

**NOTE TO CUSTOMER – THESE TERMS AND CONDITIONS ARE SUBJECT TO CHANGE BY BURST CONTROL AT ANY TIME. BURST CONTROL MAY GIVE NOTICE TO THE CUSTOMER OF SUCH CHANGES AT ANY ADDRESS HELD FOR THE CUSTOMER (INCLUDING AN EMAIL ADDRESS) OR BY PUBLISHING THE CHANGED TERMS AND CONDITIONS ON ITS WEBSITE**

## **Interpretation**

1. In these conditions:

“Customer” means any entity, including an incorporated or unincorporated business or an individual (and where the context permits its employees, agents and subcontractors) who acquires Goods or Services from Burst Control.

“Goods” means the products supplied by Burst Control to the Customer.

“Burst Control” means any entity lawfully trading under the Burst Control name and specified on either an invoice, order, tender document or credit application form, including Burst Control Pty. Ltd. ABN 88 663 167 486 and where the context permits, includes their employees, agents, subcontractors and assignees.

“Burst Control Franchisees” means any entity trading as a franchisee of Burst Control

“Services” means the services supplied by Burst Control to the Customer.

“Website” means [www.burstcontrol.com.au](http://www.burstcontrol.com.au)

## **General**

2. The Customer must pay to Burst Control all monies owing for the Goods and Services and associated charges, as set out in any invoice, order, agreement or tender document issued by or on behalf of Burst Control, unless otherwise agreed in writing.

3. An invoice will be issued to the Customer each time goods and/or services are supplied by Burst Control. Where the supply of goods and services have not been completed by each month end, or at such other stage of a particular supply when Burst Control reasonably determines it is appropriate to do so, a progress invoice may be issued to the Customer.

4. The Goods and Services are supplied subject to these Terms and Conditions, which shall prevail over all other conditions of the Customer's order to the extent of any inconsistency, and which shall not be varied or waived unless agreed by Burst Control in writing. These Terms and Conditions apply whether or not the Customer has an account with Burst Control.

### **Goods Returns Policy**

5. The Customer is not entitled to a refund if the Customer simply changes its mind and wishes to return any unused Goods or to cancel an order. Any request for a refund in those circumstances within 30 days of sale or order will be considered by Burst Control, but may be refused by Burst Control in its reasonable discretion. Where a refund in those circumstances is agreed by Burst Control in its discretion, a restocking fee of 15% of the value of those Goods will be charged to the Customer and deducted from any refund.

### **Replacement Policy**

6. Burst Control will replace any Goods if:

- a) Burst Control is satisfied that the Goods were defective in materials or in manufacture at the time of delivery of the Goods to the Customer; and
- b) The Customer gives notice to Burst Control at the address shown on the front of the invoice or other delivery documentation or at the address otherwise notified to the Customer, within 7 days of receipt of the Goods, of the alleged defects in materials or in manufacture; and
- c) The Customer actually returns the Goods to Burst Control at the expense of the Customer within 30 days of delivery, quoting invoice numbers.

The benefits to the Customer under this Replacement Policy are in addition to and are subject to any other rights and remedies which the Customer may have. If the Australian Consumer Law applies, the goods come with guarantees which cannot be excluded and which entitle the Customer to a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. If the Australian Consumer Law applies you are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

### **Limitation of Liability**

7. Subject to clauses 6 and 8 of these Terms and Conditions, and to the extent permitted by the Australian Consumer Law, the Customer has no claim against Burst Control for any damages whatsoever arising out of the purchase or the use of the Goods.

8. Assuming that the Goods or Services sold by Burst Control are not for personal, domestic or household purposes, Burst Control's liability under any guarantee or warranty, whether express or implied by the Australian Consumer Law or other relevant legislation is limited to:

(i) in the case of goods, any one or more of the following:

- a) the replacement of the goods or the supply of equivalent goods;
- b) the repair of the goods;
- c) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- d) the payment of the cost of having the goods repaired; or

(ii) in the case of services:

- a) the supplying of the services again; or
- b) the payment of the cost of having the services supplied again; or

(iii) in the case of a monetary claim in respect of goods;

- a) the cost of replacing the goods;
- b) the cost of obtaining equivalent goods; or
- c) the cost of having the goods repaired, whichever is the lowest amount.

### **Exclusion of Warranties**

9. Subject to conditions 6, 7 and 8, and subject to any statutory rights including under the Australian Consumer Law, Burst Control gives no warranties with respect to the Goods or Services supplied to the Customer. All warranties are excluded except where they are expressly given in writing by Burst Control, or except to the extent that any implied warranty cannot be excluded by law.

### **Use of Goods**

10. **(a)** The Customer must only use the Goods for the purpose for which they were intended, and must comply with all legal requirements of use and all directions of use by Burst Control or by the manufacturer of the Goods,

whether provided to the Customer or posted on the Goods.

**(b)** The Goods are not suitable for use on or in an aircraft.

**(c)** The Customer must only employ competent trained staff to use the Goods and must ensure that all persons using the Goods are suitably instructed in the safe and proper use of the Goods.

**(d)** The Customer must comply with all Occupational Health and Safety laws relating to the use of the Goods.

**(e)** The Customer indemnifies Burst Control against any claim whatsoever arising from the Customer's improper use of the Goods, and any breach by the Customer of its obligations under this Agreement.

### **No Liability for Delay**

11. Subject to any statutory rights including under the Australian Consumer Law, Burst Control will not be liable for any delivery delay or any non-delivery attributable to transport delays, unavailability of Goods or other products, lockouts, holiday periods, or any other cause whatsoever which is outside the control of Burst Control. Where part delivery of goods is made, payment will be made for those goods which are delivered.

### **Goods and Services for Oil Spills**

12. Without limiting these terms and conditions, where Burst Control is providing goods and services at the request of a Customer specifically in respect of the clean-up of an oil spill, the Customer takes full responsibility in respect of the oil spill and indemnifies Burst Control in respect of any claim or prosecution by any party whatsoever in respect of the oil spill. The Customer acknowledges that in performing its tasks in relation to the clean-up of an oil spill, it may be unavoidable that Burst Control, whilst taking all due care, spills some further oil in the course of repairs and cleaning the oil spill, and the Customer indemnifies Burst Control in respect of any such spill and in respect of any contamination or consequential loss arising from that spill.

### **Rights in Relation to Goods**

13. Burst Control reserves the following rights in relation to the Goods until all accounts owed by the Customer to Burst Control are fully paid:

**(a)** ownership of the Goods;

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

**(c)** to keep or resell any Goods repossessed pursuant to (b) above.

If, before all accounts owing by the Customer to Burst Control are fully paid, the Goods are resold or products manufactured using the Goods are sold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods in a separate identifiable account as the beneficial property of Burst Control and shall pay such amount to Burst Control upon request. Notwithstanding the provisions above Burst Control shall be entitled to maintain an action against the Customer for the full purchase price of the Goods.

### **Personal Property Securities Act (Cth) ("PPSA")**

14. **(a)** The retention of title to the Goods by Burst Control until they are paid for, or the sale of any goods by Burst Control to the Customer on consignment, may create a Security Interest in the Goods. All terms in this clause have the meaning given in the PPSA; and "PPSA" includes all amendments to, regulations under, and legislation associated with, the Personal Property Securities Act.

**(b)** At the request of Burst Control, the Customer shall promptly execute any documents, provide all necessary information and do anything else required by Burst Control to ensure that any Security Interest which may be created under these Terms and Conditions in the Goods or their proceeds is enforceable, perfected and otherwise effective under the PPSA, and has priority over all other security interests in the Goods. Burst Control is authorised by the Customer to register its Security Interest in respect of the Goods in the PPS Register at any time.

**(c)** The Customer waives its rights under all sections of the PPSA which are referred to in Section 115 of the PPSA, to the extent permissible by law.

**(d)** The Customer waives its right to receive a notice of PPSR registration under Section 157 of the PPSA.

**(e)** Burst Control may in protecting its security interests rely on any rights which it has under statute or under this Agreement, in its discretion.

## **Risk on Delivery**

15. The risk in the Goods passes to the Customer on delivery. The Customer must keep the Goods insured and in good condition and indemnifies Burst Control against any damage to or loss of the goods, however caused, after delivery.

## **Proof of Delivery (COVID-19 UPDATED)**

Zero contact service and deliveries: The Customer hereby authorises Burst Control to sign for services and deliveries on behalf of the customer by recording the recipient's name. The Customer agrees and acknowledges that such record will be deemed proof of and acceptance of services and deliveries or returns of the Goods by the Customer.

By continuing to accept services and deliveries or returns from Burst Control, you are deemed to have agreed to this clause. If alternative arrangements are needed, please contact Burst Control on 0468 775 087

## **Insolvency of Customer**

16. In addition to non-payment by the Customer or other breach of these Terms and conditions, the Customer will also be in breach of these Terms and Conditions if the Customer becomes insolvent or passes a resolution concerning its bankruptcy, administration, receivership, or liquidation, or enters into any form of external administration.

## **Collection/Legal Charges**

17. The Customer agrees that if the account is not paid by the due date, the account may be lodged with a mercantile agent for recovery, and in such circumstances the applicant will bear an account surcharge of minimum 5% to cover the agent's commission. In addition, the applicant agrees to bear all legal costs and disbursements incurred in the recovery of the debt.

## **Default Interest**

18. Burst Control may charge interest on any overdue amount at a rate equivalent to 3.0% p.a. above the business overdraft interest rate of its principal banker, as determined and calculated by Burst Control. Such interest will be payable on demand by Burst Control and for so long as it remains unpaid will compound on a monthly basis.

**Applicable Law**

19. The supply of the Goods and Services by Burst Control to the Customer is governed by the laws and courts of the state where the supply takes place.

**No Waiver**

20. These Terms and Conditions are not affected by any time or indulgence granted to the Customer by Burst Control.

**Privacy**

21. Burst Control will comply with the Australian Privacy Principles. A copy of the Burst Control Privacy Statement and Policy is available on request or on the Website.

**ALL PRICES QUOTED ARE SUBJECT TO CHANGE WITHOUT NOTICE**