

GENERAL TERMS AND CONDITIONS OF SALE – MCPHERSON'S CONSUMER PRODUCTS PTY LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 In this document, unless the context otherwise requires:

ACL means the 'Australian Consumer Law' schedule of the *Competition and Consumer Act 2010* (Cth);

Buyer means the purchaser of the Goods;

Consequential Loss means any liability suffered by a party that does not arise in the ordinary course as a direct, natural or probable consequence of a breach of this Agreement or the events giving rise to the liability (which may include loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business, loss of contract, loss of use, loss of goodwill, loss of production and other economic loss) or any liability or other amounts that are special, punitive or exemplary, whether arising in contract, tort (including negligence) or otherwise;

Consumer has the same meaning given to the term under the ACL;

Consumer Contract has the same meaning given to the term under the ACL;

Contract means the contract for the supply of Goods between the Seller and the Buyer formed in accordance with clause 2.2;

Corporations Act means the *Corporations Act 2001* (Cth);

Delivery Address means the address to which the Buyer has notified the Seller in writing that the Goods are to be delivered;

Force Majeure Event any act, occurrence or event not within the control of the relevant party including but not limited to any accidents, weather conditions or events, floods, fire, explosions, riots, acts of war, earthquakes or other natural events, pandemics, destruction or loss of products or materials, cyber breaches or attacks, ransomware attacks, infrastructure failures or outages, shipping delays, industrial action or disputes, shortage or unavailability of fuel or other resources, congestion in roads, railways, ports or other venues, derailments, sinkings, government restrictions, change in any law, or any direction of a government authority;

Free Into Store means the Seller will bear responsibility for delivering the Goods to the Buyer and paying all costs (excluding those referred to in clause 8) in bringing the Goods to the Delivery Address;

Goods means any goods which the Seller sells or provides to the Buyer from time to time;

GST has the meaning given to the term in *A New Tax System (Products and Services Tax) Act 1999* (Cth) (*Products and Services Tax*);

Insolvency Event means the occurrence of any of the following events in relation to any party:

- (a) the party is wound up, dissolved or declared bankrupt;
- (b) the party becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an applicable law;
- (c) the party becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the party's assets or undertaking;
- (e) the party enters into or becomes subject to any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors, or any re-organisation, moratorium, deed of trustee arrangement or other administration involving one or more of its creditors;
- (f) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (g) the party is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand; or
- (h) the party suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due;

Intellectual Property means all intellectual property and proprietary rights whether registered or unregistered (including business names, trade or service marks, any right to have information (including confidential information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, know how, logos, designs, design

rights, copyright and similar industrial or intellectual property rights, and websites, landline and mobiles numbers and other digital property);

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.

Order means a written request by the Buyer to purchase Goods from the Seller;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Related Body Corporate has the same meaning given to the term in the Corporations Act;

Seller means McPherson's Consumer Products Pty Limited ABN 36 000 020 495, and its Related Bodies Corporate (as the case may be); and

Small Business Contract has the same definition given to the term under the ACL.

1.2 In this document, unless the context otherwise requires:

- (a) "including" is not a term of limitation; and
- (b) words importing the singular number will include the plural number;
- (c) any reference to '\$' or 'dollars' is a reference to Australian dollars; and
- (d) words denoting natural persons will include corporations.

2. APPLICATION

2.1 The Contract constitutes the entire agreement between the parties about its subject matter and supersedes all previous representations, understandings and agreements in connection with that subject matter.

2.2 The Contract between the Buyer and the Seller comprises (in ascending order of priority unless otherwise expressly agreed in writing by the Seller):

- (a) an Order accepted by the Seller in accordance with clause 3.4;
- (b) any other terms and conditions issued by the Seller and accepted by the Buyer (including the terms of any credit agreement between the Seller and the Buyer); and/or
- (c) these Terms.

3. ORDERS

3.1 The Buyer shall place an order for the Goods by issuing an Order to the Seller.

3.2 Each Order made by the Buyer to the Seller shall constitute an offer by the Buyer to purchase Goods subject to these Terms until it is accepted by the Seller. By making an Order, the Buyer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions set forth in these Terms.

3.3 The Seller may cancel the acceptance of any Order for Goods at any time before delivery. The Buyer may only cancel an Order for Goods with the Seller's prior written consent.

3.4 A Contract will be formed between the parties when the Seller accepts an Order by issuing an order confirmation to the Buyer.

3.5 The Seller is not obliged to accept an Order and will have no liability to the Buyer in respect of a rejected Order.

3.6 The Seller may withhold delivery of Goods for non-payment of any amounts due and payable by the Buyer or for a material breach by the Buyer of these Terms.

4. PRICING

4.1 The amounts payable for the Goods are as specified in the Contract (as may be varied by the written agreement of the parties if applicable) (**Price**).

4.2 Payment of all amounts due to the Seller must be in the manner specified in the Contract (or if not specified, as directed by the Seller) in Australian Dollars (or any other currency as specified by the Seller) and free of any deduction, withholding, counterclaim or set off on any account whatsoever.

4.3 The Seller reserves the right to increase the Price to reflect any increase in costs due to any factors beyond its reasonable control by providing at least 28 days' written notice to the Buyer (where any such change will not be retrospective for any Goods already supplied to the Buyer).

- 4.4 All Prices are exclusive of GST. If GST is imposed on any supply made under or in accordance with the Contract, the recipient of the taxable supply must pay to the Seller an additional amount equal to the GST payable on or for the taxable supply
- 4.5 The granting of credit to a Buyer shall be at the absolute discretion of the Seller.

5. TERMS OF PAYMENT

- 5.1 The Buyer shall make payment of all amounts payable:
- (a) where the Goods were ordered by the Buyer on credit; within thirty (30) days from the date of the Seller's tax invoice; or
 - (b) in all other circumstances, within thirty (30) days after the end of the month of delivery.
- 5.2 If the Buyer fails to make payment in accordance with clause 5.1, then the Seller shall be entitled to:
- (a) where the Goods were ordered by the Buyer on credit, require the payment of cash before delivery of any further Goods;
 - (b) charge an interest rate of one point seven five percent (1.75%) above the cash rate prescribed by the Reserve Bank of Australia per annum accruing daily from the due date for payment, and the parties agree that such interest charge is not a penalty but a true measure of damages incurred by the Seller;
 - (c) claim from the Buyer all costs, expenses and charges incurred on any account whatsoever including but not limited to any action taken by the Seller to recover monies or goods due from the Buyer including but not limited to mercantile agents costs and legal costs and disbursements on a solicitor-client basis.
- 5.3 The Buyer shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off.

6. DELIVERY

- 6.1 Where a Delivery Address is situated within Australia and New Zealand, Goods will be delivered Free Into Store provided the value of the original Order is in excess of \$300.
- 6.2 In circumstances other than those set out in clause 6.1, the Buyer will bear responsibility for all costs associated with bringing the Goods to the nominated address.
- 6.3 The Seller will be responsible for delivery of Goods to a Delivery Address within Australia. In this circumstance:
- (a) the Seller is not required to deliver the Goods to any address other than the Delivery Address. The Seller may at its discretion agree to deliver the Goods to another address but will only be bound to do so if it agrees in writing prior to delivery. The Seller may charge additional charges for delivery to a different address.
 - (b) if the Seller reasonably believes it necessary, it may deviate from the usual or customary route or method of transport in respect of delivering the Goods.
 - (c) the Buyer must ensure that the Delivery Address (or any alternative address) has adequate and safe access arrangements in order to ensure that the Seller may deliver the Goods and the Buyer must advise the Seller of any particular risks.
 - (d) the Goods will be delivered, or deemed thereof, when they are delivered to the Delivery Address, and the Buyer authorises the Seller to leave the Goods at the Delivery Address irrespective of whether the Buyer or its representative(s) is present to accept delivery.

7. SMALL ORDERS

The Seller reserves the right to reject an Order under \$300 in wholesale value. If such an order was accepted, it would be subject to a \$15.00 administration surcharge payable by the Buyer.

8. DUTIES, TAXES, ETC

In addition to the price, Buyer will pay to Seller all taxes, duties and government charges payable or assessed in connection with the Contract

9. CLAIMS AND RETURNS

- 9.1 The Buyer must inspect the Goods upon delivery and must, within 48 hours notify the Seller of any defects, short deliveries or failure to fulfil any order (**Defective Goods**). If the Buyer fails to give the Seller notice

within the specified period, then the Goods shall be deemed to be in compliance with the order and free from any defects.

- 9.2 The Buyer must, within a reasonable time following delivery, grant the Seller access to the Defective Goods in order to inspect for any alleged defects.
- 9.3 Any claims for Defective Goods must refer to the official invoice number and date, state the reason for the claim and provide the Seller with evidence to the Seller's reasonable satisfaction of the matters giving rise to the Buyer's claim.
- 9.4 The Seller may in its absolute discretion agree to accept returns of undamaged Goods for credit, provided that the Seller agrees in writing before the Goods are returned.
- 9.5 No freight or other charges for Goods returned by the Buyer will be accepted by the Seller without the Seller's prior written consent. The Seller's nominated carrier must be used if qualified Goods are returned.
- 9.6 Acceptance of delivery for returned Goods for credit does not signify agreement to issue a credit note. A credit note will be issued only after the Goods have been inspected and found to be satisfactory in the opinion of the Seller acting reasonably. In the event that a credit note is not issued, the Buyer will be advised and the Goods made available for collection by the Buyer.
- 9.7 Goods returned for credit under this clause may be subject to re-stocking charges and will be credited to the Buyer's account.
- 9.8 The following Goods cannot be returned for credit under any circumstances:
- (a) any Goods specially made or purchased for the Buyer.
 - (b) any Goods damaged or altered in any way by the Buyer.
- 9.9 The Seller will not be liable for any loss or damage arising from the transportation of Goods via Parcel Post or a Commercial Carrier.

10. PPSA

- 10.1 In this clause:
- (a) "financing statement" has the meaning given to it by the PPSA;
 - (b) "financing change statement" has the meaning given to it by the PPSA;
 - (c) "security agreement" means the security agreement under the PPSA created between the Buyer and the Seller by these Terms; and
 - (d) "security interest" has the meaning given to it by the PPSA.
- 10.2 The Buyer agrees that these Terms:
- (a) constitute a security agreement for the purposes of the PPSA;
 - (b) create a security interest in all Goods under the Contract for the purpose of securing all monies owed by the Buyer to the Seller; and
 - (c) are in addition to any contractual lien or lien arising under common law or other relevant law.
- 10.3 The Buyer undertakes to:
- (a) constitute a security agreement for the purposes of the PPSA;
 - (b) create a security interest in all Goods under the Contract for the purpose of securing all monies owed by the Buyer to the Seller; and
 - (c) are in addition to any contractual lien or lien arising under common law or other relevant law.
- 10.4 The Seller and the Buyer agree that sections 96, 115 (contracting out provision) and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Buyer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Buyer waives its rights as a grantor or debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

11. LIABILITY AND INDEMNITY

- 11.1 If the Buyer is a Consumer:
- (a) the Goods come with guarantees that cannot be excluded under the ACL, and such guarantees are given by the Seller;

- (b) the Buyer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the ACL;
- (c) the Buyer is 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; and
- (d) if the Buyer reasonably believes the Goods do not comply with the ACL guarantees, it must contact the Seller and the parties may make arrangements for the return of the Goods. Any returned Goods must be accompanied by proof of purchase. If the Seller agrees that the Goods do not comply with the applicable ACL guarantees, without limiting the rights of the Buyer in this clause 11.1, the Seller will refund the costs of returning the Goods to the Buyer and, in all other respects, act in accordance with its obligations under the ACL.

11.2 Subject to clause 11.1, and to the maximum extent permitted by law, all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by law are expressly excluded.

11.3 The Seller's maximum aggregate liability to the Buyer in respect of any loss, liability, claim or damage relating to the Goods (including Defective Goods) or otherwise under these Terms is limited to the total amount paid by the Buyer for the Goods in the most recent 6-month period before any relevant claim.

12. RECALLS

12.1 The Buyer must promptly notify the Seller of any information relating to any:

- (a) failure of any Goods to conform to the requirements of the Contract or any applicable regulatory requirement;
- (b) investigation by any government or regulatory authority that is or may be relevant to the Goods;
- (c) adverse event, claim or anomaly relating to, or unexpected behaviour of, any Goods; or
- (d) other quality, labelling or other regulatory issue relating to the Goods.

12.2 In the event that any of the Goods are subject to a recall by the Seller, the Buyer will take all reasonable steps to provide assistance reasonable required by the Seller to give effect to the recall.

12.3 The Buyer must indemnify the Seller in respect of all costs and expenses incurred by the Seller in respect of any breach by the Buyer of its obligations under the Contract, except to the extent that such breach is directly caused or contributed to by the Seller.

13. INTELLECTUAL PROPERTY

The Buyer acknowledges and agrees that all the Seller's Intellectual Property and other information that the Seller provides or makes available to the Buyer remains the property of the Seller or its Related Bodies Corporate (as the case may be).

14. TERMINATION

14.1 Either party may terminate the Contract by giving the other party at least 60 days' notice of its intention to do so.

14.2 A party may terminate the Contract immediately on written notice to the other party if:

- (a) the other party suffers an Insolvency Event;
- (b) the other party commits a material breach of its obligations under the Contract where such breach is either not capable of remedy or, if capable of remedy, the other party fails to remedy such breach within 14 days after receipt of written notice of such breach by the other party;
- (c) the other party is the Buyer and the Buyer engages in any conduct (which includes any conduct by employees of the Buyer) which in the reasonable opinion of the Seller is or might be damaging to the reputation of the Seller or any of the Goods; or
- (d) contractual performance by either party is delayed or prevented due to any Force Majeure Event exceeding ninety (90) days.

14.3 If the Contract is terminated under this clause:

- (a) the Seller will be under no obligation to supply any Goods that have not yet been delivered to the Buyer;

- (b) all money owed to the Seller under or in connection with the Contract for any Goods delivered prior to termination will be immediately due and payable by the Buyer; and
- (c) if the Buyer has made any payments for Goods not delivered at the time of termination, the Seller will refund such payments within 30 days of the date of termination.
- (d) the termination shall not in any way affect the rights or remedies a party may have accrued prior to the termination taking effect.

15. PASSING OF TITLE AND RISK

15.1 Risk in the Goods will pass to the Buyer:

- (a) where the Delivery Address is situated in Australia, when the Goods are delivered to the Delivery Address; or
- (b) where the Delivery Address is situated outside of Australia, when the Goods are loaded at origin.

15.2 Title shall not pass to the Buyer until all payments due from the Buyer in respect of the Goods have been made to the Seller by cleared funds.

15.3 Until the Goods are paid in full, the relationship between the parties will be fiduciary, and the Buyer will hold the Goods as bailee for the Seller. The Buyer will store the Goods separately from the Buyer's own goods.

15.4 Buyer may before paying for the Goods, sell the goods to third parties, in which event, Buyer shall hold on trust for the Seller:

- (a) the proceeds of sale; or
- (b) rights to such proceeds.

15.5 If any question arises as to title to the Goods, the onus shall be on the Buyer to provide that title has passed to the Buyer.

16. FORCE MAJEURE

Neither party shall be liable for failure of or delay in performance (except for the payment of amounts due) to the extent that the failure or delay arises from a Force Majeure Event.

17. MODERN SLAVERY

The Buyer warrants that it shall throughout the course of the Contract not engage in Modern Slavery and will comply with all laws, codes and standards, regulations, legal requirements and directions relating to Modern Slavery

18. NO CONSEQUENTIAL LOSS

Neither party shall be liable to the other for any Consequential Loss arising out of or in relation to the Contract.

19. GENERAL

19.1 The Contract is governed and must be construed under the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of that territory.

19.2 The Seller may vary the Contract by at least 21 days' notice in writing to the Buyer. If the Contract is a Consumer Contract or a Small Business Contract, then the Buyer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the Goods ordered before the date of the variation but which are intended to be subject to the variation.