protection legislation (including the Australian Consumer Law), the Seller does not give any express or implied warranties and makes no representations in relation to its Goods or Services including quality, completeness, accuracy, suitability, acceptability or fitness for purpose in relation to its Goods or Services.

7.2 The Buyer should make and rely upon the Buyer's own assessments and enquiries to verify the accuracy of the information provided by the Buyer.

7.3 The Seller's liability under any non excluded implied warranty is limited to:-

- (a) in the case of Services, the costs of having the Services supplied again; and
- (b) the case of Goods, the lowest of the costs replacing the Goods, acquiring the equivalent of Goods or having the Goods repaired.

8. Cancellation

8.1 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.

8.2 If the Buyer chooses to cancel any order it must notify the Seller in writing. The Buyer will indemnify the Seller for any loss, damage, expense or costs the Seller incurs as a result of the Buyer cancelling any order.

9. Title

9.1 The Buyer agrees that all Goods or Services supplied by the Seller to the Buyer shall remain the property of the Seller and title in all Goods or Services supplied shall not pass to the Buyer until such time as the Seller has:

- (a) been paid in full for all Goods supplied; and
- (b) received payment of all other sums that are owing by the Buyer to the Seller; and
- (c) the moneys owing referred to in (a) and (b) above have been collected and cleared by the Seller.

9.2 Where the Seller has not been paid in full for any Goods supplied to the Buyer and/or in full for any other amounts which are due for payment by the Buyer to the Seller, then

- (a) the Buyer shall hold any such Goods which it has been supplied by the Seller upon trust and as a fiduciary for the Seller and shall store and identify all such Goods in a manner that clearly shows the Seller's ownership thereof;
- (b) the Customer must not sell any Goods supplied without the prior written consent of the Seller or except in the ordinary course of the Buyer's business;
- (c) the Buyer shall have no right or claim to any right or interest in the Goods to secure any liquidated or unliquidated debt or obligation that the Seller owes or may owe to the Buyer;
- (d) the Buyer may not claim any lien over the Goods;
- (e) the Buyer agrees that it shall not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and
- (f) without prejudice to the Seller's rights as an unpaid Seller or any of its other rights or remedies to retake possession of the Seller's Goods from the Buyer, the Buyer hereby agrees to deliver up Goods to the Seller upon demand by the Seller and otherwise agrees that the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

9.3 Where: (a) title has not passed to the Buyer in Goods supplied by the Seller to the Buyer; and (b) those Goods are sold to a third party by the Buyer, then the proceeds of such a sale by the Buyer, to the extent that they are deemed to equal in dollar terms to the amount owing by the Buyer to the Seller on any account at the time of receipt of such proceeds, shall be held upon trust by the Buyer for the Seller in a separate account until such time as full payment is made of all amounts owing by the Buyer to the Seller.





9.4 The Buyer agrees to indemnify and hold harmless the Seller against all loss and damage incurred or sustained by the Seller as a result of or in relation to the exercise of the Seller's retention of title rights.

9.5 Clauses 9.1 to 9.4 above shall apply in respect of any Goods supplied by the Seller to an inter-related account of a Buyer where the inter-related account is in default.

10. Freight Expenses

10.1 The Buyer will pay to the Seller any freight costs incurred by the Seller in transporting the Goods from the Seller's premises to the place of delivery as designated by the Buyer.

11. Warranty

11.1 The Seller warrants to the Buyer that the Goods supplied by the Supplier are believed to be free from defects of workmanship and materials and the Seller must, subject to clause 11.3, 11.4 and 11.6, replace or, at its own option, repair the Goods purchased by the Buyer found to be defective within 60 days of the date of the relevant invoice, where such defects are as a result of faulty materials or workmanship ("Defective Goods").

11.2 In the event of any claim presented under warranty and found under investigation by the Seller to either be outside the scope or duration of this warranty or the fault being unconfirmed, then the costs of such investigation or repair must be born by the Buyer.

11.3 The Seller is not liable at any time for damage or defects in the Goods caused by improper use, abuse, mismanagement or by using the Goods outside the specifications detailed in any manuals and/or documentation relating to the Goods or outside the specific application of the Goods.

11.4 The warranty must not be assigned without the prior written consent of the Seller.

11.5 Subject to clause 7, except as otherwise provided for in this clause, the Seller makes no other representations or warranties and expressly excludes the same whether implied, statutory or otherwise especially as to quality or fitness of the Goods for any particular purpose.

11.6 The Seller's liability pursuant to this clause is subject to and conditional upon the following:-

(a) The Seller will replace or credit the purchase price of any Defective Goods.

(b) Defective Goods must be returned by the Buyer in the original cartons with all pieces, packing materials, accompanied by a copy of the relevant invoice.

(c) Defective Goods must be returned within 60 days from the purchase date.

(d) The Buyer must pay for any freight costs relating to the return of the Defective Goods. All Defective Goods must be sent to 10 Du Rietz Court, Gympie, Queensland, 4570.

(e) Unless otherwise specified, the purchase price of the Defective Goods will be credited against the Buyer's account unless the Buyer expressly re-orders a replacement.

(f) The Buyer must pay for any collection and return freight costs for any Defective Goods which are not accepted by the Seller as Defective Goods.

(g) The Buyer must provide the following:
(i) A clear and accurate fault description; and
(ii) A print sample.

(h) If a technician is involved with the repair of any Defective Goods, the following documentation must be provided in writing:-

(i) Confirmation that the repairer is an authorised service agent for the brand or machine in question;

(ii) Full technician's report (written and signed) including the following:-

(iii) A detailed description of how the fault occurred;

(iv) What role (if any) the Defective Goods played in any fault.

(i) All technician documents must be approved by the Seller before any credits will be issued.

(j) Any Defective Goods returned without an approved return authority number will not be accepted and will be returned to the Buyer at the Buyer's expense.

(k) If immediate replacement is required before the Defective Goods are returned, or received by the Seller, any replacements will be invoiced before being sent. The Buyer will be reimbursed upon receipt of the Defective Goods

(l) Any credit given by the Seller pursuant to clause 11.6(a) must be used by the





Buyer within 12 months after the date the Seller gives the credit or otherwise the credit will be cancelled.

12. Seller's Liability

12.1 Except to the extent by law relating to this Terms & Conditions of Trade, it is not lawful to exclude such liability, the Seller is not liable to the Buyer for any loss or damage arising directly or indirectly in connection with the Goods, their use or otherwise.

12.2 Notwithstanding the generality of 12.1, the Seller expressly excludes liability for consequential loss or damage, included but not limited to the loss or damage to any other equipment or property (whether or not the same may be in the Seller's care, custody or control), or for loss of profit, business, revenue, good will or anticipated savings.

12.3 In the event that any exclusion liability in these Terms and Conditions of Trade is held to be invalid for any reason, and the Seller becomes liable for loss or damage that may be limited or capable to be limited in law, such liability is limited to the price of the Goods supplied to the Buyer.

13. Copyrights, Patents, Trade Marks and other intellectual property rights

13.1 The Buyer acknowledges that any and all of the trade marks, copy rights, patents and other intellectual property rights used or subsisting in or in connection with the Goods in which the Seller or the respective manufacturer, developer or third party has an interest remain the sole property of the Seller or such manufacturer, developer or third party. The Buyer must not during or at any time in any way question or dispute ownership.

14 Privacy Act 1988 (as amended)

14.1 The Buyer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.

14.2 The Buyer agrees that the Seller may exchange information about Buyer 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.

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 and/or 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. PPSA and PMSI

15.1 You agree to do anything that the Seller reasonably requires to ensure that the Seller has at all times a continuously perfected security interest over all of your present and after-acquired property for the purposes of the PPSA.

15.2 The Seller may allocate amounts received from you in any manner it determines, but in default will apply same first to payment of any unsecured amount owing to the Seller, next as to any reasonable enforcement expenses and then as to any secured balance owing to the Seller.

15.3 You agree to reimburse the Seller for all costs and/or expenses incurred or payable by the Seller in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement.

15.4 You will not (except with the written consent of the Seller) allow to be, or be liable to become,





perfected or attached in favor of any person, a security interest or transitional security interest in any of the monies from time to payable to the Seller (if any) or otherwise, and whether to a provider of new value or otherwise).

15.5 You will not (as against any person who is a "related entity" of you for the purposes of the *Corporations Act 2001*) without the prior written consent of the Seller, before or until all money payable to the Seller in connection with the Agreement is paid in full:

- (a) exercise a right of contribution or indemnity;
- (b) claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security the Seller holds in connection with this Agreement;
- (c) try to reduce its liability to the Seller through set off or counterclaim; or
- (d) prove in competition with the Seller if you are unable to pay your debts when due.
- (e) seek to perfect or attach in favour of you or another (either jointly or severally) a security interest in any of your present or after acquired property which would rank in priority to the entitlements of [insert].

15.6 You waive the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement.

15.7 You agree that you and the Seller contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA shall apply to this Agreement.

15.8 You and the Seller acknowledge that you are the grantor and the Seller is the holder of a Purchase Money Security Interest ("PMSI") by virtue of this Agreement and/ or the PPSA.

15.9 You and the Seller agree that the terms of this Agreement may be altered unilaterally by the Seller giving thirty (30) days written notice to you. Clerical errors are subject to correction without notification.

15.10 You hereby consent and appoint the Seller to be an interested person and your authorized representative for the purposes of section 275(9) PPSA.

16 General

16.1 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.

16.2 All Goods and/or Services supplied by the Seller are subject to the laws of Queensland and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

16.3 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.

16.4 Subject to clause 15.9, unless consented to in writing by the Seller, the Buyer and the Seller acknowledge that these terms and conditions constitute the entire agreement between them and that the only enforceable obligations and liabilities of the Buyer and the Seller in relation to its subject matter. All representations, communications and prior agreements are superseded by these terms and conditions. Where previous terms and conditions have been entered into between the Buyer and the Seller, the parties agree that this Agreement shall not act as a merger of their rights but that the terms contained under such previous Agreement shall be amended by the terms contained herein to the extent of any inconsistency.

16.5 You hereby agree:

- (a) Any notice by one party to the other shall be sufficiently served if served personally or by email or facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and shall be deemed to have been received within two (2) days of the date of posting if served by post and immediately upon transmission if served by email or facsimile transmission, and

- (b) That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon you, your successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the PPSA and shall be deemed so given or served.

17. Returned Goods

17.1 Goods (which are not Defective Goods) which have been incorrectly ordered or are no longer required may be returned to the Seller ("**Returned Goods**").





- 17.2 The Buyer will receive a credit for Returned Goods against a future purchase of any Goods. The value of the credit will be the invoiced amount of the Returned Goods.
- 17.3 The Buyer will incur a 10% restocking fee (calculated on the amount of the invoice of the Returned Goods) or a fee of \$20.00 whichever is the highest.
- 17.4 To receive a credit for Returned Goods the Buyer must deliver the Returned Goods (at the Buyer's expense) to the Seller within 60 days of the relevant invoice for the Returned Goods.

18. Clearance/Sale Products

- 18.1 Clause 11 does not apply to Goods sold as "Clearance Products."
- 18.2 Clearance Products are new, out of date or discontinued Goods, as designated by the Seller, which may also have minor cosmetic defects which are sold to the Buyer on an "as is" basis at a discounted price.

19. Back Orders

- 19.1 The Buyer can choose to have their order fully shipped, partially shipped with out of stock items placed on backorder or partially shipped with in stock items only.
- 19.2 If the Buyer chooses to have their order fully shipped, the order will be dispatched only once the entire Goods in the order are available and ready to be delivered.
- 19.3 If the Buyer requests the order to be partially shipped, then the order will be delivered in stages as the Goods in the Buyer's order become available and are ready to be delivered. If the Buyer's order is dispatched in stages, additional delivery charges will apply.
- 19.4 If the Buyer requests that only in stock items be shipped, then remaining items will be deleted from the order.

20 . DELIVERY OF GOODS/SERVICES

- 20.1 Delivery of the Goods shall be made to the Buyer's nominated address. The Buyer may make all arrangements necessary to take delivery of the Goods whenever they are tended for delivery.
- 20.2 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 delivery of the Goods to the Buyer.

20.3 The cost 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 whatsoever) and shall be due on the date for the payment of the Price. The carrier shall be deemed to be the Buyer's agent.

20.4 Where this is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carriers risk at the expense of the Buyer is deemed to be delivery to the Buyer.

20.5 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.

20.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

20.7 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller deliver the Goods (ie or any of them) promptly or at all.

