

# TERMS AND CONDITIONS

## 1. PAYMENT OF ORDERS/ACCOUNTS.

Pro forma orders are firm, irrevocable and non-cancellable by the Applicant and must be paid for in full within 14 days from date of invoice. Where payment is not received within 14 days of the date of invoice the order may be cancelled by and at the discretion of the Supplier and in such event the Applicant will be liable from the date of notice of cancellation to a cancellation fee equivalent to 20% of the invoiced cost or \$50.00 whichever is the greater.

All other orders must be paid for within 30 days of the date of invoice ('the Payment Period') and where payment in full is not received by the Supplier prior to the expiry of the Payment Period then the Applicant shall be liable to pay interest on the amount outstanding as at the expiry of the Payment Period at the rate of 1% per month until payment in full is received by the Supplier.

The Supplier is hereby irrevocably authorised to allocate the payment of any monies received from time to time from the Applicant towards any outstanding account incurred with the Supplier by the Applicant.

## 2. PROPERTY IN AND DELIVERY OF GOODS.

(a) The Goods supplied by the Supplier to the Applicant shall be at the Applicant's risk immediately on delivery to the Applicant or into the Applicant's custody or immediately upon delivery as directed by the Applicant.

(b) Notwithstanding that the risk of loss or damage to the Goods passes to the Applicant in accordance with sub-paragraph (a), property in and ownership of the Goods shall not pass to the Applicant until payment in full for the Goods shall have been received by the Supplier.

(c) Until payment in full for the Goods shall have been received by the Supplier, the Applicant shall hold the goods on a fiduciary basis as a bailee only for the Supplier and the Applicant shall at its own expense keep the Goods properly and safely stored separately from any other goods and stock of the Applicant and any other third party and in such a way as the Goods shall be readily identified as the Goods of the Supplier and the Applicant shall not, subject to sub-clause (d)(i), pledge, mortgage, charge or part with the goods or attempt to do so without the prior written consent of the Supplier.

(d) (i) Notwithstanding that the property in the Goods has not passed to the Applicant, the Applicant may resell the Goods or any part thereof in the name of the Applicant but only as agent for the Supplier and may deliver any such goods to the buyer of them but only on terms which will not prejudice the Supplier's ability to obtain the sale proceeds thereof;

(ii) Any amount paid by the buyer of such goods from time to time to the Applicant (hereinafter referred to as 'the sale proceeds') shall be held by the Applicant in trust for the Vendor, banked in a separate bank account relating only to the sale proceeds of the Goods of the Supplier under this and/or other contracts between the Supplier and Applicant and shall be forwarded as soon as possible after receipt to the Supplier;

(iii) If and when the full amount of the price of the Goods has been received by the Supplier, any further part of the price received by the Applicant upon any resale by it of the Goods may be retained by the Applicant as its commission for effecting such sale as agent for the Supplier.

(e) An act of default of this contract shall be deemed to occur in the event of any of the following:-

(i) The Applicant failing to make payment in full for the Goods within 30 days from the date hereof;

(ii) The Applicant, if required herein, failing to insure the Goods from the date of delivery thereof by the Supplier and to provide evidence of such insurance to the Supplier;

(iii) Any distress or execution being levied upon the Applicant's goods or property;

(iv) The Applicant being a company, becoming unable to pay its debts as they fall due, offering to enter into any scheme of arrangement with its creditors, the passing by the Board of Directors of the Applicant of any resolution to wind up the Applicant, the filing of any petition to wind up the Applicant or the appointment of an administrator or receiver/manager in respect of the Applicant's affairs;

(v) The Applicant, in the case of a natural person, being declared bankrupt.

(Any such acts collectively hereinafter referred to as 'an Act of Default').

Immediately upon the Applicant committing any Act of Default any right of the Applicant to sell the Goods in which the title to property remains vested in the Supplier shall cease forthwith and the Applicant shall upon the happening of any act of default immediately place all of the Goods then remaining in its possession or under its control at the disposal of the Supplier and the Supplier is hereby irrevocably authorised by the Applicant to nominate a person to enter the Applicant's premises during normal business hours for the purpose of repossessing such of the Goods still in the possession or under the control of the Applicant and where necessary to use no more than reasonable force to liberate and take possession of the Goods. Where the Goods are stored in a warehouse conducted by a person other than the Applicant immediately upon committing any Act of Default the Applicant shall be deemed to have irrevocably appointed the Supplier the attorney of the Applicant with the authority in the name of the Applicant to direct the warehouseman to release any of the Supplier's Goods in the possession or under the control of the warehouseman whether or not the Payment Period has expired and the Supplier shall be at liberty to resell the Goods after repossession of the same pursuant to this clause.

(f) Until the full amount of the price of the Goods is received by the Supplier the Applicant:-

(i) Shall maintain and keep full and up to date records of the Goods supplied by the Supplier including those goods on-sold by the Applicant.

(ii) Hereby irrevocably authorises the Supplier to enter its premises during normal business hours from time to time to inspect the residue of the Goods remaining unsold by the Applicant, the Applicant's records relating to the Goods and also to inspect the accounts including bank accounts into which the proceeds of sale of that part of the Goods already sold are by this clause required to be deposited pending payment to the Supplier.

## 3. RETURNS AND CREDITS.

Any goods purchased by the Applicant from the supplier may only be returned to the Supplier where notification of the proposed return of the Goods is received within seven (7) days of the date of delivery of the Goods to the Applicant and the Supplier has agreed in writing to accept the return of the Goods and the Goods are returned in good condition at the expense of the Applicant.

## 4. MISCELLANEOUS PROVISIONS.

(a) It is expressly agreed that any dispute arising from or in connection with this agreement shall be subject to the jurisdiction of the Courts and Laws of the State of New South Wales or at the option of the Supplier in the State which the Supplier carries on its business or has its principal office.

(b) The Applicant hereby irrevocably authorises (i) the Supplier from time to time, in order to assess any application for credit, to obtain information about the applicant from any credit provider named in this application and from the Australian Gift and Homewares Association Limited, (ii) to obtain a credit report in respect of the Applicant from any credit agency and (iii) to provide any information contained on this credit application form and also details of the performance of the Applicant in compliance with the trading terms and conditions herein to other credit providers, credit agencies and the Australian Gift and Homewares Association Limited. The Applicant further authorises the latter company to make such information available to other credit providers.

(c) Freight costs and in-transit insurance are the responsibility of the Applicant and are not included in the invoiced price of the Goods.

(d) The Applicant warrants that the Goods for which the credit is hereby applied are acquired solely for commercial sale and are not acquired by the Applicant for his, her or its personal or private domestic use.

(e) The Word 'Goods' wherever used in these terms and conditions shall be deemed to refer to any goods obtained by the Applicant from the Supplier from time to time pursuant to this agreement.

## IMPORTANT NOTICE TO THE APPLICANT FOR CREDIT (SECTION 18E(8)(C) Privacy Act 1988).

### *Please read carefully*

The Supplier may give information about you to a credit reporting agency, but only limited kinds of information allowed by the Privacy Act. This includes:- Identity Details-this only includes your name, sex, date of birth, current known address, two immediately previous addresses, your current or last known employer, your driver's licence number, the fact that you have applied for credit and the amount, the fact that the Supplier is a credit provider to you, payments overdue for at least 60 days which the Supplier has taken steps to recover, advice that payments are no longer overdue, cheques drawn by you which have been dishonoured more than once, the opinion of the Supplier that you have committed a serious credit infringement and when the credit provided to you has been discharged.