

1. DEFINITIONS

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;

Agreement means any agreement for the provision of goods or services by Busy Bee to the Customer;

Business Day means Monday to Friday in the State of Victoria, Australia, excluding public holidays and any other day on which Busy Bee's factory is closed;

Busy Bee means Busy Bee Brushware Pty Ltd (ACN 079 620 009);

consumer is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

Customer means the person, jointly and severally if more than one, acquiring goods or services from Busy Bee;

Force Majeure Event means an event beyond the reasonable control of a party including, without limitation, accident, act of God, act or threats of terrorism or war, breakdown, delay in freight or shipping or transport, epidemic, natural disaster, pandemic, import or export or travel restrictions, industrial disputes, lockouts or strikes;

goods means goods supplied by Busy Bee to the Customer;

GST means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended;

Order means an order placed by the Customer for Busy Bee to supply goods or services;

PPSA means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended;

Quotation means a written quotation from Busy Bee to a Customer for supply of goods and services specified in that quotation;

services means services supplied by Busy Bee to the Customer;

Terms means these Terms and Conditions of Trade; and

Website means Busy Bee's website located at: busybee.com.au.

2. BASIS OF AGREEMENT

2.1. Unless otherwise agreed by Busy Bee in writing, these Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2. An Order is accepted by Busy Bee when Busy Bee accepts the Order in writing or electronic means, or provides the Customer with the goods or services.

2.3. Busy Bee may refuse to accept any Order.

2.4. The Customer must provide Busy Bee with its specific requirements, if any, in relation to the goods and services.

2.5. Busy Bee may vary or amend these Terms by written notice to the Customer at any time, and any variations or amendments will apply to Orders placed after the notice date.

3. PRICING

3.1. Unless otherwise stated by Busy Bee, prices quoted for the supply of goods and services in Australia include GST.

3.2. If the Customer requests any variation to the Agreement, Busy Bee may notify the Customer of any proposed change to the price to account for the variation, and the Customer may:

- (a) accept the change in price; or
- (b) withdraw its requested variation.

4. PAYMENT

4.1. Unless otherwise agreed by Busy Bee in writing, the Customer must make payment in full to Busy Bee:

- (a) for any goods or services ordered by the Customer on the Website, in accordance with all payment terms set out on the Website at the time of the Order; and
- (b) for any goods or services ordered pursuant to a Quotation, in accordance with the payment terms set out in the Quotation.

4.2. The time for payment is of the essence.

5. PAYMENT DEFAULT

5.1. If the Customer defaults in payment by the due date of any amount payable to Busy Bee, then all money which would become payable by the Customer to Busy Bee at a later date becomes immediately due and payable without the need for any notice to the Customer, and Busy Bee may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983* (Vic) plus 4% for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Busy Bee from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- (c) cease or suspend supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2. Subject to any applicable statutory stay of proceedings, Busy Bee may also rely on clauses 5.1(c) and 5.1(d):

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of their creditors or any class of their creditors; or
- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

6. PASSING OF PROPERTY

6.1. Until Busy Bee receives full payment in cleared funds for all goods and services supplied by it to the Customer, title and property in all goods remain vested in Busy Bee and do not pass to the Customer.

6.2. In addition to its rights under the PPSA, Busy Bee may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of Busy Bee, and for this purpose the Customer

irrevocably licences Busy Bee to enter such premises and also indemnifies Busy Bee from and against all costs, claims, demands or actions by any party arising from such action.

7. PERSONAL PROPERTY SECURITIES ACT

7.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

7.2. For the purposes of the PPSA:

- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and Busy Bee has a Purchase Money Security Interest in all present and future goods supplied by Busy Bee to the Customer and the proceeds of the goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Busy Bee on the Personal Property Securities Register.

7.3. The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from Busy Bee's premises and not at any later time.

7.4. Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5. Busy Bee and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.

7.6. To the extent permitted by the PPSA, the Customer agrees:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Busy Bee will apply only to the extent that they are mandatory or Busy Bee agrees in writing; and
- (b) where Busy Bee has rights in addition to those in Chapter 4 of the PPSA, they will continue to apply.

7.7. The Customer must immediately upon Busy Bee's request:

- (a) do all things necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by Busy Bee to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Busy Bee may at any time require.

7.8. Busy Bee may allocate amounts received from the Customer in any manner Busy Bee determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Busy Bee.

8. RISK AND INSURANCE

8.1. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Busy Bee's premises.

8.2. The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.

8.3. The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Busy Bee, unless recoverable from Busy Bee on the failure of any statutory guarantee under the ACL.

9. PERFORMANCE OF AGREEMENT

9.1. In relation to Orders:

- (a) made on the Website, unless a different lead time is expressly stated then Busy Bee uses its best endeavours to dispatch goods within 1 Business Day of acceptance of a Customer's Order but does not guarantee such dispatch times; and
- (b) made other than on the Website, Busy Bee will provide the customer with an estimated date for delivery or dispatch.

9.2. Any period or date for delivery or dispatch of goods, or provision of services, stated by Busy Bee is an estimate only and not a contractual commitment.

9.3. Busy Bee will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

9.4. Busy Bee will use its best endeavours to notify the Customer of any delay or potential delay in delivery.

9.5. If Busy Bee cannot deliver goods or complete services by any estimated date, it will do so within a reasonable time.

10. DELIVERY

10.1. Subject to clause 10.8, Busy Bee will arrange for the delivery of the goods to the Customer in Australia.

10.2. Unless otherwise agreed in writing by Busy Bee, the Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.

10.3. Where the Customer seeks delivery outside of Australia, the Customer acknowledges and agrees:

- (a) it is solely responsible for all applicable brokerage fees, customs amounts, duties and import taxes (**Taxes**);
- (b) Busy Bee's calculation of the costs of shipping and handling costs do not include calculation of Taxes;
- (c) Taxes vary widely from country to country, and the Customer must check with its local customs agency for details on estimated costs of Taxes; and
- (d) Taxes may be non-refundable, and so if the Customer refuses to accept a shipment because of unexpected Taxes, to the maximum extent permitted at law Busy Bee is not liable to refund to the Customer the original cost of shipping or any Taxes.

10.4. The Customer acknowledges and agrees:

- (a) where the Customer requests delivery to a PO Box or parcel locker, the Customer must also provide details of its full shipping address as large goods may not fit in such PO Box or parcel locker;
- (b) where the Customer requests delivery to a remote or regional delivery address, Busy Bee may make delivery to the nearest service centre or storage facility and the Customer must collect the goods at its own cost; and
- (c) where the Customer requests a change of delivery address once goods have been dispatched, Busy Bee will use best endeavours but does not guarantee that it can comply with

such request and the Customer is liable for and must pay any costs associated with redirecting or trying to redirect delivery as requested.

- 10.5. The Customer indemnifies Busy Bee against any loss or damage suffered by Busy Bee, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and Busy Bee has not used due care and skill.
- 10.6. The Customer acknowledges and agrees:
 - (a) it must ensure its delivery address is reasonably accessible for delivery, including for a large truck; and
 - (b) for larger assembled or part assembled goods, Busy Bee's delivery driver (or contracted delivery driver delivering on Busy Bee's behalf) may need assistance unloading the delivery vehicle and cannot deliver items up stairs or steps or via lifts.
- 10.7. If delivery is attempted and is unable to be completed, the Customer is deemed to have taken delivery of the goods; and
 - (a) the Customer is liable for any costs associated with re-delivery; and
 - (b) the Customer is liable for reasonable storage charges payable monthly on demand.
- 10.8. For any Orders where shipping option "Free In-Store Pickup" has been selected:
 - (a) the relevant goods may be collected from Busy Bee's dispatch at 39 Swift Way, Dandenong South, 3175, Victoria, Australia (opening hours 8.00 a.m. to 4.30 p.m. Business Days);
 - (b) at the time of collection, the Customer must show Busy Bee a copy of the relevant sales invoice and must ensure that if payment has been made by credit card that the cardholder is present;
 - (c) the Customer must not attempt to effect collection using a privately booked third party professional carrier; and
 - (d) the Customer must collect the goods with seven days of being advised they are ready, and if the Customer fails to do so then the Customer is deemed to have taken delivery of the goods and is liable for reasonable storage charges payable monthly on demand

11. LIABILITY

- 11.1. Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 11.2. If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Busy Bee for failure of a statutory guarantee under the ACL.
- 11.3. If the Customer on-supplies the goods to a consumer and:
 - (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of Busy Bee's liability to the Customer;
 - (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Busy Bee's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

- 11.4. If clause 11.2 or 11.3 do not apply, then other than as stated in the Terms or any written warranty statement Busy Bee is not liable to the Customer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 11.5. Busy Bee is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 11.6. The Customer acknowledges that:
 - (a) it is the Customer's responsibility to ensure the goods are suitable for fitment and use as the Customer intends, that Busy Bee makes no representation that the goods are suitable for fitment or use with specific items (including but not limited to fitment to vehicles, garage doors or other machinery), and that if the Customer is in doubt as to the suitability of the goods for fitment or use as the customer intends it must contact the manufacturer of any item to or with which the Customer intends to fit or use the goods;
 - (b) it has not relied on any service involving skill and judgement, or on any advice, assistance, information or recommendation provided by Busy Bee in relation to the goods or services or their use or application; and
 - (c) it has not made known, expressly or by implication, to Busy Bee any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer.
- 11.7. To the maximum extent permitted at law, Busy Bee excludes any and all liability howsoever arising from fitment or use of the goods with unsuitable items (including but in no way limited to towbars, vehicles, garage doors or other machinery, as applicable).
- 11.8. Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

12. CANCELLATION

- 12.1. If Busy Bee is unable to deliver goods or provide services, it may cancel the Customer's Order or part thereof, even if it has been accepted, by written notice to the Customer.
- 12.2. If Busy Bee cancels a Customer's Order under clause 12.1, it must refund the Customer any amounts paid by the Customer and received by Busy Bee for goods or services cancelled.
- 12.3. No purported cancellation or suspension of an Order or any part of it by the Customer is binding on Busy Bee once the Order has been accepted.

13. SHORTAGES AND EXCHANGES

- 13.1. The Customer must inspect the goods upon delivery, and will be asked to sign for the goods, so if the goods are:
 - (a) signed for in good condition by the Customer, then to the maximum extent permitted by law Busy Bee will not accept any claims that the goods are damaged; and

- (b) broken or damaged, the Customer may refuse delivery or must ensure the delivery carrier's records show that the goods are damaged.
- 13.2. If goods are delivered to the Customer broken or damaged, the Customer must immediately:
- (a) notify Busy Bee, and provide photographs of the alleged breakages or damage, within 24 hours of delivery; and
 - (b) retain all original packaging, including delivery packaging.
- 13.3. The Customer must notify and provide Busy Bee with full details of any delivery shortage within 24 hours of delivery.
- 13.4. Without prejudice to any of its other rights, if the Customer is not satisfied with the goods for any reason, the Customer may return the goods to Busy Bee for an exchange or refund within 30 days of delivery subject to the following terms:
- (a) the goods must be complete (including accessories) and in new condition;
 - (b) the goods must be returned in their original packaging;
 - (c) the Customer must provide proof of purchase;
 - (d) the Customer bears the shipping costs of return; and
 - (e) a 15% restocking fee is payable by the Customer if the goods are not defective.
- 13.5. If the Customer is a consumer, nothing in this clause 13 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 14. FORCE MAJEURE**
- 14.1. Subject to clause 14.2, neither Busy Bee nor the Customer is liable in any way howsoever arising under an Agreement to the extent it is prevented from acting by a Force Majeure Event.
- 14.2. Nothing in this clause 14 operates to excuse the Customer from any obligation to pay money to Busy Bee.
- 14.3. If a party is prevented from acting by a Force Majeure Event, it must:
- (a) promptly notify the other party of the existence and expected duration of the Force Majeure Event;
 - (b) take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event; and
 - (c) subject to clause 14.4, resume performance of the obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.
- 14.4. If a Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or terminate the Agreement.
- 15. WEBSITE**
- 15.1. Busy Bee does not warrant, guarantee or make any representation regarding the accuracy, adequacy, availability, currency, completeness, reliability, or timeliness of the Website or the information available on the Website (**Information**).
- 15.2. The Information does not constitute advice about the suitability of goods or services for any circumstances.
- 15.3. Busy Bee does not warranty that the Website or Information is free from human or mechanical error, technical inaccuracies or other typographical errors or defects.
- 15.4. Busy Bee reserves the right to modify or vary the Information, to change or discontinue any feature or part of the Website, and to change the hours of availability of the Website.
- 15.5. Busy Bee does not warranty, guarantee or represent that the Information or Website will not cause damage is free from any computer virus or other defects.
- 15.6. Busy Bee will use reasonable endeavours to ensure the Website is available continuously but does not guarantee that access to the Website will be uninterrupted.
- 15.7. To the maximum extent permitted at law, Busy Bee excludes liability of any kind whatsoever arising from interaction with, and use of, the Website or the Information.
- 16. MISCELLANEOUS**
- 16.1. The law of Victoria from time to time governs the Terms.
- 16.2. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 16.3. A party's failure to enforce any of these Terms shall not be construed as a waiver of any of Busy Bee's rights.
- 16.4. If a clause of these Terms is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 16.5. A notice must be in writing and handed personally or sent by email. Notices sent by email are deemed received on confirmation of successful transmission.