

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. INTERPRETATION

1.1. In these Terms and Conditions:

„**Agreement**“ means these Terms and Conditions between Melitta Professional Coffee Solutions Australia Pty Ltd („**MPCS**“) and the Customer, and includes any variation and alteration to these Terms and Conditions.

„**Base Interest Rate**“ means the cash rate as published by the Reserve Bank of Australia for the fiscal quarter immediately preceding the date of the Supply.

„**Claims**“ mean a claim brought for any loss, damage, injuries, death or expenses arising from any breach of, or liability under this Agreement.

„**Customer**“ means the person or entity who agrees to purchase the Goods from MPCS.

„**Force Majeure**“ means an event or circumstance which is beyond the control and without the fault or negligence of the party affected provided that event or circumstance is limited to: riot, war, invasion, acts of terrorism, civil war, compulsory acquisition by any governmental authority, earthquakes, flood, fire, act of God, strikes, or industrial action.

„**Guarantor**“ means the person or persons who agrees to guarantee these Terms and Conditions.

„**Goods**“ means the property supplied by MPCS to the Customer under this Agreement.

„**GST**“ or „**Goods and Services Tax**“ has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

„**Loss**“ means any liability, damage, cost (including reasonable legal costs) and other outgoings, including any indirect or consequential loss.

„**MPCS**“ means Melitta Professional Coffee Solutions Australia Pty Ltd ACN 002 133 726.

„**Notice**“ means a written communication under this Agreement between the Parties in accordance with clause 11.

„**Order**“ means a written order by the Customer for the supply of Goods by MPCS, and includes any amendments or additions to such Orders.

„**Particulars of the Goods**“ means any measurements, illustrations, drawings, descriptions or performance details of the Goods or the Supply of the Goods.

„**Parties**“ means MPCS and the Customer.

„**Supply**“ means the supply of Goods by MPCS to the Customer under this Agreement.

„**Taxable Supply**“ has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.2. In this Agreement, unless the subject or context otherwise requires:

- a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- the singular includes the plural and vice versa;
- a reference to an individual or person includes a corporation, firm partnership, joint venture, association, authority, trust, personal representative, state or government and vice versa;
- a reference to any gender includes all genders;
- a reference to a time is that time in Sydney, New South Wales;
- except as otherwise provided, a reference to a period of time (including without limitation, a year or a month) is to calendar period;
- a reference to „amendment“ includes addition, alteration, deletion, novation, extension, modification and variation;
- a reference to „dollars“ or „\$“ is to Australian currency;

1.3. If any provision in this Agreement is prohibited or unenforceable then that part shall be removed to the extent of the prohibition or unenforceability and the remaining part of the Agreement shall continue to operate and bind the Parties.

1.4. These Conditions are governed by and are to be interpreted according to the laws in force in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts operating in the State of New South Wales.

2. THIS AGREEMENT

2.1. This Agreement governs the relationship between MPCS and the Customer and establishes the whole agreement between the Parties. All rights and conditions implied by law as they relate to the Parties shall be excluded unless contained within this Agreement.

2.2. The submitting of an order for the supply of Goods by the Customer to MPCS constitutes the Customer's unconditional acceptance of the terms and conditions set out in this Agreement.

2.3. This Agreement may be varied from time to time by MPCS. Such changes will be posted on the MPCS website. The Customer agrees to regularly review this Agreement to ensure that it is aware of any such changes.

3. ORDER FOR THE SUPPLY OF GOODS

3.1. An Order for the supply of Goods under this Agreement must be made by the Customer in writing. Verbal agreements for the supply of Goods are only valid if confirmed by the Customer in writing. Orders are only binding, if MPCS accept them in writing within two (2) weeks of receipt of the order and provided that no contrary arrangement has been made as part of a general agreement between MPCS and the Customer.

3.2. The making of an Order by the Customer, or the receipt of such an order by MPCS, does not constitute a contractual agreement between MPCS and the Customer unless and until such time as MPCS has provided the Customer with written acknowledgement of the Order, such acknowledgement usually being provided by MPCS within two (2) weeks of the date of receiving the Order, and provided also that the particulars of the Order is consistent with the terms of this Agreement.

3.3. The Customer acknowledges that the Particulars of the Goods specified by MPCS in any Order confirmation is an approximation and is subject to minor deviations.

4. SUPPLY OF GOODS

4.1. MPCS aims to fulfill each Order with a single delivery, however reserves the right to make partial deliveries.

4.2. MPCS will provide the Customer with a delivery date for each Order. The Customer acknowledges that such a delivery date is subject to:

- MPCS receiving from the Customer complete and correct information necessary to deliver the Goods;
- The timely supply of equipment, goods and parts (as the case may be) from the suppliers of MPCS;
- The punctual receipt of all required documents, licenses, approvals and, in particular, plans from the Customer; and
- The Customer not being in breach of its obligations under this Agreement. If the above requirements are not fulfilled with sufficient time to complete the Supply, or only partially fulfilled, as determined by MPCS, then MPCS may decide to either terminate the Order or else postpone the delivery date until a date as determined by MPCS in its absolute discretion.

4.3. Where MPCS fails to deliver Goods by a nominated delivery date because of the operation of a Force Majeure, MPCS may elect by providing Notice to the Customer that MPCS will either deliver the Goods on a subsequent delivery date as nominated by MPCS, or else rescind the Order to the extent of the non-delivered Goods. If MPCS do not provide Notice of its intention to deliver the Goods on a subsequent date within 28 days of the nominated delivery date, the Customer may rescind the Order to the extent that Goods have not been delivered. Where a party rescinds an Order under this clause 4.3, the Customer will remain obligated to pay MPCS for the part of the Order that was fulfilled by MPCS.

4.4. Risk of damage to or loss in the Goods shall pass to the Customer upon the dispatch of the Goods from MPCS's premises.

4.5. In the event that the Customer refuses to accept delivery of the Goods, or else is unable to accept the Goods for any reason including but not limited to having committed an Act of Insolvency, then the Customer will pay to MPCS an amount equal to 15% of the price of the Order, together with any costs incurred by MPCS in the aborted delivery of the Goods. This obligation is not subject to MPCS retaining or otherwise selling the Goods.

4.6. Should delivery of the Goods be delayed at the Customer's request by more than one (1) month from the delivery date, the Customer will pay to MPCS all costs incurred by MPCS in storing the Goods, or an amount equivalent to 0.5 % of the value of the Goods for each 28 day period that the Goods are retained by MPCS, calculated daily and payable monthly, whichever is the higher amount.

4.7. The Customer is not entitled to refuse to accept the delivery of the Goods because of insignificant defects.

4.8. In the case of delayed delivery due to the fault of MPCS, MPCS has the right to nominate a subsequent delivery date provided that such a date does not cause unreasonable delay. Should MPCS fail to deliver the Goods on the subsequent delivery date due to the fault of MPCS, the Customer may elect to withdraw its Order by providing Notice to MPCS within 14 days of the subsequent delivery date. MPCS will not be liable for any loss suffered by the Customer which results either directly or indirectly from MPCS's delayed delivery or non-performance of its obligations under this Agreement.

5. PRICING & TERMS OF PAYMENT

5.1. MPCS will charge the Customer for the Supply of Goods at the price contained in the Order confirmation. These prices are not necessarily those prices quoted by MPCS in its price lists, as all prices quoted by MPCS are subject to change.

5.2. All prices quoted by MPCS are exclusive of GST. Where the Supply of Goods by MPCS to the Customer is a Taxable Supply, MPCS it will remit an invoice to the Customer which states the amount of the GST levied against the Supply, such GST being payable by the Customer to MPCS.

5.3. All prices quoted by MPCS include packaging costs, but do not include any costs associated with the transportation of the Goods. Any costs incurred by MPCS in the course of transporting the Goods will be passed on to the Customer by MPCS.

5.4. MPCS only supplies Goods on credit to pre-approved Customers. When MPCS supplies Goods to a pre-approved Customer, payment for the Supply of Goods on the date provided on the invoice presented by MPCS in relation to that Supply. All other Customers will pay MPCS cash-on-delivery or as otherwise directed by MPCS.

5.5. The method of payment will be upon agreement of MPCS and the Customer. Payment may be agreed to be made by EFT, direct debit or credit card, and any fees incurred as a result of such method (including dishonest fee or credit card fee) will be paid by the Customer.

5.6. Payment for expenses incurred by MPCS, such as for the purchase of spare parts, repairs, tolls, or the outsourcing of services are payable by the Customer immediately upon the date of receiving an invoice from MPCS.

5.7. Where payment is not made by the Customer on the due date of an invoice:

- the Customer shall pay interest on the outstanding amount to MPCS at an amount of 8 % above the Base Interest Rate; and
- no further credit will be extended to the Customer until outstanding invoices have been paid.

6. RETURN OF GOODS

6.1. It is the responsibility of the Customer to inspect the Goods upon delivery. The Customer agrees that by accepting delivery of the Goods the Customer will be taken to have approved the condition of the Goods as being in good working order and fit for the Customer's intended purpose.

6.2. MPCS may agree, in its absolute discretion, to allow the Customer to return any Goods sold to the Customer within two (2) years of the date of sale. The Goods may not be returned to MPCS until the Customer has first provided MPCS with Notice of the Customer's request to return the Goods, and MPCS have elected in writing to accept the return of the Goods. Where MPCS fail to provide the Customer with Notice of its agreement to accept the return of the Goods within 7 days of the date of receiving Notice from the Customer, MPCS will be deemed to have refused to accept their return.

6.3. Where MPCS agree for any Goods to be returned it will provide to the Customer a return authorisation number. The Customer must present such number to MPCS when it returns the Goods to MPCS.

6.4. The Customer must return the Goods to MPCS at its own expense. Upon receiving the returned Goods, MPCS will refund the price paid by the Customer for the Goods, subject to the following reductions:

- 30% off the purchase price if returned within the first (1st) half of the first (1st) year;
- 40% off the purchase price if returned within the second (2nd) half of the first (1st) year; and
- 50% off the purchase price if returned within the second (2nd) year.

6.5. The reductions listed in clause 6.4 are agreed to be reasonable pre-estimates of the impairment experienced by the Goods at the time of their return.

7. SECURITY INTERESTS

7.1. The Customer grants to MPCS a Purchase Money Security Interest over the Goods Supplied to the Customer by MPCS as security for the performance of its obligations under this Agreement.

7.2. In addition, the Customer grants to MPCS a Security Interest over All Present and After-Acquired Property of the Customer as security for the performance of its obligations under this Agreement.

7.3. The Customer undertakes to do all things and execute and deliver all instruments as MPCS shall require from time to time to perfect and enforce the Security Interests provided to MPCS under this Agreement.

7.4. The Customer hereby appoints MPCS as its attorney to prepare, execute, deliver and file on behalf of the Customer any and all documents required or necessary to create, perfect, preserve and enforce the Security Interests provided to MPCS under this Agreement.

7.5. The Customer agrees to obtain and keep current contents insurance for the Goods for the duration of MPC's Security Interests granted under this Agreement. The Customer agrees not to remove the Goods from its current premises without first providing Notice to MPC other than for the purpose of selling the Goods to customers of the Customer in the ordinary course of business.

8. RETENTION OF TITLE

8.1. Title in the goods does not pass to the Customer until the Customer has made payment in full for the goods and, further, until the Customer has made payment in full of all the other money owing by the Customer to MPC (whether in respect of money payable under a specific contract or on any other account whatsoever).

8.2. Whilst the Customer has not paid for the goods supplied in full at any time, the Customer agrees that property and title in the goods will not pass to the Customer and MPC retains the legal and equitable title in the goods supplied and not yet sold.

8.3. Until payment in full has been made to MPC, the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of MPC, and will not mix the goods with other similar goods.

8.4. The Customer will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to MPC, the Customer will sell as agent and bailee for MPC and the proceeds of sale of the goods will be held by the Customer on trust for MPC absolutely.

8.5. The Customer's indebtedness to MPC, whether in full or in part, will not be discharged unless and until the funds held on trust are remitted to MPC.

8.6. The Customer agrees that whilst property and title in the goods remains with MPC, MPC has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of MPC and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.

8.7. The Customer will be responsible for the MPC's reasonable costs and expenses in exercising its rights under this clause. Where MPC exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against MPC, its employees, servants or agents.

8.8. The Customer agrees that where the goods have been retaken into the possession of MPC, MPC has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do so.

8.9. For the avoidance of doubt, MPC's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

9. WARRANTY

9.1. MPC provides a general warranty that the Goods are in good working order for a period of 12 months from the date of Supply.

9.2. The warranty provided under this clause 9 does not extend to Goods that have been altered, modified, improperly installed or applied, abused, inadequately maintained, not used in conformity with any instructions for use provided or published by MPC, or which were otherwise damaged due to malfunction of other parts not supplied by MPC.

9.3. The warranty provided under this clause 9 does not extend to Goods if the Customer fails to make the Goods available to MPC for inspection.

9.4. MPC makes no warranty of merchantability or that the Goods are fit for a particular purpose.

9.5. The parties agree that MPC's maximum liability under the warranties contained in this clause 9 shall not in any case exceed the purchase price of the Goods claimed by the Customer to be defective or deficient.

10. INTELLECTUAL PROPERTY

10.1. It is a condition of MPC's Supply of the Goods to the Customer that the Customer releases MPC from all loss sustained or claims arising in relation to any third party's intellectual property rights in the Goods.

10.2. Where a claim is brought against the Customer by a third party alleging that the Goods have infringed that third party's intellectual property rights, MPC shall, at its own discretion and without recourse to any other rights it has at law, elect to do any number of the following:

(a) obtain the intellectual property rights from the third party to the extent that it will permit the continued use for the Goods;

(b) alter the Goods in such a way so that the intellectual property rights of the third party are not infringed; and/or

(c) replace the Goods supplied to the Customer.

10.3. The Customer undertakes to inform MPC immediately in writing about any claim lodged by a third party regarding the Goods, including any intellectual property rights regarding the Goods. If the Customer decides to suspend its use of the Goods during the conduct of a claim by a third party, the Customer will inform such third parties that its decision to suspend its use of the Goods does not constitute an acknowledgment of that third party's rights in the Goods.

10.4. The Customer releases MPC from any liability arising or which have resulted because the Customer has used the Goods in a way which contradicts any written instruction for the use of the Goods provided by MPC, or caused by the Customer altering or modifying the Good.

11. BREACH

11.1. Where the Customer is in breach of this Agreement, the Customer will pay to MPC all costs incurred in enforcing its rights under this Agreement, including MPC's legal costs on an indemnity basis.

12. GUARANTEE AND INDEMNITY

12.1. The Guarantor/s agree to guarantee and indemnify MPC against all losses, damages or expenses that the MPC may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to MPC whether for goods sold or otherwise or to observe the terms of any agreement between the Customer and MPC, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by MPC to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier

12.2. This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by MPC to the credit of any account of the Customer or Guarantors, or deemed to be held on trust by Customer for MPC, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 11.3 and 11.4 of this guarantee and indemnity.

12.3. Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the MPC will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

12.4. MPC will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, MPC will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

12.5. This guarantee and indemnity will continue in force until such time as the Customer releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.

12.6. This guarantee and indemnity is without prejudice to and will not be affected by not will the rights or remedies of the Customer against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:

(a) Any other security taken by MPC over the Customer or from any other person;

(b) Any waiver or indulgence, whether as to time or otherwise, given to the Customer or the Guarantors or any one or more of the Guarantors;

(c) By any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors' obligations contained in this guarantee and indemnity; or

(d) Any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

13. NOTICE

13.1. Notice under this Agreement must be in writing, in English, signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:

(a) delivered to that Party's address;

(b) sent by registered pre-paid mail to that Party's address; or

(c) transmitted by email to that person's email address