

GENERAL TERMS AND CONDITIONS OF SALE

MCPHERSON'S CONSUMER PRODUCTS (NZ) LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (Terms), unless the context otherwise requires:

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 these Terms 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;

CGA means the *Consumer Guarantees Act 1993*;

Contract means the contract for the supply of Goods between the Seller and the Buyer formed in accordance with clause 2.1 (as may be varied by the written agreement of the parties);

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 6) in bringing the Goods to the Delivery Address;

FTA means the *Fair Trading Act 1986*;

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 the *Goods and Services Tax Act 1985*;

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, states that it is insolvent or is presumed or deemed to be insolvent under an applicable law;
- (c) a liquidator, receiver, 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;
- (d) 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;
- (e) 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; or
- (f) 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 1999*;

Price means the amount payable for the Goods specified in writing by the Seller as varied in accordance with clause 4.1;

Related Company has the meaning given to the term in the *Companies Act 1993*;

Seller means McPherson's Consumer Products (NZ) Limited and any Related Company (as the case may be); and

1.2 In these Terms, 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 New Zealand dollars; and
- (d) words denoting natural persons will include companies, partnerships, trusts and other entities.

2. APPLICATION

2.1 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 3.2;
- (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.

2.2 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.

3. ORDERS

3.1 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 in writing by the Seller. By making an Order, the Buyer acknowledges that it has read, understood, and agreed to be bound by these Terms.

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

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

3.4 The Seller may cancel the acceptance of any Order at any time before delivery. Once accepted the Buyer may only cancel an Order with the Seller's prior written consent.

4. PRICING

4.1 The Seller reserves the right to increase the price of the Goods 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).

4.2 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.
- 4.3 The granting of credit to a Buyer shall be at the absolute discretion of the Seller.
- 4.4 The Seller will not be bound by clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgment, or invoice and the same shall be subject to correction.
5. **SMALL ORDERS**
Any Order under \$300, if accepted, may be subject to a \$15 administration surcharge payable by the Buyer.
6. **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.
7. **TERMS OF PAYMENT**
- 7.1 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.
- 7.2 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 Dollars (or any other currency as specified by the Seller) and free of any deduction, withholding, counterclaim or set off on any account whatsoever.
- 7.3 If the Buyer fails to make payment in accordance with clause 7.2, 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 official cash rate prescribed by the Reserve Bank of New Zealand per annum accruing daily from the due date for payment; and/or
(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.
8. **DELIVERY**
- 8.1 The Seller will use its best endeavours to deliver the Goods at the time requested by the Buyer but will not be responsible for any loss or damage (of any kind and whether direct, indirect or consequential) arising from any delay in the delivery of the Goods from any cause whatsoever nor shall any such delay entitle the Buyer to cancel any Order or refuse to accept delivery at any time or refuse or delay payment for the Goods.
- 8.2 Where a Delivery Address is situated within New Zealand, Goods will be delivered Free Into Store provided the value of the original Order is in excess of \$300.
- 8.3 In circumstances other than those set out in clause 8.2, the Buyer will bear responsibility for all costs associated with delivery of the Goods to the Delivery Address.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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.
9. **PASSING OF TITLE AND RISK**
- 9.1 Risk in the Goods will pass to the Buyer when the Goods are delivered to the Delivery Address.
- 9.2 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.
- 9.3 Until the Goods are paid in full, but subject to clause 9.4, the Buyer will:
(a) hold the Goods as bailee for the Seller;
(b) keep the Goods in a good and secure condition and fully insured;
(c) store the Goods separately from other goods; and
(d) not encumber the Goods in any way.
- 9.4 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.
10. **CLAIMS AND RETURNS**
- 10.1 The Buyer must inspect the Goods upon delivery and notify the Seller of any defects, short deliveries or failure to fulfil any Order within 48 hours of delivery. 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.
- 10.2 Any claims for defects, short deliveries or failure to fulfil any Order 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.
- 10.3 The Buyer must, within a reasonable time following delivery, grant the Seller access to any Goods in order to inspect for any alleged defects.
- 10.4 The Seller may in its absolute discretion agree to accept returns of undamaged Goods for credit.
- 10.5 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 Goods are returned.
- 10.6 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 defective 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.
- 10.7 Goods returned for credit under this clause may be subject to re-stocking charges.
- 10.8 The following Goods cannot be returned for credit under any circumstances:
(a) any Goods specially made or purchased for the Buyer; or
(b) any Goods damaged or altered in any way by the Buyer.
- 10.9 The Seller will not be liable for any loss or damage arising in the course of delivery.
11. **PPSA**
- 11.1 The Buyer acknowledges that the Seller holds a "security interest" in the Goods and any proceeds of the sale of the Goods pursuant to Section 17 of the PPSA and that the Seller may register a financing statement in respect of the Goods and any sale proceeds in accordance with the provisions of the PPSA.
- 11.2 The Buyer shall provide all information, execute or arrange for execution of all documents and do all other things that the Seller may require to ensure that the Seller has a perfected first ranking security interest in the Goods under the PPSA. The Buyer shall immediately upon request by the Seller, procure from any person considered by the Seller to be relevant to its security position such agreements and waivers as the Seller may at any time require.
- 11.3 The Buyer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by the Seller

- under the PPSA and agrees that as between the Seller and the Buyer, the Buyer shall have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA and where the Seller has rights in addition to those in part 9 of the PPSA, those rights shall continue to apply.
- 11.4 The Buyer shall immediately notify the Seller of any change in the Buyer's name, address details and any other information provided to the Seller to enable the Seller to register a financing change statement if required.
- 12. WARRANTIES AND LIABILITY**
- 12.1 Save for any manufacturers warranties provided or assigned to the Buyer and any warranties and conditions conferred in writing by the Seller on the Buyer in relation to particular Goods sold by the Seller to the Buyer, the Seller makes no representations, and gives no assurance, condition or warranty of any kind to the Buyer (including any assurance, condition or warranty implied by law to the extent that the assurance, condition or warranty can be excluded). The Buyer specifically acknowledges that the Buyer is acquiring the Goods for business purposes and the provisions of the CGA are excluded. For the purposes of section 5D of the FTA, the parties agree to contract out of sections 9, 12A and 13 of the FTA.
- 12.2 The Seller shall not be liable for any loss or damage of any kind whatsoever whether suffered or incurred by the Buyer or another person whether such loss or damage arises directly or indirectly from Goods supplied by the Seller to the Buyer and without limiting the generality of the foregoing of this clause, the Seller shall not be liable for any consequential loss or damage of any kind.
- 12.3 The Seller's maximum aggregate liability to the Buyer in respect of any loss, liability, claim or damage relating to the Goods or otherwise under these Terms is limited to the total amount paid by the Buyer for the Goods in relation to which the claim relates.
- 13. RECALLS**
- 13.1 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.
- 13.2 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.
- 14. 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 Companies (as the case may be).
- 15. TERMINATION**
- 15.1 Either party may terminate the Contract by giving the other party at least 60 days' notice of its intention to do so.
- 15.2 A party (first 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 from the first 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.
- 15.3 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;
 - (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; and
 - (d) the termination shall not in any way affect the rights or remedies a party may have accrued prior to the termination taking effect.
- 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. GENERAL**
- The Contract is governed and must be construed under the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of New Zealand. The United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) shall not apply to these Terms.