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Terms and Conditions

Definitions

- 1.1. Commercial Invoice means the invoice prepared by or on behalf of the Supplier in relation to the Goods.
- 1.2. Customer means the customer named in the Sales Contract with the Supplier (and if more than one customer, jointly and severally).
- 1.3. Force Majeure Event means an act of god, act of civil or military authority, act of public enemy, war, accident, fire, explosion, earthquake, flood, the elements, strike, labour dispute, shortage of suitable part, component, material or any other event beyond the reasonable control of the Supplier.
- 1.4. Goods means the goods that are to be supplied to the Customer, as particularised in the Sales Contract.
- 1.5. Intellectual Property means the Supplier's proprietary interests in and relating to the Goods, whether arising under statutory or common law, including without limitation: the Supplier's brands; its patents and patent applications; know-how; specifications; manufacturing methods; formulations; research and development; quality control procedures; technical documentation; and trade secrets.
- 1.6. PPSA means the Personal Property Securities Act 2009 (Cth).
- 1.7. PPSR means the Personal Property Securities Register.
- 1.8. Purchase Price means the price for the Goods payable by the Customer as set out in the Sales Contract.
- 1.9. Sales Contract means the document entitled "Sales Contract", issued by the Supplier to the Customer under clause 3.2 of these Terms of Trade.
- 1.10. Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Collateral, Notice of Objection, Personal Property, Purchase Money Security Interest, Registration and Security Interest have the meanings prescribed to them in the PPSA.
- 1.11. Specification means the specifications for the Goods as set out in the Sales Contract.
- 1.12. Supplier means Hoogwegt Australia Pty Ltd.

2. General

2.1. These Terms of Trade are incorporated into the Sales Contract and into all requests, quotations, offers, instructions, purchase orders, sales contract confirmations, order confirmations and agreements with respect to the sale of the Goods to the Customer. All other terms and conditions, save for those set out in the Sales Contract, are expressly excluded.

2.2. The Supplier's agents and representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms of Trade or the terms or conditions of the Sales Contract.

3. Ordering Procedure

3.1. At the time the Customer places its order, it must advise the Supplier of any legal requirements to the extent they relate to the specification of the Goods, manufacturing process, labelling, packaging, or documentation. If the Supplier is able to do so, it will comply with such requirements to the extent set out in the relevant Sales Contract. The Supplier reserves the right to increase the price to cover the reasonable cost of complying with any such requirements.

3.2. No agreement between the Supplier and Customer for the supply of Goods will come into effect until the Supplier has issued a Sales Contract to the Customer for those Goods.

4. Price

Unless otherwise stated in the Sales Contract, the Purchase Price does not include any applicable taxes and duties, which shall be the responsibility of the Customer.

5. Payment

5.1. Payment of the Purchase Price shall be made in the manner and at the time(s) set out in the Sales Contract.

5.2. If the Supplier requires the Customer to provide security for payment the Customer must provide such security before the Goods are loaded for shipment or before such other time provided for in the Sales Contract.

5.3. Where payment by letter of credit is required, payment must be made by confirmed irrevocable letter of credit established for the credit of the bank that the Supplier nominates, and be irrevocable, confirmed and without recourse, and otherwise in a form satisfactory to the Supplier.

5.4. In the event of late payment, or if the Customer fails to provide security by the required date, the Supplier may charge the Customer interest at the rate provided for by the Penalty Interest Rates Act 1983 (Vic), plus 2% compounded daily from (and including) the date of due payment until (but excluding) the date of payment in full of the

overdue account with interest.

5.5. The Customer may not withhold payment or make any deduction or set-off from any amount owing to the Supplier without the Supplier's prior written consent.

6. Packaging and Labelling

6.1. Subject to clause 6.2, the Supplier will use its standard packaging and labelling for the Goods.

6.2. The Supplier shall not be obliged to comply with any special packaging and/or labelling requirements of the Customer except to the extent those requirements are stipulated in the Sales Contract.

7. Delivery

7.1. Incoterms 2010 are incorporated in these Terms of Trade.

7.2. The Goods will be delivered in accordance with the Sales Contract.

7.3. If the Sales Contract makes provision for delivery in instalments, each instalment is deemed to constitute a separate Agreement.

7.4. Under normal operations quantities of Goods delivered may vary from the precise quantities stated in an order. The Customer agrees that the Supplier's obligation to supply the quantity of Goods specified in the Sales Contract shall be discharged provided that the actual amount supplied is the quantity specified in the Sales Contract, plus or minus 5%.

7.5. The absence of written notice of loss or damage from the Customer at the time of delivery of Goods with patent loss or damage or within seven (7) days of delivery of Goods with latent loss or damage, shall constitute prima facie evidence of delivery of the Goods in good order and condition and in the quantity specified in the Sales Contract.

8. Delivery Instructions

8.1. The Customer will issue instructions for delivery at least 21 days prior to the estimated date of shipment.

8.2. Without prejudice to the Supplier's rights under clause 11, if the Customer fails to comply with clause 8.1 the Supplier may invoice the Goods on the estimated date of shipment and demand payment as if the Goods had been shipped on that date, provided that the Supplier must keep the Goods available for the Customer at the Customer's cost and risk.

9. Delays

9.1. The Supplier shall use its best endeavours to ensure that the Goods are delivered in the manner and at the time stated in the Sales Contract but the Supplier shall not be in default of the Sales Contract by the mere failure to meet an agreed time limit for delivery of the Goods.

9.2. Without prejudice to the Supplier's rights under clause 11, upon the Customer's request, the Supplier may, in its absolute discretion, agree to postpone the shipment of Goods. The Customer must pay such fee as the Supplier reasonably determines to cover storage costs, inventory financing charges, container charges, insurance, the cost of preparing new documentation and such other charges incurred by the Supplier which are in any way caused by or connected to such postponement.

9.3. In the event that the Supplier exercises its right under clause 9.2 to refuse a request to postpone the shipment of Goods, the Customer shall acknowledge in writing its acceptance of that refusal.

10. Force Majeure

10.1. The Supplier shall not be liable for a default or failure in performance of obligations pursuant to these Terms of Trade resulting directly or indirectly from a Force Majeure Event.

11. Cancellation and Termination

11.1. The Customer does not have the right to cancel an order for the Goods after the Supplier has issued a Sales Contract for that order.

11.2. The Supplier may terminate the Sales Contract (or any part of the Sales Contract) if:

11.2.1. the Customer breaches any provision in these Terms of Trade;

11.2.2. the Customer seeks relief under any insolvency or bankruptcy law; or

11.2.3. a Force Majeure Event occurs before the Sales Contract is fully performed.

11.3. In the event that the Sales Contract is fully or partially terminated, without prejudice to any other rights or remedies, the Supplier shall be entitled to reimbursement from the Customer of any costs incurred as a consequence of such termination, including, without limitation, packaging and re-packaging costs, storage costs, financing costs, foreign exchange losses, loss of profits and any diminution in the value of the Goods due to price movements.

12. Retention of Title

12.1. The Supplier retains ownership of the Goods until the Price has been paid in full.

12.2. Until such time as ownership of the Goods passes to the Customer the Customer is only a bailee of the goods and:

12.2.1. the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier and upon such notice the Customer's right to obtain ownership or any other interest in the Goods shall cease; and

12.2.2. the Customer:

12.2.2.1. will return the Goods to the Supplier upon receiving notice to do so in accordance with clause 12.2.1;

12.2.2.2. will not make any additions or alterations to the Goods without the written consent of the Supplier;

12.2.2.3. will not remove, obscure or deface any identifying mark, label or device on the Goods or any part thereof; or

12.2.2.4. will not purport or attempt to; sell or on-hire the Goods; dispose of, charge or encumber the Goods; or assign the Customer's rights to the Goods, without the Supplier's prior consent and without immediately accounting to the Supplier for any amounts owing by the Customer to the Supplier in respect of the Goods.

12.2.3. If, despite clause 12.2.2.4, the Customer supplies any of the Goods to any person before ownership of the Goods passes to it, the Customer agrees that:

12.2.3.1. it holds the proceeds of the resupply of the Goods on trust for and as agent for the Supplier immediately when they are receivable or are received; and

12.2.3.2. it must pay the amount of the proceeds of resupply to the Supplier immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for the Supplier;

12.2.4. If the Customer breaches clauses 5, 12.2.2.1 or 12.2.3.2, the Customer may enter upon any site owned, possessed, used or controlled by the Customer, or any other site as the invitee of the Customer, to recover possession of the Goods and the Customer agrees that the Supplier has an irrevocable licence to do so without incurring liability to the Customer or any other person.

13. Supplier's Warranty

13.1. The Supplier warrants that the Goods conform to the Specification at the time of delivery to the Customer.

13.2. In the event that the Goods do not conform to the Specification but are still merchantable, the Supplier may at its sole discretion issue a credit to the Customer to compensate for any diminution in value.

13.3. The Supplier's warranty does not cover deterioration of, or damage to, the Goods occurring after the Goods have passed the ship's rail at the port of shipment.

13.4. The warranty in clause 13.1 of these Terms of Trade is in place of all other warranties, conditions, guarantees and representations, whether express or implied. Specifically, and without limiting the generality of the foregoing, the Supplier hereby excludes any warranty concerning product efficacy or implied warranties of merchantability or fitness for a particular purpose. The Customer may not rely upon any oral opinions, interpretations, statements, assurances or representations given by the Supplier.

14. Inspection & Notice of Damage

The Customer may, at the time of ordering the Goods, make a request in writing for the testing or inspection of the Goods. If the Customer does not make such a request, the Goods will be deemed to conform to the Specification and the Customer shall have no right to make a claim or bring legal proceedings against the Supplier alleging that the Goods did not conform to the Specification.

15. Compliance with Law

15.1. The Customer must comply with all applicable laws and regulations in the countries where the Customer intends to use, distribute or market the Goods. Specifically, and without limiting the generality of the foregoing, the Customer must comply with all health and safety requirements, labelling requirements, registration and approval requirements, dating requirements, warranty requirements, truth in advertising requirements and country of origin marking requirements.

15.2. The Customer acknowledges that the Supplier will be relying entirely upon the Customer to convey any specific requirements that the Customer may have in respect to the Goods, including any legal requirements that apply in the Customer's markets. The Supplier will not be responsible for failing to satisfy any such requirements unless the Customer advised the Supplier of such requirements, in writing, on or prior to the date of the Contract and the relevant Sales Contract stipulates that the Supplier will meet those requirements.

16. Liability

16.1. To the extent that the liability of the Supplier under the Sales Contract is not otherwise limited or excluded and to the extent permitted by law, the total liability of the Supplier, whether in tort (including negligence), contract, or otherwise, for any loss, damage or injury arising directly or indirectly from any defect in the Goods or any other breach of the Supplier's obligations under these Terms of Trade shall be limited to the Purchase Price.

16.2. Notwithstanding any other provision of these Terms of Trade, under no circumstances will the Supplier be liable for any loss of income or profits or any consequential, indirect or special damage or injury of any kind suffered by the Customer or any other person.

17. Indemnity

17.1. Other than to the extent that liability arises due to a breach of the warranty in clause 13.1, the Customer indemnifies and holds the Supplier harmless against any claims of whatever nature that arise from the Customer's marketing of the Goods, including without limitation: Claims arising from death or personal injury, false efficacy

claims, breach of warranty claims and claims arising from health and safety violations. The Customer further indemnifies and holds the Supplier harmless against, any claims of whatever nature that arise from the Supplier's use of the Customer's brands, artwork, packaging, formulations, instructions and specifications to produce the Goods.

17.2. The Customer shall indemnify and hold the Supplier harmless from and against any and all claims and damages of every kind arising due to the Customer breaching these Terms of Trade.

17.3. The Customer shall indemnify and holds the Supplier harmless from and against any third party claim related to Goods or the Sales Contract, unless the Customer demonstrates that the claim is a direct result of the gross negligence or wilful misconduct of the Supplier.

18. Intellectual Property

18.1. The Customer acknowledges the Supplier's ownership of the Intellectual Property. The Customer disclaims any interest in the Intellectual Property. The Customer shall not challenge the validity of the Intellectual Property. The Customer will not take any action prejudicial to the Intellectual Property.

18.2. The Customer acknowledges that from time to time it may have access to certain information (whether written or oral) relating to the Goods or the Intellectual Property of the Supplier or the affairs of the Supplier or its customers and which information is not generally known to the public including, without limitation, price quotations, lists of the Supplier's customers and confidential or commercially sensitive methods and know how. The Customer agrees with and undertakes to the Supplier not, without the prior written consent of the Supplier, to disclose such information to any third party or use such information for the Customer's own benefit or for the benefit of any other person or in any way exploit such information, nor will the Customer provide any person with a copy of or disclose to any person the contents of any document containing such information.

19. Domestic Customers - Personal Property Securities Act 2009 (Cth)

19.1. The Customer acknowledge that these Terms of Trade constitute a Security Agreement which creates (or may create) a Security Interest in favour of the Supplier and in all Personal Property previously supplied by the Supplier to the Customer (if any) and all after acquired Personal Property supplied to the Customer by the Supplier (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant to The Supplier a Purchase Money Security Interest.

19.2. The Customer accepts, acknowledges and agrees that:

19.2.1. pursuant to the retention of title clause in clause 12.1, the Supplier obtains a

Security Interest in all Goods and Services supplied by the Supplier to the Customer on credit, including any Commingled Goods;

19.2.2. the Supplier can, without notice to the Customer, seek Registration of its Security Interest on the PPSR; and

19.2.3. Pursuant to section 275(6) of the PPSA, the Customer agrees the Supplier is not required to disclose to an interested person information pertaining to the Supplier's Security Interest unless required to do so pursuant to the PPSA or at law generally.

19.3. The Customer will:

19.3.1. sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable perfection of its Security Interest or registration of a Financing Statement or Financing Change Statement on the PPSR;

19.3.2. not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any services, without the prior written consent of the Supplier;

19.3.3. give the Supplier not less than 14 days written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business practice);

19.3.4. indemnify the Supplier against any costs the Supplier incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs the Supplier may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;

19.3.5. procure from any persons considered by the Supplier to be relevant to its security position, such agreement and waivers as the Supplier may at any time reasonably require;

19.4. To the extent permitted by the PPSA the Customer waives its rights to:

19.4.1. receive a notice under any of subsections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157 of the PPSA;

19.4.2. receive a statement that includes the information referred to in paragraph 132 (3) (d) of the PPSA ;

19.4.3. receive a statement under subsection 132(4) of the PPSA;

19.4.4. redeem Collateral after default under section 142 of the PPSA unless the lessor agrees in writing to such redemption;

19.4.5. reinstate the Security Agreement under section 143 of the PPSA ; and

19.4.6. give a Notice of Objection under section 137 of the PPSA.

20. Law & Jurisdiction

Australian law governs all transactions between the Customer and the Supplier. The Customer submits to the exclusive jurisdiction of Australian courts.

21. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts

Nothing in these Terms of Trade is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

22. No Waiver

No failure by the Supplier to insist upon strict performance of the Sales Contract, including any of these Terms of Trade, or any delay in exercising any of its rights or remedies, constitutes a waiver or variation.

23. Assignment

23.1. The Customer shall not assign its rights under these Terms of Trade without the written consent of the Supplier.

23.2. The Supplier has the right to assign its rights under these Terms of Trade without the consent of the Customer.

24. Invalidity

In the event that any clause in these Terms of Trade is invalid or unenforceable, that clause will be amended, but only to the extent necessary to make it valid and enforceable. If amendment is not possible, that clause will be stricken from these Terms of Trade. However, the balance of these Terms of Trade will continue in full force and effect.

25. Amendment

The Supplier reserves the right to change these Terms of Trade from time to time. The Supplier will notify the Customer of any such changes and the varied Terms of Trade will apply to all Sales Contracts, requests, quotations, offers, instructions, purchase orders, sales contract confirmations, order confirmations and agreements entered into between the Supplier and the Customer after such notice is given.

26. Time is of the Essence

Stipulations as to time in the Sales Contract for performance by the Customer are of the essence. Stipulations as to time for performance by the Supplier in the Sales Contract are not of the essence.

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