

Addendum to General Terms and Conditions of Sale (6500) – all contracts relating to a supply of goods or services in connection with Australia

For all contracts relating to a supply of goods or services in connection with Australia, the following additional terms apply.

1 Insert after clause 3, the following clause 3A:

“3A CONTRACTS RELATING TO A SUPPLY OF GOODS OR SERVICES IN CONNECTION WITH AUSTRALIA

(a) Non-Excludable Law.

For the purposes of these general terms and conditions:

(i) “Australian Consumer Law” means:

(A) Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and regulations under that Act insofar as they apply to that Schedule 2; and

(B) any law of any State or Territory by which the Australian Consumer Law applies as a law of that State or Territory;

(ii) “Non-Excludable Law” means any law of the Commonwealth or a State or Territory which:

(A) provides for any guarantee, warranty, condition, remedy or other right or entitlement in respect of a supply of goods or services, including the Australian Consumer Law and any other law of the Commonwealth or a State or Territory that regulates contracts for the supply of goods or services; and

(B) cannot be excluded, restricted or modified.

(b) Nothing in these general terms and conditions shall be taken or construed as excluding, restricting or modifying any Non-Excludable Law. If any of these general terms and conditions is inconsistent with a provision of a Non-Excludable Law, that provision shall prevail to the extent of that inconsistency.

To the extent that a Non-Excludable Law is applicable and available to Buyer, that Non-Excludable Law applies in addition to these terms and conditions.”

2 Insert the following words at the commencement of clause 4(h):

“To the extent permitted by and consistent with the Non-Excludable Laws, and subject to clauses 4(ha)(i), 4(ha)(ii) and 4(ha)(iii) of these general terms and conditions,”

3 Insert the following words at the commencement of each of clause 4(i):

“To the extent permitted by and consistent with the Non-Excludable Laws, and subject to clauses 4(ha)(i), 4(ha)(ii) and 4(ha)(iii) of these general terms and conditions...”

4 In clause 4(j):

(a) Insert the following words at the commencement of the clause:

“TO THE EXTENT PERMITTED BY AND CONSISTENT WITH THE NON-EXCLUDABLE LAWS, AND SUBJECT TO CLAUSES 4(ha)(i), 4(ha)(ii) AND 4(ha)(iii) OF THESE GENERAL TERMS AND CONDITIONS...”

- (b) delete the following words set out at the end of the first sentence:

“TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW”.

- (c) Insert the following words at the commencement of the second sentence:

“To the extent permitted by and consistent with the Non-Excludable Laws and subject to clauses 4(ha)(i), 4(ha)(ii) and 4(ha)(iii) of these general terms and conditions...”

5 In clause 5:

- (a) delete the following words at the commencement of the clause:

“TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW”.

- (b) Insert the following words at the commencement of that clause:

“TO THE EXTENT PERMITTED BY AND CONSISTENT WITH THE NON-EXCLUDABLE LAWS, AND SUBJECT TO CLAUSES 4(ha)(i), 4(ha)(ii) AND 4(ha)(iii) OF THESE GENERAL TERMS AND CONDITIONS...”

6 Insert after clause 4(h), the following clause 4(ha)

“(ha) Remedies.

- (i) If Seller has a liability to Buyer under Division 1 of Part 3-2 of the Australian Consumer Law (other than a liability under section 51, 52 or 53 of the Australian Consumer Law), insofar as it is lawful and fair and reasonable to do so, the liability of Seller to Buyer is limited to one or more of the following, at Seller’s discretion:

- (A) in relation to products that are goods:

- (I) the replacement of the Products involved or the supply of equivalent Products;
- (II) the repair of the Products involved;
- (III) the payment of the cost of replacing the Products involved or acquiring equivalent Products;
- (IV) the payment of the cost of having the Products involved repaired;

- (B) in relation to Products that are services:

- (I) the supplying of the services again; or
- (II) the payment of the cost of having the services supplied again.

- (ii) In the event that:

- (A) Buyer re-supplies a Product to a consumer (as that expression is defined in the Australian Consumer Law); and
- (B) the Australian Consumer Law applies to the re-supply of that Product by Buyer to a consumer,

to the extent permitted by and consistent with the Australian Consumer Law, and where it is fair and reasonable to do so, the liability of Seller to Buyer in respect of that Product is limited to a liability to pay to Buyer an amount equal to:

- (C) the cost of replacing that Product; or
- (D) the cost of obtaining an equivalent Product; or
- (E) the cost of having that Product repaired,

whichever is the lowest amount.

- (iii) To the extent consistent with the applicable Non-Excluded Laws, but not so as to exclude, restrict or limit the rights of Seller under clauses 4(ha)(i) and 4(ha)(ii) of these terms and conditions, provisions set out in clause 4(h) of these terms and conditions insofar as they relate to any of the remedies set out in clause 4(ha)(i) and 4(ha)(ii) of these terms and conditions, shall apply for the purposes of each of those clauses.”

7 In clause 18, before the commencement of sub-clause (a), insert the following words:

“To the extent permitted by and consistent with the Non-Excludable Laws:”