

PEERLESS HOLDINGS PTY LTD - TERMS OF TRADE

These Terms of Trade supersede and exclude all previous discussions, representations, and terms or conditions of dealings between Peerless and the Buyer, and unless otherwise agreed to by Peerless in writing, are the only contractual terms binding on Peerless.

A. TERMS OF PAYMENT

All accounts are payable strictly within agreed credit terms. Receipt of the full amount due to Peerless Holdings Pty Ltd ("Peerless") shall evidence the passing of the property in the Goods to which the payment relates (or is determined to relate by Peerless) to the Buyer if the Buyer does not indicate otherwise. The Buyer hereby authorizes Peerless in its sole discretion to appropriate any monies received from the Buyer against any amounts due by the Buyer to Peerless in respect of Goods.

B. INTEREST

Peerless reserves the right if payment is not made by the due date to charge interest at the rate of 18% per annum on all monies then outstanding and owing by the Buyer to Peerless. Such interest shall be calculated and compounded on a daily basis.

C. DELIVERY QUANTITIES

Goods are delivered in full pallet only apart from Bakery Goods. All deliveries must be made with the assistance of a forklift. If a forklift is not available a surcharge may be incurred.

D. FREIGHT

- (i) Goods will be delivered Free Into Store ("FIS") to the following areas: Victoria, New South Wales, South Australia, Tasmania, Queensland, Perth, Darwin and Alice Springs.
- (ii) Export will be handled on an individual basis.

E. RETURN OF GOODS

- (i) Goods may not be returned for credit without prior authorisation from the Peerless Customer Service Group manager.
- (ii) Returned Goods must state clearly the Buyers names, address and the reason for returning of the Goods.
- (iii) Claims for incorrect deliveries and faulty Goods should be noted on consignment note at time of delivery and faxed through to our office within forty eight (48) hours.
- (iv) Claims for incorrect charging must be made within ten (10) days of the receipt of Goods. The buyer shall not make any claim after the expiration of ten (10) days from the date of receipt of the Goods. Peerless shall be entitled in its sole discretion to reject any claim for incorrect deliveries, faulty Goods and/or incorrect charging made more than ten (10) days after the receipt of Goods.
- (v) All claims for non receipt of Goods must be communicated to Peerless within seven (7) days of receipt of invoice. Peerless shall be entitled in its sole discretion to reject any claim for non receipt of Goods made more than seven (7) days after the Buyers receipt of invoice.
- (vi) The freight charges for returned Goods will only be paid by Peerless if carriage has been arranged by Peerless. Goods returned from end user will not be accepted unless by prior arrangement with authorized Peerless representative.

F. RISK

All risk in the Goods shall pass to the Buyer immediately on the delivery of the Goods in accordance with these Terms of Trade.

G. RESERVATION OF TITLE

- (i) The title or property in any Goods delivered by Peerless to the Buyer shall pass to the Buyer only upon payment in full by the Buyer to Peerless in relation to such Goods. Until such time Peerless reserves and may exercise the right to call for or recover the goods at its option and in its sole discretion (for which purposes Peerless, its employees or agents may and are authorised to enter the Buyer's premises at any time and to use such force as is necessary to recover the Goods).
- (ii) In circumstances where Peerless has not been paid for Goods in accordance with the Terms of Payment set out in a clause A of these Terms of Trade or any other terms of payment subsisting between the Buyer and Peerless has delivered the good to the Buyer, The Buyer agrees that until such time as the Buyer has on sold the Goods it shall hold the Goods as trustee for Peerless and the Buyer agrees to store such Goods in a manner that clearly displays Peerless' continuing ownership of the Goods.
- (iii) The Buyer agrees that a certificate purporting to be signed by an officer of Peerless identifying products as unpaid for shall be conclusive evidence that the products have not been paid for and of Peerless' title thereto.
- (iv) Notwithstanding the sub-clauses (i) and (ii) the Buyer has the right to sell the Goods to a third party in the normal course of the Buyer's business and may deliver the Goods to that third party provided that:
 - (a) When the Buyer is paid by the third party in relation to the Goods sold and the Buyers has not yet paid Peerless for the Goods the Buyer agrees to and shall hold the whole of the proceeds of the sale of the Goods on trust for Peerless; or
 - (b) Where the Buyer has not yet been paid by the third party and the Buyer has not paid Peerless pursuant to these Terms of Trade or any other terms of payment subsisting between the Buyer and Peerless, the Buyer agrees, at the option of Peerless, to assign its claims against the third party to Peerless upon Peerless giving notice to the Buyer in writing to that effect and for the purposes of giving effect to and perfecting the assignment of such claims the Buyer hereby irrevocably appoint Peerless as the attorney for the Buyer.

H. PERSONAL PROPERTIES SECURITIES

- (i) In placing any order the Buyer expressly represents that the Buyer:
 - (a) Is solvent; and
 - (b) Has not committed an act of bankruptcy; and
 - (c) Knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Buyer's assets.
- (ii) The title or property in any Goods delivered by Peerless to the Buyer shall pass to the Buyer only upon payment in full by the Buyer to Peerless in relation to such Goods. Peerless holds a Security Interest in all goods supplied to the Buyer for payment of those moneys.
- (iii) Until all moneys due to Peerless are paid by the Buyer, the Buyer agrees to act as a fiduciary of Peerless and that the Buyer will:
 - (a) Not sell, charge or part with possession of the Goods, otherwise than for their full values in the ordinary course of business;
 - (b) Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are Peerless's property.
 - (c) Store the Goods in such manner that they are clearly identifiable as Peerless's property and must keep separate records of the Goods;

- (d) Hold the proceeds of the resale of the Goods in trust for Peerless, in a separate and identifiable manner.
- (iv) At Peerless's request, the Buyer will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that Peerless may require from time to time to give effect to these Terms of Trade, including without limitation doing all such things as Peerless may require to ensure that the Security Interest created under these Terms of Trade constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information Peerless requests to complete a financing statement or a financing change statement for the Personal Property Securities Register.
- (v) The Buyer waives any right to receive a verification statement under the Personal Property Securities Act ("PPSA").
- (vi) Nothing in sections 168(1), 181(1) and 181(2) of the PPSA shall apply to these Terms of Trade. The Buyer's rights as a debtor in sections 170, 173, and 175 of the PPSA shall not apply to these Terms of Trade.
- (vii) The Buyer's right to sell Goods will terminate forthwith on written notice of such termination being delivered by Peerless to the Buyer's place of business.
- (viii) The Buyer's right to possession of the Goods shall cease if:
 - (a) The Buyer commits an available act of bankruptcy; or
 - (b) The Buyer does anything or fails to do anything in circumstances where such act or omission operates to entitle a receiver or liquidator to take possession of any assets or which would entitle any person to apply to the Court to liquidate the Buyer; or
 - (c) The Buyer is overdue in making payment of any sum due to Peerless and Peerless makes demand. Demand may be made upon the Buyer or any employee or authorised agent of the Buyer by Peerless or any employee or authorised agent of Peerless either in writing at any time prior to repossession or verbally or in writing at the time of repossession; or
 - (d) Notice is given terminating the Buyer's right to sell goods; or
 - (e) This agreement is terminated.
- (ix) For the purpose of recovery of the Goods, Peerless may by the Peerless's employee(s) or agent(s) enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same. This permission is irrevocable and the Buyer agrees that the employees, servants or agents of Peerless so entering are not trespassing. The Buyer irrevocably agrees the Buyer will not seek to invoke the provisions of any Acts to warn such persons to leave the Buyer's premises, nor will the Buyer procure any other person to take such action.
- (x) Any Goods held by the Buyer which meet the description of Goods on an invoice in respect of which either payment has not been made in full or in respect of which title to Goods has not transferred from Peerless hereunder shall, in the absence of separate storage of Goods in terms of clause H(iii)(c) herein and in the absence of evidence to the contrary, be deemed to be Goods to which Peerless has retained title so that Peerless shall be entitled to exercise any of Peerless's remedies hereunder against such Goods.
- (xi) If the Buyer has not received the proceeds of sale of the Goods subject to this clause then the Buyer will within seven (7) days of being called upon so to do by the Peerless assign to Peerless all rights which the Buyer may have against the person or persons to whom the Buyer has supplied any Goods.
- (xii) Following repossession of the Goods Peerless shall sell the goods in whatever manner Peerless deems appropriate whether wholesale or retail, and shall credit the account of the Buyer with the net proceeds of sale. The net proceeds of sale shall be the actual price received for the goods less all costs of sale including if incurred, rental of premises, staff wages, transport costs, advertising costs and all out of pocket expenses. Peerless shall be obliged to list all Goods repossessed but shall not be obliged to record or account for the sale of Goods on an item by item basis. Proceeds of sale may be accounted for globally.
- (xiii) The debt owing by the Buyer to Peerless at the date of repossession of Goods shall, as between the parties, be deemed to include any payment previously received by Peerless which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors – irrespective of whether such a claim shall have been made at that date.

I. LIABILITY FOR LOSS OR DAMAGE

Notwithstanding anything contained in clauses A, B, C, or D of these Terms of Trade, the Buyer agrees to and does accept all risks of loss or damage to the Goods whether caused by the Buyer or another person upon delivery of the Goods and agrees to and does further indemnify Peerless against all claims, demands and suits for loss of damage arising from the handling, transport, storage, display or use of the Goods after the Buyer has itself taken possession of the Goods.

J. ORDERS

- (i) Each order that the Buyer places shall be deemed to include a representation that it is solvent and able to pay all of its debts as and when they fall due.
 - (ii) When any order is placed, the Buyer shall inform Peerless of any facts which might reasonably affect any decision to accept the order and/or grant credit.
- Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of Peerless and to be unconscionable, misleading and deceptive.

K. BUYER RESTUCTURE/SALE-ACQUISITION

- (i) The Buyer shall notify Peerless in writing of any change in its structure or management, including any change in director, shareholder, or management or change in partnership or trusteeship within fourteen (14) days of the date of any such change and the Buyer agrees to indemnify Peerless against any loss incurred if such notice is not given.
- (ii) The buyer shall notify Peerless in writing at least fourteen (14) days prior to the sale of acquisition of the Buyer's business by a third party and the Buyer agrees to indemnify Peerless against any loss incurred if any such notice is given. The buyer agrees that even if the Buyer's business is sold to or acquired by a third party, any moneys owing by the Buyer to Peerless for the supply of Goods shall remain the Buyers responsibility.

L. AMENDMENTS

Peerless has a right pursuant to these Terms of Trade to amend any terms without consultation with the Buyer
Goods

M. RECOVERY COSTS

The Buyer shall pay all legal and administrative costs and expenses incurred by Peerless, its legal advisers, mercantile agents and others in respect of overdue accounts or anything instituted or being considered against the Buyer, whether for debt, possession of any products or otherwise.

N. DEFAULT ON PAYMENT

Should the Buyer default in the payment of any monies due to Peerless, the total of all monies due to Peerless by the Buyer shall immediately become due and payable. The Buyer shall pay or reimburse any expenses, costs, or disbursements incurred or paid by Peerless in recovering outstanding monies including bank charges, debt collection agency fees and commissions and solicitors costs on a solicitor/client basis.

O. FORCE MAJEURE

Peerless shall not be responsible for the non fulfillment of its obligations as a consequence of Acts of Gods, wars, whether declared or not, riots, civil unrest, equipment failure, acts, orders or requests of any Government or any other authority, strikes, lock-outs, accidents in manufacture and any other cause beyond the control of Peerless.

P. SEVERABILITY

Any part hereof being a whole part of a clause shall be capable of severance without affecting any other part of these Terms of Trade.

Q. GST

To the extent that a supply of services provided by Peerless, or any other supply, made under or pursuant to this agreement is a "taxable supply" as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), Peerless will increase its price in respect of that supply it makes by the amount of GST applicable to the supply.

R. PRIVACY POLICY

The Company complies with the Privacy Act 1988 as amended and is bound by the National Privacy Principles dealing with the collection, use and storage of personal information about individuals.

S. JURISDICTION

The Buyer agrees that all contracts made with Peerless shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the Courts of the State of Victoria. These Terms of Trade apply notwithstanding any agreement, whether subject to these Terms of Trade or not, under which the Buyer obtains credit terms from Peerless.