

## Terms of Trade

These Terms of Trade will apply to any goods and services you purchase from ParaQuad NSW and will replace any earlier version, unless you have entered into a separate agreement with ParaQuad NSW which replaces or amends these Terms of Trade. If such an agreement amends these Terms of Trade, the version of the Terms of Trade in force at the time the other agreement was entered into will continue to apply.

### 1 Defined terms

In these Terms of Trade:

- (a) "Account" has the meaning given in clause 3(b).
- (b) "Backorder" has the meaning given in clause 2(c).
- (c) "Business Hours" means 8:30 am to 4:30 pm Monday to Friday excluding NSW public holidays.
- (d) "Delivery Address" means the address specified in the Purchase Order to which the Goods and/or Services are to be delivered.
- (e) "Delivery Date" means the requested date of delivery of Services as specified in the Purchase Order.
- (f) "Goods" means the item(s) ordered by You as specified in the Purchase Order and Invoice.
- (g) "Invoice" has the meaning given in clause 2(d).
- (h) "ParaQuad NSW" means The Paraplegic and Quadriplegic Association of NSW, trading as ParaQuad NSW, BrightSky Australia, Ferguson Lodge and other trading names as adopted by The Paraplegic and Quadriplegic Association of NSW from time to time (as specified in the relevant Invoice).
- (i) "Purchase Order" has the meaning given in clause 2(a).
- (j) "Services" means the service(s) ordered by You as specified in the Purchase Order and Invoice.
- (k) "You" means the person(s) or entity specified in the Purchase Order. "Your" has a corresponding meaning.

### 2 General Terms of Trade and Ordering

- (a) You may request ParaQuad NSW to supply Goods and/or Services by submitting a request for such Goods and/or Services by phone, fax or electronically (a "**Purchase Order**"). Each Purchase Order constitutes an offer by You to purchase the Goods and/or Services from ParaQuad NSW on these Terms of Trade.
- (b) ParaQuad NSW may decline part or all of any Purchase Order received from You for any reason (including where Goods are out of stock or otherwise unavailable) by notifying You accordingly at any time prior to issuing an Invoice for the relevant Goods or Services.
- (c) If ParaQuad NSW declines any Purchase Order under clause 2(b) and some or all of the Goods are out of stock, You may request ParaQuad NSW to place those out of stock Goods on backorder (a "**Backorder**"). If ParaQuad NSW accepts your request, the following provisions apply:
  - (i) unless You have an Account, you must pay ParaQuad NSW for the Backorder in accordance with clause 3. If You have an Account, the price of the Backorder will be charged to your Account in accordance with clause 3;
  - (ii) ParaQuad NSW will endeavour to procure the Goods specified in the Backorder within 20 business days of the date of the notice provided under clause 2(c)(i); and
  - (iii) if ParaQuad NSW cannot procure the Goods specified in the Backorder within the period specified in 2(c)(ii), either You or ParaQuad NSW may cancel the Backorder by notifying the other party accordingly, and ParaQuad NSW will refund any payment made by You under clause 2(c)(i).

- (d) If ParaQuad NSW accepts your Purchase Order, it will invoice You for the Goods and/or Services requested in the Purchase Order (an “**Invoice**”).
- (e) Once ParaQuad NSW has issued an Invoice for any Services You must provide a minimum 24 hours notice to cancel those Services. If You fail to do so, ParaQuad NSW will use reasonable endeavours to mitigate its losses but reserves the right to charge You:
  - (i) without limiting clause 2(e)(ii), any cancellation fee specified in the Invoice; and
  - (ii) for any costs ParaQuad NSW incurs in connection with the Services.
- (e) A Purchase Order charged to an Account must be paid within the payment timeframe for Your Account.
- (f) Further Purchase Orders may not be accepted by ParaQuad NSW where the credit limit of an Account has been or will be exceeded (if the Purchase Order is charged to the Account) or any amounts payable are overdue, unless prior arrangements have been made.
- (g) Where an Account is not operated within the terms described in clauses 3(d) and 0, or an Invoice for Services is not paid in accordance with clause 3(a)(ii), ParaQuad NSW reserves the right to charge interest on overdue amounts, calculated from the date of the Invoice up to the date cleared payment is received by ParaQuad NSW, calculated daily and compounded monthly. The applicable annual interest rate for calculating daily interest will be the RBA Cash Rate on the relevant day plus 4%.

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### **3 Payment and Credit Terms**

- (a) Except where clause 3(b)(vii) applies, ParaQuad NSW must receive payment for:
  - (i) the Goods, in cleared funds, before ParaQuad NSW will deliver the Goods to You; and
  - (ii) the Services within 7 days of the provision of them by ParaQuad NSW.
- (b) You may pay ParaQuad NSW by any of the following methods:
  - (i) credit card (Visa and MasterCard only);
  - (ii) cheque;
  - (iii) money order;
  - (iv) cash (in person);
  - (v) BPay;
  - (vi) a funds transfer can be made by prior arrangement from Your bank or credit union to ParaQuad NSW; or
  - (vii) subject to clauses 3(c) and 3(f), charging the amount to a credit account established in advance with ParaQuad NSW (an “**Account**”).
- (c) Accounts are subject to approval, which approval may be given or withheld in ParaQuad NSW’s absolute discretion.
- (d) A credit limit and payment timeframe will be applied to Accounts and ParaQuad NSW reserves the right to adjust this limit and payment timeframe at any time. Where possible, ParaQuad NSW will advise You of any such adjustment.
- (h) Where you maintain Your Account with [credit balances that have been held for over 12 months \(365 days\)](#) ParaQuad NSW reserves the right to charge [Your Account annually an account keeping fee calculated at the rate of \\$4 per month](#), The application of the fee is at ParaQuad NSW’s absolute discretion and the quantum of the fee is subject to change.
- (i) ParaQuad NSW reserves the right to charge a processing fee to refund credit balances on Your Account at the rate of \$25 per refund. The application of the fee is at ParaQuad NSW’s absolute discretion and the quantum of the fee is subject to change.
- (j) Credit balances maintained in Your Account are subject to NSW Unclaimed Money legislation.

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### **4 Delivery**

- (a) Goods will be delivered to and Services will be supplied at the Delivery Address by ParaQuad NSW’s nominated staff, contractors or agents’ during Business Hours or as otherwise agreed. In the case of Services, ParaQuad NSW will supply the Services on the Delivery Date unless otherwise agreed.
- (b) The estimated timeframes for standard delivery of the Goods are:
  - (i) 3-10 business days after ParaQuad NSW’s receipt of payment for the

Goods in cleared funds (or charging the amount to your Account in accordance with clause 3), if the Delivery Address is located within metropolitan Sydney; and

- (ii) 7-10 working days after ParaQuad NSW's receipt of payment for the Goods in cleared funds (or charging the amount to your Account in accordance with clause 3), if the Delivery Address is located outside metropolitan Sydney and within Australia.

Estimated delivery timeframes for Goods to be delivered outside Australia will be provided for each relevant Purchase Order.

- (c) Subject to clause 4(d), if the Delivery Address is unattended a calling card will be left and You must contact the courier to arrange an alternative time for delivery. ParaQuad NSW reserves the right to charge additional freight/delivery for repeat delivery attempts. If You do not contact the courier within 24 hours of the unsuccessful delivery attempt, the Goods may be returned to ParaQuad NSW.
- (d) ParaQuad NSW will, if instructed in a Purchase Order, arrange for the Goods to be delivered at an unattended Delivery Address (e.g. "Leave the goods at the door") provided that:
  - (i) deliveries to unattended Delivery Address will only be made to private residential homes, villas and townhouses. Deliveries cannot be made to an apartment building/unit block, retirement village or a business without a signatory confirming receipt of the delivery;
  - (ii) if the Delivery Address is unattended the Goods are deemed to have been delivered, and You accept full responsibility for the Goods under clause 6(b), once the Goods are left at the Delivery Address in accordance with the instructions specified in the relevant Purchase Order.
- (e) Where part of the Goods under a Purchase Order are placed on backorder, ParaQuad NSW will hold the ordered Goods currently in stock for up to 5 days after accepting the

Backorder. If the Backorder is not fulfilled within this time period, the Goods will be sent in separate shipments at no additional cost to You.

## **5 Returns**

- (a) Subject to clauses 5(c) and 5(d), You may return Goods to ParaQuad NSW for any reason within 7 days after delivery of the Goods, for a refund of the price of the Goods, but excluding any applicable freight or delivery costs. If you do so, You are responsible for returning the Goods to ParaQuad NSW (at your cost), unless there is a major failure with the Goods, in which case ParaQuad NSW will either pay Your reasonable costs of returning the Goods or collect the Goods where the cost of returning, removing or transporting the Goods is significant.
- (b) Once the 7 day period after delivery of the Goods has expired, You may only return the Goods where you are entitled to do so under the Australian Consumer Law or any other applicable legislation.
- (c) Unless You are entitled to return the Goods under the Australian Consumer Law or any other applicable legislation, for health and safety reasons ParaQuad NSW cannot accept the return of medical goods (e.g. bandages) that have been opened or used in any way.
- (d) Where the Goods are not usually stocked by ParaQuad NSW and ordered especially to fill your Purchase Order, You cannot return the Goods if You change your mind. You may only return such specially ordered Goods where you are entitled to do so under the Australian Consumer Law or any other applicable legislation.

## **6 Title and Risk**

- (a) Title to Goods will pass to You on the later of the date that cleared payment in full is received for the Goods and the time the Goods are Delivered.
- (b) Risk in Goods passes to You at the time the Goods are delivered to You. If any of the Goods are damaged or destroyed prior to risk passing to You, ParaQuad NSW may at its election:
  - (i) replace or repair the Goods; or
  - (ii) cancel the relevant Purchase Order and Invoice in respect of the damaged or destroyed Goods and

refund You any amount paid under the Purchase Order and Invoice including any applicable freight or delivery costs paid by You.

the cost of having the goods repaired; or

## 7 Limitation of liability and exclusions

- (a) The following statement may apply to You depending on Your circumstances:  
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. 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
- (b) All express or implied guarantees, warranties, representations, or other terms and conditions relating to these Terms of Trade or their subject matter, not contained in these Terms of Trade, are excluded from these Terms of Trade to the maximum extent permitted by law.
- (c) Nothing in these Terms of Trade excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- (d) If any guarantee, warranty, term or condition is implied or imposed in relation to these Terms of Trade under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a “**Non-Excludable Provision**”), and ParaQuad NSW is able to limit Your remedy for a breach of the Non-Excludable Provision, then the liability of ParaQuad NSW for breach of the Non-Excludable Provision is limited to one or more of the following at ParaQuad NSW’s option:
- (i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of

- (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

- (e) Subject to ParaQuad NSW’s obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, and excluding liability for personal injury, the maximum aggregate liability of ParaQuad NSW for all claims relating to each Purchase Order and Invoice (or the Goods and Services supplied under them), or otherwise in connection with these Terms of Trade or its subject matter, is limited to an amount equal to the amount paid by You under these Terms of Trade in respect of the applicable Purchase Order and Invoice. In calculating ParaQuad NSW’s aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by ParaQuad NSW for a breach of any Non-Excludable Provision.
- (f) Subject to ParaQuad NSW’s obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, ParaQuad NSW is not liable for, and no measure of damages will, under any circumstances, include:
- (i) special, indirect, consequential, incidental or punitive damages; or
- (ii) damages for loss of profits, revenue, goodwill or anticipated savings, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- (g) ParaQuad NSW’s liability to You under or in relation to these Terms of Trade or its subject matter is reduced to the extent that Your acts or omissions, or those of a third party, contribute to or cause any such liability.
- (h) To the maximum extent permitted by law, clauses 7(e), 7(f) and 7(g) apply regardless of the basis on which ParaQuad NSW’s liability arises, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis.

## 8 Force Majeure

- (a) Neither party will be liable for any failure or delay in the performance of its obligations under these Terms of Trade, except an inability to pay any money when due, where such failure or delay is caused by an event or circumstance beyond the reasonable control of that party (a **"Force Majeure Event"**).
- (b) If the supply of Goods and/or Services is affected by a Force Majeure Event for more than 30 days, either party may, at its discretion, cancel the applicable Purchase Order and Invoice for the affected Goods and/or Services without penalty or any other compensation for loss or damage sustained by either party. Subject to clause 8(c), ParaQuad NSW will refund amounts paid for Goods and/or Services not supplied.
- (c) If ParaQuad NSW is only able to supply part of the Goods and/or Services, it may charge You for those Goods and/or Services supplied and You must pay these charges in accordance with clauses 2 and 3.

## 9 General

- (a) The laws of New South Wales govern these Terms of Trade and both parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) No failure or delay on the part of a party in exercising any of its rights under these Terms of Trade will operate as a waiver of those rights.
- (c) If any part of these Terms of Trade becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- (d) These Terms of Trade constitute the entire agreement between the parties. Except as expressly stated in the preamble to these Terms of Trade, any prior agreements, arrangements or representations are excluded. No terms on any Purchase Order will be of any effect.
- (e) These Terms of Trade may only be amended or supplemented in writing signed by both parties.
- (f) You must not assign or transfer any of Your rights and obligations under these Terms of

Trade without the prior written consent of ParaQuad NSW.

- (g) ParaQuad NSW reserves the right to assign any of its rights under these Terms of Trade without Your consent in connection with:
  - (i) the recovery of outstanding amounts owed to ParaQuad NSW by You; or
  - (ii) the sale of any or all of ParaQuad NSW's business to a third party.