Conditions of sale of Goods and Services

1 Definitions and interpretation

1.1 Definitions

Buyer means the purchaser of the Goods or Services or both, whose details are set out in the invoice.

Goods means the products and services specified in the invoice issued by the Seller to the Buyer.

Seller means Unilakes (ABN 26 655 499 791) of Suite 9, 171 Piccadilly Street Kalgoorlie WA.

1.2 Interpretation

Nothing in these conditions exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the consumer guarantee provisions in the ACL) and which by law cannot be excluded, restricted or modified.

2 General

These conditions (which will only be waived in writing signed by the Seller and Buyer) will prevail over all conditions of the Buyer's order, to the extent of any inconsistency.

3 Terms of sale

The Goods and all services sold or provided by Seller are sold on these terms and conditions.

4 Seller's Quotations

Unless previously withdrawn, Seller's Quotations are open for acceptance within the period stated in them or, when no period is so stated, within 30 days only after its date. The Seller reserves the right to refuse any order based on a Quotation after this time period has expired.

5 Specifications, etc

(a) All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.

(b) The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.

(c) Where specifications, drawings or other particulars are supplied by the Buyer for the purposes of the Goods order, the Seller's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted as necessary by the Seller.

6 Delivery

(a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.

(b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.

(c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement to the effect that the Buyer will not take delivery by instalments.

(d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:

(i) this does not constitute a repudiation of the contract of sale formed by these conditions; and

(ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

7 Guarantee

8 Consumer guarantees

The Seller's liability for a breach of a condition or warranty implied by chapter 3, part 3-2, division 1 of the Australian Consumer Law (**ACL**) is limited to:

(a) in the case of Goods, any one or more of:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the Goods;

(iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and

(iv) the payment of the cost of having the Goods repaired; or

(b) in the case of services:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

9 Indemnification of suppliers by manufacturers

The Seller of Goods is indemnified by the manufacturer under section 274 of the ACL if the Seller:

(a) is liable to pay damages under section 259(4) of the ACL to the consumer for loss or damage suffered by the consumer; and

(b) the manufacturer is or would be liable under section 271 of the ACL to pay damages to the consumer for the same loss or damage.

10 Prices

(a) Unless otherwise stated all prices quoted by vendor are exclusive of Goods and Services Tax (**GST**).

(b) Prices quoted are calculated at the date of issue of a relevant quotation and may include rates provided by third parties providers, where applicable. These third party rates, if applicable, include the cost of freight and insurance, (**Third Party Rates**). Third Party Rates may vary slightly from the date of the quotation to the time of delivery of the Goods. The Buyer will be liable for any increase in the Third Party Rates.

11 Payment

(a) The purchase price for the Goods plus GST where applicable is payable on delivery (**Payment Due Date**) unless other terms of payment are agreed in writing between the parties.

(b) The Buyer must pay interest on any outstanding amount not paid by Payment Due Date. Interest will be calculated on the basis of the NAB Business Indicator Rate as published from time to time plus *2*%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.

(c) Subject to the Consumer Guarantees and Buyer's rights afforded by the Australian Consumer Law, no refunds will be offered for any Goods or Services.

12 Rights in relation to Goods

(a) The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:

(i) ownership of the Goods;

(ii) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and

(iii) subject to, and in accordance with, the PPSA, to keep or resell any Goods repossessed pursuant to clause 12(a)(ii).

(b) If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer will hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account. This will be held the beneficial property of the Seller and the Buyer will pay such amount to the Seller upon request. Despite the provisions above, the Seller will be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

13 Buyer's property

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it.

14 Storage

The Seller reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Buyer within 7 days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

15 Returned Goods

(a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by the Buyer or refund the Buyer for Goods returned. The Seller will do so only on terms to be agreed in writing in each individual case.

(b) If the Seller agrees to accept returned Goods from the Buyer under clause 15(a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

16 Cancellation

No order may be cancelled by the Buyer except with the written consent of the Seller. If there is a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

17 Personal Property Securities Act 2009 (Cth) (PPSA)

(a) This agreement is a security agreement.

(b) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.

(c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Seller to facilitate registration.

(d) Until title in the Goods has passed to the Buyer, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business.

(e) The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.

(f) The Seller and Buyer agree that this agreement and all related information and documents are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

(g) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:

    (i) any requirement for the seller to give the Buyer a notice of removal of accession;

(ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;

(iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;

(iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;

(v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and

(vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.

(h) Expressions defined in the PPSA have the same meaning when used in this agreement.]

18 Termination

(a) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for amalgamation or reconstruction).

(b) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 14 days after receipt of a written notice by the other party requiring rectification of the breach.

(c) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.

(d) The obligations of the parties that by their nature could be reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

19 Place of contract

This agreement shall be governed by and construed in accordance with law of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of the governing law jurisdiction. Nothing in this clause is intended to undermine the jurisdiction of the Federal Court of Australia or Federal Circuit Court of Australia.