

## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

### 1. INTERPRETATION

- 1.1. In these Terms and Conditions:
- "Agreement"** means these Terms and Conditions between Melitta Professional Coffee Solutions Australia Pty Ltd ("**MPCS**") and the Customer, and includes any variation and alteration to these Terms and Conditions.
- "Base Interest Rate"** means the cash rate as published by the Reserve Bank of Australia for the fiscal quarter immediately preceding the date of the Supply.
- "Claims"** mean a claim brought for any loss, damage, injuries, death or expenses arising from any breach of, or liability under this Agreement.
- "Customer"** means the person or entity who agrees to purchase the Goods from MPCS.
- "Force Majeure"** means an event or circumstance which is beyond the control and without the fault or negligence of the party affected provided that event or circumstance is limited to: riot, war, invasion, acts of terrorism, civil war, compulsory acquisition by any governmental authority, earthquakes, flood, fire, act of God, strikes, or industrial action.
- "Goods"** means the property supplied by MPCS to the Customer under this Agreement.
- "GST"** or **"Goods and Services Tax"** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- "Loss"** means any liability, damage, cost (including reasonable legal costs) and other outgoings, including any indirect or consequential loss.
- "MPCS"** means Melitta Professional Coffee Solutions Australia Pty Ltd ACN 002 133 726.
- "Notice"** means a written communication under this Agreement between the Parties in accordance with clause 11.
- "Order"** means a written order by the Customer for the supply of Goods by MPCS, and includes any amendments or additions to such Orders.
- "Particulars of the Goods"** means any measurements, illustrations, drawings, descriptions or performance details of the Goods or the Supply of the Goods.
- "Parties"** means MPCS and the Customer.
- "Supply"** means the supply of Goods by MPCS to the Customer under this Agreement.
- "Taxable Supply"** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 1.2. In this Agreement, unless the subject or context otherwise requires:
- a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
  - the singular includes the plural and vice versa;
  - a reference to an individual or person includes a corporation, firm partnership, joint venture, association, authority, trust, personal representative, state or government and vice versa;
  - a reference to any gender includes all genders;
  - a reference to a time is that time in Sydney, New South Wales;
  - except as otherwise provided, a reference to a period of time (including without limitation, a year or a month) is to calendar period;
  - a reference to "amendment" includes addition, alteration, deletion, novation, extension, modification and variation;
  - a reference to "dollars" or "\$" is to Australian currency;
- 1.3. If any provision in this Agreement is prohibited or unenforceable then that part shall be removed to the extent of the prohibition or unenforceability and the remaining part of the Agreement shall continue to operate and bind the Parties.
- 1.4. These Conditions are governed by and are to be interpreted according to the laws in force in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts operating in the State of New South Wales.

### 2. THIS AGREEMENT

- 2.1. This Agreement governs the relationship between MPCS and the Customer and establishes the whole agreement between the Parties. All rights and conditions implied by law as they relate to the Parties shall be excluded unless contained within this Agreement.
- 2.2. The submitting of an order for the supply of Goods by the Customer to MPCS constitutes the Customer's unconditional acceptance of the terms and conditions set out in this Agreement.
- 2.3. This Agreement may be varied from time to time by MPCS. Such changes will be posted on the MPCS website. The Customer agrees to regularly review this Agreement to ensure that it is aware of any such changes.

### 3. ORDER FOR THE SUPPLY OF GOODS

- 3.1. An Order for the supply of Goods under this Agreement must be made by the Customer in writing. Verbal agreements for the supply of Goods are only valid if confirmed by the Customer in writing. Orders are only binding, if MPCS accept them in writing within two (2) weeks of receipt of the order, and provided that no contrary arrangement has been made as part of a general agreement between MPCS and the Customer.
- 3.2. The making of an Order by the Customer, or the receipt of such an order by MPCS, does not constitute a contractual agreement between MPCS and the Customer unless and until such time as MPCS has provided the Customer with written acknowledgement of the Order, such acknowledgement usually being provided by MPCS within two (2) weeks of the date of receiving the Order, and provided also that the particulars of the Order is consistent with the terms of this Agreement.
- 3.3. The Customer acknowledges that they Particulars of the Goods specified by MPCS in any Order confirmation is an approximation and is subject to minor deviations.

### 4. SUPPLY OF GOODS

- 4.1. MPCS aims to fulfill each Order with a single delivery, however reserves the right to make partial deliveries.
- 4.2. MPCS will provide the Customer with a delivery date for each Order. The Customer acknowledges that such a delivery date is subject to:
- MPCS receiving from the Customer complete and correct information necessary to deliver the Goods;
  - The timely supply of equipment, goods and parts (as the case may be) from the suppliers of MPCS;
  - The punctual receipt of all required documents, licenses, approvals and, in particular, plans from the Customer; and
  - The Customer not being in breach of its obligations under this Agreement.
- If the above requirements are not fulfilled with sufficient time to complete the Supply, or only partially fulfilled, as determined by MPCS, then MPCS may decide to either terminate the Order or else postpone the delivery date until a date as determined by MPCS in its absolute discretion.
- 4.3. Where MPCS fails to deliver Goods by a nominated delivery date because of the operation of a Force Majeure, MPCS may elect by providing Notice to the Customer that MPCS will either deliver the Goods on a subsequent delivery date as nominated by MPCS, or else rescind the Order to the extent of the non-delivered Goods. If MPCS do not provide Notice of its intention to deliver the Goods on a subsequent date within 28 days of the nominated delivery date, the Customer may rescind the Order to the extent that Goods have not been delivered. Where a party rescinds an Order under this clause 4.3, the Customer will remain obligated to pay MPCS for the part of the Order that was fulfilled by MPCS.
- 4.4. Risk of damage to or loss in the Goods shall pass to the Customer upon the dispatch of the Goods from MPCS's premises.
- 4.5. In the event that the Customer refuses to accept delivery of the Goods, or else is unable to accept the Goods for any reason including but not limited to having committed an Act of Insolvency, then the Customer will pay to MPCS an amount equal to 15% of the price of the Order, together with any costs incurred by MPCS in the aborted delivery of the Goods. This obligation is not subject to MPCS retaining or otherwise selling the Goods.
- 4.6. Should delivery of the Goods be delayed at the Customer's request by more than one (1) month from the delivery date, the Customer will pay to MPCS all costs incurred by MPCS in storing the Goods, or an amount equivalent to 0.5 % of the value of the Goods for each 28 day period that the Goods are retained by MPCS, calculated daily and payable monthly, whichever is the higher amount.
- 4.7. The Customer is not entitled to refuse to accept the delivery of the Goods because of insignificant defects.

- 4.8. In the case of delayed delivery due to the fault of MPCS, MPCS has the right to nominate a subsequent delivery date provided that such a date does not cause unreasonable delay. Should MPCS fail to deliver the Goods on the subsequent delivery date due to the fault of MPCS, the Customer may elect to withdraw its Order by providing Notice to MPCS within 14 days of the subsequent delivery date. MPCS will not be liable for any loss suffered by the Customer which results either directly or indirectly from MPCS's delayed delivery or non-performance of its obligations under this Agreement.
- 5. PRICING & TERMS OF PAYMENT**
- 5.1. MPCS will charge the Customer for the Supply of Goods at the price contained in the Order confirmation. These prices are not necessarily those prices quoted by MPCS in its price lists, as all prices quoted by MPCS are subject to change.
- 5.2. All prices quoted by MPCS are exclusive of GST. Where the Supply of Goods by MPCS to the Customer is a Taxable Supply, MPCS will remit an invoice to the Customer which states the amount of the GST levied against the Supply, such GST being payable by the Customer to MPCS.
- 5.3. All prices quoted by MPCS include packaging costs, but do not include any costs associated with the transportation of the Goods. Any costs incurred by MPCS in the course of transporting the Goods will be passed on to the Customer by MPCS.
- 5.4. MPCS only supplies Goods on credit to pre-approved Customers. When MPCS supplies Goods to a pre-approved Customer, payment for the Supply of Goods is due within 30 days from date of the invoice presented by MPCS in relation to that Supply. All other Customers will pay MPCS cash-on-delivery or as otherwise directed by MPCS.
- 5.5. Payment for expenses incurred by MPCS, such as for the purchase of spare parts, repairs, tolls, or the outsourcing of services are payable by the Customer immediately upon the date of receiving an invoice from MPCS.
- 5.6. Where payment is not made by the Customer on the due date of an invoice, the Customer shall pay interest on the outstanding amount to MPCS at an amount of 8 % above the Base Interest Rate.
- 6. RETURN OF GOODS**
- 6.1. It is the responsibility of the Customer to inspect the Goods upon delivery. The Customer agrees that by accepting delivery of the Goods the Customer will be taken to have approved the condition of the Goods as being in good working order and fit for the Customer's intended purpose.
- 6.2. MPCS may agree, in its absolute discretion, to allow the Customer to return any unused Goods sold to the Customer within two (2) years of the date of sale. The Goods may not be returned to MPCS until the Customer has first provided MPCS with Notice of the Customer's request to return the Goods, and MPCS have elected in writing to accept the return of the Goods. Where MPCS fail to provide the Customer with Notice of its agreement to accept the return of the Goods within 7 days of the date of receiving Notice from the Customer, MPCS will be deemed to have refused to accept their return.
- 6.3. Where MPCS agree for any Goods to be returned it will provide to the Customer a return authorisation number. The Customer must present such number to MPCS when it returns the Goods to MPCS.
- 6.4. The Customer must return the Goods to MPCS at its own expense. Upon receiving the returned Goods, MPCS will refund the price paid by the Customer for the Goods, subject to the following reductions:
- 30% off the purchase price if returned within the first (1<sup>st</sup>) half of the first (1<sup>st</sup>) year;
  - 40% off the purchase price if returned within the second (2<sup>nd</sup>) half of the first (1<sup>st</sup>) year; and
  - 50% off the purchase price if returned within the second (2<sup>nd</sup>) year.
- 6.5. The reductions listed in clause 6.4 are agreed to be reasonable pre-estimates of the impairment experienced by the Goods at the time of their return.
- 7. SECURITY INTERESTS**
- 7.1. The Customer grants to MPCS a Purchase Money Security Interest over the Goods Supplied to the Customer by MPCS as security for the performance of its obligations under this Agreement.
- 7.2. In addition, the Customer grants to MPCS a Security Interest over All Present and After-Acquired Property of the Customer as security for the performance of its obligations under this Agreement.
- 7.3. The Customer undertakes to do all things and execute and deliver all instruments as MPCS shall require from time to time to perfect and enforce the Security Interests provided to MPCS under this Agreement.
- 7.4. The Customer hereby appoints MPCS as its attorney to prepare, execute, deliver and file on behalf of the Customer any and all documents required or necessary to create, perfect, preserve and enforce the Security Interests provided to MPCS under this Agreement.
- 7.5. The Customer agrees to obtain and keep current contents insurance for the Goods for the duration of MPCS's Security Interests granted under this Agreement. The Customer agrees not to remove the Goods from its current premises without first providing Notice to MPCS other than for the purpose of selling the Goods to customers of the Customer in the ordinary course of business.
- 8. WARRANTY**
- 8.1. MPCS provides a general warranty that the Goods are in good working order for a period of 12 months from the date of Supply.
- 8.2. The warranty provided under this clause 8 does not extend to Goods that have been altered, modified, improperly installed or applied, abused, inadequately maintained, not used in conformity with any instructions for use provided or published by MPCS, or which were otherwise damaged due to malfunction of other parts not supplied by MPCS.
- 8.3. The warranty provided under this clause 8 does not extend to Goods if the Customer fails to make the Goods available to MPCS for inspection.
- 8.4. MPCS makes no warranty of merchantability or that the Goods are fit for a particular purpose.
- 8.5. The parties agree that MPCS's maximum liability under the warranties contained in this clause 8 shall not in any case exceed the purchase price of the Goods claimed by the Customer to be defective or deficient.
- 9. INTELLECTUAL PROPERTY**
- 9.1. It is a condition of MPCS's Supply of the Goods to the Customer that the Customer releases MPCS from all loss sustained or claims arising in relation to any third party's intellectual property rights in the Goods.
- 9.2. Where a claim is brought against the Customer by a third party alleging that the Goods have infringed that third party's intellectual property rights, MPCS shall, at its own discretion and without recourse to any other rights it has at law, elect to do any number of the following:
- obtain the intellectual property rights from the third party to the extent that it will permit the continued use for the Goods;
  - alter the Goods in such a way so that the intellectual property rights of the third party are not infringed; and/or
  - replace the Goods supplied to the Customer.
- 9.3. The Customer undertakes to inform MPCS immediately in writing about any claim lodged by a third party regarding the Goods, including any intellectual property rights regarding the Goods. If the Customer decides to suspend its use of the Goods during the conduct of a claim by a third party, the Customer will inform such third parties that its decision to suspend its use of the Goods does not constitute an acknowledgment of that third party's rights in the Goods.
- 9.4. The Customer releases MPCS from any liability arising or which have resulted because the Customer has used the Goods in a way which contradicts any written instruction for the use of the Goods provided by MPCS, or caused by the Customer altering or modifying the Good.
- 10. BREACH**
- 10.1. Where the Customer is in breach of this Agreement, the Customer will pay to MPCS all costs incurred in enforcing its rights under this Agreement, including MPCS's legal costs on an indemnity basis.
- 11. NOTICE**
- 11.1. Notice under this Agreement must be in writing, in English, signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:
- delivered to that Party's address;
  - sent by registered pre-paid mail to that Party's address; or
  - transmitted by facsimile to that person's facsimile number.