

Terms and Conditions

1. General

The whole of the agreement between H.A.G Import Corp'n. (Australia) Pty Ltd ACN 005 109 035 as trustee of the HAG Wholesalers (Australia) Unit Trust ABN 99 197 250 028 ("HAG Import") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms").

HAG Import and the Customer agree that any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. For the avoidance of doubt, where there are inconsistencies between these Terms and terms contained in any order, these Terms prevail to the extent of the inconsistency.

By receiving delivery and/or supply of all or a portion of the goods, materials and/or parts and/or labour and/or services supplied by HAG Import under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

2. Credit Terms

Unless otherwise agreed in writing, the Customer must pay all accounts in full (without set-off, deduction or counterclaim) within thirty (30) days of invoice. All proforma orders must be paid within fourteen (14) days upon placement of order.

- 2.1 A discount as advised by HAG Import from time to time may be offered for early payment of accounts (within seven (7) days).
- 2.2 HAG Import's express or implied approval for extending credit to the Customer may be revoked or withdrawn by HAG Import at any time.
- 2.3 HAG Import is entitled to set-off against any money owing to the Customer amounts owed to HAG Import by the Customer on any account whatsoever.
- 2.4 Without limiting HAG Import's rights under clause 8.9, payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in clause 2.5, and then to principal.
- 2.5 The Customer is liable for all costs (including actual legal costs on a full indemnity basis), charges and expenses (including contingent expenses such as debt collection commission) incurred by HAG Import in enforcing or attempting to enforce any of its rights under these Terms (including, but not limited to, recovering any unpaid amounts), the Credit Application, the PPSA or at law.

3. Quotations and Pricing

- 3.1 Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by HAG Import by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). HAG Import will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 3.2 Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.
- 3.3 Unless otherwise specified by HAG Import, the prices exclude:
 - 3.3.1 any statutory tax, including any GST, duty or impost levied in respect of the Goods and which

has not been allowed for by HAG Import in calculating the price; and

- 3.3.2 costs and charges in relation to insurance, packing (other than the standard packing of HAG Import), crating, delivery (whether by road, rail, ship or air) and export of the Goods.
- 3.4 Unless otherwise specified by HAG Import, all charges by HAG Import will be increased by the amount of any GST that is payable on the supply of the Goods.
- 3.5 Any variations in the invoice or contract price as a consequence of currency fluctuations shall be payable by the Customer.
- 3.6 The contract between HAG Import and the Customer shall not be affected by any impositions or alterations of customs duties or by decisions of the Customs Department with regard to either classification or value of duty or landing charges occasioned thereby. Any such impositions shall be to the account of the Customer.

4. Delivery and Supply

- 4.1 Any times quoted for delivery and/or supply are estimates only. HAG Import will use its best endeavours to effect delivery in the time quoted, but if HAG Import fails to do so by reason of:
 - 4.1.1 inability to obtain supplies of materials or parts from approved sources;
 - 4.1.2 any strike, shortage of labour or lockout;
 - 4.1.3 war, riots, accident, civil commotion, fire, or Force Majeure; or
 - 4.1.4 any other event whatsoever beyond the reasonable control of HAG Import,Subject to clause 19, HAG Import shall not be liable for failure to deliver/supply, or for delay in delivery/supply and may (in its absolute discretion):
 - 4.1.5 cancel the contract or any unfulfilled part; or
 - 4.1.6 extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery.

- 4.2 Any order that cannot be fulfilled on its receipt will automatically be back ordered and processed when stock becomes available unless it is the Customer's stated standard policy not to accept back orders or the Customer specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and HAG Import will not be liable for any charges due to product unavailability.

- 4.3 The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch.
- 4.4 HAG Import may refuse to supply any order by the Customer for Goods in its absolute discretion and may make acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- 4.5 If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer:
 - 4.5.1 shall be liable for any additional cost, charge and expense incurred by HAG Import in complying with the Customer's direction; and

- 4.5.2 shall pay for the whole of the invoiced value of the Goods pursuant to Clause 4 notwithstanding the staggered deliveries.
- 4.5.3 Such action shall be deemed to be delivery to the Customer.
- 4.6 Delivery is deemed to have occurred when the Goods are unloaded at the Customer's premises (or other premises agreed by the parties). If the Customer fails or refuses, or indicates to HAG Import that it will fail or refuse, to take or accept delivery, then (unless HAG Import otherwise agrees) the Goods will be deemed to have been delivered when HAG Import notifies the Customer that the Goods are available for collection.
- 4.7 If the Customer is unable or fails to accept delivery of the Goods, HAG Import may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by HAG Import. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all cost, charge and expense incurred by HAG Import on account of storage, detention, double cartage/delivery or similar causes.
- 4.8 Subject to Clause 4.1, the Customer agrees that it will be obliged to and shall pay for the Goods on the due date notwithstanding that delivery is made after the agreed delivery date, and notwithstanding that the Goods may not yet be delivered.
- 4.9 The Customer must not sell the Goods: (i) to any retailer or wholesaler; or (ii) through the Amazon marketplace, without HAG Import's express written consent. Without limiting the Customer's other rights under these Terms and at law, if the Customer sells any Goods in breach of this clause, HAG Import may refuse to supply any future orders by the Customer for Goods and/or terminate these Terms immediately by notice in writing to the Customer.
- 5. Risk**
- 5.1 Subject to clauses 5.2 and 19, the Goods shall be at the Customer's risk after delivery has been, or has been deemed to have been effected, notwithstanding that delivery of the Goods may be staggered or that the Customer may not have signed a receipt for the Goods.
- 5.2 HAG Import shall not be liable for any loss or deterioration of, or damage to, the Goods:
- 5.2.1 where a carrier is engaged by HAG Import to deliver the Goods to the Customer, from such time as the Customer or carrier commences unloading the Goods or the Customer acknowledges receipt of the Goods, whichever occurs first; and
- 5.2.2 in all other cases, from such time as the Goods are loaded onto the carrier's vehicle at the place of dispatch.
- 6. Property**
- 6.1 Until full payment has been made (in cleared funds) for all Goods, and any other sums in any way outstanding from the Customer to HAG Import from time to time:
- 6.1.1 the Customer shall hold the Goods as bailee for HAG Import (returning the same to HAG Import on request);
- 6.1.2 HAG Import retains full title and ownership in the Goods supplied to the Customer;
- 6.1.3 for such time as the Customer retains possession of the Goods, the Customer must:
- (a) insure them for the full purchase price;
- (b) store them securely and in such manner that they may be identified as the property of HAG Import and easily removable by HAG Import; and
- (c) ensure the Goods are properly maintained in the condition in which they were delivered and shall make good any damage or deterioration; and
- 6.1.4 HAG Import is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.
- 6.2 Notwithstanding clause 6.1, subject to clause 6.3-6.4 (inclusive), the Customer may sell the Goods in the ordinary course of its business as the fiduciary agent of HAG Import.
- 6.3 If the Customer sells any of the Goods in accordance with clause 6.2, the proceeds of sale (direct or indirect) are received by the Customer on trust for HAG Import. The Customer must account to HAG Import on demand for the proceeds of sale held by it as trustee for HAG Import.
- 6.4 If the Customer sells any of the Goods in accordance with clause 6.2, the Customer must keep full and adequate records of all sales and make them available on request to HAG Import..
- 7. Returns, Cancellations and Claims**
- 7.1 The Customer shall not return any Goods to HAG Import without obtaining prior authorisation from HAG Import. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by HAG Import only after Goods returned are either collected by HAG Import's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to HAG Import but must await receipt of a credit note.
- 7.2 All goods returned must be of merchantable and reasonable quality such that the goods are complete in their original packaging, not shop-soiled, are not price ticketed and are still listed in the current price list.
- 7.3 If HAG Import accepts the return of any Goods that have been ordered, HAG Import may charge the Customer fifteen per cent (15%) of the invoice price as a handling fee with freight costs and risk remaining the responsibility of the Customer.
- 7.4 No cancellations or partial cancellation of an order by the Customer shall be accepted by HAG Import unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by HAG Import, will indemnify HAG Import against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

- 7.5 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to HAG Import in writing within seven (7) days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.
- 8. Personal Property Security Interest**
- 8.1 In these Terms, "PPSA" means the Personal Property Securities Act 2009 (Cth) (as amended), and where words that are used in these Terms are defined in the PPSA, they have the meanings given to them respectively in the PPSA.
- 8.2 To secure the obligation of the Customer to pay the purchase price of the Goods and any other obligations of the Customer to HAG Import (together the "Indebtedness"), the Customer grants HAG Import a security interest in:
- 8.2.1 the Goods and their proceeds; and
- 8.2.2 all present and after-acquired property delivered and/or supplied to the Customer by HAG Import, to the extent required to secure the Indebtedness.
- 8.3 Subject to clauses 6.2-6.4, the Customer must not, without HAG Import's prior written consent, sell or grant a security interest in any of its personal property (including but not limited to the Goods and the proceeds of the Goods) in respect of which HAG Import has a security interest until the Customer has discharged all of the Indebtedness.
- 8.4 The Customer consents to HAG Import registering (at any time) a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Customer waives any right to receive notice in relation to any registration on the register of a security interest in respect of the Goods.
- 8.5 As and when required by HAG Import the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable HAG Import to register a financing statement or a financing change statement and generally to obtain, maintain, register and enforce HAG Import's security interest in respect of the Goods and their proceeds.
- 8.6 The Customer represents and warrants to HAG Import that:
- 8.6.1 all information in the Credit Application is true, correct and complete; and
- 8.6.2 the Goods are not purchased for personal, domestic or household purposes.
- 8.7 The Customer repeats each representation and warranty in clause 8.6 each time HAG Import delivers and/or supplies Goods under these Terms, with reference to the facts and circumstances at the time such Goods are delivered and/or supplied.
- 8.8 The Customer shall not change any of its details as set out in the Credit Application without first notifying HAG Import at least 7 days before the change takes effect.
- 8.9 HAG Import has absolute discretion as to the manner in which it applies money it receives from the Customer.
- 8.10 The parties agree to contract out of the PPSA in accordance with section 115 of the PPSA to the extent that section 115 applies for the benefit of, and does not impose a burden on, HAG Import. Specifically, the following provisions of the PPSA will not apply and the Customer will have no rights under them:
- 8.10.1 section 95 (to the extent that it requires the HAG Import to give notices to the Customer); section 96; section 118 (to the extent that it allows HAG Import to give notice to the Customer); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142; section 143; and
- 8.10.2 to the extent permitted by section 115(7) of the PPSA section 127; section 129(2),(3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- 8.11 Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and HAG Import agree not to disclose any information of a kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any rights which it may have, or but for this clause it may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- 8.12 HAG Import is irrevocably authorised to enter any premises where the goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods and seize the Goods in accordance with the PPSA without liability for trespass or any resulting damage.
- 9. Privacy Act 1988 ("Privacy Act")**
- To enable HAG Import to assess the Customer's application for credit, the Customer authorises HAG Import to:
- 9.1 obtain from a credit reporting agency/body a consumer or commercial credit report containing personal information about the Customer and its guarantors; and
- 9.2 obtain a report from a credit reporting agency/body and other information in relation to the Customer's commercial credit activities and
- 9.3 give to a credit reporting agency/body information including identity particulars and application details
- AND the Customer authorises HAG Import to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency/body information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.
- The Customer understands that information can be used for the purposes of assessing its application for credit, assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.
- 10. Notification**
- The Customer must notify HAG Import in writing within seven (7) days of:
- 10.1 Any alteration of the name or ownership of the Customer.
- 10.2 The issue of any legal proceedings against the Customer.

- 10.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 10.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to HAG Import for all Goods supplied to the new owner by HAG Import until notice of any such change is received.

11. Warranties

No warranties except those implied and that by law cannot be excluded are given by HAG Import in respect of Goods supplied. Where it is lawful to do so, the liability of HAG Import for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by HAG Import.

12. Force Majeure

HAG Import shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible ("Force Majeure"), where all money due to HAG Import shall be paid immediately and, unless prohibited by law, HAG Import may elect to terminate the Agreement.

13. Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of HAG Import all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by HAG Import to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by HAG Import and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

14. Failure to Act

HAG Import's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or HAG Import's failure to exercise any right or remedy available under these Terms or at law, or HAG Import's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of HAG Import's right to demand timely payment of future obligations or strict compliance with the Terms.

15. Legal Construction

- 15.1 These Terms shall be governed by and interpreted according to the laws of Victoria and HAG Import and the Customer consent and submit to the jurisdiction of the Courts of Victoria.
- 15.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.

16. Default

16.1 If any one or more of the following occurs:

- 16.1.1 the Customer fails to pay any amount owing to HAG Import by the due date (or by the date required under clause 0);

- 16.1.2 the Customer fails to comply with these Terms;
- 16.1.3 the Customer is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors;
- 16.1.4 the Customer is a company and has a provisional liquidator, liquidator, receiver, receiver and manager or official manager, voluntary administrator or analogous person appointed to it or any of its property;
- 16.1.5 a secured creditor seizes or takes possession of any collateral in the possession of the Customer and HAG Import gives notice in writing to the Customer that (in its sole discretion) HAG Import considers it to constitute a default;
- 16.1.6 in the sole opinion of HAG Import, there is a material risk that the Customer is, or will be, unable to pay any amounts owing to HAG Import or perform any other obligation under these Terms and HAG Import gives notice in writing to the Customer of this opinion;

then, by notice to the Customer and without prejudice to HAG Import's other rights and remedies under these Terms or at law or in equity, and subject to Part 5 of the *Corporations Act 2001* (Cth):

- 16.1.7 any discount for early payment of accounts are null and void;
- 16.1.8 all outstanding amounts become immediately due and payable by the Customer to HAG Import;
- 16.1.9 the Customer shall pay all costs (including actual legal costs on a full indemnity basis), charges and expenses (including contingent expenses such as debt collection commission) incurred by HAG Import in enforcing or attempting to enforce any of its rights under these Terms (including, but not limited to, recovering any unpaid amounts), the Credit Application, the PPSA or at law to HAG Import on demand;
- 16.1.10 interest will accrue on all overdue amounts from the due date up to the date of actual payment at a rate equivalent to two per cent (2%) above the rate of interest applicable under section 2 of the *Penalty Interest Rates Act 1983* (Vic);
- 16.1.11 HAG Import may (at its sole discretion) suspend supply and delivery of all Goods; and
- 16.1.12 HAG Import shall be entitled to a general lien over all personal property belonging to the Customer in HAG Import's possession (although all or some of such property or goods may have been paid) for any amount owing to HAG Import.

16.2 Interest charged under clause 16.1.10 will be calculated on daily balances and will be payable within 30 days of a demand being made by HAG Import.

17. Alteration of these Terms

HAG Import may amend or replace these Terms (New Terms) from time to time by notice to the Customer. The notice may be delivered or sent by post, email (which may include a link to a website) to the Customer based on the details in the Credit Application. All orders made after the notice is given to the Customer (or, if later, the date specified in the notice) shall be subject to the New Terms.

18. Acknowledgment of Commercial Relationship

The Customer acknowledges that:

- 18.1 the relationship between HAG Import and the Customer is a commercial one and the arrangements do not relate to or involve any goods or services of the kind ordinarily acquired for personal, domestic or household use or consumption;
- 18.2 it has no authority to bind HAG Import; and
- 18.3 nothing in these Terms will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship HAG Import and the Customer.

19. Exclusion of Liability

19.1 In these Terms 'Australian Consumer Law' means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth), and under the same or similar provisions of the Australian Consumer Law and Fair Trading Act 2012 (Vic), as amended or replaced from time to time. 'Consumer' means a consumer within the meaning of section 3 of the Australian Consumer Law.

19.2 Nothing in these Terms operates to exclude, restrict or modify the application of any implied condition or warranty, the exercise of any right or remedy (including a right to indemnity), or the imposition of any obligation, right or liability, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would:

- 19.2.1 contravene that statute;
- 19.2.2 cause any term of these Terms to be void,

("Non-excludable Obligation").

19.3 Except to the extent of the Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability, or obligation on, HAG Import are expressly excluded under these Terms.

19.4 Except to the extent of the Non-excludable Obligations, HAG Import's liability to the Customer arising, directly or indirectly, under or in connection with these Terms, and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

19.4.1 HAG Import will have no liability whatsoever to the Customer for any:

- (a) loss, harm, liability, damage, cost or expense (including legal fees) suffered by the Customer that cannot reasonably be considered to arise naturally from that breach, event or events giving rise to the losses;
- (b) special, indirect, consequential, exemplary or punitive loss or damage;
- (c) any and all economic loss, loss of contract, profit, revenue, opportunity, production, production stoppage, goodwill, reputation, overhead costs, anticipated savings or data;

19.4.2 the aggregate of HAG Import's liability to the Customer is otherwise limited to the replacement or repair of the Goods or payment of the cost of

replacement or repair of those Goods at the discretion of HAG Import;

19.5 In relation to Non-excludable Obligations, except for Goods of a kind ordinarily acquired for personal, domestic or household use or consumption, HAG Import's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to the lowest of the cost of:

- 19.5.1 replacing the Goods;
- 19.5.2 supplying equivalent Goods; or
- 19.5.3 having the Goods repaired.

20. Indemnity

20.1 To the extent permitted by law, and without limiting any other rights of HAG Import, the Customer shall indemnify, and on demand reimburse, HAG Import and keep HAG Import indemnified against all claims, suits, actions, demands, loss, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards made against HAG Import or incurred by HAG Import to the extent that such liability, cost, expense or loss is caused by:

- 20.1.1 a breach of these Terms or any contract by the Customer;
- 20.1.2 any negligent act or omission, by the Customer or any of its officers, employees, contractors or agents; or
- 20.1.3 HAG Import repossessing the Goods or enforcing any other rights HAG Import has under clauses 6 or 8, or at law.

20.2 Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of these Terms.

21. Severability

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