

Part 3: Terms & Conditions of Trade

1. Definitions

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;

"Acknowledgements" means the acknowledgements provided by the Customer in Part 2 of this Contract;

"Contract" means the Order Form, Acknowledgments and Terms;

"consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Order Form;

"Customer" means the person, jointly and severally if more than one, acquiring the Goods from the Supplier;

"Approximate Delivery Date" means the date specified in item 3 of the Order Form

"Deposit Due Date" means the date specified in item 3 of the Order Form

"Goods" means the good or goods identified in the Order Form to be supplied by the Supplier to the Customer;

"GST" means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and its associated Regulations as amended;

"Order Form" means the order form for the provision of the Goods by the Supplier to the Customer in conjunction with the Acknowledgements and the Terms;

"Supplier" means the part identified in item 2 of the Order Form;

"Termination Fee" means the fees specified in clause 13.1 of these Terms; and

"Terms" means these Terms & Conditions of Trade in conjunction with the Order Form and the Acknowledgements.

2. Basis of Contract

2.1 Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to the Contract and cannot be varied or replaced by any other terms.

2.2 The Supplier may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will only apply to orders placed after the notice date and communicated to the Customer.

2.3 If you are under 18 years of age, then you must obtain your parent or guardian's consent before entering into this Contract.

2.4 The Contract is between the Customer and the Supplier and all correspondence and communication with respect to this Contract will only be entered into by the Supplier with that Customer

3. Pricing

3.1 Prices quoted for the supply of the Goods include GST and any other taxes or duties imposed on or in relation to the Goods.

3.2 If the Customer requests any variation to the Contract, the Supplier may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by the Supplier in relation to the Goods (e.g. size surcharge), the Supplier may vary their price to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing:

(a) the Customer must pay for 50% of the cost of the Goods on the Deposit Due Date.

(b) the balance of the amount owed to the Supplier for the cost of the Goods must be paid by way of monthly instalments commencing on the date specified in Item 3 of the Order Form).

(c) The Customer must quote the Customer Reference No. specified in Item 1 of the Order Form when making payment.

4.2 Payments can be made by cash, over the phone by credit card (surcharges may apply) or by way of electronic funds transfer to a bank account nominated by the Supplier.

4.3 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.4 The time for payment is of the essence.

4.5 Where a payment is due on a Brisbane public holiday or weekend then it is acceptable that the payment is made the next working day after the Brisbane public holiday or weekend.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of their other accrued or contingent rights:

(a) charge the Customer interest on any sum due at the prevailing standard contract default rate set by the Queensland Law Society from time to time for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by them resulting from the default or in taking action to enforce compliance with the Contract or to recover any Goods; and

(c) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 The Customer acknowledges that payment default will include any failure of the Customer to quote the Customer Reference No. specified in Item 1 of the Order Form when making payment.

6. Passing of Property

6.1 Until the Supplier receives full payment in cleared funds for all goods supplied by them to the Customer, as well as all other amounts owing to the Supplier by the Customer, title and property in the Goods remain vested in the Supplier and do not pass to the Customer.

7. Risk and Insurance

7.1 The risk in the Goods will pass to the Customer immediately on the Goods being delivered to the Customer or taken from the Supplier's premises.

7.2 On and from the date that the risk in the Goods passes to the Customer, the Customer will be responsible for all insurance obligations of the Goods (including theft, damage or otherwise)

7.3 The Customer assumes all risk and liability for loss or damage to property of the Customer or third parties arising out of the use or possession of the Goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

8. Acknowledgments

8.1 The Customer acknowledges that:

(a) they have not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the Goods or their use or application.

(b) they have not made known, either expressly or by implication to the Supplier any purpose for which they requires the Goods and they have the sole responsibility of satisfying itself that the Goods are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Supplier.

(c) variations in size and dye which are within accepted industry tolerances and variations may occur between different products.

(d) they are financially responsible for the cost of any alterations they wish to make to the Goods ordered from the Supplier.

9. Performance of Contract

9.1 Subject to clause 9.2 and 9.3, any Approximate Delivery Date is on the condition that the payment in clause 4.1(a) are received by the Deposit Due Date and that the instalments in 4.1(b) are received by the dates specified in item 3 of the Order Form.

9.2 Any period or date for delivery of the Goods by the Supplier is an estimate only and not a contractual commitment.

9.3 The Supplier will use their reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

10. Delivery

10.1 Subject to clause 10.5, the Supplier will arrange for the Goods to be delivered to the Supplier's store.

10.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer to the point of delivery.

10.3 The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Supplier has not used due care and skill.

10.4 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the Goods.

10.5 If agreed that the Customer will collect the Goods:

(a) the Customer must collect the Goods within 21 days of being advised they are ready;

(b) if the Customer does not collect the Goods within this time, the Customer is deemed to have taken delivery of the Goods and is liable for the Supplier's storage charge as specified in the Acknowledgements, payable monthly on demand.

10.6 The Customer may, by notice in advance to the Supplier, authorise a representative to collect the Goods on behalf of the Customer on an 'as is where is' basis.

11. Liability

11.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture or design of the Goods placed for order with the Supplier by the Customer or any contractual remedy for their failure.

11.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

11.3 If the Customer on-supplies the Goods to a consumer, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer, howsoever arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.

11.4 If clauses 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the Goods by the Customer or any third party.

11.5 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or Goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

12. Limitation on Cancellation

12.1 A Lay By is unable to be cancelled once the Goods to which this contract relates are delivered or collected under this Contract; and

12.2 An order is unable to be cancelled with respect to Goods that do not constitute a Lay-by arrangement.

13. Cancellation

13.1 Subject to clause 12, if the Customer cancels the order placed with the Supplier the Supplier may charge a termination fee of 50% of the total purchase price of the Goods quoted by the Supplier to cover the costs incurred, included but not limited to, obtaining the Goods on behalf of the Customer from the manufacturer.

13.2 In such circumstance the Customer is entitled to a refund of all payments less the Termination Fee.

13.3 If the Supplier does not hold enough funds to recover the Termination Fee the balance moneys may be recovered by the Supplier as a debt against the Customer.

13.4 If the Supplier is unable to deliver or provide the Goods for reasons outside of its control, then they may cancel the Customer's order (even if the order has been accepted) by written notice to the Customer.

13.5 Subject to clause 12.1, no purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the order has been accepted.

14. Exchanges

14.1 Subject to clause 14.2, the Supplier will not under any circumstances accept goods for return or credit that:

(a) have been specifically produced, imported or acquired to fulfil the Contract;

(b) are discontinued goods or no longer stocked by the Supplier;

(c) have been altered in any way;

(d) have been used;

(e) are not in their original condition and packaging;

(f) are being returned or not accepted because the Customer has changed shape; or

(g) are being returned or not accepted because the Customer has changed their mind on purchasing the Goods.

14.2 If the Customer is a consumer, unless deemed acceptable, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

15. Force Majeure

15.1 The Supplier is not liable in any way howsoever arising under the Contract to the extent that they are prevented from delivering the Goods by events beyond their reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, inclement weather, acts of God, acts or threats of terrorism or war or any other unforeseen delays. If an event of force majeure occurs, the Supplier may suspend or terminate the Contract by written notice to the Customer.

16. Specifications

16.1 All photographs, descriptive matter and particulars contained in the Supplier's catalogues, website and marketing documents are indicative only, do not form part of this Contract, and are not contractual representations or warranties of any kind.

16.2 All photographs, descriptive matter and particulars supplied remain the Supplier's property and must be returned to the Supplier on demand. The Customer must not publish or communicate any of them to any person or publish or permit them to be copied or communicate them to any other person without the Supplier's prior written consent.

17. Miscellaneous

17.1 The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

17.2 The Supplier's failure to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.

17.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

17.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile are deemed received on confirmation of successful transmission. Notices sent by email are deemed received on confirmation of a "read receipt" or in the absence of "read receipt" no receipt of a "send email".