

TERMS & CONDITIONS AND FOR SUPPLY AND THE PROVISION OF SERVICES

These terms & conditions of sale (Terms & Conditions) apply for the supply of all products, merchandise, merchandise displays and services ("Products") by Freshway Cleaning Supplies Pty Ltd (ABN:85 145 190 638) and its associated and subsidiary companies (all of which are referred to as the Supplier) to any person, firm or company (Customer). Except as otherwise expressly agreed in writing between the Supplier's duly authorised officer and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued in relation to the Products.

1. Acknowledgement

- a) The Customer's placement of an order to purchase Products from the Supplier constitutes acceptance of these Terms and conditions. These Terms and Conditions supersede and are not modified by any conditions of sale, including payment terms, used by or appearing on any document that the Customer may provide, except for any executed Agreement between the Supplier and the Customer.
- b) If the Customer cancels or alters any order with the Supplier, then the Supplier reserves the right to charge the Customer any associated costs.

2. Prices

- a) The Customer agrees to pay the Supplier the prices specified in the Supplier's price list for the Products applicable at the time when the order is placed.
- b) The Supplier will give the Customer 30 days notice of any increase in the Supplier's prices.

3. GST and other taxes

The Customer must pay the Supplier goods and services tax and any other taxes, duties, fees & levies for the Products supplied. The amount that the Customer owes the Supplier will be stated in an invoice to the Customer.

4. Terms of Payment

- a) The granting of credit to a Customer shall be at the absolute discretion (including the right of the Supplier to forthwith revoke credit without notice) of the Supplier and unless otherwise demanded by the Supplier the Customer shall make payment of all amounts payable within (30) days from the end of the month in which the Products are charged.
- b) The Customer shall not be entitled to withhold payment of any account by reason of any account query, dispute or set off, unless otherwise agreed by the Supplier.
- c) If the Customer fails to make payment in accordance with clause 4.(a) & or 4.(b) the Supplier shall be entitled to:
 - i) require the payment prior the time of any further Products being supplied;
 - ii) claim from the Customer all costs, expenses and charges incurred including, but not limited to, any mercantile agent's costs and legal costs and disbursements on a solicitor-client full indemnity basis;
 - iii) cease any further deliveries to the Customer and terminate any agreement in relation to Products that have not been delivered to the Customer;
- d) preclude the customer from participating in special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until its accounts are no longer overdue;
- e) require the Customer to provide to the Supplier a copy of the latest audited financial statement and or other financial details upon request by the Supplier; and
- f) charge an account keeping fee at the rate of two per centum (2%) per month on a cumulative basis calculated on a day to day basis on any monies due but unpaid to the Supplier. Such amounts will be computed from the due date for payment. The parties agree that such amounts are not a penalty but are a true measure of damages incurred by the Supplier. Payments received from the Customer will be credited first against any account keeping fees and all such fees shall be payable on demand.

5. Delivery & Risk

- a) The Supplier shall endeavor to effect delivery of the Products at the time or times required by the Customer but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer or render the Supplier liable for any loss or damage directly or indirectly sustained by the Customer as a result thereof.
- b) The Supplier's delivery obligation is discharged on arrival of the Products at the Customer's nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unload the Products upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the Products, the Supplier shall be entitled to charge a fee for any delay experienced or for the storage of the Products at the risk and cost of the Customer. The Supplier may, at its discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and conditions.
- c) The risk in the Products shall pass to the Customer upon delivery to the Customer or its agent or to a transport company nominated by the Customer.
- d) The Customer shall examine the Products immediately after delivery and the Supplier shall not be liable for any misdelivery, shortage, defect or damage unless the Supplier receives details in writing within seven (7) days of the date of delivery of the Products.
- e) Any Products the subject of clause 5 d) shall be left in the state and condition in which the Product was delivered until such times as the Supplier, or its duly authorised agent has inspected the Product, such inspection to be carried out within a reasonable time after the Notification by the Customer. If the Product is not left in the state and condition in which it was delivered, the Customer shall be deemed to have accepted the Product and shall pay the purchase price for the Product to the Supplier.

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- f) The Supplier is not liable for any claims for non fulfillment or late delivery of Products, or any loss or damage (including consequential loss or damage) suffered by the Customer arising from the delay in delivery or failure to deliver. The Customer shall accept and pay for the Products notwithstanding late delivery.
- g) Subject to clause 5 d), acceptance of the Products shall be deemed for all purposes to have taken place when delivery has occurred.
- h) No Products will be accepted for return by the Supplier unless agreed in writing by the Supplier prior to such return and then only upon conditions acceptable to the Supplier and at the Customer's entire risk as to loss or damage. Where the Supplier agrees to accept Products for return to the Supplier, it may at its discretion charge a restocking charge to the Customer, which will be immediately payable.
- i) Any claim made by the Customer in relation to rebates must be made within six (6) months of the date of delivery. If no rebate claim is made by the Customer within six (6) months of delivery, the Products are deemed to be accepted by the Customer upon the rebate applied and no further claim will be made by the Customer nor payable by the Supplier.
- j) 3rd party deliveries of the Product may be arranged at the request of the Customer subject to the acceptance of the Supplier. The cost of such delivery shall be to the Customer's account and the delivery charges will be detailed separately on the sales invoice. The Supplier is entitled to charge a fee for delivery.
- k) Deliveries of Product for export shall be free on board and shall be deemed to be effected when the Products are loaded onto the delivery ship or aircraft, or made available to a freight forwarder as the case may require.

6. Legal & Equitable Title

- a) Ownership of the Products remains with the Supplier until the Customer has paid all indebtedness on an all monies basis to the Supplier on any account whatsoever
- b) The Customer agrees that it is in possession of the Products solely as a bailee for the Supplier until all payments owing to the Supplier have been made in full on an ongoing basis and until such payment:
- i) the Customer shall be fully responsible for any loss or damage to the Products whatsoever and howsoever caused following delivery;
- ii) the Customer shall store the Products separately from its own goods and those of any other party and in a manner which clearly identifies the Products, whether as separate chattels or as components, as the property of the Supplier; and
- iii) the Customer shall maintain records of Products owned by the Supplier identifying them as the Supplier's property. The Customer shall allow the Supplier to inspect these records and the Products upon request.
- c) The Supplier licenses the Customer to install the Products. If the Products are affixed to other materials, the totality thereof shall be the sole and exclusive property of the Supplier until full payment has been made to the Supplier.
- d) The Customer shall be at liberty to sell the Products subject to the condition that until payment has been made to the Supplier, the Customer shall sell as an agent and bailee for the Supplier.
- e) The Supplier reserves the following rights in relation to the Products until all amounts owed by the Customer to the Supplier are fully paid:
- i) to enter the Customer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
- ii) to keep or resell any of the Products repossessed pursuant to clause 6 (e) i).
- f) If the Products are sold by the Customer, the Customer must hold in trust such part of the proceeds of any such sales as represent the invoice price of the Product sold in a separate identifiable account as the beneficiary property of the Supplier and must pay such amount to the Supplier upon request. The Supplier is entitled to maintain an action against the Customer for the purchase price of the Product.
- g) If payment for the Product is not made by the Customer by the due date specified by the Supplier to the Customer, then the Customer shall return the Products to the Supplier on demand. If the Customer does not return the Product to the Supplier within 48 hours of receipt of the demand, the Supplier shall be entitled to enter the premises at any time to do all things necessary to recover the Product. The Customer shall be liable for all costs associated with the exercise by the Supplier of its rights under this clause and all such costs shall be repayable on demand.

7. Cancellation

The Customer cannot cancel its order for the Products unless approved in writing by the Supplier. If the Customer cancels its order, the Customer must indemnify the Supplier against all losses arising from the cancellation.

8. Default

- a) The Customer will be in default if:
- i) the Customer breaches these terms and condition or any other agreement with the Supplier for the supply of products;
- ii) payment for the Products has not been received by the Supplier by the due date of payment;
- iii) the Customer, as an individual, commits an act of bankruptcy or become insolvent;
- iv) the Customer being a body corporate ceases to carry on its business or becomes insolvent or an order is made, or a resolution passed for its winding up, whether voluntary or otherwise if a receiver, receiver and manager, or administrator is appointed to the whole, or any part of its assets;
- v) the Supplier determines the Customer's credit worthiness or its credit standing alters adversely.
- b) If the Customer defaults, the Supplier may:

- i) treat the agreement with the Customer as repudiated and sue for breach of contract or other remedies available to the Supplier;
- ii) refuse to supply any Products to the Customer;
- iii) claim the return of any Products in the Customer's possession where title has not passed to a consumer;
- iv) without notice to the Customer withdraw or vary any credit the Supplier may have provided to the Customer; or
- v) without notice to the Customer, make all monies owing to the Supplier on any account immediately due & payable.

9. Return or Exchange of Products

a) Except as required by law, the Supplier is under no obligation to accept Products which the Customer wishes to return or exchange. Any Products returned or exchanged are subject to the Supplier's claims policy.

b) The Customer agrees that the Supplier has a discretion to accept any returned Products, provided that such Products shall only be accepted for return with prior approval of a duly authorised representative of the Supplier. Product returned for credit will be subject to a handling fee of 20% of the invoiced value of the returned Product. Return freight and other expenses will be paid for by the Customer. Any returned Product must be accompanied with the relevant invoice and or Goods Return Authority Form duly signed by the Supplier's duly authorised representative.

10. Warranty

a) The Products are warranted by the product's manufacturer against defective workmanship and materials. The Customer acknowledges that such warranty is limited to the repair or replacement of any defective Product or materials at its option and is subject to the terms stated in the Warranty Card attached to the Product.

b) To the extent permitted by law all implied conditions and warranties are expressly excluded.

c) Except as provided in this clause, the Supplier shall not be liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by the Supplier or any negligence of the Supplier, its employees or agents.

d) Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify, or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including Trade Practices Act 1974 (CTH)) and which by law cannot be excluded, restricted or modified.

11. Limitation of liability

a) These terms & conditions do not exclude, restrict or modify the application of any provisions of any Commonwealth, State or Territorial Law which cannot be excluded, restricted or modified.

b) To the extent permitted by law all terms, conditions, warranties and representations, expressed or implied, by statute or otherwise, are hereby expressly excluded.

c) To the extent permitted by law, the Supplier shall not be liable to the Customer for any injury, harm, loss, damage, costs, expense or other claim including economic loss or loss of profits however arising from the supply of the Products or arising from any breach, default or negligence of the Supplier in connection with the supply of the Products.

d) If the Customer is entitled to the benefit of any implied terms which cannot be excluded, the Supplier's liability shall be limited, at its option, in the case of a supply of goods to:

- i) the replacement of the Product or the supply of an equivalent or similar Product;
- ii) the payment of the costs of replacing the Products or acquiring the relevant Products;
- iii) the payment of the costs of having the Products repaired;
- iv) the repair of the Product;
- v) in the case of services, the resupply of the services; or
- vi) the payment of the cost of having the services performed again.

12. Charge

For the purpose of securing payment to the Supplier of all monies owing by the Customer to the Supplier, Customer hereby:

(a) charges all of the Customer's beneficial interest in any real and personal property (including all property acquired after) in favour of the Supplier.

(b) agrees to deliver to the Supplier within seven (7) days of written demand a Mortgage in registerable form incorporating the covenants contained for the State relevant for the Mortgage to be registered.

(c) authorises and consents to the Supplier taking all actions necessary to give effect to this security including the lodgement of a Caveat upon the title of the Customer's real property.

(d) the Customer hereby irrevocably appoints the Supplier and any person nominated by the Supplier severally the attorney of the Customer with power to execute, sign and deliver such Mortgage or other document to give effect to this security.

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13. Force Majeure

The Supplier shall not be held liable for failure to comply with these terms & conditions to the extent that the Supplier's performance is prevented or delayed because of circumstances outside of the Supplier's control. This includes but is not limited to unforeseen events such as strikes, breakdown of machinery, adverse non foreseeable weather conditions, or action of government or a port authority.

14. Amendments

The Supplier may amend these Terms and Conditions from time to time.

15. Governing Law

These Terms and Conditions are governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales .

16. Service of Documents

Service of any notices may be effected by forwarding same by pre-paid post which will be deemed to have been received two days after postage, or facsimile which will be deemed to be received on successful transmission, to the last known address and facsimile of the parties.

17. Statement of Debt

A certificate signed by a Director, Secretary, Financial Controller or Credit Manager of the Supplier shall be prima facie evidence of the amount of the indebtedness of the Customer to the Supplier at that time.

18. Indemnity

Without prejudice to any other rights the Supplier may have against the Customer and to the extent permitted by law, the Customer shall indemnify the Supplier for and save it harmless from any loss, damage, or expense incurred by the Customer should the Customer cancel any order (or part thereof) for the Product or breach these terms and conditions.

19. Disputes

a) Any dispute between the parties arising from the performance of the provisions of these Terms and Conditions of Sale must be settled through negotiated consultation by the parties. All disputes arising in respect of the Terms and Conditions of Sale which are not resolved within thirty (30) days of first arising will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said rules. The place of arbitration will be Melbourne, Victoria. The procedural law applicable to the arbitration will be that of Victoria. The decision of the arbitrator will be final and binding for both parties.

b) During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these Terms and Conditions which are not under dispute and which are able to supply components by the due date.

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