

Terms and Conditions of Trade

1. OUTLINE

- 1.1 **Currency:** These Terms apply to the supply of all Goods and Services by us to you from the date that you accept these Terms.
- 1.2 **Acceptance:** You accept these Terms when:
- 1.2.1 you submit an Order;
- 1.2.2 you accept delivery of the Goods and Services pursuant to an Order; or
- 1.2.3 you make Payment, or partial Payment, for any Goods and Services supplied by us, whichever occurs first.

2. QUOTES + ORDERS

- 2.1 **Requesting a Quote:** You may request a Quote from us relating to the potential supply of Goods and Services.
- 2.2 **Providing a Quote:** We may provide to you a Quote relating to the potential supply of Goods and Services, which may include the price and quantity of the Goods and Services proposed to be supplied by us and other relevant details as necessary.
- 2.3 **Validity of Quote:** A Quote is valid for 30 days only. We reserve the right to withdraw a Quote at any time before you place an Order.
- 2.4 **Placing an Order:** If you place an Order for each supply of Goods and Services, it is not binding until we have provided you in our absolute discretion our written acceptance or confirmation of the Order.
- 2.5 **Additional conditions:** Unless otherwise agreed by us in writing, these Terms will prevail over, and we will not be bound by, any conditions (express or implied) added or provided by you, whether in an Order or otherwise.

3. PRICE

- 3.1 **Price:** Unless otherwise agreed in writing by us or by our authorised representative, subject to clause 3.2, the price charged and payable for the Goods and Services shall be the price in Australian dollars at the date we provide the Quote, accept the Order, Deliver of the Goods or Services to you or issue the Invoice to you (whichever comes first), together with any applicable taxes, charges and delivery costs in relation to the Goods and Services.
- 3.2 **Variation of price:** Prices for the supply of Goods or Services are based on the cost prevailing and the specification supplied at the time. Subject to your rights under law including the ACL, we reserve the right to vary the price if:
- 3.2.1 there is any movement in the cost of supplying the Goods or Services specified in your Order, including any Charges;
- 3.2.2 the Goods or Services specified in your Order are varied from the Goods or Services specified in our Quote; or
- 3.2.3 otherwise provided in these Terms, and we provide you reasonable notice of any such variation of price.
- 3.3 **Imported goods:** Prices for imported goods charged to you shall be the price of those goods charged to us (including any relevant Charges, transportation, freight and insurance costs) are to be converted into Australian dollars based on the Reserve Bank Exchange Rate on the date that such goods are paid for by us.

4. PAYMENT

- 4.1 **Invoice on delivery:** Unless otherwise agreed in writing, we will issue you an Invoice upon delivery of the Goods or Services specified in your Order.
- 4.2 **Payment terms:** Unless otherwise agreed by us in writing, all Payments shall be made in full within 7 days from the date of the Invoice.
- 4.3 **Payment method:** All Payments are to be made to us in cash, by direct credit to the bank account nominated by us, by cheque or as otherwise indicated by us in writing.
- 4.4 **Payment in instalments:** We may at our discretion as agreed in writing accept Payments in instalments upon such terms as we see fit.
- 4.5 **Deposit.** We may in our absolute discretion require payment of a deposit, which shall be indicated by us in writing prior to commencement of work on your Order.

5. PAYMENT DEFAULT

- 5.1 **Default Interest:** We may at our discretion in the event of your failure to make a Payment in accordance with clause 4 (*Payment*) charge Default Interest at the rate of 10% per annum.
- 5.2 **Payment of Default Interest:** Default Interest pursuant to clause 5.1 shall be:
- 5.2.1 payable on demand; and
- 5.2.2 calculated daily from the date Payment was due to the actual date that the Payment is made in full.
- 5.3 **Costs of enforcement:** We may recover from you any costs we incur in the collection of Payment of any Invoice.
- 5.4 **No set off:** You may not set off against any Payment any claims which you may have against us. Any Payment you make to us shall first be credited against any Default Interest accrued pursuant to this clause 5 to the actual date of Payment.

6. DELIVERY, RISK + INSURANCE

- 6.1 **Delivery:** Delivery of the Goods shall take place upon pick up by or delivery of the Goods to you, your agent or nominee or to a carrier commissioned on your behalf as applicable at the place specified by you or as otherwise agreed.
- 6.2 **Cost of delivery:** We may charge you the cost of delivering the Goods to you, which will be included in the Payment to be made in relation to the Goods. Any transportation costs incurred after the Goods have been Delivered will be paid by you.
- 6.3 **Instalments:** We reserve the right to make deliveries in instalments and these Terms shall be severable as to such instalments.
- 6.4 **Risk passes on delivery:** The risk in the Goods shall pass to you upon the delivery of the Goods in accordance with clause 6.1.
- 6.5 **No liability for delay:** We will use reasonable efforts to deliver the Goods to you by the date and to the place specified by you. Without limiting clause 9 (*Exclusions + Limitations*), if the Delivery of the Goods is delayed:
- 6.5.1 we shall not be liable for late delivery or delay in delivery;
- 6.5.2 the delay does not give you the right to cancel an Order or terminate these Terms.

7. CANCELLATION

- 7.1 **Cancellation by you:** You may not cancel an Order, or any part of it, unless:
- 7.1.1 we give our written consent; and
- 7.1.2 you pay to us (if required by us in our absolute discretion) any and all costs reasonably incurred by us in relation to the cancelled Order or the cancelled part of the Order to the date of cancellation.
- 7.2 **Cancellation by us:** We may in writing cancel an Order or delivery of an Order without liability to you (save as required by relevant laws) if:
- 7.2.1 we reasonably form the opinion that you are insolvent or at material risk of insolvency;
- 7.2.2 you fail to pay any amount for the Goods or Services on the due date; or
- 7.2.3 we reasonably form the opinion that supplying Goods or Services to you may have a negative impact upon our business or commercial reputation or image.

8. DEFECTS + RETURN OF GOODS

- 8.1 This clause 8 is subject to clause 9 (*Exclusions + Limitations*), clause 10 (*Statutory Rights*) and any other statutory or legal right whether under these Terms or otherwise.
- 8.2 **Returns:** You should inspect the Goods immediately once they are delivered and may only return the Goods if:
- 8.2.1 they do not materially comply with the Order; or
- 8.2.2 if permitted by law, including the ACL.
- 8.3 **Notification:** If you wish to return any Goods delivered to you, you must give to us:
- 8.3.1 notice within a reasonable time of your receipt of the Goods; and
- 8.3.2 the original Invoice details.
- 8.4 **Replacement or credit:** If we accept the return of Goods from you, we will at our option either:
- 8.4.1 replace the returned Goods; or
- 8.4.2 give a credit or a refund for such Goods.
- 8.5 **Costs to return Goods:** You shall bear any expense of transportation of Goods returned to us. We reserve the right to apply a restocking fee equivalent to the cost we incur in processing the returned Goods.

9. EXCLUSIONS + LIMITATIONS

- 9.1 **ACL exception:** The exclusions and limitations in this clause 9 are subject to clause 10 (*Statutory Rights*).
- 9.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law
- 9.3 **Limitations:** No warranty is given and we will not be liable for:
- In the case of Goods*
- 9.3.1 alterations to Goods for which we are not responsible;
- 9.3.2 damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or

9.3.3 loss caused by any factors beyond our control; and

In the case of Services

9.3.4 interference with our Services for which we are not responsible;

9.3.5 damage or loss caused by unusual or non-recommended use of our Services; or

9.3.6 loss caused by any factors beyond our control.

9.4 **Indirect loss:** We will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by you or any other person resulting from any act or omission by us).

9.5 **Total liability:** Our total liability for breach of these Terms or breach of our contractual obligations or duties at law or in equity (however arising) is limited at our option to:

In the case of Goods

9.5.1 the replacement of the Goods or the supply of equivalent goods;

9.5.2 the repair or rectification of the Goods;

9.5.3 the payment of the cost of replacing the Goods or of acquiring equivalent goods; or

9.5.4 the payment of the cost of the repair or rectification of the Goods; and

In the case of Services

9.5.5 the supply of the Services again; or

9.5.6 the payment of the cost of having the Services supplied again.

9.6 **No reliance:** You acknowledge and agree that:

9.6.1 you have and will make your own assessment of the suitability of any Goods or Services supplied to you; and

9.6.2 you do not and will not rely on our skill or judgment in relation to the acquisition of any Goods or Services from us.

10. STATUTORY RIGHTS

10.1 **Statutory rights:** In circumstances where you are acquiring Goods and Services from us as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, we acknowledge and agree that certain statutory guarantees and rights shall apply to you as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.

10.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

11. TITLE

11.1 **Possession as bailee:** After delivery of the Goods, until the full Payment has been made you shall possess the Goods as bailee only.

11.2 **Title:** We will retain absolute title over the Goods until we have received Payment in full in respect of the Goods.

11.3 **Identification:** Until full title in the Goods has passed to you, you will ensure that:

11.3.1 any identifying plate, mark or packaging number on any of the Goods is not removed, defaced or obliterated; and

11.3.2 the Goods are identifiable and distinguishable from any other goods that may be in your possession and as to each particular Invoice of Goods.

12. SECURITY INTEREST

12.1 **Security Agreement:** This clause 12 sets out the Security Agreement between you (**Grantor**) and us (**Secured Party**).

12.2 **Creation of Security Interest:** The Grantor grants to the Secured Party a Security Interest in the Goods supplied by us to you, including all related proceeds (**Collateral**), as security for all or part of the Payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.

12.3 **Attachment:** The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as bailee under clause 11.1.

12.4 **Perfection:** The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR.

12.5 **Information:** The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.

12.6 **Identification:** Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that it will comply with clause 11.3 insofar as it applies to the Collateral.

12.7 **Accessions:** The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.

12.8 **Remedies:** Until this Security Interest in the Collateral has been extinguished, if:

12.8.1 a Default Event occurs in respect of the Grantor; or

12.8.2 the Grantor is in breach of these Terms, the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity, including those set out in clause 12.9.

12.9 **Right of entry:** In addition to any rights given to the Secured Party under Chapter 4 of the PPSA, the Grantor irrevocably:

- 12.9.1 grants the Secured Party the right to:
- A demand the immediate return of the Goods to the Secured Party;
 - B enter the Grantor's premises to search for and seize the Goods without notice or liability to the Grantor; and
 - C retain, sell or otherwise dispose of those Goods in any manner it sees fit; and

12.9.2 indemnifies, and keeps indemnified, the Secured Party against any claim (including in negligence) in respect of any damage to the property of, or the premises occupied by, the Grantor or any consequential loss

caused by another party arising relating to searching for and seizing any Goods in accordance with this clause 12.9.

12.10 **Permitted use and sale:** The Grantor may only sell or deal with any of the Collateral (including accessions) in respect of which full Payment has not been received if:

12.10.1 the Secured Party has not exercised a remedy under clause 12.8;

12.10.2 the proposed transaction is a *bona fide* transaction to a third party at market value conducted in the ordinary course of business of the Grantor;

12.10.3 the proposed transaction does not create a security interest in the Collateral that ranks above this Security Interest;

12.10.4 all proceeds of the proposed transaction is:

- A immediately paid to the Secured Party; or
- B held on trust for the Secured Party in a separate account, payable to the Secured Party on demand; and

12.10.5 unless otherwise obligated by law, the Grantor does not disclose to a third party that the proposed transaction is subject to this Security Agreement or that the proceeds will be immediately paid to the Secured Party or held on trust for the Secured Party.

12.11 **Costs:** The Grantor shall pay all costs incurred by the Secured Party (including costs on a solicitor-client basis and debt collector's costs) arising out of this Security Agreement, including costs in relation to:

12.11.1 seizure, retention, redemption or any other remedy exercised pursuant to clause 12.8; and

12.11.2 the enforcement of its rights under this Security Agreement (including matters incidental to it).

12.12 **Waiver:** Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on the Secured Party.

12.13 **Waiver of receipt of statements:** The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.

12.14 **Change of name:** The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.

12.15 **Acknowledgement:** The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms.

13. INTELLECTUAL PROPERTY

13.1 **Your intellectual property:** If you provide us with Material to be used in the supply of the Goods or Services:

13.1.1 you warrant and represent to us that our use of the Material provided to us will not infringe the Intellectual Property Rights of any third party; and

13.1.2 you indemnify and will keep us indemnified from and against any and all claims, liabilities, obligations, expenses or damages which we may suffer or incur as a result or

in connection with clause 13.1.1 being untrue or breached.

13.2 **Licence over Materials:** You grant to us a non-exclusive royalty-free license throughout the world to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the provision of the Goods or Services.

13.3 **Our intellectual property:** All of our Intellectual Property Rights in and relating to the production, development and supply of the Goods or Services, including but not limited to drawings, illustrations, specifications and other literature (excluding your Materials) remains our property and shall not be transferred, assigned, licensed, reproduced or otherwise given to any other person by you without our prior written consent.

13.4 **Confidentiality:** You shall keep confidential and shall not use any confidential information communicated by us to you without our prior written consent.

14. GST

14.1 **Prices exclusive of GST:** Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

14.2 **GST payable in addition:** You must pay to us all GST in addition to any other amounts payable by you to us in respect of a taxable supply, which will be payable by you when required to pay for the Goods or Services.

14.3 **Issue of tax invoice:** We will issue a tax invoice for any taxable supply to you, which will enable you, if permitted by the GST Law, to claim a credit for GST paid by you.

14.4 **Third party supplies:** If GST is payable for a taxable supply by a third party, we will request that party to provide you with a tax invoice.

15. GENERAL

15.1 **Indemnity:** You agree to indemnify and keep us indemnified in respect of all damages, losses, costs and expenses (including legal costs) that we may incur as a result of your breach or alleged breach of these Terms.

15.2 **Termination:** If a Default Event occurs:
15.2.1 we may, without limiting any other right we have under these Terms, terminate any outstanding Order and any contract for the supply of Goods and Services to you; and
15.2.2 all Payments and any other money under these Terms becomes immediately payable.

15.3 **Lawful purpose:** You shall ensure that the Goods and Services are used only for lawful purposes and in accordance with any applicable laws.

15.4 **Binding:** These Terms shall bind our successors, administrators and permitted assigns and your executors and permitted assigns, or, being a company, its successors, administrators and permitted assigns.

15.5 **Assignment:** We may without notice to you assign, transfer and/or sub-contract our rights and/or obligations (in whole or in part) under these Terms. You may not assign, transfer, hold on trust or otherwise delegate any of your rights or obligations under these Terms without our prior written consent.

15.6 **Time of the essence:** Time shall be of the essence in relation to any date or period under these Terms.

15.7 **New Terms:** If we adopt new terms and conditions for the sale of Goods and Services:

15.7.1 you will be given written notice (if you are a Customer at the relevant time); and

15.7.2 unless otherwise agreed, they will apply to the supply of Goods and Services after you accept such new terms and conditions.

15.8 **Variation:** We may vary these Terms by providing you reasonable written notice.

15.9 **Force Majeure:** If a Force Majeure Event occurs, we may elect to extend at our discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

15.10 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

15.11 **Waiver:** No failure, delay, relation or indulgence on our part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

15.12 **Governing law:** These Terms shall be governed by the laws of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

16. INTERPRETATION + DEFINITIONS

16.1 **Personal pronouns:** Except where the context otherwise provides or requires:

16.1.1 the terms **we**, **us** or **our** refers to the Company; and

16.1.2 the terms **you** or **your** refers to the Customer.

16.2 **Defined terms:** In these Terms, unless otherwise provided, the following terms shall have their meaning as specified:

ACL means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.

Charges means any sales tax, excise duties, customs duty, transfer duty, GST or any other taxes, duties or charges applicable in respect of the provision of the Goods and Services.

Collateral means property that is subject of a security interest.

Company means South West Catering Pty Ltd (ABN 44 072 057 115).

Customer means any person or entity that places an Order with us and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms, including any related company, related party, officer and authorised person of the relevant person.

Default Event means any one of the following events:

- (a) you fail to make any payment when due, whether for the Goods and Services or otherwise;
- (b) Winding Up commences against you;
- (c) a receiver is appointed to you;
- (d) you become insolvent, bankrupt or commit an act of bankruptcy;
- (e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or
- (f) a mortgagee or their agent enters into possession of your assets.

Default Interest means as defined in clause 5.

Delivery means the delivery of the Goods and Services in accordance with clause 6.1.

Force Majeure Event means circumstances beyond our reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, your acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from you.

Goods means goods sold by the Company from time to time, including catering related equipment.

Grantor means the person who has the interest in property to which a security interest is attached.

GST and GST Law have the meaning as set out in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.

Invoice unless otherwise agreed means the invoice issued upon the delivery of the Goods and Services specified in your Order.

Material means any material in which you have Intellectual Property Rights provided by you for use by us in the production, development and supply of the Goods and Services to you.

Order means an order for Goods and Services received by us whether in writing or otherwise.

Payment means payment of any amount relating to Goods or Services in accordance with these Terms.

PMSI means a purchase money security interest as defined by section 14 of the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended, including any regulations made pursuant to it.

PPSR means the Personal Property Securities Register.

Quote means a quotation by us for the supply of particular Goods and Services containing details as specified in clause 2.2.

Secured Party means a person who holds the benefit of a security interest.

Security Agreement means the security agreement set out in clause 12 (*Security Interest*).

Security Interest means the security interest created in clause 12 (*Security Interest*).

Services means services provided by the Company from time to time, including any advice or recommendations where the context permits.

Terms means these terms and conditions.

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.