

Terms and Conditions of Sale
Sydney City Smallgoods Pty Ltd, trading as Two Providores
ACN 078 623 337



Definitions:

Buyer	means the purchaser of any goods specified on a purchase order to the Company.
Company	Means Sydney City Smallgoods Pty Limited ACN 078 623 337
Consumer	means an individual who buys products for personal use and not for resale.
Goods	means the products and, if any, services specified on a purchase order from the Company to the Buyer.
PPSA	means the <i>Personal Properties Securities Act 2009</i> .
PMSI	means a purchase money security interest as defined by the PPSA.
Security Interest	and "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meanings given to them by the PPSA.

1. Pricing and Delivery

- 1.1 The price of the Goods is to be calculated by reference to the Company's current price list.
- 1.2 The prices and product specifications contained in the Company's price list are subject to change at the absolute discretion of the Company and without notice to the Buyer.
- 1.3 The Buyer agrees that the delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of the Buyer, shall be conclusive evidence of delivery.

2. Orders

- 2.1 An order for Goods constitutes an offer to purchase the Goods by the Buyer subject to these Terms and Conditions.
- 2.2 Orders accepted by the Company may not be cancelled or altered in whole or in part without the Company's written consent.
- 2.3 The Company may from time to time and at its absolute discretion vary the Terms and Conditions.
- 2.4 The Company may at its absolute discretion decline any order either in whole or in part.
- 2.5 The Company reserves the right to specify the minimum order value that will be accepted from time to time. The Company may at the Company's absolute discretion, supply orders below the specified minimum order value and charge a handling fee, as determined by the Company, on all such orders.
- 2.6 In placing any order the Buyer expressly represents that the Buyer:

- (a) Is solvent; and



- (b) Has not committed an act of bankruptcy; and
- (c) Knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Buyers' assets.

3. Terms of Payment

- 3.1** All invoices are due and payable in full in accordance with the time period for payment as recorded on each invoice.
- 3.2** Should the Buyer fail to pay the Company's invoices by the due date then the Buyer shall pay all of the Company's costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.
- 3.3** The Company may set off any amount owed by the Company to the Buyer from any amount due by the Buyer to the Company.

4. Goods and Services Tax ('GST')

- 4.1** All prices will be quoted exclusive of GST. Invoices will be issued in the prescribed form as set out by Section 195-1 of the 'A New Tax System (Goods and Services Tax) Act 1999 (Cth)' and the related imposition Acts of the Commonwealth (The GST Law)'.
4.2 Any discounts or other terms agreed between the Buyer and the Company will be calculated on and applied to the Purchase Price exclusive of GST.
- 4.3** Payment for GST
 - (a) If GST is imposed on any supply made by the Company pursuant to these Terms and Conditions, the Buyer must pay to the Company, in addition to any consideration payable, an additional amount for supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable, or provided, (without any deduction or set-off) by the Buyer under any other clause in these Terms and Conditions. Any amount payable is payable upon demand by the Company whether such demand is by means of any invoice or otherwise.
 - (b) If any part of the Purchase Price is referable to both a Taxable Supply and anything that is not a Taxable Supply, the GST exclusion portion of the purchase price shall be determined by the Company.
 - (c) Where the Company determines on reasonable grounds that an adjustment is required to the purchase price, it will promptly issue any 'Adjustment Notes' that are prescribed by the GST law.

5. Warranty

- 5.1** This clause is to be read together with any benefits that the Company may provide under statute.
- 5.2** The Buyer shall immediately notify the Company in writing of any defect in the Goods supplied.
- 5.3** Nothing in these Terms and Conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded. Except as expressly set out in these Terms and Conditions and as required by the Australian Consumer Law, the Company makes no warranties or other representations to the Buyer. The Company's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law. Any warranties made by the Company to the ultimate consumer

of the Goods is solely for the benefit of the Consumer, and no Buyer purchasing goods for resale shall be entitled to bring claims under any such warranties.

5.4 Without limiting the above clauses:

- (a) To the extent permitted by statute, the liability, if any, of the Company arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of Goods, shall at the Company's option be limited to:
- (b) The replacement of the Goods or resupply of the Goods, or the cost of replacement or resupply of the Goods; or
- (c) refund of the Purchase Price.
- (d) Subject to clause 5.4, the Company shall not in any circumstances be liable to the Buyer under or in connection with these Terms and Conditions, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of these Terms and Conditions, for or in respect of any excluded loss.
- (e) Unless otherwise specified, this warranty does not cover products that have become damaged or defective as a result of improper use.

5.5 Unless otherwise specified, the process for making a warranty claim as a Consumer is as follows:

- (a) Any Good subject to a warranty claim should be returned to the place of purchase for assessment by the Company representative. The Consumer is responsible for returning the Good to the place of purchase.
- (b) The Consumer must present proof of purchase when making a warranty claim.
- (c) The claim under a warranty (the Consumer may have additional rights under the Australian Consumer Law) will be assessed by the Company, authorised distributor or representative on the basis of their product knowledge and reasonable judgment (subject to clause 5.6(d)) and will be accepted if:
 - i. a relevant defect is found; and
 - ii. the warranty claim is made during the relevant warranty period.
- (d) Upon acceptance of a claim under a warranty, the Company will arrange a replacement good.

6. Other Claims

- 6.1** Any claims by the Buyer for short or wrongful delivery of the Goods must be notified to the Company in writing within seven days after delivery of the Goods to the Buyer and any claim which the Buyer does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
- 6.2** Any claims by the Buyer associated with trade promotions in relation to the Company's products must be made in writing within 3 months of completion of the trade promotion and must be accompanied by copies of all documents that are necessary to justify the Buyer's claim.
- 6.3** Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within the prescribed time periods provided by law.

7. Return of Goods

- 7.1** The Company will not accept returns for credit without prior authorisation.
- 7.2** Any Goods which the Buyer returns for credit, other than defective Goods and warranty claims will only be accepted if they are in the original packaging and in as new saleable order and condition.

7.3 The Company reserves the right to charge a delivery fee, in its absolute discretion, if the order total value is under \$150.00.

8. Implied Terms

8.1 It is hereby acknowledged by the Buyer that, under the Australian Consumer Law, certain conditions and warranties may be implied in the contract between the Company and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights.

8.2 Subject to the clause 8.1, the Company disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.

8.3 Where so permitted the liability of the Company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of Goods, to the replacement of the Goods or the supply of equivalent Goods or the cost of replacing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.

8.4 Accordingly, subject to Clause 8.1, in no event shall the Company be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.

9. Indemnity

9.1 Subject to Clause 8, the Buyer shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from one or more of the following:

- (a) As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
- (b) As a result of any other negligence or other breach of duty by the Buyer; or
- (c) As a result of any compliance or adherence by the Company with any instructions of the Buyer in relation to the Goods or their manner of fabrication.

10. Rights in relation to the Goods

10.1 In connection with the Goods while they remain the property of the Company, the Buyer agrees with the Company that:

- (a) The Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Buyer;
- (b) The Buyer cannot claim any lien over the Goods;
- (c) The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
- (d) Where the Buyer is in actual or constructive possession of the Goods:

- i. The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
- ii. It is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.

10.2 In connection with the Goods, the Company states to the Buyer that:

- (a) The Company has the right to supply the Goods to the Buyer;
- (b) The activities of the Buyer in supplying the Goods do not infringe the rights of the owner of the Goods (where the Company is not the owner of the Goods); and
- (c) If the Goods are not owned by the Company, that the Company is authorised to supply the Goods to the Buyer.

10.3 The Company and the Buyer agree that:

- (a) All risk of loss in respect of the Goods transfers to the Buyer upon completion of the Company's delivery obligations;
- (b) The property of the Company in the Goods remains with the Company until the Company has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Company and the Buyer;
- (c) The Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;
- (d) Pending payment in full for the Goods, the Buyer:
 - i. Must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - ii. Must not allow any person to have or acquire any security interest in the Goods;
 - iii. Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business.

10.4 Despite clause 10.3, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Company (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:

- (a) It holds the proceeds of re-supply of all the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
- (b) It must either pay the amount of the proceeds or re-supply to the Company immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
- (c) Any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the Buyer becomes and remains the property of the Company until the Company is paid in accordance with clause 10.3(a) when the property in the Goods (including the accessory) passes to the Buyer and;
- (d) Notwithstanding clauses 10.4(a) – 10.4(c), the Buyer acknowledges that the Company has a security interest in the Goods and in addition, in the proceeds of the Goods, that constitute both a 'security interest' in the original Goods and a 'purchase money security interest' in the proceeds of the Goods within the meaning of the Personal Property Securities Act 2009 ("the Act")

- (e) The Buyer warrants that in the event that it grants a 'non-purchase money security interest' in the account, within the meaning of the Act, to a Third Party as original collateral for new value, the Buyer will:
 - i. On the direction of the Company, purchase new inventory from the Company with the proceeds of sale, within 7 days of any notice pursuant to the Act, delivered to the Company by the Third Party; or
 - ii. On the direction of the Company, pay the Company all outstanding amounts in the account to satisfy the Customer's primary obligation to the Company, within 7 days of any notice pursuant to the Act, delivered to the Company by the Third Party; whichever of 10.4(f)(i) or 10.4(f)(ii) the Company so directs.
 - iii. The Buyer acknowledges and agrees that a failure to comply with a direction by the Company in accordance with the above will constitute a default and breach of the security agreement between the Company and the Buyer which will allow the Company to enforce the Buyer's obligations to the Company.

11. Withholding Supply

11.1 The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Buyer, to withhold supply to the Buyer and the Company will not be liable for loss or damage resulting directly or indirectly from such action where:

- (a) The Company has insufficient Goods to fill the order;
- (b) The Goods ordered have been discontinued; or
- (c) The Company has determined in the Company's absolute discretion that credit should no longer be extended to the Buyer.

12. Modifications of labels

12.1 The Buyer may not, without the Company's written consent, alter, remove, or obliterate any labels which the Company attaches to the Goods.

13. Performance and Representations

13.1 The Buyer acknowledges that neither the Company nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.

14. Default in Payment

14.1 The Company will treat any default by the Buyer in payment of any monies due to the Company as a breach of these Terms and Conditions. The Company reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments on all moneys owed are made. Recurring payments default may, at the Company's discretion, lead to the Buyer's account with the Company being closed and any further order placed by the Buyer and accepted by the Company will only be processed when prepaid at the Company's absolute discretion.

15. Waiver

15.1 Failure by the Company to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or

of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.

16. Buyer's Acknowledgment

16.1 The Buyer acknowledges that the Goods are not of a kind ordinarily acquired for private use or consumption but are acquired for business purposes.

17. Intellectual Property Rights

17.1 The Buyer warrants that any design or instruction furnished to the Company shall not be such as will cause the Company to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify the Company against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Buyer any licence or rights under any intellectual property rights which is the property of the Company.

18. Notices

18.1 Any notice to be given by the Buyer to the Company shall be sent to the Company's Principal Place of Business as recorded by the Company Database maintained by ASIC from time-to-time. No notice shall be deemed to have been given until it is actually received at such address.

19. Severance

19.1 It is agreed that if any provision of these terms and conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

20. Governing Law

20.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of New South Wales. The Buyer and the Company agree to submit to the non-exclusive jurisdiction of New South Wales and the Federal Court of Australia.

21. Entire Agreement

21.1 These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Company may have with the Buyer, then the provisions of these Terms and Conditions shall prevail.

22. Clerical Errors

22.1 The Company reserves the right to correct clerical errors without notification.

23. Personal Properties Securities Act 2009

23.1 The Buyer hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of the Company in all Goods previously supplied by the Company to the Buyer (if any) and all after

acquired Goods supplied by the Company to the Buyer (or for the Buyer's account) to secure the payment from time to time and at a time, including future advances. The Buyer agrees to grant a "Purchase Money Security Interest" to the Company.

23.2 The Buyer acknowledges and agrees that by assenting to these terms the Buyer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions) to the Company and all Goods previously supplied by the Company to the Buyer (or for the Buyer's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's purchase order.

23.3 The Buyer undertakes to:

- (a) sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
- (b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Company;
- (c) give the Company not less than 14 days' written notice of any proposed change in the Buyer's name and/or any other changes in the Buyer's details (including but not limited to changes in the Buyer's address, facsimile number, email address, trading name or business practice);
- (d) pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;
- (e) be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- (f) the Buyer waives any rights it may have under sections 115 of the PPSA upon enforcement.

23.4 Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Company, the Buyer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

23.5 The Buyer agrees that immediately on request by the Company the Buyer will procure from any persons considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.

24. Security Interest

24.1 The Buyer gives the Company a Security Interest in all of the Buyer's present and after-acquired property in which Goods supplied or financed by the Company have been attached or incorporated.