

## CONDITIONS OF SALE

### 1. DEFINITIONS & INTERPRETATION

- 1.1 **SupaCut** means Wavebreak Capital No.1 Pty Ltd ABN 71 623 476 157, and its subsidiaries, successors, assigns associated entities, connected entities and related entities, and their servants and/or agents, and when used, the words “we”, “us”, and “our” are references to Wavebreak Capital No.1; **Collateral Documents** means any Sale Delivery Dockets, Orders, quotations, invoices, guarantees or other documents which form or describe the subject matter of an agreement entered into in accordance with the Conditions of Sale, but does not include any descriptions, illustrations and performances contained in catalogues, price lists and advertising material; **Conditions of Sale** means any terms and conditions of quotation, supply and or sale of Wavebreak Capital No.1 that are notified by Wavebreak Capital No.1 to the Customer (whether in a Collateral Document or otherwise) and include these conditions of sale and any Purchase Agreement; **Customer** means the person who purchases the Products and when used, the words “you” and “your” are references to the Customer; **Event of Default** means (i) the Customer fails to pay for Products in accordance with the Conditions of Sale; (ii) the Customer is in breach of its obligations under the Conditions of Sale; or (iii) there is an Insolvency Event; **Insolvency Event** means for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer’s property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a creditor’s statutory demand, being unable to pay the Customer’s debts as and when they fall due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer’s own affairs for any reason, taking any step that could result in the Company becoming insolvent, entering into a compromise or arrangement with any of the Customer’s members or creditors, or any analogous event; **Interest Rate** means the rate of 15% per annum; **Officer** means each director, secretary, credit manager and authorised representative of Wavebreak Capital No.1 ; **Order** means a purchase order or offer from the Customer which has been accepted by Wavebreak Capital No.1 but excludes any terms and conditions of the Customer that may be on the Order or offer to purchase or any other documentation of the Customer associated with any Order; **Payment Date** means within 30 days of the date of statement from Wavebreak Capital No.1 to the Customer, or as Wavebreak Capital No.1 may otherwise notify the Customer of in writing; **Products** means any products of Wavebreak Capital No.1 being power tool accessories including without limitation auger bits, chucks and chuck keys, diamond cup wheels, plug cutters, drill doctors, drills, holesaw sets, holesaws, jigsaw blades, merchandisers, multi - function tools, polishing, protection, reciprocating blades, router bit sets, router bits, sanding, saw blades, saw bushes, spade bits, wire wheels and other products as supplied and or distributed from time to time by Wavebreak Capital No.1 to the Customer, or ordered by the Customer but not yet supplied, **and includes the Services**; **Sale Delivery Docket** means, if applicable, Wavebreak Capital No.1’ docket provided upon Delivery; **Services** means any service supplied by Wavebreak Capital No.1 to the Customer, being IT consumables and hardware supply and distribution services.

### 2. ORDERS

- 2.1 Each Order shall constitute an offer by you to purchase from us the Products specified in such order. If we decide to accept an Order, an agreement (“**Purchase Agreement**”) shall have been entered into between you and us in relation to the Products on the terms and conditions contained in the Conditions of Sale.
- 2.2 Orders must clearly state an order number, date of order and requested delivery date.

- 2.3 Wavebreak Capital No.1 reserves the right to amend the price of any Products the subject of the Order at any time up to Delivery.
- 2.4 Within a reasonable time after receipt of the Order and with the Customer being notified, Wavebreak Capital No.1 may, for any reason, decide not to supply the Products the subject of the Order.
- 2.5 Wavebreak Capital No.1 is not liable to the Customer for any loss or damage suffered as a result of the non-supply of any Products.
- 2.6 Wavebreak Capital No.1 may require the Customer to provide documents or further information as part of the Order, and if Wavebreak Capital No.1 does so it shall not be obliged to consider an Order until such documents and further information have been provided.
- 2.7 An Order may be revoked by the Customer at any time prior to acceptance by Wavebreak Capital No.1, but if written notice of revocation from the Customer is not actually received by Wavebreak Capital No.1 prior to acceptance, the revocation shall be ineffective and the Customer shall be bound by the Conditions of Sale, and the Customer must pay to Wavebreak Capital No.1 any costs and expenses incurred by Wavebreak Capital No.1 of and incidental to such Order.
- 2.8 For the avoidance of doubt, no terms or conditions of the Customer are binding on Wavebreak Capital No.1 unless expressly agreed to in writing by Wavebreak Capital No.1.

### 3. DELIVERY

- 3.1 Delivery is taken to be when the Products leave Wavebreak Capital No.1’ premises, either by collection by you or by delivery pursuant to your specific request.
- 3.2 The Customer must pay all delivery charges incurred at cost plus sales tax / GST and other relevant charges prevailing at that time.
- 3.3 Wavebreak Capital No.1 is not responsible for the loading or transportation of the Products unless otherwise agreed to by Wavebreak Capital No.1.
- 3.4 The Customer bears all costs and risks involved in taking the Products from Wavebreak Capital No.1’ premises, irrespective of the type of Delivery.
- 3.5 Any timeframes for Delivery quoted by Wavebreak Capital No.1 are estimates only.
- 3.6 Delivery may, in Wavebreak Capital No.1’ absolute discretion, be by way of partial deliveries. Each partial delivery may be invoiced separately and will be a separate Purchase Agreement.
- 3.7 If Wavebreak Capital No.1 fails to deliver some or all of the Products pursuant to a Purchase Agreement and/or the Conditions of Sale, the Customer will not be entitled to cancel the Purchase Agreement or any other Order or Purchase Agreement.
- 3.8 If you take advantage of our shipment facilities please note that if Products have to be re-delivered because you are not available to accept the Products, Wavebreak Capital No.1 is charged for each additional attempt. You agree to reimburse us for all such additional delivery costs. We will invoice you on a separate invoice for these additional delivery costs, and you agree to pay any such invoices on or before the Payment Date or on the terms contained in the invoice, whichever is the earlier in time for payment.

### 4. RISK

- 4.1 Notwithstanding any arrangements that may have been made, risk in the Products passes to the Customer on Delivery or upon collection by the Customer.

### 5. PAYMENT

- 5.1 Payment is due on or before the Payment Date, without deduction or set off.
- 5.2 Amounts received by Wavebreak Capital No.1 may be applied by Wavebreak Capital No.1 in its absolute discretion including first toward payment of interest, costs and expenses payable to Wavebreak Capital No.1 under these Conditions of Sale or any

Purchase Agreement, before being applied against any amounts invoiced for Products which remain unpaid from time to time.

5.3 Payments by credit card will incur a surcharge (plus GST).

5.4 Returned cheques will incur a dishonour fee (excluding GST).

## **6. INTEREST**

6.1 The interest rate on any outstanding debts is a fixed rate of 10 per cent.

## **7. CLAIMS, RETURNS AND CREDITS**

7.1 Claims for shortages and breakages must be made immediately upon Delivery and must include Wavebreak Capital No.1' invoice number and date, failing which the claim will not be accepted by Wavebreak Capital No.1.

7.2 Credits sought for returned Products are at Wavebreak Capital No.1' discretion. Where accepted, Wavebreak Capital No.1 may charge a reasonable administration fee in respect of all returned Products. For the avoidance of doubt, no Products for which the shelf life has expired will be accepted for return.

7.3 Products, in respect of which a credit is sought and approved by Wavebreak Capital No.1, must be returned to Wavebreak Capital No.1' premises within 14 days from date of invoice, freight free, in good and saleable condition, in the original containers and packaging in which they were supplied and accompanied by the number and date of Wavebreak Capital No.1' supplying invoice.

## **8. LIABILITY**

8.1 Wavebreak Capital No.1 makes no express warranties in respect of the Products.

8.2 To the extent permitted by law, Wavebreak Capital No.1 excludes all:

- (a) implied warranties in respect of the Products that would otherwise be implied by law into the Conditions of Sale; and
- (b) liability to the Customer for any loss (including loss of profits and any direct, indirect, special or consequential losses), or for any damages to persons or property, or for death or injury caused by an act or omission (including negligent acts or omissions) by Wavebreak Capital No.1, its employees, contractors or agents and/or arising in any way out of the use of the Products, or delay in delivery or non-delivery.

8.3 Where the preceding paragraphs cannot legally operate and to the extent permitted by law, Wavebreak Capital No.1' liability for breach of any warranty or any term implied by law into the Conditions of Sale is limited to the lowest of the cost of replacing the Products, acquiring equivalent products or having the Products repaired.

8.4 The Conditions of Sale are not subject to the provisions of the *Sale of Goods Acts* in each jurisdiction of Australia, the operations of which are hereby expressly excluded.

## **9. WARRANTIES, REPRESENTATIONS, ACKNOWLEDGEMENTS**

9.1 In making an Order, the Customer warrants, represents, acknowledges and agrees as follows:

- (a) You have read and understand and wish to be bound by the full terms, conditions and effect of the Conditions of Sale;
- (b) All purchases by you are for commercial purposes only;
- (c) The person(s) who made the Order was authorised by you to do so;
- (d) Any Purchase Agreement entered into pursuant to any Order shall be valid and binding on you, notwithstanding the making or serving of any such Order or purported Order was forged or fraudulent or was procured in excess of or without your authority;
- (e) Your particulars provided to us are in all respects true and correct;
- (f) You have relied solely on your own skill and judgement in entering into the Conditions of Sale and selecting the Products ordered by you;

(g) We have not made any representation or promise to you of any nature, regarding your rights under the Conditions of Sale or otherwise;

(h) The Conditions of Sale represent the entire agreement as concluded between us and you, and supersedes any other agreement, terms and/or conditions;

(i) No representations made by us or you concerning the Products shall be an implied term of the Conditions of Sale or form the subject matter of a separate agreement, subsidiary or collateral with the Conditions of Sale; and

(j) You have not been induced to enter into the Conditions of Sale by any representation, oral or otherwise, made by, for or on behalf of us.

## **10. GST**

10.1 Unless otherwise stated, an amount payable by a party under a Purchase Agreement in respect of a taxable supply represents the value of that supply (exclusive of GST), and the recipient must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

## **11. PROPRIETARY RIGHTS**

11.1 Wavebreak Capital No.1 will retain all copyright and other proprietary rights in any Wavebreak Capital No.1 confidential information and any Wavebreak Capital No.1 material, including documents, drawings, certifications and instructions provided to the Customer. The Customer must not use the Wavebreak Capital No.1 information or material or their contents for any purpose other than the purpose for which they were provided. The Customer must not disclose, transfer, transmit or otherwise make available to any third party in any manner or form, any material or their contents or any information relating to them or the Products without Wavebreak Capital No.1 written consent.

## **12. MISCELLANEOUS**

12.1 Time is of the essence.

12.2 The Conditions of Sale shall be governed by and construed in accordance with the laws of and applicable to the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland. Further, the Customer submits to the Brisbane central registries of the Courts of the State of Queensland, the Federal Magistrates Court of Australia and the Federal Court of Australia as the proper and correct registries for Wavebreak Capital No.1 to commence any proceeding in relation to the Conditions of Sale.

## **13. VARIATION**

13.1 The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Wavebreak Capital No.1 at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by Wavebreak Capital No.1.

13.2 Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request upon providing reasons either orally or in writing.

13.3 Variations requested by the Customer will only be binding upon Wavebreak Capital No.1 if they are accepted in writing.

## **14. PRIVACY ACT**

14.1 The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.