

SALES CONDITIONS

The Supplier will supply Goods to the Customer on the following terms unless otherwise notified or agreed by the Supplier in writing.

1. INTERPRETATION

1.1 Definitions

In this Agreement:

“**Containers**” means any containers, pallets, palletcons, crates or tanks used for the delivery of Goods, but excludes any cardboard packaging.

“**Customer**” means the purchaser of the Goods set out in the invoice or relevant credit application.

“**FIS**” means free into the Customer’s nominated store.

“**Goods**” means the Good delivered by the Supplier to the Customer and the subject of an order by the Customer.

“**GST Act**” is a reference to **A New Tax System (Goods and Services Tax) Act 1999 (Cth)** as amended.

“**Invoice**” means the document which may be provided to the Customer on or after delivery of the Goods describing those Goods, their price and which may contain these Sales Conditions.

“**Laws**” means the laws of the Australian Commonwealth, State or Territory legislation.

“**Purchase Price**” means the price to be paid for the Goods as shown as the total on the invoice calculated by reference to the Supplier’s current price list for the Customer and such other terms as may be agreed by the Customer and the Supplier from time to time subject to condition 2.2. The Purchase Price is inclusive of GST.

“**Supplier**” means Mrs Mac’s Pty Ltd (ACN 009 068 473) and any of its related bodies corporate.

“**Taxable Supply**” has the meaning given in the GST Act.

2. PRICE

2.1 Inclusive

Unless otherwise agreed or required by law, the Purchase Price include any GST, duty or other impost (other than income tax on the sale of the Goods), delivery (if FIS), and standard packing for delivery.

Other Terms

Any discount or other terms separately agreed between the Customer and the Supplier will be calculated on and applied to the Purchase Price less GST.

Variation

The Supplier may vary the price of the Goods at any time at its discretion but will use its reasonable endeavours to provide the Customer with 30 Business Days prior written notice of any price increase.

3. DELIVERY

3.1 Method and Loss

Unless otherwise agreed or the Goods are ex-works, the Supplier may select the method of delivery and the carrier and is not liable for any loss or damage of any kind whatsoever arising from late delivery.

3.2 Timing

The Customer acknowledges and agrees that time is not of the essence in relation to delivery and that it must accept and pay for Goods even if the Goods are delivered after the requested date.

3.3 Installments

The Supplier may deliver the Good in installments and the Customer must pay an amount for that installment as notified by the Supplier in the invoice. If the Supplier fails to deliver any installments the Customer must still accept and pay for the balance of the Goods delivered. If the Customer fails to pay for any installment the Supplier may at its discretion refuse to deliver any further installments until all amounts due and payable, are paid, or terminate the Agreement for the supply of the Goods and recover damages.

Containers

(a) Containers owned by the Supplier at all times remain the property of the Supplier. The Supplier retains the right of possession of any containers, not owned by the Supplier. Property to the Containers does not pass to the Customer in any circumstances.

(b) All Containers are delivered to the Customer at its risk and the Customer must ensure that the Containers are kept clean, not damaged and are returned (at the request of the Supplier) to the Supplier, or such other person as the Supplier may nominate, in good condition.

(c) The Customer indemnifies the Supplier and keeps indemnified the Supplier against all losses, liabilities and expenses arising out of or in connection with the possession or use of all Containers (delivered by the Supplier) by the Customer. For the purpose of this indemnity, the Customer is deemed to be in possession of a Container from the time of delivery by the Supplier until the Supplier or the owner of the Container physically resumes possession of the Container.

4. PAYMENT AND CREDIT

4.1 Cash on Delivery

The Customer must pay the Purchase Price for the Goods in advance or cash on delivery.

4.2 Credit Terms

If the Customer has made an application to the Supplier for a credit account and the Supplier has agreed to supply Goods to the Customer on the Credit Terms, the Customer must pay for the Goods within the period of the Credit Term from the date of any invoice for the Goods. The Credit Term will be notified to the Customer by the Supplier.

4.3 Disputes

If there is any dispute in relation to the Purchase Price, the Customer must provide the Supplier with written details of the dispute within 7 days of the date of the invoice and must pay the undisputed amount of the Purchase Price.

4.4 Dispute Resolution

The Customer and the Supplier must make a bona fide attempt to resolve the dispute by negotiation within 7 days of the date that the Purchaser provides its reasons for the dispute before pursuing other remedies but the Supplier may during this period refuse to supply Goods to the Customer. If the Purchase Price stated on the invoice is found to be correct, the Supplier may change the surcharge set out in condition 4.5 on the disputed amount from the date that the disputed amount was due to the date it is paid.

4.5 Late Payment

If payment is not made when due, the Supplier may withdraw any credit, not supply further Goods, and charge a surcharge of up to 2.5% of the Purchase Price (less GST) which will be payable in addition to the Purchase Price. The Purchaser shall also pay to the Supplier upon demand an amount equal to any additional GST that may become payable by the Supplier as a result of the Customer’s non-payment.

4.6 Set Off

The Supplier may set off any amount owed by the Supplier to the Customer from any amount due by the Customer to the Supplier and this right is expressly accepted by the Customer.

5. GST

5.1 Customer Liable

In addition to any GST included in the Purchase Price of the Goods, the Customer must pay to the Supplier on demand any GST payable in relation to any other Taxable Supply.

5.2 Apportionment

If any part of the Purchase Price is referable to both a Taxable Supply and anything that is not a Taxable Supply, the GST exclusive portion of the Purchase Price shall be determined by the Supplier.

5.3 Adjustments

If the Supplier determines on reasonable grounds that the amount of GST referable to any Taxable Supply which is subject to these conditions differs for any reason from the amount of GST included in the Purchase Price, the amount of GST payable by the Customer shall be adjusted accordingly and recovered from the Customer or credited to the Customer’s account as appropriate. Where the Supplier has paid the difference between the two amounts to the Commissioner for Taxation, whether or not as part of a larger sum, no amount will be paid to the Customer under this clause unless the Supplier is entitled to a refund or credit of such amount from the Commissioner of Taxation.

6. RISK

Risk in the Goods passes to the Customer at the time the Goods are delivered to the Customer at the nominated delivery point.

7. TITLE

7.1 Retention

Property in the Goods remains with the Supplier and does not pass to the Customer until the Customer has paid all amounts owing by the Customer to the Supplier including GST (“**Amount Due**”) and cleared funds on all cheque or negotiable instruments have been received by the Supplier (“**Relevant Date**”).

7.2 Sales to Third Parties

Until the Relevant Date the Customer may, as principal, in the course of its business, sell and deliver any Goods to a third party (and for that purpose the Supplier gives to the Customer the right to pass the ownership of those Goods to the third party) provided that:

(a) Where the Customer is paid for the Goods by the third party, the Customer must out of the proceeds of the sale hold the Amount Due from the Customer to the Supplier on trust, and

(b) Where the Customer has not been paid for the Goods by the third party the Customer holds the debt owing to it by the third party in respect of the sale of the Goods upon trust for the Supplier and hereby assigns that debt to the Supplier and for the purposes of the assignment of that debt the Customer irrevocably appoints the Supplier and each manager, executive and officer of the Supplier as its attorney to perfect the assignment.

7.3 Right of Entry

The Customer must permit representatives of the Supplier to enter any premises under the control of the Customer where the Goods are held for the purpose of inspecting the premises and the Goods to check that the Customer is complying with this condition and in circumstances covered by this condition 7, to retake possession of any relevant Goods.

7.4 Retaking Possession

If the Customer fails to pay any of the Amount Due or the Customer becomes or, in the reasonable opinion of the Supplier, is in danger of becoming insolvent or bankrupt the Supplier may retake possession of the Goods.

7.5 Disposal on Retaking Possession

If the Supplier retakes possession of the Goods, the Supplier may sell or otherwise dispose of the Goods at its discretion.

8. WARRANTIES

8.1 Exclusion

Subject to condition 8.2 and to the extent permitted by law, this agreement excludes all warranties, conditions, liabilities or representations in relation to the Goods or the correctness of information, advice or other services concerning the Goods.

8.2 Limitation

Where legislation implies in the agreement any condition or warranty which cannot be excluded or modified, the condition or warranty is deemed to be included in this agreement. However, to the extent permitted by law, the liability of the Supplier and its officers, employees or agents for a breach of any such condition or warranty is limited, at the Supplier’s option, to any one or more of the following:

(a) The replacement (from any source) of those Goods or the supply of equivalent Goods.

(b) The payment of the costs of replacing those Goods or of acquiring equivalent Goods, by credit to the Customer’s account, in cash or by cheque at the Supplier’s discretion, or

(c) Repayment of any part of the Purchase Price of those Goods which has been paid by the Purchaser, by credit to the Customer’s account, in cash or by cheque at the Supplier’s discretion.

8.3 Liability

The Supplier, its officers, employees or agents are not liable for any loss or damage of any kind whatsoever, including, without limitation, consequential or economic loss or loss of profits, even if due to the negligence of the Supplier, its officer, employees or agents arising out of or in connection with the supply of Goods. This exclusion extends to any promotional activities, advertising statement about the Goods or their performance or characteristics of or by the Customer.

8.4 Notification

Where Goods are short delivered, defective or damaged on delivery, the Customer must notify the Supplier immediately on delivery or in writing (including any delivery note number and details of the claim) within 24 hours after delivery, unless there is an immediate danger to the health of consumers in which case the Customer must notify the Supplier immediately by telephone and must follow any produce recall or withdrawal directions given by the Supplier. The Customer has no entitlement to return Goods which are outside the “use by” period of those Goods other than in accordance with this clause. The Customer is deemed to have accepted the Goods if they are not rejected in accordance with this clause.

8.5 Return

This Supplier may require Goods to be returned by the Customer to the Supplier and the Goods must be sent freight paid to an address notified by the Supplier. Where Goods are not returned freight paid, the Supplier may deduct the amount of freight payable from any refund or replacement it agrees to make. Returns (whether under this condition 8.5 or under any other condition), may be subject to a handling charge equivalent to 20% of the Purchase Price of the relevant Goods.

8.6 Warranties

The Customer warrants that it

(a) Has product safety and product recall procedures in place which conform with the requirements of all Laws and recommendations of Food Standards Australia New Zealand.

(b) Will not make any unauthorized use of or any claim to, intellectual or industrial property which pertains to the Goods or is the property of the Supplier.

(c) Will handle and store Goods at all times as directed by the Supplier or in the absence of such direction safely and properly in accordance with prevailing industry standards or procure them to be so.

(d) Will handle and store Containers with due care, and in accordance with occupational or public health and safety requirements.

9. FORCE MAJEURE

9.1 Events

The Supplier may suspend deliver or reduce the amount to be delivered if the Supplier is unable to deliver the Goods by reason of any circumstances beyond its reasonable control, including (without limitation) strikes, lock-outs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, terrorist attack, act of God or any order or direction of any government, government authority or instrumentality.

9.2 Right of Termination

If the effects of the force majeure event continue for more than one calendar month, the Supplier at its absolute discretion may terminate the agreement for supply of Goods to which these terms and conditions apply.

9.3 No Claim

The Customer will have no claim against the Supplier for any damages, loss, costs or expenses arising from delay or cancellation under condition 9.1 for an event of force majeure.

10. ALTERATION

The Supplier reserves the right, at its discretion to add to or remove from the range of products, including the Goods supplied by the Supplier, and may do so at anytime without notice to the Customer.

11. VIENNA CONVENTION

The United Nations Convention on Contracts for the International Sale of Goods 1900 does not apply to these conditions.

12. GENERAL

12.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to bound by the waiver.

12.2 Severability

Any provision in this agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. Otherwise the provision may be severed to the extent of the invalidity or enforceability without affecting the remaining provision of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

12.3 Sales Conditions Preval

As between the Supplier and the Customer, if there is any inconsistency (whether expressly referred to or to be implied from these Sales Conditions or otherwise) between the provisions of these Sales Conditions and those of any document of the Customer, the provision of these Sales Conditions prevail to the extent of the inconsistency.

12.4 Governing Law

The Supplier and the Customer accept the law of Western Australia as the proper law of the agreement and agree to submit to the non-exclusive jurisdiction of the Courts in Western Australia and any court hearing appeals from those Courts.