



TRADING TERMS AND CONDITIONS

The Customer agrees that the supply of products by Cromford Group Pty Ltd (also trading as Cromford Film) herein referred to as Cromford Group Pty Ltd is subject to these terms which may be amended by Cromford Group Pty Ltd from time to time by notice. If the Customer is a company, its directors and any other person who signs the Credit Application Form on behalf of the Customer agree to provide a Guarantee and Indemnity on behalf of the Customer as set out in Clause 19 of these terms. This document of December 2010 supersedes all previous terms and conditions.

1. **INITIAL TRADING TERMS** – By signing the Credit Application Form, the Customer irrevocably offers to be bound by these terms. This offer may be accepted by Cromford Group Pty Ltd in its absolute discretion and Cromford Group Pty Ltd is under no obligation to accept the offer. The offer may be accepted by written confirmation notifying the Customer that the Customer's credit application has been accepted and what the Customer's credit limit is. Thereafter, the terms of trade between Cromford Group Pty Ltd and the Customer are on the terms set out here.
2. **ORDERS** – All orders are to be confirmed by the Customer within 7 days of the original order being given, either by the confirmation being mailed to Cromford Group Pty Ltd at P.O. Box 155 Pendle Hill NSW 2145 and/or fax to Sales Fax line (02) 9896 3915. Cromford Group Pty Ltd will not be obliged to process any orders which are not confirmed by the Customer in accordance with this Clause.
3. **BACK ORDERS** – The onus is on the Customer to notify Cromford Group Pty Ltd of back order cancellations
4. **PRICES** – Orders are accepted on the basis of the last price list distributed to the Customer or such other rises as Cromford Group Pty Ltd - may notify the Customer before Cromford Group Pty Ltd accepts an order.
5. **PAYMENT OF GST BY CUSTOMER** – The prices on the price list do not include GST. Where the Customer is liable to pay GST, it must be paid by the Customer at the time and in the same manner as the price and other charges for the products. If Cromford Group Pty Ltd or the Customer becomes liable for any fees, costs, charges, expenses or interest resulting from late payment of GST because of the Customer's failure to comply with this clause, then the Customer will pay Cromford Group Pty Ltd an amount equal to those fees, costs, charges, expenses and/or interest, on demand.
6. **COST OF FREIGHT** – Delivery costs will be charged to the Customer as agreed between Cromford Group Pty Ltd and the Customer from time to time.
7. **PAYMENT FOR CHEP PALLETS** – Where Chep pallets are not exchanged or de-hired by the Customer within 30 days from the end-of-month statement, Cromford Group Pty Ltd will invoice the Customer for the Chep replacement cost of such pallets and the Customer agrees to pay this within 30 days of the date of such invoice.
8. **INSPECTION AND ACCEPTANCE** – The Customer shall inspect all goods upon delivery and shall, within 48 hours of delivery give notice to Cromford Group Pty Ltd named in the relevant invoice or of any matter or thing by which the Customer alleges the goods are not in accordance with the Customer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Trade Practices Act 1974 (Cth) the goods shall be deemed to have been delivered to and accepted by the Customer.



9. **RETURNS –**

- a. Returns will be accepted for faulty or defective goods or any other non-excludable obligations of Cromford Group Pty Ltd set out in the Trade Practices Act (Cth) or similar State and Territory Legislation.
- b. A Goods Return Authority No. must be obtained and referred to on all documentation prior to any credit claim being recognised by Cromford Group Pty Ltd.
- c. Returns other than those referred to in (a) above must be approved by Cromford Group Pty Ltd named in the relevant invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition. Cromford Group Pty Ltd reserves the right to charge a handling fee equal to 20% of the price of the goods returned under this provision. Products specifically purchased, manufactured or cut to size to the buyers specifications and are not returnable unless they are of the kind referred to in (a) above.

10. **TERMS OF PAYMENT –** Payment to Cromford Group Pty Ltd for goods delivered and accepted is due within 30 calendar days of the end of the month in which the goods are invoiced.

11. **WITHDRAWAL OF CREDIT FACILITIES –** Cromford Group Pty Ltd may without notice and in its absolute discretion withdraw any credit facility granted to the customer.

12. **COSTS OF ENFORCING TERMS –** The Customer must also pay any costs incurred by Cromford in enforcing its rights under these terms and conditions including cheque fees, commission, legal expenses (on an indemnity basis) and any other incidentals which will be added to the outstanding account. Cromford Group Pty Ltd may at its sole discretion appropriate any payment from the Customer to any outstanding amount then due.

13. **NO WARRANTY ON DELIVERY DATE –** Whilst best endeavours will be used to satisfy customer requirements, no warranty is given as to delivery date for ordered products.

14. **INTELLECTUAL PROPERTY RIGHTS –** Cromford Group Pty Ltd retains all intellectual property rights pertaining to all its products.



15. **EXCLUSION OF LIABILITY FOR LOSS** – To the extent allowed by law, Cromford Group Pty Ltd excludes all terms, conditions, warranties, undertakings, inducements or representations relating in any way to its products, which are not contained in these terms. To the extent allowed by law, Cromford Group Pty Ltd is not liable for any loss or damage (including consequential loss or damage) however caused and whether directly or indirectly in respect of its products or its failure to comply with these terms.
16. **LIMITATION ON LIABILITY** – Where any condition, warranty or liability is implied by law and as permitted by law Cromford Group Pty Ltd's liability is limited to (Cromford's option):
- a. Replacing its products; or
 - b. Supplying equivalent products; or
 - c. Issuing a credit to the value of the products.

The Customer agrees that they will return all the relevant products to Cromford Group Pty Ltd by Cromford Group Pty Ltd's approved courier (which freight will be at Cromford Group Pty Ltd's cost if the products are faulty but otherwise at the Customer's cost).

17. **PASSING OF RISK AND TITLE** – The full risk of loss of damage to the products will pass from Cromford Group Pty Ltd to the Customer:
- a. On their delivery to the Customer's nominated location (where Cromford Group Pty Ltd's approved courier is used to transport the products); and
 - b. On leaving Cromford Group Pty Ltd's store (where the Customer's nominated courier is used to transport the products).

The parties agree that title to the products does not pass to the Customer until Cromford Group Pty Ltd has been paid all amounts it is owed by the Customer. Until such payment has been received, the Customer holds the products as bailee for Cromford Group Pty Ltd and is to properly store, protect and insure the products and label the products in a manner which shows Cromford Group Pty Ltd ownership. The Customer agrees that it will store the products separately from other goods or products which have not been supplied to it by Cromford Group Pty Ltd. The Customer must maintain detailed records in respect of the products, including, without limitation, the sale, use, manufacture and supply of the products. The Customer will maintain the records in accordance with all applicable standards and will provide Cromford Group Pty Ltd with access to and copies of such records on demand. The Customer will not allow any products to become the subject of any charge, lien or other encumbrances whether by operation of law or otherwise until title to them has passed to the Customer. Notwithstanding this clause, the Customer may sell the products to a third party in the ordinary course of its business but will receive and hold money received for the sale of those products in trust for Cromford Group Pty Ltd and will keep such money in a separate account until all the Customer's liabilities to Cromford Group Pty Ltd are discharged. If the products are incorporated (by manufacture, construction, attachment or otherwise) into other times, then the Customer will hold such part of the money it receives for the sale of those items as relates to the products, in trust for Cromford Group Pty Ltd. Such part will be deemed to equal in dollar terms the amount the Customer owes to Cromford Group Pty Ltd at the time of the receipt of the sale money. If any question arises as to the ownership of any products the onus will be on the Customer to prove that in respect of those products title has passed. All products in the Customer's possession will be deemed to belong to Cromford Group Pty Ltd unless the Customer can prove otherwise. For the purpose of giving effect to the Customer's obligations



under this clause, the Customer hereby irrevocably appoints Cromford Group Pty Ltd as its attorney.

18. PERSONAL PROPERTIES SECURITIES ACT

- a. In this clause, capitalised terms which are not defined have the same meaning contained in the Personal Properties Securities Act (2009) (Cth), any consequential or amending acts and any regulations (collectively the PPSA)
- b. On the earlier of the Registration Commencement Date and the date on which PPSA affects the rights and obligations of the parties under these terms, this clause will automatically and without the need for any further act by the parties supersede and clause 17 to the extent to which clause 17 is inconsistent with the PPSA.
- c. Without limiting the rights of Cromford Group Pty Ltd to vary these terms on notice, the Customer agrees that it will do all things necessary, including signing any further document to ensure that the rights of Cromford Group Pty Ltd under these terms are not diminished by the PPSA. The Customer appoints Cromford Group Pty Ltd as its attorney for the purposes of this clause.
- d. To secure the payment of all monies owing by the Customer to Cromford Group Pty Ltd, the Customer grants to Cromford Group Pty Ltd a Security Interest in
 - i. all products supplied to the Customer under these terms ("Collateral"); and
 - ii. the Proceeds arising from such sale if the Customer sells the Collateral whether or not such sale is permitted by these terms,
- e. The Customer acknowledges and agrees that the Security Interest in clause 18(d) will be a Purchase Money Security Interest in any Collateral and its Proceeds to the extent to which moneys owing by the Customer to Cromford Group Pty Ltd represent all or part of the purchase price owing in respect of that Collateral.
- f. Cromford Group Pty Ltd will be entitled to register a Financing Statement against the Customer on the Register in respect of its Security Interest or Purchase Money Security Interest as applicable.
- g. If the Collateral is not Inventory of the Customer, the Customer must not sell, transfer, encumber, grant a Security Interest in or otherwise deal with such Collateral other than with the express prior written consent of Cromford Group Pty Ltd.
- h. If the Collateral is Inventory of the Customer, provided there is not default under these terms, then the Customer may sell such Inventory in the ordinary course of its business.
- i. The Customer must now allow any third party to register a Financing Statement in respect of the Collateral and the Proceeds. If such registration occurs, the Customer will, at its own cost and expense take such steps as directed by Cromford Group Pty Ltd to remove such registration and its failure to do so will be a default under these terms.
- j. For the purposes of s115 of the PPSA, the Customer agrees that the Collateral will not be used predominantly for personal, domestic or household purposes and the Customer and Cromford Group Pty Ltd agree that to the extent that Chapter 14 of the PPSA applies to these terms, the parties agree to exclude the following sections of PPSA:
 - (i) 95 – Notice of Removal of Accession;
 - (ii) 96 – When a Grantor may retain an Accession;
 - (iii) 120 – Enforcement of Liquid Assets;
 - (iv) 121(4) – Enforcement of Liquid Assets – Notice to Grantor;
 - (v) S125 – Obligation to dispose of or retain Collateral



- (vi) S130 – Notice of Disposal
 - (vii) S132(3)(d) – Contents of Statement of Account after disposal
 - (viii) S132(4) – Statement of Account if no disposal
 - (ix) S135 – Notice of Retention;
 - (x) S142 – Redemption of Collateral;
 - (xi) S143 – Entitled persons may reinstate Security Agreement
- k. For the purposes of s275 of the PPSA, Cromford Group Pty Ltd and the Customer agree that the following documents and information are confidential and that neither of them will disclose the following information to any third party other than their professional's advisers, without the other party's prior written consent:
- 1. these terms;
 - a. any document which sets out the amount or the obligation that is secured by the Secured Interest created by this Security Agreement and the terms of payment or performance of any obligation; and
 - b. any documents which describe the items of Collateral;
- l. For the purposes of s157(3)(b) of the PPSA, the Customer expressly waives its right to receive a Verification Statement.

19. GUARANTEE AND INDEMNITY

If the Customer is a company, its directors and any other person who sign the Credit Application Form on its behalf (collectively referred to as "Guarantor" and each is a Guarantor) agree as follows:

- a. The Guarantor guarantees the due and punctual payment of all monies and the performance of all obligations owing from time to time by the Customer to Cromford Group Pty Ltd.
- b. The Guarantor indemnifies Cromford Group Pty Ltd from and against all losses, costs, charges and expenses, including, without limitation, legal costs on an indemnity basis which Cromford Group Pty Ltd may suffer by reason any breach or non-performance by the Customer of its obligations under these terms.
- c. The liability of the Guarantor under this clause is not affected or discharged by any of the following: the variation of these terms; the granting of any indulgence or extension of time by Cromford Group Pty Ltd to the Customer; Cromford Group Pty Ltd failing to make a demand on the Customer for the payment of monies or the performance of obligations and any agreement made between the Customer and Cromford Group Pty Ltd for any reason
- d. The guarantee in this clause is a continuing guarantee and is not wholly or partially discharged by the payment at any time of monies owing or the settlement of account and applies to monies and obligations which are presently owing by the Customer and which may become owing in the future.

20. DEFAULT BY CUSTOMER – If:

- a. The customer fails to pay Cromford Group Pty Ltd when due; or



- b. The Customer is declared, or threatened to be declared, bankrupt, or has a liquidator, receiver or administrator appointed, or threatened to be appointed; or
- c. Cromford Group Pty Ltd has reasonable grounds to believe that products delivered to the Customer have been or will be destroyed, damaged, endangered or removed from the Customer's normal place of business or its normal location; or
- d. Cromford Group Pty Ltd has reasonable grounds to believe that the Customer is unable to pay its debts when they fall due;

Then Cromford Group Pty Ltd may, without prejudice to any other rights:

- e. Refuse the Customer's orders and withhold further deliveries; and
 - f. Repossess and dispose of the products for which Cromford Group Pty Ltd retains title and enter any premises in which the products may be located to do so. Cromford Group Pty Ltd will not be liable for any damage or injury to such premises unless caused solely by Cromford Group Pty Ltd's wilful negligence; and
 - g. The Customer will indemnify Cromford Group Pty Ltd against any liability to any third party for any costs, expenses and damages it incurs in enforcing its rights under these terms.
21. **NOTIFICATION OF CHANGED CIRCUMSTANCES** – The Customer agrees to advise Cromford Group Pty Ltd of any changed circumstances affecting the Customer's credit worthiness. Such circumstances include but are not limited to voluntary winding-up of the business, transfer of ownership and control, bankruptcy, and any other change in financial circumstances that may affect Cromford's decision as to whether or not to continue to provide credit to the Customer.
22. **BUILDING & CONSTRUCTION INDUSTRY SECURITIES OF PAYMENTS ACT** – The provisions of these terms do not limit and are in addition to Cromford Group Pty Ltd's rights under the *Building and Construction Industry Security of Payment Act (NSW)*.
23. **DISCLOSURE OF CREDIT INFORMATION** – The Customer acknowledges and agrees that Cromford Group Pty Ltd may (as allowed by the Privacy Act) disclose personal information about this application to a credit reporting agency and that Cromford Group Pty Ltd may obtain from a credit reporting agency or other credit provider a credit report containing personal credit information about the Customer to assess this application or in relation to collection of any overdue payments.
24. **OBTAINING CREDIT INFORMATION** – The Customer also acknowledges that Cromford Group Pty Ltd may give to and seek from other credit providers (whether named in this application or not) information about the Customer's credit arrangements including information about its credit limit, credit worthiness, credit history or credit capacity (as allowed by the Privacy Act).
25. **FORCE MAJEURE** – If the performance or observance of *these terms of trade* or any other obligation by Cromford Group Pty Ltd to the Customer is prevented or delayed by reasons of an act of God, civil commotion, riots, strikes, legal moratorium, war, revolution or action by government, Cromford Group Pty Ltd will upon giving notice of such cause to the Customer, be excused from such performance or observance to the extent of *such prevention or during the period of such delay, provided that Cromford Group Pty Ltd will use its best efforts to avoid or remove the cause or causes of non-performance and observance.*
26. **APPLICABLE JURISDICTION** – These terms and conditions are governed by the laws of the State of New South Wales and both Cromford Group Pty Ltd and the Customer submit to the non-exclusive jurisdiction of the courts of that State.