

## SECTION 2 – TERMS AND CONDITIONS OF SALE



### 1 Definitions and interpretation

In this document:

- a. **Company** means Tassal Group Limited ABN 15 106 067 270.
- b. **Confidential Information** means any trade secrets, knowhow, technical, scientific, commercial, financial, product market or pricing or other information of or about Tassal or a Contract, which is not in the public domain.
- c. **Consequential Loss** means in relation to any event, fact, matter or circumstance (i) any Loss that cannot reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance; (ii) any and all consequential, special, indirect, exemplary or punitive Loss in relation to that breach or event, fact, matter or circumstance, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance; and (iii) any and all loss of profit, loss of revenue, loss of goodwill, loss of opportunity and loss of savings, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance, in each case whether arising in contract, tort (including negligence) or equity or under statute.
- d. **Contract** means a contract between Tassal and the Customer for the sale and purchase of Goods.
- e. **Credit** means Tassal's consent to make payments to Tassal at times which are later than the times required under these Terms and **Credit Application** means the Application for Supply and Commercial Credit which incorporates these Terms, the Privacy Statement (set out in Section 3) and the Deed of Guarantee and Indemnity (set out in Section 4).
- f. **Customer** means the person listed as the 'Applicant' in Section 1 of this Credit Application.
- g. **Goods** means all goods supplied or to be supplied by the Supplier to the Customer including goods which are subject of an Order Confirmation or Contract.
- h. **Group** means the Company and any of its Related Bodies Corporate and **Group Company** means any member of the Group.
- i. **Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts when due and payable, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Customer becoming insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of any of the Customer's members or creditors or any other analogous event.
- j. **Loss** means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment (whether direct or indirect, consequential or incidental) and includes any economic loss or damage; loss of reputation; loss of any revenue or actual or potential profits; lost opportunity, including the opportunity to enter into or complete an arrangement with a third party; and legal costs on a full indemnity basis.
- k. **Order** means an offer by the Customer to Tassal to buy Goods on the terms and conditions contained in these Terms and the Order Confirmation.
- l. **Order Confirmation** means a confirmation issued by the Supplier setting out some or all of the following details: (i) the quantity, description and estimated weight of Goods ordered by the Customer; (ii) the Price and payment terms; (iii) the delivery address and estimated delivery date; (iv) the shipping mode; and (v) shipment terms.
- m. **Price** means the price of the Goods (excluding GST) payable in AUD\$, unless otherwise agreed.
- n. **Real Property** means at any time, the Customer's present and future right, title and interest in and to any land or other real property and the proceeds of sale or other dealings with such real property.
- o. **Related Bodies Corporate** has the same meaning as the *Corporations Act 2001* (Cth).
- p. **Supplier** means the Tassal entity which is party to a Contract.
- q. **Tassal** means any Group Company and, where the context requires, each Group Company.
- r. **Terms** means the terms and conditions set out in this Section 2 of the Credit Application, as amended or replaced from time to time in accordance with clause 3c.

### 2 General

The Customer agrees that (a) all Goods that the Customer orders or purchases from Tassal and that Tassal sells to the Customer, are ordered, purchased and sold on these Terms and the terms and conditions contained in any Order Confirmation (b) terms and conditions that may be contained in any document provided by the Customer (including in any acknowledgment, invoice or other form of the Customer) or which may be imposed by the Customer or which may arise from any trade, custom, practice or course of dealing between Tassal and the Customer, are excluded and do not form part of any agreement between the Customer and Tassal (c) a contract between the Customer and Tassal for the sale and purchase of Goods on these Terms and the terms and conditions contained in any Order Confirmation arises when Tassal gives the

Customer the Order Confirmation and (d) if there is any inconsistency between the Order Confirmation and these Terms, the provisions of the Order Confirmation will take precedence to the extent necessary to resolve the inconsistency.

### 3 Credit

- a. The Customer must pay amounts due to the Supplier at the times set out in these Terms and is not entitled to Credit unless otherwise advised by the Supplier in its absolute discretion. The Supplier reserves the right, in its sole and absolute discretion and without any duty or obligation or duty to do so, to suspend, withdraw or cancel any Credit at any time, with or without notice. The Supplier is not liable for any Loss to the Customer arising from the Supplier's refusal, suspension, withdrawal or cancellation of any Credit.
- b. The Customer creates a security interest in the Real Property in favour of Tassal to secure the due and punctual performance by the Customer of all of the Customer's obligations to Tassal at any time whether under a Contract or otherwise and the due and punctual payment of any amounts owing by the Customer to Tassal from time to time, whether actually, prospectively or contingently on any account whatsoever. The Customer must promptly execute all documents and do all things that Tassal from time to time reasonably requires for further or more perfectly securing the Real Property to Tassal and stamping and registering it and any document contemplated by it in any jurisdiction that Tassal requires and giving to Tassal the rights that this document purports to give or which are contemplated by it.
- c. The Supplier may from time to time amend or replace these Terms. Amended or replaced Terms will apply to all orders for Goods made by the Customer and contracts for the sale and purchase of those Goods 7 days after notification to the Buyer of that amendment or replacement.

### 4 Orders

- a. The Customer may from time to time request that Tassal supply goods. All such requests are deemed to be Orders. Tassal may in its discretion accept an Order either in whole or in part by sending the Customer an Order Confirmation. A contract between the Customer and the relevant Tassal entity which sends the Order Confirmation arises when that Tassal entity gives the Customer the Order Confirmation.
- b. Once an Order has been accepted either in whole or in part, it may not be cancelled by the Customer except with the written agreement of the Supplier and on terms that the Customer indemnifies the Supplier against any Loss that the Supplier pays, suffers, incurs, or is liable for because of any cancellation.
- c. The Customer acknowledges that certain Goods are seasonal in nature and depend on stock availability. The Supplier makes and gives no promise, assurance, statement or warranty as to the availability of Goods.

### 5 Price

- a. Any rebates, discounts, allowances or other reductions calculated by reference to the sales value to which Customer is entitled or which are granted by the Supplier (**Discounts**) are to be calculated on the net sales Price (before any such Discounts).
- b. The Supplier reserves the right, at any time before delivery of either all or part of the Goods, to increase the Price among other things, to reflect any increase in costs to the Supplier which are due to any factor, including a significant increase in the costs of, or shortages or the unavailability of, labour or product, the increase or imposition of any tax duty or other levy, any variation in exchange rates, any change of delivery dates, any changes in quantity or specifications of the Goods requested by the Customer, or any delay caused by supply or non-supply of Customer instructions.
- c. If the Customer does not want to accept a Price increase, the Customer can elect to terminate its obligation to purchase undelivered Goods by giving notice in writing to the Supplier at least 2 Business Days before the due date for delivery of the Goods.
- d. The Customer must accept and pay the Price for all Goods delivered and for random weight Goods these Goods may be plus or minus up to 20% of the quantity or weight specified in a Contract and the Customer must not object to such variation or withhold payment of the Price.

### 6 Delivery

- a. The Supplier will take reasonable steps to deliver the Goods to the Customer: (i) where the Contract provides for the collection of Goods by the Customer from the Supplier – by making the Goods available for collection at the agreed time for collection; and (ii) where the Contract provides for the delivery of the Goods by the Supplier to the Customer – at the times set out in the Order Confirmation. Stated delivery dates are estimates only and the Supplier will not be liable for any Loss suffered by the Customer because of any delivery delay of the Goods.
- b. The Supplier bears all costs associated with the delivery and supply of the Goods including government taxes, duties or imposts unless otherwise agreed between the Supplier and the Customer.

- c. Where a Customer fails to collect or take delivery of Goods at an agreed time the Customer must indemnify and keep indemnified the Supplier for all Loss incurred by the Supplier in connection with the late collection or taking delivery, storage and transportation of the Goods and pay such Loss on demand.
- d. Any containers used for the delivery of Goods or other equipment provided by the Supplier for the Customer's use (**Equipment**) at all times remains the property of the Supplier and title to the Equipment does not pass in any circumstances. The Customer must keep the Equipment clean and undamaged and return the Equipment in good condition to the Supplier after delivery of Goods.

## 7 Payment terms

- a. The Supplier may in its absolute discretion at any time and from time to time: (i) provide Credit to the Customer or (ii) require the Customer to pay the Price in full or in part in cash on or before delivery of the Goods (even though the Supplier may have provided Credit to the Customer for other Contracts).
- b. Unless otherwise agreed, the Supplier may invoice the Customer on delivery and the Customer must pay the Price to the Supplier unconditionally in full, without deduction, counterclaim or set-off, within 30 days from the end of the month of purchase.
- c. The Customer must pay the Supplier for the Goods delivered even if there is a delay in the delivery of Goods or the Customer disputes the quality, quantity or condition of Goods delivered or provided. The Supplier is entitled to set off amounts that Tassal owes the Customer against and in reduction of any amounts including the Price that the Customer owes to Tassal.
- d. If the Customer has not paid the Price in full by the due date, the Supplier may, without limiting other rights, charge the Customer interest on the overdue moneys at a rate per year equal to the Overdraft Business Rate published by Westpac from time to time, or if that rate is not published, such other comparable rate determined by the Supplier plus 3% from the date of delivery of the Goods up to and including the date that the Price is paid in full, and take action against the Customer for the Price for which payment has not been made, even though title in the Goods remains with the Supplier.
- e. The Customer agrees to pay on demand the Supplier's administration and handling fees in respect of any copies of documents required or other processing involved in the conduct of the account including but not limited to collection and recovery of overdue monies, account administration fees, merchant or other fees incurred as a result of payment by credit or charge card or Bpay or payment by other means which will be charged to the Customer's account.

## 8 Risk and title

- a. Risk of loss or damage to the Goods passes to the Customer on delivery.
- b. Title, property and ownership in any Goods sold or supplied by the Supplier, only passes on receipt of payment of the Price for those Goods. Until title passes to the Customer:
  - i. the Customer holds the Goods on trust for the Supplier, must not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and must ensure the Goods are properly stored, separate from all other goods, protected, readily identifiable, clearly marked as owned by the Supplier and fully insured for an amount not less than the Price; and
  - ii. if the Customer sells the Goods or any good incorporating the Goods (**Processed Goods**) to any third party, the Customer in its position as fiduciary assigns to the Supplier the benefit of any claim against the third party and will hold on trust in a separate identifiable account, and account to the Supplier for all proceeds of sale or such part of the proceeds of sale as is equivalent to the Price of the Goods incorporated or used in the Processed Goods. The Supplier has the rights to such proceeds whether or not those proceeds are held in a separate identifiable account.
- c. The Customer acknowledges that the Contract constitutes a security agreement under the *Personal Property Securities Act 2009 (PPSA)*, that the Supplier has a security interest in the Goods (including any Goods to be supplied in the future) and any proceeds.
- d. The Supplier's rights in the Goods established under this clause 8 are a 'purchase money security interest' (**PMSI**) and the Supplier will have a PMSI in proceeds of those Goods. The Customer agrees to do anything required by the Supplier to enable the Supplier to register the security interest and to maintain the registration including by paying all costs, expenses and other charges incurred by the Supplier in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interests, maintaining those registrations, and enforcing any security interests.
- e. The Customer will not charge the Goods in anyway, nor grant or give any interest in the Goods while they remain the property of the Supplier, nor allow any third party to acquire a security interest in the Goods.
- f. If the Customer fails to comply with the Contract then (i) the Customer must return the Goods on which there are outstanding amounts owing on request (ii) the Customer authorises the Supplier and any person

authorised by the Supplier to enter premises where the Goods may be located to take possession of the Goods; and (iii) the Supplier may retain, sell or otherwise dispose of those Goods.

- g. The Customer agrees, to the extent permitted under the PPSA, that the following provisions will not apply when enforcing these Terms: s95, s130 and s157 to the extent it requires the Supplier to give notice to the Customer; s121(4); s132(3)(d); s132(4); s135; s142; and s143, unless otherwise agreed by the Supplier; and the Customer will not disclose, nor authorise the disclosure of, any information of the kind described in s275(1) to any person. Unless the context otherwise requires, terms defined or used in the PPSA have the same meaning as in the PPSA.

## 9 General Lien

In addition to any lien at law, the Customer acknowledges that the Supplier has a particular and general lien over all Goods sold to or stored on behalf of the Customer in the Supplier's possession for all money due now or in the future. The Supplier may, after giving 7 days' notice, sell or otherwise dispose of the Goods at the expense of the Customer and without any liability to the Supplier and the Customer hereby indemnifies the Supplier from any Loss caused due to the sale of the Goods or otherwise.

## 10 Force majeure

The Supplier is entitled (without liability to the Customer) to delay, vary or cancel the performance of any of its obligations if and to the extent that it is prevented from, hindered in or delayed in the performance of any of its obligations by normal route or means of delivery or at costs commercially acceptable to the Supplier through any circumstances beyond its control, including acts of God, governmental actions, strikes or other labour disputes (whether or not relating to the Supplier's workforce), lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, epidemic, pandemic, fire, natural disasters, extreme adverse weather, reduction or unavailability of energy sources, breakdown of plant, or machinery, restrictions or delays affecting delivery of the Goods, default of suppliers or subcontractors, shortage or unavailability of raw materials from normal sources of supply or the amendment or coming into force of any regulatory provision affecting the import or export of the Goods (each a **Force Majeure Event**)

## 11 Shortfall, Damaged and Defective goods

- a. The Supplier is deemed to have delivered the Goods in full and in a condition that complies with the Contract unless the Customer notifies the Supplier in writing of any shortfall, damage or defect within 24 hours of delivery (unless there is an immediate health or safety danger in which case the Customer must notify the Supplier immediately). The Customer is not entitled to any credit or refund unless it has complied with this clause 11a.
- b. If the Customer gives the Supplier notice under clause 11a, it must preserve the Goods in the state in which they were delivered for 7 days after notice and at the Supplier's option, allow the Supplier or its representative to inspect the Goods or return some or all of the Goods to the Supplier in the same condition as delivered, except in each case for any normal deterioration due to the passing of time.
- c. The Supplier is not obliged to accept the return of or allow a credit for Goods that have passed their use-by or best before date.
- d. The Customer must handle, store and process the Goods at all times as directed by the Supplier or, in the absence of such direction, in accordance with prevailing industry standards (including but not limited to the Australia and New Zealand Food Standards Code) and any applicable regulations and laws.
- e. The Customer agrees not to make any claim in relation to a shortfall unless the quantity or weight of Goods is at least 5% more or less than the quantity or weight specified in the Contract.

## 12 Right of Entry, Resale and Termination

- a. If an Insolvency Event occurs in relation to the Customer or if the Customer (i) ceases or threatens to cease to conduct business; (ii) breaches a Contract; or (iii) in the Supplier's opinion, fails to perform its obligations in a satisfactory manner, engages in unlawful or dishonest activity or fraud, has a conflict of interest or any other misconduct; the Supplier may, without affecting its accrued rights and obligations, enter the Customer's premises where the Goods are held, retake possession of and resell the Goods or terminate any Contract immediately by notice to the Customer (without liability to the Customer) and withhold or suspend any deliveries of Goods under the Contract (except to the extent that a stay on the exercise of such a right applies under section 415D – 415G, 434J – 434M or 451E – 451H of the *Corporations Act 2001* (Cth)).
- b. The Supplier may terminate any Contract at any time by giving the Customer no less than 30 days' notice in writing, or if a Force Majeure Event continues for 30 days or more or any event specified in clause 15b occurs, on immediate notice to the Customer.

## 13 Confidential Information

The Customer must keep all Confidential Information secret unless it comes into the public domain (other than because of a breach of these Terms) and must not use Confidential Information except as necessary for

the purposes of these Terms. On termination or expiry of these Terms, the Customer must promptly return all Confidential Information to the Supplier or destroy it if the Supplier requires.

#### 14 Limitation of Liability and Warranties

- a. The Customer may have certain rights under the Australian Consumer Law, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth) including consumer guarantees that the Goods will be of acceptable quality and fit for the purpose disclosed. These Terms do not exclude or limit these guarantees or any other statutory rights the Customer may have under applicable laws.
- b. To the extent permitted by law: (i) all guarantees, conditions and warranties, express or implied, by law, custom or otherwise are excluded; and (ii) the Supplier's liability for any Loss arising in connection with a breach of such guarantees, conditions and warranties, or a Contract is limited to either replacement of the Goods, the supply of products equivalent to the Goods, or the cost of replacing the Goods or acquiring products equivalent to the Goods.
- c. To the extent permitted by law, Tassal will not be liable for any Loss which the Customer pays, suffers or incurs or is liable for any reason, including as a result of a delay, negligence, or any act, advice, matter or thing done or permitted or omitted to be done by Tassal, its employees or agents in connection with any breach of a Contract or negligence, by the Customer or with Tassal exercising its rights under a Contract. In any event, Tassal's maximum liability in respect of a Contract will be limited to the Price that Tassal is entitled to receive under that Contract.
- d. To the extent permitted by law, the Supplier is not liable for any Loss arising from the negligence of, or breach of any applicable standard, regulation or law, by any other person.
- e. Tassal is not liable for any Consequential Loss.

#### 15 Trusts

- a. If the Customer enters into a Contract in its capacity as trustee for a trust (**Trust**), the Customer represents and warrants that: (i) it enters into the Contract in its personal capacity and in its capacity as trustee as a Trust; (ii) no action has been taken or proposed to remove it as trustee of the Trust or to terminate or resettle the Trust; (iii) it has the power, and has complied with all requirements under the relevant Trust deed, to enter into and perform its obligations under the Contract in its capacity as trustee of the Trust; and (iv) it has the right to be indemnified out of the Trust assets in respect of its obligations and liabilities under and in connection with the Contract. The Customer acknowledges that the Supplier is relying on the representations and warranties made to it under this clause 15a.
- b. The Customer must not, without the written consent of the Supplier, except as required by law or the Trust deed: (i) permit its right to be indemnified out of the Trust assets to be reduced or extinguished; (ii) permit a variation to the Trust deed which would have a material adverse effect on the Supplier's rights and entitlements under the Contract; or (iii) terminate or resettle the Trust.

#### 16 Anti-corruption and modern slavery

- a. The Customer will not directly or indirectly, in private business or in public sector dealings, offer, give or agree to offer or give any payment, gift or other advantage with respect to any matters which are the subject of these Terms which would violate any anti-corruption laws or regulations; is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust; or which a reasonable person would otherwise consider to be unethical, illegal or improper.
- b. The Customer must (i) comply with all applicable anti-slavery and human trafficking laws and laws regarding working conditions and labour standards (ii) take reasonable steps to monitor compliance with such laws by the Customer's suppliers of goods or services and not deal with suppliers who do not comply with such laws and (iii) provide to Tassal all information that Tassal requires to comply with its obligations under any applicable modern slavery laws including The Modern Slavery Act 2018 (Cth).
- c. If Tassal considers in good faith that the Customer is not complying with this clause 16, it may terminate any Contract by giving written notice with immediate effect.

#### 17 Termination

Without prejudice to any other right or remedy available, either party may terminate a Contract with immediate effect by giving written notice to the other party if the other party (a) commits a material breach (or repeated or persistent breaches) of the Contract that is incapable of remedy or, if capable of remedy, has not been remedied within 5 Business Days from having been provided with reasonable details by the other party of such breach, or (b) except to the extent that a stay on the exercise of such a right applies under section 415D – 415G, 434J – 434M or 451E – 451H of the *Corporations Act 2001* (Cth), an Insolvency Event occurs in relation to the other party.

#### 18 GST

Capitalised expressions which are not defined in the Terms but which have a defined meaning in the GST Act have the same meaning in this clause. If a party (**Supplier**) makes a Taxable Supply, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply. The Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act. The Recipient must pay the GST on the Taxable Supply to the Supplier at the same time as the Recipient pays the consideration for the Supply to the Supplier. If the whole or part of any consideration is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise. If an Adjustment Event occurs regarding a Supply, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event. If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment. If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment.

#### 19 Miscellaneous

Any waiver by the Supplier of any right is not a waiver of other or future rights the Supplier may have. If any part of these Terms is void or unenforceable, that part is severable from the Terms without affecting the enforceability of the other provisions of these Terms. If the Customer is more than one person or entity, each person or entity (as applicable) shall be jointly and severally liable to the Supplier. Any notice in connection with these Terms or any Contract will be deemed to have been duly given when made in writing and delivered or sent by post or email to the party to whom such notice is intended to be given, at the address of that party in the Contract or to such other address (including email address) previously notified in writing to the other party. Notices shall be deemed received on the earlier of (a) if personally delivered, on delivery; (b) if sent by post, on the fifth Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and (c) if sent by email, when the sender's computer produces a confirmation stating that the transmission of the entire email was complete. These Terms and any Contract will be governed by and is to be construed in accordance with the laws applicable in Tasmania and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.