

# SUPACUT

## Terms and Conditions

Effective 8 September 2014

### 1. Interpretation

In these Terms and Conditions: "Seller" means SupaCut Pty Ltd ACN 109 569 940 as trustee for the SupaCut Trust of Unit 1, 15 Corporate Place, Hillcrest, Q:D 4118, which is the seller of the Goods, "Buyer" means the purchaser of the Goods and "Goods" means the products and, if any, services purchase by the Buyer.

### 2. Payment

Unless stated otherwise the Price is exclusive of GST and subject to change without notice. All prices are quoted in Australian dollars unless otherwise stated and export shipments are not subject to GST. The Buyer must pay the Price, plus the requisite GST, in relation to each order to the Seller within 30 days of the date of the relevant tax invoice. SupaCut reserves the right to require payment in full on delivery of the goods. Payment by cheque is not deemed made until the proceeds of the cheque have cleared. Payment terms may be revoked or amended at SupaCut's sole discretion immediately upon giving the Buyer written or verbal notice. The time for payment is of the essence.

### 3. Freight

The Buyer indemnifies SupaCut against any loss or damage suffered by SupaCut, its sub-contractors or employees as a result of delivery, except where the Buyer is a "consumer" as defined in the Australian Consumer Schedule of the Competition and Consumer Act 2010 (Cth) as amended ("ACL") and SupaCut has not used due care and skill.

### 4. Delivery

4.1 The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery. The Seller is not liable for any loss, damage or delay occasioned to the Buyer or its Buyers arising from late delivery or late installation of the Goods. The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement on the Quotation to the effect that the Buyer will not take delivery by instalments.

4.2 If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:

- (a) it is not a repudiation of the contract of sale formed by these conditions; and
- (b) the defective instalment is a severable breach that gives rise only to a claim for compensation.

4.3 The Buyer agrees that by signing for receipt of delivery of the Goods that:

- (a) the Buyer has inspected the outside of the Goods, and the Buyer is satisfied with the appearance of the Goods;
- (b) that the Goods are not damaged in anyway in so far as the Buyer can determine from an inspection the Goods; and
- (c) the quantities delivered are the same as specified on the delivery docket.

4.4 If the Buyer is not satisfied with the Goods for any of the reasons the Buyer shall not sign the delivery docket, and shall immediately notify the Seller of the reason of non-acceptance of delivery of the Goods. The Buyer waives any claim arising out of shortage of any Goods, delivery of the Goods or damage of the Goods if a claim in respect for short delivery, delivery otherwise or damage has not been lodged with the Seller within seven (7) days from the date of receipt of Goods by the Buyer.

### 5. Shortages and non-compliance

SupaCut will not be liable for any shortages or non-compliance with the specifications of the Goods unless the Buyer notifies SupaCut with full details and description within seven (7) working days of delivery to the Buyer. Where any shortages, claim for damaged goods or non-compliance with the agreement specifications is accepted by SupaCut, SupaCut may at its discretion, repair or replace the goods or refund or credit the portion of the purchase price. SupaCut will not under any circumstances accept goods for return that have been specifically produced, imported or acquired to fulfil the agreement, that are discontinued goods or no longer stocked by SupaCut, that have been altered in any way, that have been used, or that are not in their original condition and packaging. If the Buyer is a consumer, nothing in this clause limits any remedy available for a failure of the statutory guarantees in the ACL.

### 6. Passing of title

Title to the Goods constituting an order passes to the Buyer free of encumbrances and all other adverse interests upon payment in full by the Buyer being received by the Seller in relation to such order. Until title to the Goods constituting an order passes to the Buyer, the title of the Seller is a security interest.

### 7. Rights in relation to Goods

7.1 The Seller reserves the following rights in relation to the Goods until all accounts owed by the Buyer to the Seller are fully paid:

- (a) ownership of the Goods;
- (b) to enter the Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) subject to, and in accordance with, the Personal Property Securities Act 2009, to keep or resell any Goods repossessed pursuant to paragraph (b)) above.

7.2 If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provisions above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Goods shall pass to the Buyer upon delivery.

### 8. Passing of risk

Risk in each order of Goods passes to the Buyer upon delivery of that order to the Buyer or collection of that Goods by the Buyer, its agent or courier as the case may be.

### 9. Personal Property Securities Act 2009 (PPSA)

9.1 This agreement is a security agreement.

9.2 The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.

9.3 The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonable required by the Seller to facilitate registration.

9.4 Until such time as title in the Goods has passed to the Buyer as contemplated by clauses 7 and 8 above, the Buyer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Buyer or any third party. The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business.

9.5 The Buyer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.

9.6 The Seller and Buyer agree that this agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.

9.7 Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:

- (a) any requirement for the Seller to give the Buyer a notice of removal of accession;
- (b) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the Goods;
- (c) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
- (d) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
- (e) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
- (f) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.

9.8 Expressions defined in the PPSA have the same meaning when used in this agreement.

### 10. Exclusion and limitation of liability

10.1 The Buyer expressly agrees that the use, sale, installation, storage or any other dealings by the Buyer or any third party however arising under or in connection with the Goods is at the Buyer's risk. To the full extent allowed by law, the Seller's liability for breach of any term implied into these Terms of Trade by any law is excluded.

10.2 All information, specifications and samples provided by the Seller in relation to the Goods or Services are approximations only and, subject to any guarantees under the ACL, small deviations or slight variations from them which do not substantially affect the Buyer's use of the Goods or Services will not entitle the Buyer to reject the Goods upon delivery, or to make any claim in respect of them.

- 10.3 The Seller gives no warranty in relation to the Goods provided or supplied. Under no circumstances is the Seller or any of its suppliers liable or responsible in any way to the Buyer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods including in their form, specification, content and timeliness of deliveries, fitness for use, merchantability, condition, design, manufacture, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- (a) any Goods supplied to the Buyer;
  - (b) any delay in supply of the Goods; or
  - (c) any failure to supply the Goods.
- 10.4 Any advice, recommendation, information, assistance or service given by the Seller in relation to Goods is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Seller does not accept any liability or responsibility for any loss suffered as a result of the Buyer's reliance on such advice, recommendation, information, assistance or service.
- 10.5 To the fullest extent permissible at law, the Seller is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods, or otherwise arising out of the provision of Goods, whether based on terms of trade, negligence, strict liability or otherwise, even if the Seller has been advised of the possibility of damages.
- 10.6 The Australian Consumer Law may give to the Buyer certain guarantees. Where liability for breach of any such guarantee can be limited, the Seller's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.
- 10.7 If the Buyer is a consumer nothing in these Terms and Conditions restricts, limits or modifies the Buyer's rights or remedies against SupaCut for failure of a statutory guarantee under the ACL.
- 10.8 If the Buyer on-supplies the goods to a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of SupaCut's liability to the Buyer;
  - (b) if the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of SupaCut's liability to the Buyer howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Buyer or any third party.
- 11. Credit and returns**  
Except to the extent of any liability imposed by the ACL, authorisation must be obtained before returning goods for credit. No goods will be accepted for credit that are correctly supplied and invoiced if not returned freight paid within 14 days and delivery freight will be charged. A 15% restocking fee will apply for any goods supplied correctly. Goods forwarded in error will be replaced at no charge or for freight paid. Goods incorrectly sent must be held by the Buyer pending SupaCut's further instruction.
- 12. Proper law**  
This agreement is subject to the law of the state or territory of Australia in which this document is issued.