

TERMS AND CONDITIONS OF TRADE



Familiar Hospitality Pty Ltd
ABN 97651787405 T/A Familiar Goods

All goods are sold and supplied by Familiar Hospitality Pty Ltd ABN 97651787405 trading as Familiar Goods ("Familiar Goods") to you ("the Customer") on the following terms and conditions:

1. TERMS

(a) The Customer acknowledges having received and read a copy of these terms and conditions of trade ("the Terms of Trade").

(b) An order made by the Customer will be binding on Familiar Goods and the Customer if it is accepted by Familiar Goods. An order will be considered to be accepted by Familiar Goods if a written acceptance is given by Familiar Goods or the goods are supplied by Familiar Goods in accordance with the order.

(c) Familiar Goods may vary the Terms of Trade at any time by publication of new terms of trade on its website or by notice in writing to the Customer. Varied Terms of Trade will only apply to orders made by Customers subsequent to the variation.

(d) An order which has been accepted in whole or in part by Familiar Goods cannot be cancelled by the Customer without obtaining the prior written approval of Familiar Goods, which Familiar Goods may refuse in its absolute discretion.

(e) The Terms of Trade constitute the entire agreement between the Customer and Familiar Goods and prevail over any oral, written, previous, contemporaneous and all other communications between the parties, unless otherwise expressly agreed in writing and signed by the parties.

2. PRICES

(a) The price of the goods shall be the price charged by Familiar Goods at the date of delivery, subject to this clause 2.

(b) The price charged for goods is subject to applicable taxes (including goods and services tax), delivery and handling charges, which are payable by the Customer in accordance with the Terms of Trade.

3. PAYMENT

(a) The Customer must pay Familiar Goods for all goods in full by the last business day in the calendar month following from the date of Familiar Goods' invoice to the Customer.

(b) Familiar Goods may accept payment of any invoice by credit card but only where no amount is owing on the Customer's account for more than 30 days. Familiar Goods reserves the right to pass onto the Customer the fee charged to it by the credit card company.

(c) The Customer shall not set off against the payment due to Familiar Goods any amount(s) the Customer claims for the return of goods or for short deliveries, incorrect goods or defective goods.

4. DEFAULT

Without prejudice to any other rights Familiar Goods may have at law, if payment in full is not received by Familiar Goods within the time stipulated in clause 3(a), then the Customer agrees:

- (a) to pay Familiar Goods interest at the ANZ Bank's rate for "Standard Variable Home Loans for Principal and Interest" as published from time to time plus 3 %, and if that rate is not published, then such other comparable rate published by the Commonwealth Bank, on any unpaid amount until payment in full is made, calculated daily;
- (b) Familiar Goods may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights; and
- (c) Familiar Goods may immediately and without further notice, refer the unpaid invoice to a debt collection agency or its lawyers. In this event, it is further agreed that the Customer will be liable to pay Familiar Goods the outstanding amount together with interest as referred to above and all legal costs and expenses incurred in attempting to recover the unpaid invoice, including any commissions or other amounts payable to a debt collection agency.

5. CUSTOMERS

- (a) Goods will only be supplied to a Customer on credit at the discretion of Familiar Goods.
- (b) Familiar Goods may at its discretion set a credit limit for each customer. In that case, Familiar Goods will advise the Customer in writing of the set credit limit and the Customer must adhere to the credit limit. Any orders above the credit limit must only be made on a pre-paid basis by the Customer.
- (c) Familiar Goods may at any time in its discretion disallow a Customer credit or decline a Customer's order request.
- (d) New Customers must pay Familiar Goods for goods in full prior to delivery.
- (e) New Customers will remain on a prepaid basis until Familiar Goods determines in its discretion that the Customer may be allowed credit terms.
- (f) A Customer with an account which has been inactive for 6 months or a Customer who does not comply with the terms of payment in clause 3 will be deemed a new Customer.

6. CREDIT CHECKS

The Customer acknowledges and agrees that, upon submission of a completed Account Application Form, including any Director's Guarantee form, Familiar Goods is authorised to perform any credit checks on the Customer or any director or guarantor of the Customer with third parties as it requires.

7. SPECIAL ORDERS

Special orders of goods or goods made to the Customer's specifications, or any goods deemed to be custom made not normally stocked items:

- (a) must be paid for in full at the time of order at the price charged by Familiar Goods; and
- (b) will not be accepted by Familiar Goods for exchange, return or cancellation, unless defective, subject to applicable laws.

8. BACK ORDERS

(a) Goods temporarily out of stock will be placed on back order. When available these goods will be included in the Customer's next delivery.

(b) Back orders will be supplied at the prices charged by Familiar Goods at the date of delivery (not the date of the order) unless such orders are paid in full at the time of the initial order.

(c) If the price of the goods increases between the date of order and the date of delivery for back or forward orders, Familiar Goods will notify the Customer and grant the Customer 48 hours to cancel its order if the price increase is not accepted. If the order is cancelled within this period, Familiar Goods will refund any price paid in advance by the Customer. If the order is not cancelled within this period, the price increase will be deemed to be accepted by the Customer.

9. GST

If a goods and services tax or other value added tax ("GST") applies in respect of any supply made to the Customer under or in connection with the Terms of Trade, the amount payable for that supply will be increased by the rate of GST applicable at that time and is payable by the Customer.

10. DELIVERY, HANDLING & RE-STOCKING CHARGES

(a) The Customer shall pay the delivery and handling charges for goods as follows:

(i) orders over \$150.00 (GST exclusive) for delivery in the Perth metropolitan area will be delivered without charge, provided the goods are delivered to the Customer's usual place of business;

(ii) orders less than \$150.00 (GST exclusive) for delivery in the Perth metropolitan area will be subject to a delivery and handling fee of \$20.00.

(iii) orders for delivery **outside** of the Perth metropolitan area will be subject to the following:

A. the Customer may choose to have the goods delivered to the premises of a courier service situated in the Perth metropolitan area, on the basis as noted in Clauses 10(a) (i) and (ii) above,
or

B. Otherwise, a delivery and handling fee will be quoted by Familiar Goods at the time of order.

(b) The Customer shall pay the GST on the delivery and handling charges. A re-stocking fee is payable by the Customer if goods reserved or held ("pack & hold") by Familiar Goods at the Customer's request are cancelled before delivery, whether or not the goods have left the warehouse. The re-stocking fee is 20% of the value of the goods cancelled at the time of cancellation.

11. DELIVERY AND RETURNS

(a) The times quoted for delivery are estimates only and Familiar Goods accepts no liability for failure or delay in delivery of goods.

(b) The Customer is not relieved of any obligation to accept or pay for goods by reason of any delay in delivery unless agreed by Familiar Goods.

(c) Risk in accepting the goods shall pass on delivery to the Customer. Delivery will be deemed to have taken place upon the goods being delivered to the Customer at the address specified on the order.

(d) Other than as required under any Consumer Guarantees (as define in Clause 15 below), the return of goods will not be accepted except by prior agreement of Familiar Goods. If a return of goods is agreed by Familiar Goods, Familiar Goods will issue a credit note for the returned goods subject to the following terms:

(i) the issue of any credit note is subject to the goods being returned in their original form and original packaging;

(ii) any credit note issued will be subject to, and after deduction of, a 20% re-stocking fee and after deduction of the original delivery and any return delivery charge (if applicable); and

(iii) the Customer is not entitled to cash refund for the goods.

12. CLAIMS FOR SHORT DELIVERIES, INCORRECT GOODS, DEFECTIVE GOODS AND CHANGE OF MIND

(a) The Customer must notify Familiar Goods in writing (including the invoice number) of all claims for short deliveries, incorrect goods or defective goods or change of mind, within 5 working days of receipt by the Customer.

(b) To the extent permissible by law, the Customer agrees that Familiar Goods is entitled to reject any claims received outside this period.

(c) Subject to the above, Familiar Goods will, in its discretion, make good the short delivery, replace the goods or issue a credit note.

(d) The goods must be retained by the Customer for physical inspection in person by Familiar Goods' authorised agent or representative.

13. CLAIMS FOR BREAKAGES OF CROCKERY AND/OR GLASSWARE

(a) Subject to any Consumer Guarantees, Familiar Goods will not accept breakage claims for crockery and/or glassware unless these goods were purchased in full cartons.

(b) The goods must be retained by the Customer for physical inspection in person by Familiar Goods' authorised agent or representative.

(c) Familiar Goods is entitled to reject any claim for broken goods where the Customer has not kept or made the goods available for its inspection.

(d) Subject to the above, Familiar Goods will, in its discretion, replace the broken goods or issue a credit note.

14. INTELLECTUAL PROPERTY

(a) Familiar Goods is the owner of trademarks, business names, designs, copyright and other intellectual property rights used in connection with its business and the goods, including copyright in the various images and names associated with its goods ("the Intellectual Property").

(b) The Customer acknowledges and agrees that:

- (i) the Intellectual Property is and remains at all times the property of Familiar Goods; and
- (ii) it may not use the Intellectual Property otherwise than in the promotion of goods purchased from Familiar Goods to the extent permitted by Familiar Goods.

15. WARRANTY

(a) With the exception of any Consumer Guarantees and any warranty expressly given in writing by Familiar Goods, to the extent permitted by law, Familiar Goods excludes all other terms, warranties, conditions and representations, whether express or implied in connection with the goods supplied and any order placed by the Customer.

(b) "Consumer Guarantees" means a right or guarantee the Customer may have under Australian Consumer Law or other rights in relation to the supply of goods (such as terms implied into a contract) that cannot lawfully be excluded.

16. LIABILITY

(a) To the extent permitted by law, Familiar Goods shall not be liable to the Customer for losses, whether direct, indirect or consequential, arising from:

- (i) loss of profit or business;
- (ii) loss of opportunity or goodwill;
- (iii) loss resulting from a claim by a third party;
- (iv) loss, damage or fault arising out of incorrect or inappropriate use of the goods, or
- (v) loss, damage or cost incurred that is indirect or consequential whether arising in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise,

in relation to or in connection with any Customer order or any goods supplied to the Customer by Familiar Goods.

(b) Subject to applicable law, the liability of Familiar Goods arising from the goods (including the supply and use of the goods) is limited, at Familiar Goods' option, to:

- (i) the replacement of the goods;
- (ii) the repair of the goods; or
- (iii) the issue of a credit note for the value of the goods.

17. TITLE

(a) Until full payment in cleared funds is received by Familiar Goods for all goods supplied by it to the Customer, as well as all other amounts owing to Familiar Goods by the Customer, under the Terms of Trade, any order made the Terms of Trade or any other agreement between the Customer and Familiar Goods:

(i) legal title and property in all goods supplied by Familiar Goods remain vested in Familiar Goods and do not pass to the Customer;

(ii) the Customer must, where reasonably practicable, store the goods separately and in such a manner and maintain any labelling and packaging of Familiar Goods, so that the goods are clearly and readily identifiable as the property of Familiar Goods;

(iii) the Customer must not sell the goods except in the ordinary course of the Customer's business;

(iv) the Customer will hold that part of the proceeds of the goods received from its customers on trust for Familiar Goods. Such part will be deemed to equal in dollar terms the amount owing by the Customer to Familiar Goods for all goods supplies at the time of the receipt of the proceeds. The Customer will keep Familiar Goods' proportion of the proceeds of sale separately such that they are clearly traceable and identifiable; and

(v) in addition to any rights Familiar Goods may have under Chapter 4 of the Personal Property Securities Act 2009 (Cth) ("PPS Act"), Familiar Goods may, at any time, demand the return of the goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the goods may be located in order to search for and remove the goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of Familiar Goods, and for this purpose the Customer irrevocably licenses Familiar Goods to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies Familiar Goods from and against all loss suffered or incurred by Familiar Goods as a result of exercising its rights under this clause 17(a). If there is any inconsistency between Familiar Goods' rights under this clause 17(a) and its rights under Chapter 4 of the PPS Act, this clause 17(a) prevails.

(b) The Customer must, at its own cost, insure and keep insured the goods against such risks as a prudent owner of the goods would insure at their full cost price, with a reputable insurance company.

18. PERSONAL PROPERTY SECURITIES ACT

(a) Unless a contrary intention appears, words or expressions used in this clause 18 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.

(b) The Customer acknowledges and agrees that, until Familiar Goods has received payment for all amounts owing to it by the Customer, Familiar Goods has:

(i) a purchase money securities interest (as defined in section 14 of the PPS Act) in the goods presently supplied and in the future by Familiar Goods to the Customer; and

(ii) a security interest (as defined in section 12 of the PPS Act) in relation to any other amounts owed by the Customer to Familiar Goods.

(c) The security interests arising under this clause 18 attach to the goods when the Customer obtains possession of the goods, and the parties confirm that they have not agreed that any security interest arising under this clause 18 attaches at any later time. Familiar Goods may register its security interests in the PPSR and where necessary amend its registrations from time to time.

(d) Familiar Goods may apply for any registration, or give any notification, in connection with the security interests arising under this clause 18 and the Customer must promptly, upon Familiar Goods' request, do anything (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents, and supplying information) to:

(i) ensure that any such security interest in favour of Familiar Goods is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective, and ranks as a first priority security interest;

(ii) enable Familiar Goods to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and

(iii) enable Familiar Goods to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.

(e) All costs and expense arising as a result of actions taken by either party pursuant to this clause 20 will be for the account of the Customer. Within five days of a written request, the Customer must pay to Familiar Goods any costs or expenses incurred or to be incurred in connection with to this clause 18.

(f) If Chapter 4 of the PPS Act applies to the enforcement of the security interest created under the Terms of Trade, the Customer agrees that the following provisions of the PPS Act will not apply to the extent permitted by law:

(i) the right to receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPS Act;

(ii) section 142 (redemption of collateral); and

(iii) section 143 (reinstatement of security agreement).

(g) Familiar Goods does not need to give the Customer any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.

(h) Neither party will disclose to a person or entity that is not a party to the Terms of Trade information of the kind mentioned in section 275(1) of the PPS Act unless section 275(7) of the PPS Act applies or that information is publicly available.

(i) Nothing in this clause 18 prevents Familiar Goods from taking collection action or legal action against the Customer to recover any amounts outstanding from time to time.

19. GENERAL

(a) Whilst all care has been taken, Familiar Goods will not be bound by any errors or omissions which may appear in any of its invoices and statements or its price lists, catalogues, or other promotional material.

(b) No time or other indulgence that Familiar Goods may give to a Customer shall affect or limit the rights of Familiar Goods under the Terms of Trade except to the extent that Familiar Goods expressly waives the same in writing.

(c) Any terms contained in the Customer's Order or other document issued by either Familiar Goods or the Customer which are inconsistent with the Terms of Trade shall, to the extent of the inconsistency, have no legal effect.

(d) If any term or part of the Terms of Trade is found to be void, illegal or unenforceable it shall be construed as being severed from the Terms of Trade and the remaining terms shall continue in full force and effect.

(e) Notices under the Terms of Trade may be may by electronic means, including by email.

20. JURISDICTION

The parties agree to submit to and be bound by the laws and courts in the State of Western Australia.