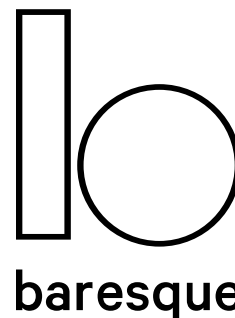


## TERMS OF TRADE

### 1. APPLICATION OF TERMS

Except as may be expressly stated otherwise in a written quotation or proposal submitted by Baresque Australia Pty Limited ABN 39 097 110 846 (Baresque) to the Customer or a written contract of sale signed by Baresque these Terms of Trade apply to every sale of goods or services (Product) by Baresque to any Customer.



### 2. PRICES

All prices published and Products offered for supply by Baresque are subject to change without notice. The Customer should check the price of a Product before placing an order for it. Prices quoted are, unless otherwise stated, exclusive of goods and services tax (GST) and are valid for delivery of Product within 60 days of the date on which the Customer communicates to Baresque an offer to purchase Products. Prices quoted for delivery of Product are DAP – Delivered at (Customer's) Place (Incoterms® 2010), the Customer being responsible to take the Product off the delivery vehicle.

Unless specified, prices quoted include delivery to the loading dock of a commercial premises in major capital cities ie Sydney, Melbourne, Brisbane, Adelaide and Perth. Delivery to smaller cities or out of city areas will be quoted on an order by order basis once the delivery address is confirmed.

### 3. GST

If GST is imposed on any supply made by Baresque, the Customer must pay to Baresque, in addition to any consideration payable or to be provided by Customer for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable or to be provided (without any deduction or set off). Any amount payable by Customer is payable on demand by Baresque, whether such demand is made by an invoice raise by Baresque or otherwise.

### 4. DELIVERY AND INSTALLATION

- 4.1 The Customer acknowledges that the delivery/transportation of certain Products may be subject to prescribed safety restrictions/limitations.
- 4.2 Deliveries of larger orders or sheet or fabricated goods will likely be made on a pallet and will require either a forklift or sufficient manpower on site to accept and unload the delivery.
- 4.3 Leadtimes and availability should be confirmed prior to or on placement of order. Shorter leadtimes are generally available but will be subject to express freight or manufacturing surcharges.
- 4.4 Any date given to Customer by Baresque for delivery of Product shall be an estimate only, and, although Baresque shall use commercially reasonable endeavours to meet such delivery date, Baresque shall not be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of any delay in delivery or non-delivery regardless of the reason.

**baresque australia pty limited**

ABN 39 097 110846

53-55 whiting street

artarmon nsw

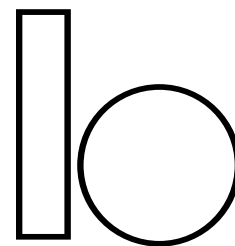
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- 4.5 If for any reason Baresque is unable to deliver Product either within a reasonable time or at all, the applicable purchase order and/or contract of sale shall be cancellable, in full or only as to certain Products, at Baresque's option, and neither Baresque nor the Customer shall be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of such cancellation.
- 4.6 Disposal of all shipping pallets, containers and packaging becomes the responsibility of the Customer upon delivery.
- 4.7 If the Customer has contracted Baresque to install Product at the Customer's premises, the Customer shall, at its expense, ensure that the installation site is ready, and has been prepared in accordance with agreed specifications, on the date agreed for installation of the Product; and that adequate and safe power and lighting is available at the installation site which is readily and safely accessible to Baresque's technicians. The Customer will be responsible to provide Baresque's technicians with such induction/site training as is appropriate and which the Customer deems reasonably necessary having regard to the nature of the services to be provided by the technicians. The Customer will indemnify Baresque for any additional costs incurred in connection with the installation as a consequence of the site not being available in the condition specified above.
- 4.8 Baresque reserve the right to deliver Goods by instalments.
- 4.9 If you request us to postpone delivery of the Goods beyond the delivery date or dates specified in your order, Baresque may agree to do so if you agree to pay an additional fee for such postponement.
- 4.10 After the due delivery date, if Baresque do not receive delivery instructions sufficient to enable us to dispatch the Goods within seven (7) days of you being notified that the Goods are ready for delivery, you shall from the eighth day after notification:
- (a) be deemed to have taken delivery of the Goods;
  - (b) be liable for storage charges, payable prior to delivery at the rate of \$15.00 + GST / cubic metre per week. Full containers to be charged at costs plus 15%.
  - (c) assume risk in the Goods.
- 4.11 Baresque will not be responsible for non-delivery or delay in delivery of any Goods due to any cause beyond our reasonable control, notwithstanding that the cause may be operative at the time of entering the contract of sale. Where such non-delivery or delay occurs, Baresque may deliver the Goods not delivered or delayed at any subsequent time and you must accept and pay for them.

## **5A. PAYMENT – CASH CUSTOMER**

If the Customer has not been granted a line of credit with Baresque, the Customer must pay to Baresque an amount equivalent to 50% of the estimated price of the Products, including any associated delivery and administration charges, plus GST, at the time the Customer places the order, selecting one of the payment options available.

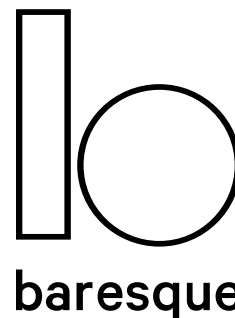
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For orders shipped by express freight, requiring express manufacture, or where the total order amount is less than \$1,000, up front payment of 100% of the order value will be required.

The Customer will pay the balance of the amount to be invoiced, by one of the available payment options, prior to shipment of the Products by Baresque. The Customer indemnifies Baresque for any loss suffered by Baresque as a consequence of a charge to a credit card or bank or other account not being honoured. The Customer will pay Baresque any surcharge levied with respect to payments made using certain credit cards.



#### **5B. PAYMENT – TRADE CUSTOMER**

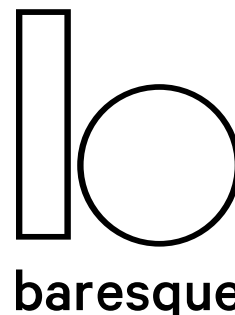
If the Customer has been granted a line of credit with Baresque, the Customer must pay to Baresque the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, within the agreed account payment period.

#### **5C. PAYMENT – GENERALLY**

If the Customer commits any act of insolvency, all money owing by the Customer to Baresque, whether by way of credit or otherwise, will become due and payable immediately. Baresque reserves the right to suspend, with or without notice, any deliveries of Products if any payment due by the Customer to Baresque is overdue. A late payment fee of 2% per month, calculated daily, (being a genuine pre-estimate of the loss suffered by Baresque as a consequence of the Customer's failure to make timely payment) may be charged on overdue amounts. The Customer will reimburse Baresque, on a full indemnity basis, all costs incurred by Baresque as a consequence of a charge to a credit card or bank or other account or a cheque not being honoured, and to its collection agents and/or lawyers in relation to the collection of any moneys owed to Baresque that are not paid when due.

#### **6. PASSING OF RISK – TRANSFER OF TITLE**

- 6.1 Delivery of Product to the Customer shall occur, and all risk of loss or damage to Product shall pass to Customer, immediately upon such Product being turned over to either the Customer or a Customer's nominated carrier for transportation to the Customer or a nominated place or site. Such delivery shall be deemed to be acceptance of Product by the Customer, whether or not the Customer is present at the time of delivery to inspect such Product and sign a receipt therefor.
- 6.2 Notwithstanding anything to the contrary, ownership of and title to Product shall not pass to the Customer until full payment therefore has been received by Baresque or sale or mixing of the Product by the Customer.
- 6.3 If the Customer does not pay for any Product in accordance with these Terms of Trade, Baresque is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.



## 7. PPS LAW

- 7.1 The Customer agrees that this document (Terms of Trade), alone or in conjunction with Baresque's Request to Trade completed by the Customer or a Quotation provided by Baresque to the Customer, constitutes a security agreement in writing for the purpose of the Personal Property Securities Act 2009 (Cth) (PPS Law). This clause applies to the extent PPS Law (or part of it) applies to this agreement and any security interest arising under it.
- 7.2 The security interest granted to Baresque is a 'purchase money security interest' (PMSI) to the extent that it can be under section 14 of the PPS Law.
- 7.3 The Customer agrees that all collateral which is at any time subject to Baresque's security interest secures its own purchase price.
- 7.4 The Customer agrees, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to Baresque's security interest secures as a PMSI the purchase price of all collateral supplied to the Customer.
- 7.5 This clause does not limit what other amounts are secured under these Terms of Trade.
- 7.6 The parties agree that payments will be applied in the following order:
- (a) to obligations that are not secured, in the order in which those obligations were incurred;
  - (b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
  - (c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- 7.7 Baresque may register its security interest as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which Baresque requires for the purposes of:
- (a) ensuring that Baresque's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling Baresque to gain first priority (or any other priority agreed to by Baresque in writing) for its security interest; and
  - (c) enabling Baresque to exercise rights in connection with the security interest,

and to assure performance of its obligations, the Customer hereby gives Baresque an irrevocable power of attorney to do anything Baresque considers the Customer should do under these Terms of Trade.

- 7.8 The rights of Baresque under these Terms of Trade are in addition to and not in substitution for Baresque's rights under other law (including the PPS Law) and Baresque may choose whether to exercise rights under these Terms of Trade, and/or under such other law, as it sees fit.

7.9 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are “contracted out” of these Terms of Trade in respect of goods that are not used predominantly for personal, domestic or household purposes:

- (a) sections 95 (notice of removal of accession to the extent it requires Baresque to give a notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
- (b) section 130 (notice of disposal to the extent it requires Baresque to give a notice to the Customer);
- (c) section 132(3)(d) (contents of statement of account after disposal);
- (d) section 132(4) (statement of account if no disposal);
- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral); and
- (g) section 143 (re-instatement of security agreement)

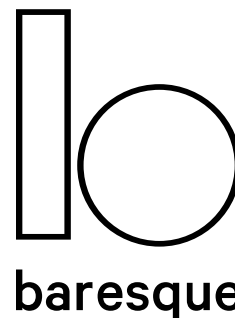
7.10 The following provisions of the PPS Law:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral)

confer rights on Baresque. The Customer agrees that in addition to those rights, Baresque shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under these Terms of Trade and the Customer agrees that Baresque may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

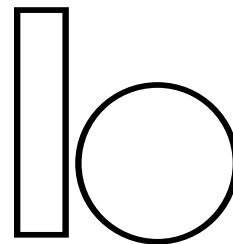
7.11 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

7.12 Solely for the purpose of allowing to Baresque the benefit of section 275(6) of the PPS Law, Baresque and the Customer agree that neither of them must disclose information of the kind that can be requested under section 275(1) of the PPS Law.



## 8. CUSTOMER'S SPECIAL ORDER

Baresque reserves the right to demand a deposit for special orders of non-stock items or orders for the manufacture of Product to the Customer's specifications. Baresque shall not be responsible for errors in the Customer's specifications. The Customer may not cancel special orders without the written consent of Baresque. Baresque will not accept returns of Product made to the Customer's specifications unless defective.



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## 9. RETURN FOR CREDIT

9.1 The Customer must notify Baresque, in writing, within seven (7) days of the date of the invoice of a claim for credit for faulty or damaged Product or for Product incorrectly supplied. Credit will not be given for notifications received by Baresque outside this period. The claim for credit should state the date and number of the invoice and the reason for return. All returns are at the discretion of Baresque and must receive a Return Authorisation Number (RAN) in advance of shipment. Product returned for credit is to be clearly consigned to Baresque and must, if the claim for credit is not based on the Product being faulty or damaged, be in the original packaging and in a saleable and undamaged condition. If the claim for credit and return is due to the Product being faulty or damaged, or some fault of Baresque, then Baresque will bear the cost of the return freight, otherwise the cost of return freight shall be borne by the Customer.

9.2 The following goods will be returnable in original condition subject to a 20% restocking fee and less any return freight costs:

(a) Roman Wallcovering Adhesive + Primer

(b) Zintra Acoustic Panel unfabricated

(c) Lucere Mirror unfabricated

(d) Smart Wall Paint

9.3 Without in any way limiting our discretion to refuse to accept the return of any Goods, the following Goods will not be returnable:

(a) any Goods that have been held by you or your agent for more than seven (7) days; or

(b) any Goods which are not in original condition; or

(c) any Goods that are manufactured as made to order ("mto") items unless faulty. Any manufacturing surcharge is non-refundable

Baresque will only recognise claims for faulty Goods that are lodged within seven (7) days. Refunds will not be paid until seven (7) days after goods are received, inspected and approved by Baresque as being in original condition.

## 10. PRODUCT WARRANTY

10.1 Baresque warrants the Products to be free from defects in material and workmanship for the warranty periods specified in Express Warranty document(s) published by Baresque in respect of the Products from time to time. During the

applicable warranty period, Baresque, at its sole obligation, will repair or replace (at its option) any product, part, or component covered by the applicable Express Warranty which fails under normal use as a result of a defect in material or workmanship.

- 10.2 Subject to any rights or remedies to which the Customer may be entitled under the Australian Consumer Law or other applicable law, and without excluding, restricting or modifying any such rights or remedies the Express Warranty inclusively describes all of the warranties given and remedies available with respect to the Products. Baresque disclaims any other warranty whether express or implied, statutory or otherwise, in relation to the Products.



## **11. ACTS OF DEFAULT**

- 11.1 If you fail to pay for any Goods on the due date; or

- (a) otherwise breach this Agreement and fail to rectify such breach within seven (7) day's notice; or
- (b) cancel delivery of the Goods; or
- (c) commit an act of bankruptcy; or
- (d) allow a trustee in bankruptcy or receiver and manager to be appointed to you or any of your property; or
- (e) allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property including under the PPSA; or
- (f) are a company and:
  - a. proceedings are commenced to wind you up or any of your subsidiaries; or
  - b. an controller, receiver, administrator, liquidator or similar officer is appointed to you or in respect of any part of your property,

then Baresque and our agents may enter upon your premises (doing all that is necessary to gain access) where Goods supplied under this Agreement are situated at anytime and retake possession of any or all of the Goods Baresque have supplied to you; and

- 11.2 Baresque reserve the right to:

- (a) resell the Goods concerned; and
- (b) terminate the agreement.

## **12. RESALES**

- 12.1 If Baresque conduct a re-sale pursuant to clause 11:

- (a) we may do so at our premises or place; and
- (b) the re-sale may, at our discretion, be by public or private sale; and
- (c) we may recover from you as liquidated damages for our loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach).

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12.2 If applicable Goods cannot be sold within three (3) months of the first attempted sale, those Goods will be deemed to have a re-sale price of nil.

### **13. ENTIRE AGREEMENT**

The Customer agrees that Baresque will only supply Products pursuant to these Terms of Trade. An agreement between the parties may not be varied without the prior written consent of Baresque.

### **14. WAIVER**

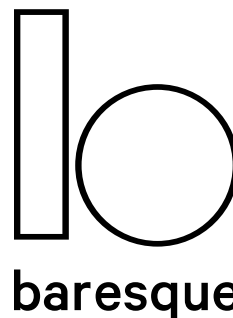
The failure, delay or indulgence on the part of Baresque in exercising any power or right conferred by these Terms of Trade does not operate as a waiver of that power or right.

### **15. GOVERNING LAW**

These Terms of Trade shall be construed in accordance with the law in force in New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

### **16. SEVERANCE**

These Terms of Trade are qualified by any provision of a law which applies and which cannot be excluded. If any provision of these Terms of Trade is deemed to be unlawful or unenforceable, such provision shall be read down to the extent permitted or severed from these Terms of Trade and all other provisions hereof shall remain in force.



Effective 28 October 2016

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