

TAMA AUSTRALIA STANDARD CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions:

BUYER- means the person who buys or agrees to buy the Goods from the Seller;

CONDITIONS- means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;

CONTRACT- means a contract between the Seller and the Buyer for the sale and purchase of Goods in accordance with these Conditions and shall include the order form and/or proforma invoice, which sets out the Buyer's details;

DATA PROTECTION LAWS - means all applicable data protection and privacy laws, regulations, and binding governmental requirements in Australia, including but not limited to the *Privacy Act 1988 (Cth)*, the *Australian Privacy Principles (APPs)*, and any other relevant federal, state, or territory legislation, as amended from time to time. This includes obligations regarding cross-border data transfers, data breach notification, and the handling of sensitive information;

DELIVERY DATE- means the date specified by the Seller when the Goods are to be delivered, or the date on which delivery takes place, whichever is later;

DELIVERY DESTINATION- means the location specified in a Contract for the delivery of the Goods ordered by the Buyer under that Contract;

GOODS- means the articles which the Buyer agrees to purchase from the Seller;

SELLER- means Tama Australia Pty Limited;

SERVICES- means as defined in condition 14.1; and

SMALL BUSINESS- means a Buyer who enters into a Small Business Contract as defined in Schedule 2, Section 23 of the Competition and Consumer Act 2010 (Cth) with the Seller.

2. CONDITIONS APPLICABLE

2.1 These Conditions shall apply to all Contracts to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order, or similar document.

2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.

2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless expressly agreed in writing by the Seller.

2.4 Quotations issued by the Seller are an invitation to treat and do not constitute a contractually binding offer by the Seller to supply the Goods.

2.5 The images and/or drawings of the Goods displayed on the website are for illustration purposes only and do not bind the Seller to supply an identical product. The Seller will make every effort to provide the Buyer with images and data of the Goods that are as accurate as possible.

2.6 The Seller makes every effort to ensure that the information provided on the website is the most complete and accurate information possible. To the fullest extent permitted by law, the Seller will not bear any liability arising from or related to inaccuracies or errors on its website. The laws in Australia provide Small Businesses with additional statutory rights, so this waiver may not apply. .

2.7 The Seller does not undertake to maintain inventory of all the Goods whose images appear on the website.

3. PRICE

3.1 The price payable for the Goods shall be the price stipulated in the Seller's published price list current at the date on which the Goods were ordered by the Buyer. Otherwise, the price payable for the Goods shall be the price agreed upon by the Seller and the Buyer in writing.

3.2 The Seller reserves the right, acting reasonably and to the extent reasonably necessary to protect its legitimate interests, to increase prices in the current price list without giving written notification to the Buyer. For example, the Seller may increase prices due to higher costs from raw materials, regulatory change or changes in market conditions. Any changes to the Seller's prices will be updated in the Seller's price lists and/or in the price quotes/order forms sent to the Buyer, as applicable and will not affect orders made before the changes take effect.

3.3 The SELLER's price is exclusive of any taxes, duties or delivery fees on the goods which shall be specified and due at the rate on the date of the Seller's invoice.

3.4 All prices are quoted in Australian Dollars (AUD) unless otherwise specified, and all payments must be made in Australian Dollars unless otherwise agreed in writing by the Seller.

4. DELIVERY

4.1 Delivery shall take place by such method as the Seller may in its reasonable discretion decide to the location specified by the Buyer (the "**Delivery Destination**"), on or as close to the Delivery Date as is reasonably practicable in all the circumstances. The Delivery Date is approximate only.

4.2 Costs of packaging and delivery shall be included in the price of the Goods, unless otherwise stated in the Sale Invoice.

4.3 To the maximum extent permitted by law, a delay in the delivery of the Goods will not:

4.3.1 affect the price of the Goods; or

4.3.2 enable the Buyer, except in circumstances where the delay was due to the Seller's gross negligence, fraud or wilful misconduct, to: reject any delivery or any further part of the order or any other order from the Buyer or to repudiate the Contract or the order.

4.4 If the Seller delivers the Goods in accordance with instructions and the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has failed to provide appropriate instructions, documents, licences or authorisations, the Seller may store the Goods until delivery can be made. The Buyer shall be liable for direct costs (including, without limitation, storage and insurance) incurred by the Seller for storage of the Goods. This provision is without prejudice to any of the Seller's rights in relation to a failure by the Buyer to take delivery of the Goods or pay for them in accordance with the terms of the Contract.

4.5 To the maximum extent permitted by law, the Seller shall not be liable for any direct, indirect or consequential loss (including, without limitation: pure economic loss, loss of profits, loss of

business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by a delay in the delivery of the Goods.

4.6 Subject to the other provisions of these Conditions, the Buyer shall not be entitled to terminate or rescind the Contract for any delivery delay unless such delay exceeds sixty (60) days.

5. PAYMENT

5.1 Unless the Contract provides otherwise, subject to 5.3, payment of the price, GST and any other tax, duty, insurance, storage or delivery charges shall be due within thirty (30) days of the end of the month of invoice.

5.2 The Contract shall stipulate whether deposits or other interim payments are required prior to delivery.

5.3 In the event that payment is to be made by a letter of credit then it shall be an express condition of the Contract that the letter of credit is irrevocable and is drawn on or confirmed by a first class Australian bank and all the documentation is presented to the Seller when requested by the Seller or otherwise in accordance with the terms of the Contract.

6. LATE PAYMENT

6.1 In the event that the Buyer fails to make payment of any invoice within the due date for payment, the Seller shall be entitled to (without limitation):

6.1.1 charge interest on such invoice from the date of the invoice until the date of payment of the invoice at a rate of 2% above the cash rate target published by the Reserve Bank of Australia on the due date or if such rate ceases to be published then the rate as determined by the Seller in good faith. The interest payable under this condition accrues from the due date until the date of payment; or

6.1.2 suspend or cancel deliveries of any Goods due to the Buyer.

6.2 The Seller shall be entitled to exercise the remedies in Conditions 6.1 notwithstanding that the title to the Goods may not have passed to the Buyer.

7. RISK AND TITLE

7.1 Risk in the Goods shall pass to the Buyer:

7.1.1 according to delivery terms specified in the Sale Invoice (Incoterms 2020);

7.1.2 when the Goods are delivered to the destination nominated by the Buyer;

7.1.3 if the Goods are stored at the Seller's premises, upon collection of the Goods by the Buyer, or upon the expiry of fourteen (14) days from the Seller's written notice to the Buyer that the Goods are ready for delivery, whichever is the earlier; or

7.1.4 if otherwise agreed to between the Buyer and Seller

7.2 The Seller accepts no responsibility for any loss, damage or shortage which may occur to the Goods in transit after risk has passed to the Buyer, unless caused by the Seller's gross negligence, fraud or wilful misconduct. In the event that the Buyer has a claim arising in respect of any such loss, damage or shortage, then such claim should be notified to both the Seller and the carrier as soon as is reasonably practicable. The Buyer undertakes in such circumstances to comply in full

with the carrier's standard conditions for claims for damage, shortage or loss in transit to the extent permitted by law.

7.3 Notwithstanding that delivery may have taken place and / or risk in the Goods may have passed to the Buyer, the Seller will retain title to Goods supplied to the Buyer until the purchase price of the Goods has been paid in full to the Seller.

7.4 Until such time as title in the Goods passes to the Buyer:

7.4.1 the Buyer shall:

- (a) hold the Goods as bailee and agent for the Seller;
- (b) keep the Goods separate from those of the Buyer and third parties, and in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible;
- (c) keep the Goods properly stored and protected and to the reasonable satisfaction of the Seller;
- (d) insure the Goods against all usual risks to full replacement value and hold any insurance monies received by the Buyer for Goods on trust for the Seller;
- (e) not pledge or allow any lien, charge or other encumbrance to arise over the Goods;
- (f) not destroy, deface or obscure any identifying mark or packaging on or related to the Goods; and
- (g) the Seller's other rights will not be affected by the Seller retaining title to Goods supplied until the Goods have been paid for in full by the Buyer.

7.4.2 the Buyer shall be entitled to use, re-sell or distribute the Goods in the ordinary course of its business (except where such entitlement may be terminated by notice from the Seller to the Buyer, and shall automatically terminate without notice in the event the Buyer enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration or becomes insolvent); and

7.4.3 provided that the Goods are still in existence and have not been sold by the Buyer in accordance with Condition 7.4.2, the Seller is entitled at any time to require the Buyer to deliver the Goods to the Seller and if the Buyer fails to do so, to enter on to any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.5 Any Goods repossessed by the Seller may be resold on such terms as the Seller may in its absolute discretion determine and the Buyer shall remain liable to the Seller for the difference between the net proceeds of such resale and all outstanding sums due to the Seller in respect of the Goods and for all costs and expenses incurred by the Seller in repossessing, storing, insuring and re-selling the same.

7.6 The provisions of these Conditions relating to payment for the Goods shall apply equally (and without limitation) to payment for fees or charges incurred by the Seller in undertaking any extra work, requirement, modification, test or inspection.

7.7 Upon termination of the Contract, the Seller's (but not the Buyer's) rights contained in this Condition 7 shall remain in effect.

7.8 Except where, prior to shipment, the Seller agrees in writing to accept return of the Goods sold hereunder, the Seller reserves the right to decline at its reasonable discretion requests from the Buyer to return quantities of the Goods ordered but not utilized by Buyer for any reason. No returns may be made without the Seller's written approval. For approval and issuance of Goods return instructions, the Buyer must contact the Seller. The Buyer shall pay all return shipping charges to the location designated by the Seller. The Buyer may not set off from payments due to the Seller any amounts for returns except with the Seller's written permission. The Seller shall not be obligated to issue any payments or credits for returned amounts where the Buyer is in default of any of its payment obligations to the Seller. Restocking fees may be charged at the Seller's reasonable discretion.

8. WARRANTY

8.1 Subject to the provisions of Condition 9 below, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defect in both materials and workmanship for a period of twelve (12) months from the Delivery Date.

8.2 All other warranties, conditions or terms that are not expressly set out in these Conditions are excluded. This does not limit any applicable statutory guarantees provided under the *Competition and Consumer Act 2010* (Cth) or equivalent State legislation that cannot be excluded.

8.3 The parties acknowledge and agree that the Buyer has had adequate opportunity to enquire about, and received enough information regarding, the Goods to ensure their safe use, handling and storage.

8.4 The Buyer warrants that it will ensure that the Goods are properly used so that they are free from risk to health and safety.

8.5 Each party warrants to the other that it has the power and authority to enter into this agreement and be bound by the conditions set out herein.

9. LIMITATION OF LIABILITY

9.1 Without prejudice to the generality of Condition 8 above, the Seller shall be reduced to the Buyer:

9.1.1 in respect of any defect due to the Buyer's use of the Goods arising from wear and tear, wilful damage, negligence, abnormal working conditions, a failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration, or repair of the Goods without the Seller's approval;

9.1.2 in the event that the full price (including, without limitation, those matters set out in Condition 7) for the Goods has not been paid by the due date for payment, or

9.1.3 by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

(a) act of God, explosion, flood, tempest, fire or accident,

(b) war or threat of war, sabotage, insurrection, civil disturbance or requisition, pandemic,

(c) acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority,

- (d) import or export regulations, sanctions or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party),
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery, or
- (g) power failure or breakdowns in machinery.

9.2 If the Goods do not comply with Condition 8.1, the Buyer should (i) notify the Seller in writing and (ii) provide the Seller with an opportunity to inspect the Goods within a reasonable time after it was notified of the defect. After inspection, if the Goods are found to be non-compliant with Condition 8.1, the Seller's liability to the Buyer, to the extent permitted by law, is limited at the Seller's option to:

- 9.2.1 fixing or replacing the Goods (or the part in question) free of charge, or
- 9.2.2 refund to the Buyer the price or proportion of the price paid by the Buyer for the Goods. but upon the Seller undertaking either of the steps in this Condition 9.2, the Seller shall have no further liability to the Buyer to the extent permitted by law.

9.3 Neither party shall be liable to each other for loss of profit, loss of business, opportunity costs, damage to reputation or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply of the Goods.

9.4 Any claim (including any relating to the quality of the Goods) by the Buyer arising out of this Contract shall be provided to Seller by written notice setting out the facts on which it is based as soon as reasonably possible after the date when the facts were discovered or reasonably should have been discovered. To the extent permitted under applicable law, any such claims must be submitted by the Buyer to the Seller in writing no later than 90 days after the date the Goods were delivered by Seller.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 All intellectual property rights and all other rights in the Goods and the Seller's website shall be owned or licensed by the Seller.

10.2 The Buyer shall indemnify the Seller on a full indemnity basis against any and all actions, costs (including, without limitation, the costs of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Seller with the Buyer's specific instructions relating to the use of the Buyer's intellectual property rights.

11. DATA PROTECTION

11.1 The Buyer acknowledges and agrees that the Buyer's personal details will be processed in accordance with the relevant Data Protection Laws and the Seller's privacy notice available here: <https://www.tama-australia.com.au/privacy-policy/>. Details of the Buyer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on the Seller's behalf in connection with the Goods.

12. TERMINATION

12.1 Unless otherwise agreed by the Seller and the Buyer in writing, no Contract may be terminated by the Buyer except by mutual agreement in writing.

12.2 Termination of the Contract by the Buyer for convenience is subject to the Buyer being required to pay, upon issue of an invoice from the Seller:

- (i) for all Goods which are completely manufactured and ordered by the Buyer at the time of the Seller's receipt of notice of termination; and
- (ii) any reasonable and direct costs which have been unavoidably incurred by the Seller with regard to Goods which have been ordered by the Buyer and have not been completely manufactured at the time of the Seller's receipt of notice of termination but ordered by the Buyer.

12.3 Termination of the Contract by the Seller for convenience is subject to the following conditions: (i) the Seller must act reasonably; (ii) the termination occurs at any time before the Goods are delivered; (iii) the Seller provides 30 business days' written notice; and (iv) upon providing such notice, the Seller shall refund to the Buyer any sums paid in respect of the Goods.

12.4 Either party may terminate the Contract if the other party is materially in breach of its obligations under the Contract and does not remedy that breach within 30 days after receiving notice from the other party to do so.

12.6 Termination by either party under this clause is without prejudice to that party's other remedies or the Seller's right to recover payment from the Buyer for any Goods previously supplied by the Seller.

13. GENERAL PROVISIONS

13.1 These Conditions shall be governed by and construed in accordance with the laws of the State of Victoria, Australia and the parties hereby submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

13.2 Any dispute or claim arising out of or in connection with the Contract whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination of the Contract shall be settled by consultation between the Parties. In the event of failure of such consultations within 60 days (unless otherwise extended by mutual agreement) after receipt by the respondent party of the written notice of such matter, then the matter shall be finally settled by the courts of Victoria, Australia.

13.3 No failure by the Seller to enforce its rights against the Buyer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Seller against the Buyer or be regarded as any waiver of any of these Conditions.

13.4 The Seller reserves the right to sub-contract the whole or any part of the Contract to a party that is financially capable of performing its obligations under the Contract by giving written notice to the Buyer.

13.5 Any provision of these Conditions that is illegal, void or unenforceable will be severed without affecting the other provisions.

13.6 Any notice under or in connection with these Conditions or any Contract shall be in writing and shall be served by registered post, by hand, by email on the party to the address of the party set out in the Contract or at such other address as may subsequently be notified by one party to the other, and in the absence of any evidence of earlier receipt, any notice shall be deemed to have been received: (i) if delivered by hand when left at the address for service; or (ii) if sent by registered post, on the fifth day after posting; or (iii) if sent by email on the date sent (unless a delivery failure

notification or similar is received by the sender). This Condition does not apply to notices given in legal proceedings or arbitration for which certain methods of notice will not be accepted.

13.7 No one other than a party to this Contract shall have any right to enforce any of its provisions.

14. TECHNICAL ADVICE OR OBSERVATION

14.1 At the Buyer's request, Seller (or any representative it may designate) may provide certain limited observation and/or technical advice associated with the sale and/or use of the Goods sold under this Contract ("**Services**"). Seller reserves the right to establish limits on the total time allocated to the Buyer for such Services. Where the Buyer and the Seller contract in writing for additional or extended services, if any, those terms shall prevail, within the scope of those extended services described.

14.2 Services are offered in an advisory capacity only, and the Buyer assumes full responsibility for its use of such Services. To the fullest extent permitted by law, the Seller has no liability for the Buyer's use of such Services unless the Buyer suffers loss or damage caused by the Seller's gross negligence, fraud or wilful misconduct. The Seller makes no warranty, expressed or implied, as to the services.

14.4 When visiting each other's premises, the Buyer and the Seller and their respective personnel shall observe all rules or regulations that are in force on such premises. The Buyer shall inform the Seller of hazards, reasonably associated with the provision of the Services. A party may keep or withdraw its personnel from any site of the other party without any liability for delay or otherwise if, in the opinion of the first party, that site represents a danger to the safety of its personnel.