

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these terms and conditions:

- 1.1 **"Products"** means the good(s) (whether 'made-to-order' or customised goods manufactured by the Seller, 'off-the-shelf' or standard goods manufactured by the Seller or a 3rd party, and / or new or used goods) and or service(s) described overleaf.
- 1.2 **"Seller"** means HOSPITALITY WORLD DIRECT (A.B.N 42 360 650 122).
- 1.3 **"Buyer"** means the purchaser of the Products specified overleaf

2. APPLICABILITY OF THESE TERMS AND CONDITIONS

- 2.1 These terms and conditions apply to all sales of Products by the Seller to the Buyer and constitute all the terms agreed between them to the exclusion of all other terms and conditions. Any conditions contained in any order or other document submitted by the Buyer are hereby expressly excluded.
- 2.2 The descriptions, illustrations and performances contained in the Seller's catalogues, price lists and other advertising matter do not form part of the contract of sale of the Products or of the description applied to the Products. The Buyer accepts all responsibility for ensuring that the Products it selects at the time of purchase are fit for their intended purpose and releases the Seller from any responsibility over recommendations made by the Seller at or before the time of purchase.

3. PRICE AND PAYMENT

- 3.1 Prices quoted by the Seller are ex-Seller's premises exclusive of GST and are subject to change at any time without notice and are not binding on the Seller.
- 3.2 Payment of the price of the Products (plus any applicable freight or delivery charges and GST and any other taxes, duties or imposts) must be made in clear funds at the times and in the manner described overleaf and in all cases must be fully made prior to delivery, installation or collection (unless otherwise agreed in writing by the Seller). If payment of a deposit is indicated as being required overleaf, the deposit shall be non-refundable to the extent permitted by law.
- 3.3 If the Buyer has an approved credit account with the Seller, the Products supplied must be paid for within the approved credit terms. Where the Buyer is overdue with any payment of any approved credit account, the Seller (without prejudice to its other rights) reserves the right to change the Buyer to a 'cash on delivery' ("COD") account or to cease supplying further Products to the Buyer.
- 3.4 Without prejudice to any other remedy, the Seller reserves the right to charge interest on any overdue invoices at an annual rate prescribed from time to time under section 2 of the *Penalty Interest Rates Act 1983*.

4. SHIPPING AND DELIVERY

- 4.1 Whilst the Seller will use all reasonable endeavours to meet proposed delivery times, the delivery times made known to the Buyer are estimates only given in good faith and the Seller is not liable for late delivery or non-delivery. The Seller is not liable for any loss, damage or delay (including consequential losses) occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Products.
- 4.2 Unless otherwise agreed in writing by the Seller, delivery terms shall be ex-Seller's premises.
- 4.3 The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to the Products in transit caused by any event of any kind by any person (whether or not the Seller is legally responsible for the person who caused or contributed to that loss or damage). The Products are at the risk of the Buyer as soon as they are dispatched or collected from the Seller's premises.

5. RETENTION OF TITLE & PPSA

- 5.1 This clause 5 applies to any good(s) forming part of the sale of the Products described overleaf and or to any good(s) forming part of the sale of any Products by the Seller to the Buyer in the future ("the Goods").
- 5.2 Ownership of, or title in, the Goods remains with the Seller and will not pass to the Buyer until the Buyer has paid the Seller in full for the Products under all individual contracts for the supply of Products between the Seller and the Buyer, and the Buyer has discharged all outstanding indebtedness under these terms and conditions, whether in respect of the Products or otherwise, to the Seller.
- 5.3 Until the Goods are sold or otherwise used by the Buyer in the ordinary course of the Buyer's business, the Buyer must keep the Goods safe and clearly designate the Goods as the property of the Seller. If the Goods are sold or otherwise used, altered or commingled with other goods by the Buyer, then the proceeds of sale of each item of the Goods must be held by the Buyer in a separate fund on trust for the Seller and the Buyer must account to the Seller for such proceeds. The Buyer hereby irrevocably grants the Seller the right to enter the Seller's premises or vehicles to inspect the Goods and retake possession of any Goods and otherwise exercise any rights in relation to the Goods conferred by common law, statute or contract.

5.4 PPSA

5.4.1 In this clause 5.4:

- (i) PPSA means the Personal Property Securities Act 2009 (Cth) as amended from time to time;
- (ii) a term used in this clause 5.4 has the same meaning as in the PPSA.

5.4.2 In consideration of the Seller supplying the Goods to the Buyer at the request of the Buyer, the Buyer:

- (i) grants to the Seller, at the Seller's discretion, a security interest or purchase money security interest (PMSI) in the Goods;
- (ii) agrees that any of the Goods or proceeds of sale of the Goods coming into existence after the date of these terms and conditions or the date of this invoice (as the case may be) will come into existence subject to the security interest or PMSI granted in these terms and conditions without the need for any further action or agreement by any party;
- (iii) agrees that the Buyer has received valuable consideration from the Seller and that such consideration is sufficient;

- (iv) agrees that the security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Buyer when the Buyer takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these terms and conditions or the date of this invoice (as the case may be).

5.4.3 The Seller may, by notice to the Buyer at any time, require the Buyer to take all steps that the Seller considers necessary or desirable to:

- (i) ensure that these terms and conditions or any security interest or PMSI arising under them, are enforceable against the Buyer or any third party;
- (ii) protect, perfect, record, or better secure the position of the Seller under these terms and conditions as a first ranking security.

5.4.4 The Seller reserves the right to register a financing statement in respect of any Goods supplied by the Seller to the Buyer under these terms.

5.4.5 The cost and expense of registering a financing statement or a financing change statement is to be paid by the Buyer and may, where applicable, be debited against the Buyer's credit account with the Seller or included in this invoice as a separate charge.

5.4.6 The Buyer:

- (i) waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these terms and conditions, unless the notice or statement is required by law and cannot be excluded;
- (ii) agrees to comply with any notice from the Seller under this clause 5.4 at the Buyer's cost and expense.

5.4.7 The Buyer agrees:

- (i) not to allow any person to register a financing statement over any of the Goods supplied by the Seller without the prior written consent of the Seller;
- (ii) that it must immediately notify the Seller if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.

6. WARRANTY

6.1 To the extent permitted by law, the Seller's liability for a breach of any express and implied warranties, guarantees and conditions under statute or general law (including but not limited to a breach of a guarantee implied by Division 1 of Part 3-2 of the Australian Consumer Law) in relation to any Products manufactured by the Seller is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding:

- (a) in the case of new Products - twelve (12) calendar months;
- (b) in the case of used Products - three (3) calendar months,

after the earlier of: the Products being dispatched to/collected by the Buyer; and the date of the Seller's invoice for the Products, and so long as:

- (i) defects have arisen solely from faulty materials or workmanship;
- (ii) the Products have not received maltreatment, inattention or interference and have been used, serviced and maintained by the Buyer in accordance with the Seller's specifications and recommendations;
- (iii) accessories of any kind used by the Buyer are manufactured by or approved by the Seller;
- (iv) the seals of any kind on the Products remain unbroken; and
- (v) the Seller's authorised representative has inspected the Products and has determined that a defect exists.

6.2 Consumables such as globes, thermo couples, door seals and the like are not covered by the warranty in clause 6.1.

6.3 If any of the Products are not manufactured by the Seller the guarantee of the manufacturer of those Products is accepted by the Buyer and is the only guarantee given to the Buyer in respect of those Products. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to those Products that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.

6.4 Except as provided in these terms and conditions and to the extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Products for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable to the Buyer or any third party for physical or financial injury, loss or damage or for special, indirect, consequential or punitive loss or damage of any kind (including but not limited to loss of profits or loss of business) (and even if notified of the possibility of such loss or damage) arising out of the supply, layout, assembly, installation or operation of the Products or arising out of the Seller's negligence or in any way whatsoever.

7. CHANGED OR DISCONTINUED PRODUCT

7.1 The Buyer acknowledges that over time, the Seller's products may undergo update and revision. As a result, there may be some differences between what is supplied to the Buyer and the specifications and description of the Products at the time the Seller submits its quotation and or the time the Buyer submits its Order

8. RETURNS

8.1 The Seller is not under any duty to accept Products returned by the Buyer and will do so only on terms determined by the Seller (including a 30% re-stocking fee for 'off-the-shelf' or standard Products) in each individual case.

8.2 Without limiting the generality of clause 8.1, in no case shall the Seller accept the return of Products which are 'made-to-order', customised, used or damaged, or have been sourced from overseas. Further, in the case of any Product, the Seller shall not accept any claim for return by the Buyer if the claim is not made within 7 days of delivery or collection of the Products.

8.3 If the Seller agrees to accept returned Products from the Buyer under clause 8.1, the Buyer must return the Products to the Seller at the Seller's place of business.