

## WEBSITE TERMS AND CONDITIONS OF USE

### 1. About the Website

- (a) Welcome to [www.ecoreliningsupplies.com.au](http://www.ecoreliningsupplies.com.au) (the '**Website**'). The Website provides you with an opportunity to browse and purchase various products that have been listed for sale through the Website (the '**Products**'). The Website provides this service by way of granting you access to the content on the Website (the '**Purchase Services**').
- (b) The Website is operated by Eco Relining Supplies & Equipment Pty Ltd (**ERSE**) ABN 89633 651 895. Access to and use of the Website, or any of its associated Products or Services, is provided by **ERSE**. Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- (c) **ERSE** reserves the right to review and change any of the Terms by updating this page at its sole discretion. When **ERSE** updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

### 2. Definitions

**eWay** – Established in 1998, **eWAY** has been providing a solution for Australian and New Zealand merchants to receive online payments from their customers. For further information on **eWAY**, please refer to their website: <https://www.eway.com.au>

### 3. Acceptance of the Terms

- (a) You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by **ERSE** in the user interface.

### 4. Registration to use the Purchase Services

- (a) In order to access the Purchase Services, you must first register as a user of the Website. As part of the registration process, or as part of your continued use of the Purchase Services, you may be required to provide information about yourself (such as identification or contact details), including:
  - (i) Name or Business name;
  - (ii) Name of person authorised to complete this form;
  - (iii) Email address;
  - (iv) Preferred username;
  - (v) Mailing address;
  - (vi) Telephone number;
  - (vii) Password;
  - (viii) Any other information we reasonably consider necessary to permit your registration including but not limited to information required by regulatory authorities.
- (b) You warrant that any information you give to **ERSE** in the course of completing the registration process will always be accurate, correct and up to date and further acknowledge that **ERSE** will rely on this information in providing the Purchase Services.
- (c) Once you have completed the registration process, you will be a registered member of the Website ('**Member**') and agree to be bound by the Terms. As a Member you will be granted immediate access to the Purchase Services.

- (d) You may not use the Purchase Services and may not accept the Terms if:
  - i) you are not of legal age or capacity to form a binding contract with Eco Relining Supplies & Equipment Pty Ltd; or
  - ii) you are a person barred from receiving the Purchase Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Purchase Services.
  - iii) if in **ERSE's** absolute discretion, we reject your request to access and use the Purchase Services

## 5. Your obligations as a Member

- (a) As a Member, you agree to comply with the following: You will use the Purchase Services only for purposes that are permitted by:
  - (i) the Terms;
  - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
  - (iii) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Purchase Services;
  - (iv) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify **ERSE** of any unauthorised use of your password or email address or any breach of security of which you have become aware. You acknowledge that ERSE will not be responsible for any loss you may suffer as a result of the misuse of your password or the access of your registration information by third parties;
  - (v) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of **ERSE** providing the Purchase Services;
  - (vi) you will not use the Purchase Services or Website for any illegal and/or unauthorised use.

## 6. Purchase of Products and Returns Policy

- (a) In using the Purchase Services to purchase the **Products** through the Website, you will agree to the payment of the purchase price listed on the Website for the **Products** (the '**Purchase Price**').
- (b) Payment of the Purchase Price may be made through;
  - (i) **eWAY** - (the '**Payment Gateway Provider**'). In using the Purchase Services, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable Terms and Conditions of Use, Privacy Policy and other relevant legal documentation provided by the Payment Gateway Providers; or
  - (ii) **ERSE Account Holders** – must pay **ERSE** for the invoiced amount, for **Products** which have been selected from the Website, in accordance with the payment terms as stated on the **ERSE** Credit Application form. Title for **Products** supplied by **ERSE** remains with **ERSE** until the Account Holder has paid in full for the **Products**. Risk in any **Products** passes to the Account Holder on delivery or pick-up of the **Products** by the Account Holder.
- (c) Following payment of the Purchase Price being confirmed by **ERSE**, you will be issued with a receipt to confirm that the payment has been received and **ERSE** may record your purchase details for future use.
- (d) Subject to Clause 7, **ERSE** may, at their sole discretion, provide a refund on the return of non-specialised and/or non-custom made **Products** within 5 working days where the **Products** packaging is unopened and remains in a saleable condition. You acknowledge and agree that you are liable for any cancellation / re-stocking / handling / postage and shipping costs associated with any refund pursuant to this clause.

**7. Warranty**

- (a) **ERSE Products** come with guarantees that cannot be excluded under the Australian Consumer Law. Notwithstanding anything contained in these terms, we acknowledge that the rights and warranties contained in the Australian Consumer Law shall prevail (**'the ACL Warranties'**)
- (b) You are also entitled to have the **Products** resupplied if the **Products** fail to be of acceptable quality and the failure does not amount to a major failure (the **'Warranty'**).
- (c) Additionally, there is an **ERSE** warranty period, which shall be 12 months commencing on the date the Customer collects the **Products** from **ERSE** or the date the **Products** are delivered by **ERSE** to the Customer (**'the Warranty Period'**). This warranty period shall be provided that;
- such warranty periods are offered / available to **ERSE** from the **Products** / material manufacturer / supplier / importer / agent;
  - the Customer has used the Product for its intended purposes; and/or
  - the **Products** have been operated / installed in accordance with the manufacturer / supplier requirements and/or specifications;
- then **ERSE** shall, subject the conditions noted in i), ii) or iii) above, re-supply any defective goods.

To confirm, to the maximum extent permitted by law, **ERSE** excludes all warranties other than those set out above. In the event of a warranty claim, **ERSE** shall, within a reasonable time frame, re-supply defective products but will not be liable for any injury to any person, damage to any property, any indirect or consequential loss, or in any other respect.

Where the Warranty Claim is accepted then **ERSE** will, resupply any defective **Products** or part thereof with a new or remanufactured equivalent during the Warranty Period at no charge to you for parts or labour. In order to make a Warranty Claim during the Warranty Period, you must provide proof of purchase to Eco Relining Supplies & Equipment Pty Ltd showing the date of purchase of the **Products**, provide photographs / a description of the **Products** and the price paid for the **Products** by sending written notice to Eco Relining Supplies & Equipment Pty Ltd at PO Box 2051, Bayswater, Victoria, 3153 or by email at [info@erse.com.au](mailto:info@erse.com.au).

- (d) All implied warranties including the warranties of merchantability and fitness for use are limited to the Warranty Period unless the Australian Consumer Law provides otherwise.
- (e) The Warranty does not apply to any appearance of the supplied **Products** nor to the additional excluded items set forth below nor to any supplied **Products** where the exterior of which has been damaged or defaced, which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction.

**8. Delivery**

- (a) You acknowledge that the Purchase Services offered by **ERSE** may integrate delivery (the **'Delivery Services'**) through the use of third party delivery companies (the **'Delivery Service Providers'**).
- (b) In providing the Purchase Services, **ERSE** may provide you with a variety of delivery and insurance options offered as part of the Delivery Services by the Delivery Service Providers. You acknowledge and agree that **ERSE** is not the provider of these delivery and insurance options and merely facilitates your interaction with the Delivery Service Providers in respect to providing the Delivery Services. Accordingly you acknowledge that **ERSE** will not be liable for any loss sustained as a result of the act or omission of a Delivery Service Provider.
- (c) In the event that an item is lost or damaged in the course of the Delivery Services, **ERSE** asks that you:
- contact the Delivery Service Provider directly to request a refund or to claim on any insurance options available; and

- (ii) contact us by sending an email to [info@erse.com.au](mailto:info@erse.com.au) outlining in what way the Products were damaged or lost in transit so we are able to determine if the Delivery Service Provider should be removed from the Purchase Services.

## 9. Copyright and Intellectual Property

- (a) The Website, the Purchase Services and all of the related products of **ERSE** are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties.  
Unless otherwise indicated, all rights (including copyright) in the site content and compilation of the website (including text, graphics, logos, button icons, video images, audio clips and software) (the '**Content**') are owned or controlled for these purposes, and are reserved by **ERSE** or its contributors.
- (b) **ERSE** retains all rights, title and interest in and to the Website and all related content. Nothing you do on or in relation to the Website will transfer to you:
  - i) the business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright of Eco Relining Supplies & Equipment Pty Ltd; or
  - ii) the right to use or exploit a business name, trading name, domain name, trade mark or industrial design;
  - iii) a system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a system or process).
- (c) You may not, without the prior written permission of **ERSE** and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Content or third party content for any purpose. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

## 10. Privacy

- (a) **ERSE** takes your privacy seriously and any information provided through your use of the Website and/or the Purchase Services are subject to the **ERSE Privacy Policy**, which is available on the Website.

## 11. General Disclaimer

- (a) You acknowledge that **ERSE** does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Products other than provided for pursuant to these Terms and the Australian Consumer Law.
- (b) **ERSE** will make every effort to ensure a Product is accurately depicted on the Website, however, you acknowledge that sizes, colours and packaging may differ from what is displayed on the Website to the extent permissible by the Australian Consumer Law.
- (c) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (d) Subject to this clause, and to the extent permitted by law:
  - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
  - (ii) **ERSE** will not be liable for any special, indirect or consequential loss or damage (resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Purchase Services or these Terms (including as a result of not being able to use the Purchase Services or the late supply of the Purchase Services), whether common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

- (e) Use of the Website, the Purchase Services, and any of the products of Eco Relining Supplies & Equipment Pty Ltd (including the Delivery Services), is at your own risk. Everything on the Website, the Purchase Services, and the Products of **ERSE** are provided to you on an "as is" and "as available" basis. None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of **ERSE** including any third party where the Delivery Services are made available to you make any express or implied representation or warranty about its Content or any products or Purchase Services (including the products or Purchase Services of Eco Relining Supplies & Equipment Pty Ltd) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
- (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unauthorised and/or unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
  - (ii) the accuracy, suitability or currency of any information on the Website, the Purchase Service, or any of its Content related products (including third party material and advertisements on the Website);
  - (iii) costs incurred as a result of you using the Website, the Purchase Services or any of the Products;
  - (iv) the Content or operation in respect to links which are provided for the User's convenience;
  - (v) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website.

## 12. Limitation of Liability

- (a) **ERSE** total liability arising out of or in connection with the Purchase Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the most recent Purchase Price paid by you under these Terms, or the sum of \$100.00 (whichever is lesser).
- (b) You expressly understand and agree that **ERSE**, its affiliates, directors, officers, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- (c) You acknowledge that **ERSE** does not provide the Delivery Services to you and you agree that **ERSE** will not be liable to you for any special, indirect or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Delivery Services.

## 13. Termination of Contract

- (a) The Terms will continue to apply until terminated by either you or by **ERSE** set out below.
- (b) If you want to terminate the Terms, you may do so by:
  - (i) notifying **ERSE** at any time; and
  - (ii) closing your accounts for all of the Purchase Services which you use, where **ERSE** has made this option available to you.
- (c) Your notice should be sent, in writing, to **ERSE** via the 'Contact Us' link on our homepage.
- (d) **ERSE** may at any time, terminate the Terms with you if:
  - (i) you have breached any provision of the Terms or intend to breach any provision;
  - (ii) **ERSE** is required to do so by law;



- (iii) the agents, contributors, third party content providers and licensors with whom **ERSE** offered the Purchase Services to you has terminated its relationship with **ERSE** or ceased to offer the Purchase Services to you;
- (iv) **ERSE** is transitioning to no longer providing the Purchase Services to Users in the country in which you are resident or from which you use the service; or
- (v) If **ERSE** in its absolute discretion elects to cease to permit you to use the **Purchase Services**.
- (e) Subject to local applicable laws, **ERSE** reserves the right to discontinue or cancel your membership to the Website at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Purchase Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts **ERSE's** name or reputation or violates the rights of those of another party.
- (f) When the Terms come to an end, all of the legal rights, obligations and liabilities (including a liability to pay monies) that **ERSE** have benefited from, or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

## 14. Force Majeure

- (a) You acknowledge that **ERSE** will not be liable for any Loss incurred as a result of; being prevented in whole or in part in fulfilling orders due to any delay or failure;
  - (i) due to a shortage of materials or labour or production capacity;
  - (ii) caused by shortage of raw materials due to transport or shipping delays due to embargos / sanctions / blockades / weather / COVID and/or pandemic events;
  - (iii) caused by restrictions or prohibitions as legislated by any government;
  - (iv) to observe any of these Terms and Conditions due to an event of force majeure;
  - (v) due to failure of supply by suppliers of **ERSE**;
  - (vi) due to failure of supply / services by utility organisations;
  - (vii) due to manufacturing machinery breakdown;
  - (viii) due to any storms, strikes, floods, lock-outs, labour disputes, fires, acts of God or any malicious or accidental damage;
  - (ix) being any cause or circumstance beyond the control of **ERSE**;
  - (x) due to any determination by any regulatory authority of a State of EmergencyAs the result of the continuance of an event of **force majeure** or an event described in this clause, then **ERSE's** obligations under these Terms and Conditions will be suspended and will resume as soon as the cause or circumstance has ceased to have effect.

## 15. Indemnity

- (a) You agree to indemnify **ERSE**, its affiliates, directors, officers, employees, agents, contributors, third party content providers and licensors from and against:
  - (i) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any Content you post through the Website;
  - (ii) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so and any breach by you or your agents of these Terms; and/or
  - (iii) any breach of the Terms.
- (b) You acknowledge that this indemnity is a continuing indemnity and will apply notwithstanding the termination of this agreement.

## 16. Dispute Resolution

- (a) **Compulsory:**

If a dispute arises out of or relates to the Terms other than a dispute arising out of the non-payment of monies due to **ERSE**, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

**(b) Notice:**

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

**(c) Resolution:**

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties** ') must:

- (i) Within 10 working days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (ii) If for any reason whatsoever, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Institute of Victoria or his or her nominee;
- (iii) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (iv) The mediation will be held in Melbourne, Australia.

**(d) Confidential:**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

**(e) Termination of Mediation:**

If 5 working days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

## 17. Venue and Jurisdiction

The Purchase Services offered by **ERSE** is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

## 18. Governing Law

The Terms are governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.



## **19. Independent Legal Advice**

Both parties confirm and declare that they have been afforded the opportunity to obtain independent legal advice prior to accepting these Terms and accordingly warrant that on acceptance of these Terms they consider them to be fair and reasonable and declare the Terms are not against public policy on the grounds of inequality of bargaining power or general grounds of restraint of trade.

## **20. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.