



Breathalyser Sales & Service Pty Ltd ABN 14 001 901 622 ('BSS')

Standard conditions of sale

1 **General:** These terms and conditions as updated from time to time and which can be found at BSS's website (<http://breathalyser.com.au/>) (**Conditions**), together with the Supply Agreement between BSS and its customer (**Customer**) (where applicable) and all documents specified on it, constitute the entire terms of the Agreement to the supply of products (**Product**) to the Customer (**Agreement**). The Conditions exclude and supersede all prior discussions, representations and arrangements and any other oral or written terms and conditions whether or not they are endorsed on, delivered with or referred to in any purchase order or other document delivered by the Customer to BSS.

2 In the event of ambiguity, conflict or confusion between the documents constituting the Agreement, the terms of the Supply Contract (where applicable) prevail.

3 **Orders:** BSS may accept or reject orders it receives. Accepted orders cannot be cancelled without BSS's consent which may be refused or given with conditions. The supply of Product is subject to availability. BSS reserves the right to suspend or discontinue the supply of Product to the Customer. If BSS is unable to supply all of the Customer's order, the Agreement continues to apply to any part of the order supplied.

4 **Price:** Unless otherwise agreed by BSS in writing, prices for Product are:

4.1 those stated in a written quotation – to the extent of any inconsistency in pricing of a particular Product, the document which is dated the latest prevails;

4.2 quoted to alteration by BSS without notice from time to time; and

4.3 subject exclusive of GST and all taxes.

5 **Payment:** Unless otherwise agreed by BSS in writing, the terms of payment for the Product are 30 days from end of the month of date of invoice without deduction or set off. Time is of the essence. Invoices shall be issued and will be payable in respect of every delivery notwithstanding that the balance of the order has not been nor will be delivered for any reason. Where any payment is not made by the due date, BSS may charge interest on any overdue portion from the date the payment was due until the date payment is made (both dates inclusive) at a rate equal to 1% above the indicator lending rate for the time being advised by the National Australia Bank.

6 **Delivery:** All quoted delivery or consignment dates are estimates only. BSS is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever. Risk in the Product passes to the Customer on delivery.

7 **Safety and access:** If BSS or its carrier enters the Customer's premises to deliver or collect Product, the Customer must provide full and safe access and will be liable for, and indemnifies BSS against the cost of all loss, damage to the property and injury to persons, occurring directly or indirectly as a result of the failure by the Customer to ensure the said full and safe access. The Customer is responsible for providing adequate labour and/or material handling equipment for the loading and unloading of Product at its premises. Where BSS agrees to collect Product from the Customer's premises, the Customer must ensure that the Product is all available for collection at an easily accessible central point and that it is ready for loading at the time BSS or its carrier arrives to collect them.

8 **Returns:** If the Customer does not advise BSS in writing of any fault, damage or defect in the Product or failure of the Product to comply with the terms of a contract made pursuant to this Agreement within 14 days of delivery (a) the Customer is deemed to have accepted the Product and is deemed to agree that the Product is not faulty, damaged or defective or non-compliant; and (b) the Customer releases and discharges BSS from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Product.

9 **Faults** If the Customer advises BSS in writing of a fault, damage or defect in the Product within 14 days of delivery then BSS may, at its sole discretion accept return of the Product and replace the Product, provided that the Customer has not used the Product and the Product is returned within 30 days of the date of delivery in the same condition as they were delivered and, where appropriate, in the original packaging, and BSS will have no additional liability to the Customer. BSS may charge a reasonable handling fee for returns.

The reading obtained through the correct use of the Product is considered accurate at the time of testing. Notwithstanding any other provision in this Agreement, neither BSS, the manufacturer, distributor, owner nor licensee of the Product, accepts liability or responsibility in respect thereof. Readings obtained through use of this Product cannot be used as evidence in a court or tribunal.

10 **Title:** Until all monies owing by the Customer to BSS are paid in full for the Product and notwithstanding any credit granted to the Customer, legal and equitable title to the Product is retained by BSS. Until then, the Customer is a bailee of the Product. The Customer (a) holds the Product as bailee and fiduciary agent of BSS; and (b) must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Product is clearly and easily identifiable as BSS's property and inform BSS of the location of the Product, if requested. Should the Product be lost or damaged after delivery to the Customer and prior to payment, the Customer shall indemnify BSS for such loss or damage.

11 If the Customer sells the Product before payment in full to BSS, it must hold all of the proceeds of any sale or dealing in the Product on trust for BSS, and the Customer must pay such amount to BSS on demand.

12 Notwithstanding any other provision to the contrary, BSS reserves the following rights in relation to the Product until all amounts owed in respect of the Product and all other Product supplied to the Customer by BSS at any time are fully paid (a) legal and equitable ownership of the Product (b) to retake possession of the Product and (c) to keep or resell any of the Product repossessed.

13 **Repossession:** The Customer hereby grants full leave and irrevocable licence to BSS and any person authorised by BSS to enter upon any premises of the Customer where the Product is stored for the purpose of retaking possession of the Product. The Customer agrees that (a) it will be liable for all expenses incurred or suffered by BSS (whether direct or indirect) as a result of BSS retaking possession of the Product or otherwise exercising its rights under this clause; and (b) it will indemnify BSS for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against BSS in connection with retaking possession of the Product or the exercise by BSS of its rights under this clause, and the Customer must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

14 **Warranties:** BSS warrants that the Product sold is free from defective materials and workmanship. This warranty does not apply if (a) the defect becomes apparent after the warranty period for the Product (which can be found at BSS's website (<http://breathalyser.com.au/>), with such period commencing on the date of delivery of the Product; (b) the Product has not been stored in accordance with the instructions issued by BSS; (c) the Product has been subject to any alteration by any person other than authorised in writing by BSS; or (d) the Customer fails to

notify BSS of its claim under this clause within 7 days of the defect becoming apparent and return the Product to BSS on its request to do so.

15 All other conditions and warranties of any type in relation to the Product are excluded to the maximum extent allowed by the law. In respect of Product which is not ordinarily acquired for personal, domestic or household use or consumption, the liability of BSS for a breach of any condition or warranty implied by law is limited at BSS's option to the repair of Product, or supply of a replacement, or payment of the cost of replacing the Product or of acquiring equivalent goods or payment of the cost of having the Product repaired.

16 **Termination:** BSS may by written notice to the Customer terminate the Agreement if (a) the Customer fails to perform any of its obligations under the Agreement; (b) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business; (c) anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due; or (d) a step is taken to have a receiver, receiver and manager, provisional liquidator or administrator appointed to that person or any of its assets. Clauses 19 to 24 and 32 (inclusive) survive the termination of the Agreement.

17 If the Agreement is ended because of the Customer's default and the Customer owes BSS money, the money is immediately payable to BSS and bears interest and BSS is entitled to enter the Customer's premises and repossess any Product in the Customer's possession or control.

18 **Force Majeure:** BSS will not be liable for any loss incurred as a result of delay or failure to make any supply of Product or to observe any provisions of this Agreement due to an event of force majeure, being any cause or circumstance beyond BSS's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-governmental authorities or embargoes. During the continuance of an event of force majeure BSS's obligations under this Agreement will be suspended. The Customer must accept delivery of the Product notwithstanding any delay in delivery caused by any force majeure event.

19 **PPSA** The supply of Products by BSS to the Customer from time to time creates a security interest (**Security Interest**) in favour of BSS over the Products and the proceeds of sale of the Products (together the **Collateral**) in accordance with the Personal Property Securities Act 2009 (Cth) (**PPSA**). The Security Interest attaches to the Products in accordance with the PPSA (and it is not agreed that it will attach at a later time) and continues in the Products even if they are mixed or commingled with other products. For the purposes of the PPSA, the Agreement (including in particular this document which contains the Security Interest) comprises the security agreement. This document is adopted by the Customer when it signs this Agreement and each time the Customer takes physical possession of Products (irrespective of any rights the Customer may have to return the Products under clause 9). The Products the subject of the security agreement are more particularly described in the relevant purchase documents.

20 The Customer must, immediately on request, do whatever BSS requires of the Customer to enable BSS to better exercise its rights pursuant to the Security Interest, to ensure the Security Interest is fully enforceable, perfected, has the priority required by BSS and to enable BSS to apply for any registration, give any notification in connection with the Security Interest or exercise any rights over the Collateral.

21 BSS may apply for any registration, or give any notification, in connection with the Security Interest and for whatever class of collateral BSS determines. The Customer consents to any registration or notification by BSS, and agrees not to make any amendment demand. The Customer indemnifies, and on demand will immediately reimburse, BSS for its costs, charges and expenses (excluding fees for registration of the Security Interest) incurred in connection with anything BSS does to perfect, preserve, enforce or protect or otherwise deal with the Security Interest.

22 The Customer further agrees (to the extent permitted by law) that: (a) BSS does not have to comply with any of the requirements of, and the Customer waives its rights under, sections 95, 120, 121(4), 123, 125, 129, 130, 132(3)(d), 132(4) 134(2), 135 and 137(2) of the PPSA or any other provision of the PPSA notified by BSS to the Customer from time to time; (b) the Customer may not exercise any rights under sections 142 and section 143 of the PPSA; and (c) BSS or any receiver (or receiver manager) appointed by BSS does not have to give any notice required under the PPSA (including a notice of verification statement).

23 The Agreement is confidential. The Customer will not request any disclosure be made, disclose or authorise the disclosure, of any information of the kind mentioned in section 275(1) of the PPSA, unless section 275(7) of the PPSA applies and in that case only BSS is entitled to make the disclosure.

24 Any payment made by the Customer to BSS may be applied by BSS in any manner it sees fit.

25 **Miscellaneous:** BSS waives a right under this Agreement only if it does so in writing.

26 BSS may assign or otherwise deal with the benefit of any contract made pursuant to the Agreement.

27 The rights and remedies provided in these Conditions will not affect any other rights or remedies available to BSS.

28 This Agreement is governed by and must be interpreted in accordance with the laws of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

29 BSS may amend or vary this Agreement by notifying the Customer in writing of the amendment or variation or (in the case of the Conditions) by uploading the amended Conditions onto BSS's website. Each time the Customer places an order with BSS, and on each day during the term of the Agreement, the Customer acknowledges either receiving, or having the opportunity to review, a copy of the Conditions which can be found at BSS's website (<http://breathalyser.com.au/>).

30 If any provision of this Agreement is unenforceable, illegal or void, that provision is severed and the other provisions of this Agreement remain in force.

31 Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile or email to the address of that party shown in the quotation, purchase order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.

32. The Customer indemnifies BSS from and against, and must pay BSS on demand for, all actions, costs, claims, demands, losses, expenses and liabilities howsoever arising (including those brought by third parties) sustained or incurred by BSS or its related entities or their respective officers, employees, consultants and agents as a result of any breach of the Agreement, negligence, willful misconduct or fraud by the Customer or its related entities or their respective officers, employees, consultants and agents.