

Trading Terms for Goods

The following terms and conditions ("Trading Terms") apply to all purchases of goods and/or products by you, (the "Purchaser"), from Soniclean Pty Ltd (ABN 89 057 730 917) ("Soniclean"). Placing an order with Soniclean or accepting a Quotation will constitute deemed acceptance by the Purchaser of these Trading Terms. Modifications of or deviations from these Trading Terms must be agreed in writing by Soniclean.

1. Orders

- 1.1. Orders will be initiated by the Purchaser making a request for stock from Soniclean.. When placing an order with Soniclean, you will comply with any ordering procedures (including the required form of any order) notified to you from time to time by Soniclean.
- 1.2. Soniclean reserves the right to accept or reject any order in whole or in part for any reason, including without limitation the unavailability of any products.
- 1.3. Freight, without limitation, will always be an extra cost to the Purchaser, as set out in *clause 7*, and not included on the order form provided by Soniclean.

2. Quotations

- 2.1. Quotations are not valid unless they are provided to the Purchaser in writing.
- 2.2. All quotations provided to the Purchaser by Soniclean in writing are open for acceptance for a period of thirty [30] days from the date of the quotation. Acceptance must be in writing and received by Soniclean within that time period.
- 2.3. If the quotation is not accepted in writing within that period in *clause 2.2* the offer in the quotation will lapse.
- 2.4. Until the quotation is accepted by the Purchaser Soniclean reserves the right to withdraw the quotation or to vary or alter any part, including without limitation any price, fee or rebate specified in the quotation.
- 2.5. The Purchaser agrees to be bound by the Contract, which becomes binding on the Purchaser when Soniclean receives the Purchaser's unconditional acceptance of the quotation in writing.
- 2.6. The Purchaser cannot cancel or alter an order after acceptance of a quotation without the written agreement of Soniclean (which agreement may be given on such terms as Soniclean requires).
- 2.7. All prices quoted and payable are exclusive of any applicable GST, use, excise or other similar taxes, unless specifically stated otherwise. The Client must pay all such applicable taxes and must indemnify Soniclean in respect of all associated Claims and liabilities.
- 2.8. The Quotation will not include freight costs, which will be the responsibility of the Purchaser, as set out in *clause 7*.
- 2.9. Unless otherwise stated in the Quotation, all prices are quoted in Australian currency and all payments must be in Australian dollars.

3. Data errors and omissions

- 3.1. Soniclean makes every effort to ensure the accuracy of information shown in Soniclean's documents, including without limitation its website, promotional material or databases. Such information may contain technical inaccuracies or typographical errors.
- 3.2. Soniclean makes no representation or warranty as to the accuracy of any information.
- 3.3. The Purchaser should confirm specific requirements with Soniclean before relying on such information.

4. Pricing & payment

- 4.1. Soniclean will quote all orders at its current prices, which may alter without notice to the Purchaser. The Purchaser agrees to pay the Purchase Price for the goods supplied to the Purchaser by Soniclean.
- 4.2. The Purchase Price for goods supplied must be paid to Soniclean within 7 days of invoicing, and in any event before delivery of the goods, unless the Purchaser has been approved for a Credit Account or unless Soniclean otherwise agreed in writing.
- 4.3. The Purchaser may pay by credit card, subject to a minimum surcharge of 2%, or via electronic funds transfer to Soniclean's bank account, as provided by Soniclean.
- 4.4. For goods supplied to Purchaser by way of Credit Account:
 - a. such credit is offered subject to the additional conditions set out in Soniclean's application for Credit Account as provided by Soniclean; and
 - b. payment of the Purchase Price is strictly required within the terms of payment that have been approved with respect to the Purchaser's Credit Account (and absent any specific terms, then within 30 days of invoicing).
- 4.5. The Purchaser is not entitled to withhold payment in whole or in part, or claim any right to set off in respect of the Purchase Price for any reason.

5. Credit Accounts

- 5.1. Soniclean may refuse to supply goods to the Purchaser if there is an Event of Default.
- 5.2. Upon the occurrence of an Event of Default all outstanding amounts become payable immediately, notwithstanding the terms of the Credit Account.
- 5.3. The Purchaser agrees that Soniclean, in its absolute discretion, may withdraw or vary the Credit Account facility at any time.
- 5.4. The Purchaser agrees to pay on demand all sums owing in connection with the Credit Account at any time.
- 5.5. If there is a change in ownership or circumstances of the Purchaser which Soniclean deems to be material, the Purchaser must advise Soniclean in writing, and Soniclean may withdraw the Credit Account facility and require that the Purchaser submit a new Credit Account application form.

6. Ownership, title and risk

- 6.1. All risk in the goods will pass to the Purchaser when the goods leave Soniclean's premises, regardless of how delivery is effected.

- 6.2. Ownership of each unit of the Goods will remain with Soniclean until all amounts owing by the Purchaser to Soniclean on any account whatsoever (including the Purchase Price for the Goods) (Amounts Owing) have been paid.
- 6.3. Until the Amounts Owing have been paid, the Purchaser:
- a. may, subject to *clause 6.4*, take possession of the Goods and hold them as trustee and agent for Soniclean;
 - b. must ensure that the Goods are insured and stored or identified so that they are readily distinguishable from other goods held by the Purchaser or other persons.
- 6.4. Until the Amounts Owing have been paid, the Purchaser has the right to move otherwise use the Goods in the ordinary course of its business, subject to the following:
- a. the Purchaser may sell the Goods, but only as trustee and agent for Soniclean; and
 - b. the Purchaser must hold the proceeds it receives from any sale of the Goods as trustee and agent for Soniclean; and
 - c. the Purchaser must place the whole of the monetary proceeds in an account separate from its own monies and maintain proper records of that account; and
 - d. if the Goods become part of a product or mass through manufacturing, processing, assembly or becoming commingled, Soniclean's security interest continues in that product or mass (Commingled Property) to the extent permitted by law.
- 6.5. Despite *clause 6.4(a)*, The Purchaser must not represent to any third parties that it is acting as an agent of Soniclean and Soniclean will not be bound by any contracts with third parties to which the Purchaser is a party.
- 6.6. If the Purchaser fails to comply with any part of these Trading Terms in relation to the payment of any Amount Owing or otherwise, then:
- a. immediately on Soniclean's request the Purchaser must return to Soniclean any Goods acquired from Soniclean on which there are outstanding Amounts Owing; and
 - b. Soniclean is granted a licence to, and is entitled to, enter the premises at which those Goods are stored, and seize possession of them; and
 - c. Soniclean may retain, sell or otherwise dispose of those Goods.
- 6.7. The Purchaser must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without Soniclean's prior written consent. Without limiting the meaning of Amounts Owing, if the Purchaser makes a payment to Soniclean at any time whether in connection with these Trading Terms or otherwise Soniclean may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.
- 6.8. If Chapter 4 of the PPSA would otherwise apply to the enforcement of these Trading Terms the Purchaser agrees the following provisions of the PPSA will not apply to the enforcement of these Trading Terms: section 95 (notice of removal of accession), to the extent that it requires Soniclean to give a notice to the Purchaser; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets--notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires Soniclean to give a notice to the Purchaser; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

- 6.9. Notices or documents required or permitted to be given to Soniclean for the purposes of the PPSA must be given in accordance with the PPSA.
- 6.10. The Purchaser consents to Soniclean effecting a registration on the PPSA register (in any manner Soniclean considers appropriate) in relation to any security interest contemplated by these Trading Terms and the Purchaser agrees to provide all assistance reasonably required to facilitate this. The Purchaser waives the right to receive notice of a verification statement in relation to any registration on the register.
- 6.11. In this *clause 6*:
- a. a reference to **Goods** means the original goods supplied as described in each Invoice and also includes proceeds and Commingled Property when the context permits;
 - b. **paid** means receipt of cash or cleared funds by Soniclean in full satisfaction of the Amounts Owing;
 - c. **PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it;
- 6.12. The following words have the respective meanings given to them in the PPSA: account, commingled, proceeds, purchase money security interest, register, registration, security interest and verification statement.
7. Delivery
- 7.1. The Purchaser is responsible for freight costs and arranging freight for any goods from Soniclean.
- 7.2. Where the Client has requested Soniclean to arrange freight at the cost of the Purchaser and Soniclean has accepted such request, then the Purchaser is responsible to pay Soniclean all such costs of freight as well as any costs in arranging such freight. Such costs will be specified in the invoice from Soniclean to the Purchaser with respect to the relevant goods, and the Purchaser must pay such amount in full in accordance with the Contract.
- 7.3. If the Purchaser requests Soniclean to arrange freight and Soniclean accepts this request, then Soniclean;
- a. makes no warranty as to the time of delivery or the availability of any goods.
 - b. may advise the estimated time frame for delivery of goods on a best estimates basis. Soniclean will use its reasonable endeavours to effect delivery by the estimated time frame, but does not guarantee that delivery will be effected by such time, and Soniclean is not responsible for any delays in delivery.
 - c. may, by notice in writing to the Purchaser, extend the period for delivery, change the delivery time or cancel an order for any reason without liability to the Purchaser for any loss or damage of any kind (including without limitation where the Purchaser commits an Event of Default).
 - d. may deliver the goods in part with written notice to the Purchaser. If goods are delivered in part pursuant to such notice, the Purchaser must accept the part-delivery.
 - e. will deliver to the address specified in the order form (which address may not be changed without the parties agreeing in writing) and the Purchaser will pay all additional delivery or other costs to Soniclean, if Soniclean is required to redeliver or redirect the delivery of the goods to another address.
- 7.4. The Purchaser cannot extend the period for delivery, change the delivery schedule or cancel an order without the written agreement of Soniclean (which agreement may be given on such terms as Soniclean requires). If the Purchaser refuses to accept any goods delivered to the Purchaser or the Purchaser's representatives are not available to collect any delivered goods at the time the goods are delivered, the Purchaser is solely responsible for all costs, and must pay Soniclean on demand all costs, to return the goods to Soniclean.

- 7.5. The Purchaser must keep records relating to the delivery of goods to the Purchaser and provide Soniclean with copies of such records upon request by Soniclean.
 - 7.6. Soniclean is not responsibly for delivery or freight undertaken by any third party delivery service providers, and cannot be held liable for any fault to the goods upon the goods leaving Soniclean's premises.
 - 7.7. In the event of any inconsistency between the ordering forms and the Contract, the terms of the Contract will prevail to the extent of any such inconsistency unless Soniclean informs the Purchaser otherwise in writing. The ordering form does not form part of the Contract.
8. Availability of goods
- 8.1. Soniclean may, in its sole discretion, cease making certain goods and/or ranges of goods and cease offering such goods to the Purchaser without liability to the Purchaser.
 - 8.2. Where Soniclean ceases to make any goods and/or ranges of goods, Soniclean will use its reasonable endeavours to notify the Purchaser as soon as is practicable.
9. Return of goods by Purchaser
- 9.1. The Purchaser must notify Soniclean in writing within [14 days] of receipt of the goods by the Purchaser ("Return Period") of any fault, defect or error in the delivered goods using the return authority request form provided by Soniclean ("Customer Return Advice Form"). The Purchaser agrees the delivered goods are deemed to be accepted unless Soniclean receives a Customer Return Advice Form within the Return Period.
 - 9.2. Soniclean will provide a refund or credit for any returned goods purchased from Soniclean which contain a manufacturer's fault or defect, or a refund for any returned goods purchased from Soniclean when required by applicable law.
 - 9.3. At its sole discretion Soniclean may otherwise accept returned goods for a credit or refund subject to:
 - a. The returned item is a Standard Stock Item at Soniclean which has not been modified or customised by Soniclean or any other party. A **Standard Stock Item** is any benchtop model, any accessory, detergent or an Ultrasonic Performance Meter. Any other Soniclean product is not a Standard Stock Item and is not returnable under this clause.
 - b. A Restocking Fee of 10% of the Purchase Price is payable by the Purchaser.
 - c. Additional fees may be charged to recover costs incurred by Soniclean due to unreasonable actions by the Purchaser such as but not limited to the repeated ordering of incorrect stock or repeated returns of non-defective items to Soniclean.
 - 9.4. All goods returned for refund or credit by the Purchaser to Soniclean must:
 - a. except for faulty or defective goods, be returned in original unopened packaging, remain unused and in original undamaged and saleable condition;
 - b. be accompanied by the original proof of purchase or other relevant original documentation reasonably required by Soniclean.
 - c. be shipped to Soniclean according to Soniclean's shipping directives.
 - 9.5. Provided that *clause 9.2* or *clause 9.3* is satisfied and *clause 9.4* is satisfied, the Purchaser may return goods for a credit note, or at the sole absolute discretion of Soniclean a refund, within the Return Period if Soniclean agrees in writing (which agreement may be given on such terms as Soniclean requires).

- 9.6. To the maximum extent permitted by law, in the case of all goods returned to Soniclean, Soniclean is under no obligation to issue a refund or credit note to the Purchaser if the Purchaser owes any money to Soniclean.
- 9.7. If Soniclean determines to conduct a recall of any goods, the Purchaser must provide Soniclean with such assistance in recalling and collecting the relevant goods, as Soniclean reasonably requires. Soniclean will issue a credit note to the Purchaser in respect of the purchase price paid by the Purchaser for any goods recalled that have not yet been sold to customers.

10. Warranties and release

- 10.1. Soniclean gives the warranties specified in the Warranty, and subject to and to the maximum extent permitted by law, Soniclean excludes all other warranties and guarantees in relation to the goods, whether express or implied, including without limitation any warranty regarding acceptable quality or fitness for a particular purpose.
- 10.2. To the maximum extent permitted by law, Soniclean excludes all liability in respect of the goods. To the extent that Soniclean is not able to exclude liability under law, then to the maximum extent permitted by law in respect of the goods is limited.
- 10.3. Other than specifically stated in these Trading Terms and to the maximum extent permitted by law, Soniclean is not liable for and the Purchaser hereby releases Soniclean from any consequential loss or damages of any type including without limitation incidental, special, indirect, punitive or otherwise, including loss of profit, whatever the claim (tort, breach of contract or warranty or otherwise) and whatever the forum, whether arising out of or in connection with the goods, any breach of the Contract by Soniclean or any other cause whatsoever.
- 10.4. The Purchaser releases Soniclean from all liability, in respect of personal injury or death or damage or loss of property of any person including the Purchaser or the Purchaser's employees agents or contractors, arising wholly or in part from the Purchaser's acts, omissions, negligence, breach of duty, breach of contract, or breach of the Contract whether arising out of or in connection with the goods or any other cause whatsoever.
- 10.5. In any event and without limiting the generality of the foregoing, Soniclean's liability for any breach of a term, condition or warranty not excluded by the Contract will be limited to the replacement of goods delivered or the payment of the cost of replacing the goods or acquiring equivalent goods from an alternate supplier.

11. Purchaser's acknowledgement

- 11.1. The Purchaser acknowledges that it has the sole responsibility of satisfying itself that the goods supplied by Soniclean are suitable for the use of the Purchaser or any contemplated use of the Purchaser and that it has conducted its own investigations and has not relied upon any information, statement, advice or representation by Soniclean of or in relation to:
 - a. the operating and/or performance parameters of the goods;
 - b. the outcomes that the goods may achieve;
 - c. the suitability of the goods to any particular application, installation or physical environment; and
 - d. the appropriateness of the use of the goods outside Australia.
- 11.2. The Purchaser acknowledges and agrees that:
 - a. the actual performance of the goods in situ might be affected by external factors (including without limitation environmental conditions) beyond Soniclean's control;
 - b. incorrect and/or negligent installation, application or use of the goods may cause injury and/or damage; and

- c. Soniclean makes no representation, warranty or assurance as to any of the matters listed in *clause 11.1* and that Soniclean shall not be liable for any loss or cost arising from those matters to the maximum extent permitted by law.

12. Intellectual Property

- 12.1. The Purchaser must not deface or remove any mark, label or plate affixed by Soniclean on the goods.
- 12.2. The Purchaser acknowledges that all Intellectual Property in the goods is the property of Soniclean.
- 12.3. The Purchaser must not and must not cause, permit or assist any other person directly or indirectly to:
 - a. copy any Intellectual Property in the goods or record or replicate it or any part of it by any other means;
 - b. make copies of or replicate the goods or any part of them;
 - c. translate, reverse engineer, decompile or disassemble the goods or any part of them;
 - d. copy, publish, disclose or distribute any documentation associated with the goods (including without limitation, operating instructions and manuals); or
 - e. attempt to do any of the above.

13. Indemnity

- 13.1. The Purchaser shall be responsible for and indemnify and hold harmless Soniclean from and against all Claims, damages, costs (including without limitation legal costs on a full indemnity basis), losses, liabilities and applicable expenses caused by the Purchaser's acts, omissions, negligence, breach of duty, breach of contract, breach of any law or regulation or breach of the Contract.

14. Privacy

- 14.1. The Purchaser consents to Soniclean collecting certain personal information from the Purchaser, such as name, address and credit card details, and to using such personal information collected from the Purchaser in accordance with Soniclean's Privacy Policy. A copy of this policy is available on Soniclean's website www.soniclean.com.au/privacy or from Soniclean upon request.

15. Taxation and Duties

- 15.1. Any amounts payable to Soniclean are exclusive of GST unless specified otherwise. Any government charges or duties, including sales tax, GST, use or excise taxes or similar taxes, are payable by the Purchaser.

16. Confidentiality and publicity

- 16.1. Each of Soniclean and the Purchaser agrees to ensure that the Confidential Information of the other (Discloser) is kept confidential. A party who receives the Discloser's Confidential Information (Recipient) must not directly or indirectly divulge or communicate or otherwise disclose the Confidential Information of the Discloser, in whole or part, to any third party unless that third party is also bound by confidentiality on terms that are substantially the same as, or at least as onerous as, the terms owed by the Recipient to the Discloser under this *clause 16* or use of any of the Confidential Information of the Discloser for any purpose other than exercising its rights or fulfilling its obligations under these terms and conditions, without the prior written consent of the Discloser.
- 16.2. Each of Soniclean and the Purchaser agree that they must not make any public announcement that refers or relates to the Contract, other than the release of advertising or marketing material that refers to the goods being available for purchase by customers from the Purchaser, without the written consent of the other party.

17. Variation of Terms

- 17.1. Soniclean reserves the right to change any of these Trading Terms at any time in its sole discretion, to be effective on written notice to the Purchaser. If the Purchaser does not agree to any changes, any Credit Account that the Purchaser may have with Soniclean will be terminated.

18. Force Majeure

- 18.1. Soniclean will not be deemed to be in breach of the Contract or liable to the Purchaser or any third party for any failure, delay or interruption in the performance of any of the terms and conditions contained in the Contract due to any Force Majeure Event.

19. Miscellaneous

- 19.1. If any term of the Contract is void, voidable or unenforceable, the term will be read-down, limited or, if necessary, excluded to the extent necessary to make it not void, voidable or unenforceable, and all other terms will remain in full force and effect.

- 19.2. Any waiver or relaxation by Soniclean partly or wholly of any provision of or right under the Contract:

- a. is only valid if in writing and signed by Soniclean;
- b. applies to a particular occasion only;
- c. is restricted to its written terms;
- d. is not continuing nor of application generally unless expressed so to be; and
- e. does not constitute a waiver or relaxation of any other term or condition.

- 19.3. The Contract:

- a. constitutes the entire agreement between Soniclean and the Purchaser; and
- b. may not be varied or waived except agreed to in writing by Soniclean.

- 19.4. No course of dealing or performance, usage of trade or failure to enforce any term will or will be construed to modify the terms of the Contract. The Contract is governed by and construed in accordance with the law from time to time in the State of South Australia and the Purchaser agrees to submit to the non-exclusive jurisdiction of the courts of South Australia and the courts, which hear appeals from them. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) is excluded in its entirety.

20. Definitions

In these Trading Terms:

- 20.1. **Claims** means any cost, demand, legal proceedings, claims, actions, fines, penalties, obligation or liabilities of any nature;
- 20.2. **Confidential Information** means any nonpublic or proprietary information concerning either party's business, goods, financial information, strategies, methods or processes, and the existence of the Contract and its terms;
- 20.3. **Contract** means:
- a. the quotation;
 - b. the application for Credit Account form (if any);

- c. the Warranty; and
 - d. these Trading Terms, to be read as one document, the contents of which, in the case of ambiguity or inconsistency, will be given precedence in interpretation in the order of paragraphs (a) to (d) above;
- 20.4. **Credit Account** means the Purchaser's approved credit facility with Soniclean;
- 20.5. **Event of Default** means:
- a. the Purchaser fails to pay the Purchase Price or any part of the Purchase Price outstanding and any accrued interest within two business days of receiving a written demand from Soniclean;
 - b. the guarantees provided by the directors or proprietors of the Purchaser are not binding or any person alleges that the guarantees are not binding;
 - c. the Purchaser commits an act of Insolvency;
 - d. the Purchaser ceases to carry on business; or
 - e. the Purchaser commits a material breach of the Contract;
- 20.6. **Force Majeure Event** means an event beyond the control of Soniclean and that could not be avoided by the exercise of due care and diligence, including without limitation strikes, boycotts, labour disputes, unavailability of suitable and/or sufficient labour or materials, employees, loss of internet or other network connectivity, acts of God, acts of public enemy, acts of governmental authority, floods, war, terrorism or threat of terrorism, riots or rebellion;
- 20.7. **GST** means a tax, duty, levy, charge or deduction, imposed by GST Law and any related interest, penalties, fines or other charges;
- 20.8. **GST Law** means the A New Tax System (Goods and Services Tax) Act 1999, or any other act imposing a goods and services tax in Australia;
- 20.9. **Insolvency** means:
- a. the Purchaser, not being a company committing an act of bankruptcy, making a proposal to its creditors for a composition or arrangement under the Bankruptcy Act or if any other act or event occurs that would entitle a petition for a bankruptcy order to be made;
 - b. the Purchaser, being a company, having a receiver or administrator appointed or doing, or omitting to do anything which would permit such an appointment to occur.
- 20.10. **Intellectual Property** includes the rights comprised in any patent, copyright, future copyright, design, trade mark, eligible layout, business name, brand name, trading style or similar right whether at common law or conferred by statute and includes rights to apply for registration under a statute in respect of those or like rights as well as rights to protect trade secrets, know-how, confidential information or unpatented production methods or technical information throughout the world for the full period of the rights and all renewals and extensions and all other rights with respect to intellectual property, as defined in Article 2 of the July 1967 Convention Establishing the World Intellectual Property Organisation;
- 20.11. **Invoice** includes any invoice issued to the Purchaser for goods supplied to the Purchaser by Soniclean;
- 20.12. **Purchase Price** means the amount or amounts specified in the Invoice, and includes the actual cost of delivery of the goods to the Purchaser including any additional or unforeseen costs due to any delay, misinformation or error caused or contributed to by the Purchaser and GST in relation to the goods supplied as referred to in the Invoice;

20.13. **Warranty** means the document entitled "Warranty Form" provided by Soniclean;

20.14. **Warranty Period** means the warranty period applicable to the goods as set out in the Warranty.

Further Enquiries

Contact Soniclean Pty Ltd (ABN 89 057 730 917) on +61 8 8234 8398 or email:
sales@soniclean.com.au