

TP3 GLOBAL TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Victoria, Australia are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 16.3.

Contract: the contract between TP3 and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from TP3.

Force Majeure Event: event / circumstance beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order Acknowledgement.

Order: the Customer's order for the Goods.

Order Acknowledgement: TP3's written acknowledgement of an Order.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and TP3.

TP3: TP3 Global (Australasia) Pty Ltd ACN 168 321 597 (registered in Australia) whose registered office is at C/- Kaias Phillips, 129 Station Street, Fairfield VIC 3078.

1.2 Interpretation:

A reference to **writing** or **written** includes emails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when TP3 issues an Order Acknowledgement, at which point the Contract shall come into existence.

2.3 Any samples, drawings or advertising produced by TP3 and any descriptions or illustrations contained in TP3's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.4 A quotation for Goods given by TP3 shall not constitute an offer. Unless otherwise noted on the quotation itself, a quotation shall only be valid for twenty (20) Business Days from its date of issue.

3. Goods

3.1 Test results for the Goods shown in TP3 documents, marketing materials or other communications (**Results**) illustrate the performance of the Goods under precisely controlled packing and testing conditions in an environmental chamber. The temperature profiles used for testing are designed to simulate fluctuations in ambient temperature experienced during live shipping. However, as TP3 has no control for what may happen during a live shipment, no liability will be accepted for any temperature excursions, resultant loss of Goods or compensation claim that may result from the failure of the Goods to perform in line with the Results.

3.2 TP3 shall have no liability in respect of any variation in the dimensions of the Goods where such variation comes within the bounds of agreed tolerances.

3.3 The colour of the Goods is subject to reasonable variation.

3.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify TP3 against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by TP3 in connection with any claim made against TP3 for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with TP3's use of the Specification. This clause 3.4 shall survive termination of the Contract.

3.5 TP3 reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1 Unless otherwise stated in the Order Acknowledgement, which is incorporated into the Contract, the Goods will be delivered Ex Works (Incoterms® 2020).

4.2 Any dates or periods of time quoted for delivery are approximate only, and the time of delivery is not of the essence. Any stipulated period of time for delivery shall date from the issue of the Order Acknowledgement. TP3 shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide TP3 with adequate delivery instructions or any other instructions relevant to the supply of the Goods.

4.3 Customer shall have five (5) days after receipt of goods and services to reject such goods and services, and to make a claim for shortage.

4.4 If TP3 fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. TP3 shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's

failure to provide TP3 with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If TP3 delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

4.6 TP3 may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 TP3 warrants that on delivery the Goods shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to TP3 within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) TP3 is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by TP3) returns such Goods to TP3's place of business at the Customer's cost,
- TP3 shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 TP3 shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow TP3's oral / written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of TP3 following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without written consent of TP3;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, TP3 shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty per 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by TP3.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer in accordance with the relevant Incoterms® 2020 rule.

6.2 Title to Goods shall not pass to the Customer until TP3 receives payment in full (in cash / cleared funds) for the Goods and any other goods that TP3 has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as TP3's property;
 - (b) not resell, dispose of, part with possession of, create any interest in or use the Goods, except in the ordinary course of its business (subject to clause 6.5);
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify TP3 immediately if it becomes subject to any of the events listed in clause 12.1; and
 - (f) give TP3 such information relating to the Goods as TP3 may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before TP3 receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as TP3's agent; and
- (b) title to the Goods shall pass from TP3 to the Customer immediately before the time at which resale by the Customer occurs; and
- (c) it must hold in trust for TP3 the proceeds of such resale until TP3 receives full payment for the Goods and, if the Customer becomes subject to any of the events listed in clause 12.1 and clause 12.3, must on TP3's demand apply such proceeds toward full payment for the Goods.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1 and clause 12.3, then, without limiting any other right or remedy TP3 may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) TP3 may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to recover them.

7. Intellectual property rights

7.1 If the Goods are to be manufactured or any process is to be applied to the Goods by TP3 in accordance with a specification or design submitted by the Customer, the Customer shall (without prejudice to the other rights and remedies of TP3) indemnify TP3 in full against any loss, costs, damages, charges, expenses and other liabilities suffered by TP3 as a result of or in connection with:

- (a) any allegation relating to infringement of any patents, copyright, trademarks and service marks, rights in designs, database rights, rights to use or any other intellectual property rights of any kind of any person, firm or company and/or passing off and/or unauthorised use of confidential information which results from TP3's use of the Customer's specification or design; and/or
- (b) any other liability of any kind to any third party including without limitation for defective goods, personal injury or death to the extent that it arises from the Customer's specification or design

8. Price and payment

8.1 The price of the Goods shall be the price set out in the Order Acknowledgement (**Price**). The Price applies solely to the quantity of Goods ordered and must not be taken to apply to any subsequent order for any lesser quantity of the Goods.

8.2 TP3 may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond TP3's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give TP3 adequate or accurate information or instructions.

8.3 TP3 may invoice the Customer for the Goods on or at any time after the completion of delivery.

8.4 The Customer shall pay the invoice in full and in cleared funds in accordance with the payment terms and to the bank account stated in the Order Acknowledgement. Time for payment is of the essence.

8.5 If the Customer fails to make any payment due to TP3 under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the lower of the rate of 2% per annum above Reserve Bank of Australia Target 'Cash Rate', or the maximum permitted by law from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). TP3 may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by TP3 to the Customer.

9. GST

9.1 In this clause 9, a word or expression defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) which is not otherwise defined in these Conditions of Sale has the meaning given to it in that Act.

9.2 All consideration provided under these Conditions of Sale is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party (Supplier) makes a taxable supply to another party (Recipient) under or in connection with these Conditions of Sale in respect of which GST is payable, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

9.3 the date when any consideration for the taxable supply is first paid or provided; and

9.4 the date when the Supplier issues a tax invoice to the Recipient.

9.5 If an adjustment event varies the amount of GST payable by a Supplier under these Conditions of Sale, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within ten (10) business days of the Supplier becoming aware of the adjustment event. Any payment under this clause is to be treated as an increase or decrease of the additional amount payable under clause 9.2.

9.6 If the GST payable in relation to a supply is less than the amount the Recipient has paid the Supplier under clause 9.2, the Supplier is only obligated to pay a refund of GST to the Recipient to the extent the Supplier receives a refund of that GST from the Australian Taxation Office.

9.7 Subject to an express provision in these Conditions of Sale to the contrary, any payment, reimbursement or indemnity required to be made to a party (the Payee) under this Agreement which is calculated by reference to an amount paid or payable by the Payee to a third party (Outgoing) will be calculated by

reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Outgoing.

10. Personal Property Securities Act 2009

10.1 In this clause 10, unless context requires another meaning, the following capitalised words and expressions have the same meanings as those words and expressions (although uncapitalised) in the Personal Property Securities Act 2009 (Cth) (PPSA): Financing Statement, Financing Change Statement, Proceeds, Purchase Money Security Interest, Security Interest, and Verification Statement.

10.2 For the purposes of sections 115(1) and 115(7) of the PPSA:

(a) TP3 is not required to comply with sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA; and

(b) sections 142 and 143 of the PPSA are excluded.

10.3 For the purposes of section 115(7) of the PPSA, TP3 is not required to comply with sections 132 and 137 of the PPSA.

10.4 The Customer grants to TP3 a Security Interest, and must not create, or permit to exist, any prior ranking Security Interest in favour of any other person, in the Goods supplied by TP3 or their Proceeds.

10.5 The Customer acknowledges and agrees that TP3 may make any registration, including under the PPSA, in respect of any Security Interest (**TP3 Security Interest**) arising, or created or deemed to be created under the PPSA, in favour of TP3 in any Goods supplied by TP3 to the Customer from time to time and their Proceeds. The Customer acknowledges and agrees that the TP3 Security Interest is a Purchase Money Security Interest.

10.6 The Customer waives its right to receive any notice required by any provision of the PPSA, including notice of any Verification Statement in respect of any Financing Statement or Financing Change Statement related to the TP3 Security Interest.

10.7 To the extent permitted by law, TP3 is not required to give notice to or account to the Customer or any other person or deal with any Goods in a particular way when enforcing the TP3 Security Interest.

10.8 To the extent permitted by law, the Customer waives any time period that must otherwise lapse under any law before the TP3 Security Interest can be enforced and that, if the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

10.9 If TP3 exercises a right, power, remedy or discretion in connection with a TP3 Security Interest, that exercise shall be taken not to be an exercise of a right, power, remedy or discretion under the PPSA unless TP3 states otherwise at the time of exercise or such right, power, remedy or discretion can only be exercised under the PPSA.

10.10 The Customer shall promptly at its own expense do anything required by TP3 (including giving, procuring or executing any information, notice, consent, agreement or document) to ensure that the TP3 Security Interest is fully effective, enforceable and perfected and has the priority required by TP3.

10.11 The Customer indemnifies TP3 on demand for any liability, loss, cost or expense incurred or payable by TP3 in connection with the registration, maintenance, contemplated or actual enforcement, preservation or discharge of the TP3 Security Interest.

10.12 The Customer agrees that it will not, without 10 Business Days prior written notice to TP3, change any of its details (including name, address, ABN, and ACN) or any other details related to the TP3 Security Interest.

10.13 If the Customer holds any Security Interests in the Goods supplied by TP3 to the Customer from time to time, the Customer agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that the Customer takes all steps under the PPSA to perfect continuously any such Security Interest including all steps necessary:

(a) for the Customer to obtain the highest ranking priority possible in respect of such Security Interest (such as perfecting a Purchase Money Security Interest); and

(b) to reduce as far as practicably possible the risk of a third party acquiring an interest free of such Security Interests.

10.14 Subject to clause 15 and the terms of any supply agreement between TP3 and the Customer, each of the Customer and TP3 agrees that it will not disclose any of the information set out in section 275(1) of the PPSA in relation to any TP3 Security Interest to the person (except that TP3 may do so where required due to the operation of section 275(7) of the PPSA).

11. Cancellation

11.1 Except as provided in these Conditions, no Order shall be cancelled except by mutual consent. TP3 will not consent to cancellation if processing of the Goods has commenced, special stock has been purchased or manufactured for the Order, Goods have been assembled for loading, loading has commenced or the Goods are in transit.

12. Termination

12.1 Without limiting its other rights or remedies, TP3 may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in TP3's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, TP3 may suspend provision of the Goods under the Contract or any other contract between the Customer and TP3 if the Customer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(d), or TP3 reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, TP3 may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date.

12.4 On termination of the Contract for any reason the Customer shall immediately pay to TP3 all of TP3's outstanding unpaid invoices and interest.

12.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in force.

13. Limitation of liability

13.1 Terms, conditions, warranties and guarantees implied by law (including the Competition and Consumer Act 2010 (Cth)) may apply to these Conditions of Sale to the extent required by those laws (**Non-Excludable Guarantees**).

13.2 Nothing in these Conditions of Sale (i) restricts, excludes or modifies, or purports to restrict, exclude or modify, any Non-Excludable Guarantee, or (ii) limits or excludes TP3's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

(b) fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1.

(a) TP3 shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) TP3's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

14. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for more than three months, TP3 may terminate this Contract with immediate effect by giving written notice to the affected party.

15. Confidentiality

15.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, customers or suppliers of the other party, or any member of its group of companies, for a period of two years after receipt of the same from the other party, except where: (a) its employees, officers, representatives or advisers need to know such information for the purposes of carrying out its obligations in connection with this Contract (in which case each party shall ensure that its employees, officers, representatives or advisers comply with this clause 15); (b) where such confidential information is proven to be known to the other party other than by breach of the Contract; (c) where such information enters the public domain; or (d) where such information may be required to be disclosed by law, a court of competent jurisdiction, the rules of any stock exchange, or by any governmental or regulatory authority (provided however that this provision does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies).

15.2 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15.3 Each party acknowledges that damages may not be an adequate remedy for breach of this clause 15 and breach will cause irreparable injury to

the party which first disclosed that confidential information (Disclosing Party) to the other party (Receiving Party). Each party further acknowledges that the Disclosing Party may apply for and obtain injunctive relief in any court of competent jurisdiction in addition to all other remedies that might be available to it if the Receiving Party breaches or threatens to breach this clause 15, or the Disclosing Party reasonably believes that the Receiving Party is likely to breach this clause 15.

16. General

16.1 Assignment and other dealings.

(a) TP3 may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its contractual rights or obligations.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its contractual rights or obligations without the prior written consent of TP3.

16.2 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.6 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.7 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

16.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Victoria, Australia.

16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of Victoria, Australia shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

17. How we use your personal information (Data Protection)

17.1 All personal information that we may use will be collected, processed, used and held in accordance with the provisions of the Privacy Act 1988 (Cth) (**Privacy Act**) and your rights under the Privacy Act.

17.2 For complete details of our collection, processing, storage and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, details of your rights and how to exercise them, and personal data sharing (where applicable), please refer to our APP 5 Collection Notice and Privacy Policy available at www.csafeglobal.com or upon request from data-protection-team@csafeglobal.com.

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