

SUPPLY AGREEMENT TERMS AND CONDITIONS

Defined Terms

Agreement	means this agreement which consists of the Details, Account Application Form, Director's Guarantee, Defined Terms and General Terms and any schedule or annexure to those documents.
Agreement Date	has the meaning given in the Details.
Associates	means a party's officers, employees, agents, contractors and subcontractors.
Business Day	means a day on which banks are open for retail banking business other than a Saturday or Sunday in the capital city of the State or Territory noted as the Governing Law.
Consignment Goods	has the meaning given in the Details.
Consignment Period	means the period specified in the relevant Delivery Schedule for Consigned Goods.
Default Interest	means the Penalty Interest Rate as determined from time to time under the <i>Penalty Interest Rates Act 1983 (Vic)</i> .
Delivery Date	means the date upon which the Goods are delivered to the Customer as specified in a Delivery Schedule.
Delivery Schedule	means an invoice, consignment note or any other similar document which, by way of example, specifies details of: <ul style="list-style-type: none"> (a) the Goods; (b) the Consignment Period in respect of Consigned Goods (if applicable); (c) the Price for the Goods; (d) the Delivery Date in respect of the Goods; (e) the Location of the Goods; As issued by the Supplier from time to time.
Goods	has the meaning given in the Details.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
Insolvent	means bankrupt or insolvent or otherwise unable to pay debts when due for payment, in receivership or receivership and management, under administration, in liquidation, under official management or any other form of administration, wound up, dissolved, subject to any arrangement, assignment or composition, or protected from creditors under statute and 'insolvency' has a corresponding meaning.
Intellectual Property	means Trade Marks, domain names, get-up, patents, inventions, design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where those rights are obtained or enhanced by registration, any registration of those rights and applications and rights to apply for those registrations.
Location	means that specific section of the Customer's premises where the Goods are held in storage by the Customer on behalf of the Supplier.
Price	has the meaning given in the Details.
Related Body Corporate	has the meaning set out in the <i>Corporations Act 2001 (Cth)</i> .
Special Conditions	means those terms (if any) set out in the section headed "Special Conditions" in Annexure B.
Trade Marks	means a mark, letter, word, name, signature, numeral, device, brand, heading, label, ticket, logo, slogan, aspect of packaging, shape, colour, sound or scent and any other tradename, insignia, logo or proprietary mark of the Supplier or third party used in relation to the Goods.

Supply Agreement – General Terms

1 Scope

- 1.1 These General Terms apply to all goods supplied by the Supplier to the Customer on or after the Agreement Date.
- 1.2 Any order by the Customer for the supply of Goods which includes terms not expressly included in these General Terms is of no effect and the order is deemed to be requested and will be supplied exclusively on the basis of these General Terms.

2 Supply of Goods

- 2.1 Any Goods supplied to the Customer by the Supplier must be accompanied by a Delivery Schedule completed in accordance with Annexure A in respect of the Goods.
- 2.2 The Customer must acknowledge receipt of the Goods in any, but not limited to, of the following methods such as phone, email or fax.
- 2.3 Upon delivery the Customer must inspect the Goods for defects. The Customer must return any Goods which are defective to the Supplier within 14 days of the Delivery Date.
- 2.4 Any Goods not returned within 14 days of the Delivery Date will be deemed to be in good and marketable condition and free from defects.

3 Price and Payment

Consigned Goods

- 3.1 Consigned Goods are deemed to be sold by the Customer on the date the Customer delivers the Consigned Goods to the Customer's customer, irrespective of when payment for the sale actually occurs.

Payment Terms

- 3.2 The Customer must pay the Supplier's tax invoice within 30 days after the end of the calendar month in which the tax invoice is issued to the Customer.
- 3.3 Where any, or part of any, tax invoice remains outstanding on or after its due date for payment, Default Interest will be payable on the outstanding amount. Default Interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.

4 Title and Risk

- 4.1 Title to the Goods does not pass to the Customer until the Customer has paid the Price in respect of those Goods in full to the Supplier. Until title to the Goods passes the Customer will hold the Goods as the fiduciary agent and bailee of the Supplier.
- 4.2 The Customer may resell but only as a fiduciary agent of the Supplier. Any right to The Customer may resell but only as a fiduciary agent of the Supplier. Any right to bind the Supplier to any liability to any third party by contract or otherwise is expressly excluded.
- 4.3 The Customer receives all proceeds whether tangible or intangible, direct or indirect of any dealing with the Goods in trust for the Supplier until the Price has been paid in full.
- 4.4 The Supplier is to have power to appropriate payments to such goods and accounts as it thinks fit notwithstanding any appropriation by the Customer to the contrary.
- 4.5 If the Customer uses the Goods in some manufacturing, assembly or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of any such manufactured, processed, assembled or commingled goods in trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of the receipt of such proceeds.
- 4.6 Risk in the Goods is with the Customer from the time the Goods leave the Supplier's premises on the Delivery Date.

5 Personal Property Securities Act 2009 (“PPSA”)

5.1 In this clause:

- (a) ‘Financing Statement’ has the meaning given to it in the PPSA;
- (b) ‘Financing Change Statement’ has the meaning given to it in the PPSA;
- (c) ‘PPS Register’ means the Personal Properties Securities Register established under section 147 of the PPSA;
- (d) ‘Security Agreement’ has the meaning given to it in the PPSA; and
- (e) ‘Security Interest’ has the meaning given to it in the PPSA.

5.2 Upon execution of this Agreement by the Customer, the Customer acknowledges and agrees that this Agreement:

- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in:
 - (1) the Goods; and
 - (2) all proceeds received by the Customer in relation to the sale of Goods supplied by the Supplier.

5.3 The Customer undertakes to:

- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the Supplier may reasonably require to:
 - (1) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Goods;
 - (2) register any other document on the PPS Register which is necessary to perfect the Supplier’s Security Interest over the Goods; or
 - (3) correct a defect in any document referred to in clause 5.3(a)(1) and 5.3(a)(2);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;
- (c) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the prior written consent of the Supplier;
- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;
- (e) keep full and complete records of the Goods; and
- (f) without limiting any other right the Supplier may have, immediately return the Goods if requested to do so by the Supplier following non-repayment of any amount owing by the Customer to the Supplier or following the breach of any other obligation of the Customer.

5.4 The Supplier and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.

5.5 The Supplier is not required to give any notice or statement under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

5.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

5.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.

5.8 The Customer agrees that the information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by the Customer except where required by section 275(7) of the PPSA.

5.9 If the Customer fails to pay the Supplier any amount by the due date then, in addition to and without prejudice to the Supplier’s other rights and remedies under the PPSA or otherwise, the Supplier (or the Supplier’s agents) may without notice enter and recover possession of all Goods that have not been paid for in full from any site owned, possessed or controlled by the Customer and the Customer agrees that the Supplier has an irrevocable licence to do so without incurring any liability to the Customer. The Supplier will be entitled to deal with any Goods the Supplier recovers at its absolute discretion.

6 Delivery

- 6.1 The Supplier will deliver the Goods to the address specified in the Delivery Schedule unless otherwise agreed between the parties.
- 6.2 All delivery times are approximate only and while the Supplier will use its best endeavours to deliver Goods on the delivery times specified in the Delivery Schedule, the Supplier is not liable for any loss, damage or delay whether consequential or direct arising from late delivery or non-delivery of Goods.
- 6.3 The Supplier may at its discretion deliver the Goods to the Customer in any number of instalments. If any of the Goods delivered by instalment are defective for any reason, the defective instalment shall be a severable breach and shall not be deemed a repudiation of this Agreement.
- 6.4 The Customer waives any claim for shortage of any Goods delivered if a claim in respect of shortage has not been lodged with the Supplier within [7] days from the date of receipt of Goods by the Customer.

7 Storage and Identification

- 7.1 Upon receipt of the Goods the Customer must keep the Goods at the Location.
- 7.2 While in the possession of the Customer, unless agreed with the Supplier, the Customer must take such steps as are necessary to ensure that the Goods are not commingled with any other goods.
- 7.3 The Customer may remove the Goods from the Location for the purpose of displaying the Goods for sale in the Customer's premises.
- 7.4 At all times, whether on display or stored in the Location, the Customer must ensure that the Goods are readily identifiable from all other goods in the Customer's premises.

8 Insurance

- 8.1 The Customer must maintain all adequate and proper insurance coverage against loss, damage, theft or destruction of any Goods held by the Customer at any time.
- 8.2 The Customer must supply the Supplier on written request such evidence of currency of relevant insurance and premium payment receipts as may reasonably be requested by the Supplier.
- 8.3 The Customer must notify the Supplier in writing of any matter that may give rise to a claim under any insurance policy in respect of the Goods within 2 Business Days of the event occurring.
- 8.4 Upon receipt of notification of a claim under clause 8.3 in respect of any Goods, any outstanding Price becomes immediately due and payable by the Customer to the Supplier, regardless of whatever claim the Customer may have against any other party.

9 Inspection

- 9.1 Whenever the Customer is in possession of any Goods, the Supplier has the right, at its own expense, to inspect any Goods and all written records relating to the Goods stored at the Customer's premises.
- 9.2 The Supplier must give the Customer at least 2 Business Days advance written notice of its intention to inspect the Goods at the Customer's premises.
- 9.3 During the inspection referred to in this clause 9 the Supplier must comply with all reasonable directions of the Customer.

10 Intellectual Property

- 10.1 The parties acknowledge and agree that the Supplier owns or is the authorised user of all Intellectual Property in the Goods (if any) .
- 10.2 Nothing in this Agreement transfers any rights in the Intellectual Property to the Customer.
- 10.3 Except where the Goods are by their nature intended to be modified, incorporated into or transformed into other products the Customer is not permitted to use any Intellectual Property in the Goods without the prior written consent of the Supplier.

- 10.4 Where the Goods or packaging for the Goods is marked with any Trade Mark or other information is on the Goods (**Branding Marks**), the Customer must not, unless otherwise permitted in writing by the Supplier:
- (a) remove any Branding Marks from the Goods;
 - (b) tamper with, alter or obscure any Branding Marks in any way; or
 - (c) place any other marks on the Goods.
- 10.5 Except where the Supplier provides marketing materials to the Customer, the Customer, at its sole cost and expense, shall be responsible for its own advertising, promotional and sales literature in relation to the Goods.
- 10.6 The Customer must submit to the Supplier a sample of the advertising, sales and promotional literature referred to in clause 10.5 and the Customer shall not publish or distribute such advertising without the Supplier's written approval, which will not be unreasonably withheld or delayed.
- 10.7 The Customer must notify the Supplier promptly and in writing if it becomes aware of any infringement of any Trade Marks or other Intellectual Property in the Goods and shall fully cooperate with the Supplier in any infringement action.

11 Return of Consigned Goods

- 11.1 The Customer may return any Consigned Goods to the Supplier at any time prior to the end of the Consignment Period.
- 11.2 Any item of Consigned Goods not sold by the Customer before the end of the Consignment Period must be returned to the Supplier within 5 Business Days after the end of the Consignment Period.
- 11.3 Any Consigned Goods returned under this clause must be returned in its original condition, free of defects and at the cost of the Customer.
- 11.4 Any Consigned Goods returned under this clause which is defective must be paid for in full at the Price by the Customer.

12 Term and Termination

- 12.1 This Agreement commences on the Agreement Date and remains in force until terminated under this clause 12.
- 12.2 If the Customer becomes Insolvent, this Agreement terminates automatically on the date of the Insolvency.
- 12.3 Either party may terminate this Agreement by giving the other party 30 days written notice of its intention to terminate and the Agreement will terminate on the 30th day after notice is given.
- 12.4 On the date of termination of this Agreement for any reason (**Termination Date**) all outstanding amounts owed by the Customer to the Supplier must be immediately paid.
- 12.5 As soon as reasonably practicable after the Termination Date (but in any event no later than 7 days after the Termination Date) the Customer must return all the Consigned Goods held by it to the Supplier in its original condition and at its own cost.
- 12.6 The Customer authorises the Supplier to enter the Customer's premises at any time after 7 days after the Termination Date (and to use such reasonable force as may be required to enter) and remove any Goods which has not been returned.

13 GST

- 13.1 In this clause 13, a word or expression defined in the GST Act has the meaning given to it in that Act.
- 13.2 Any prices quoted for goods supplied under this Agreement are quoted exclusive of GST unless expressly provided otherwise.
- 13.3 If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 13.2 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.

- 13.4 A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

14 Exclusion of liability

- 14.1 Except as otherwise provided in this Agreement all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the supply of Goods are excluded to the fullest extent permitted by law.
- 14.2 Despite any other provision in this Agreement, the Supplier is not be liable for any consequential, indirect or special loss, or loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by the Customer whether arising from or in connection with the supply of the Goods or anything incidental to the supply of the Goods or any other breach of this Agreement.

15 Indemnities

Goods used at Customer's risk

- 15.1 The Customer agrees to use and possess the Goods at the Customer's risk. The Customer agrees that the Supplier will have no responsibility or liability for any loss or damage to any property of the Customer. To the full extent permitted by law the Customer releases and discharges the Supplier and its agents and employees from:
- (a) all claims and demands on the Supplier; and
 - (b) any loss or damage whatsoever and whenever caused to the Customer or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise,
 - (c) arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods or any accident to or involving the Goods or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of the Supplier or otherwise) or which may otherwise be suffered or sustained in, upon or near the Goods.

Indemnity against other costs and liabilities

- 15.2 The Customer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless the Supplier and its agents and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):
- (a) arising out of or alleged to arise out of the delivery, selection, purchase, acceptance or rejection, ownership, possession, use, repair, maintenance, storage, or operation of the Goods, and by whomsoever used or operated (except where used by the Supplier or any person on behalf of the Supplier);
 - (b) incurred by the Supplier in respect of any loss of the Goods by seizure, distress, execution or other legal process, confiscation or forfeiture of the Goods;
 - (c) incurred by the Supplier in respect of the use by the Customer of its own advertising, promotional or sales literature in relation to the Goods; or
 - (d) arising out of a breach of this agreement by the Customer.

Survival of indemnities

- 15.3 The indemnities and assumptions of liability contained in this Agreement will continue in full force and effect notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

16 Variations

- 16.1 This Agreement can be varied in writing by a later document executed by all parties.

17 Special Conditions

- 17.1 In the event of any inconsistency between the Special Conditions and these General Terms then the provisions in the Special Conditions will prevail to the extent of any inconsistency.