

# Terms & Conditions

## STANDARD TERMS AND CONDITIONS OF SUPPLY

"Before completing this form, each person signing it must read the section titled "Privacy Statement and Consent". Any person providing personal information to us in connection with this application, but who does not sign this form, must sign separate "Privacy Statement and Consent" Form.

### 1 GENERAL

1.1 In these terms and conditions unless the context specifies otherwise, the following terms shall have the following meaning:

"Contract" means these Standard Terms and Conditions of Supply, any additional terms and conditions of supply set out on the reverse of any relevant invoice issued by Peleguy Distribution and any other Peleguy Distribution document issued from time to time which is said to incorporate further Peleguy Distribution terms and conditions of supply;

"Enforcement Expenses" means any such expenses as incurred by Peleguy Distribution or its agents in pursuit of collection of an unpaid invoice issued by Peleguy Distribution and such expenses include, but not limited to, legal fees on a full indemnity basis, mercantile agent fees (and commission) and court processing fees.

"Force Majeure" - means any event or cause outside the control of the relevant party including acts of God, power or telecommunication interruptions, wars and vandalism or changes in the law.

"Goods" means the products and (if any) services specified on the reverse of an invoice issued by Peleguy Distribution;

"GST" means Goods and Services Tax as defined in the A New Tax System (Goods and Services Tax) Act 1999.

"Insolvency Event" means, for a corporation:

- (i) being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property;
- (ii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (iii) being unable to pay its debts or otherwise insolvent;
- (iv) taking any step that could result in the person becoming an insolvent under administration, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors.

For a natural person insolvency event occurs if the person commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth), dying or losing capacity to manage his own affairs or anything analogous to the above,

"Intellectual Property Rights" means all present and future rights in Australia or in relation to copyright, trademarks, designs, patents, circuit layouts, business and domain names and inventions."

"Peleguy Distribution" means Peleguy Distribution Pty Ltd (ACN 166 904 383) and its Related Entities as defined under the Corporations Act 2001 and its agents, representatives, assigns and successors;

"Privacy Consent Form" means the form entitled privacy consent form which you will receive together with Peleguy Distribution credit application;

"Purchaser" means the person described as such on the reverse of the relevant invoice;

"Settlement Price" means the price so indicated on an invoice issued to the Purchaser for Goods or services provided by Peleguy Distribution to the Purchaser pursuant to a Contract or any other arrangement and include the actual price of the Goods or services and any ancillary cost as marked on the invoice.

1.2 These terms and conditions (except to the extent that they are waived in writing signed by Peleguy Distribution) prevail over all other terms and conditions issued previously by Peleguy Distribution but only to the extent of the inconsistency between the documents and together, they form the Contract between the Purchaser and Peleguy Distribution .

### 2. TERMS OF SALE

The Goods and all other products or services sold or provided by Peleguy Distribution to the Purchaser are sold on the terms and conditions of the Contract.

### 3. DESCRIPTION FOR IDENTIFICATION ONLY

3.1 Any description of the Goods which appears on the reverse of the relevant invoice is given solely for identifying the specific goods that are the subject of this Contract and does not render this Contract a sale by description as defined in the Trade Practices Act 1974 (Cth).

3.2 The Purchaser agrees that he or she inspected the goods and or ascertained the suitability of the services and agrees that Peleguy Distribution does not provide any warranty in respect of the suitability of the Goods or services for the Purchaser's purpose of acquisition.

### 4. DELIVERY OF GOODS

The Purchaser acknowledges that any delivery times indicated to it by Peleguy Distribution, whether in this Contract or otherwise, are estimates only and Peleguy Distribution is not liable for late delivery or non-delivery. Peleguy Distribution is not liable and the Purchaser expressly releases Peleguy Distribution from any liability arising out of any loss, damage or delay suffered by the Purchaser or its customers arising out of late delivery or non-delivery.

### 5. LOSS OR DAMAGE IN TRANSIT

Peleguy Distribution is not responsible to the Purchaser (or any person claiming through the Purchaser) for any loss or damage to any Goods in transit caused by any event of any kind by any person.

### 6. PASSING OF PROPERTY AND RISK

6.1 Property and title in Goods supplied under this Contract does not pass to the Purchaser until payment in full by the Purchaser of the Settlement Price is received by Peleguy Distribution in relation to such Goods or services and in relation to all other amounts owing to Peleguy Distribution by the Purchaser on any account whatsoever, until which time (subject always to clause 6.2):

- (a) The Purchaser must not deal with any Goods to which Peleguy Distribution retains property and title in accordance with this clause 6.1 ("Retained Goods") in any way inconsistent with the rights and interests of Peleguy Distribution as owner thereof; and
- (b) The Purchaser must hold the Retained Goods as fiduciary bailee and agent for Peleguy Distribution, and the Purchaser must store the Retained Goods in such separate place and in such manner such that the Retained Goods are capable of being clearly identified as the property of Peleguy Distribution.

6.2 On demand by Peleguy Distribution (which demand may be made at any time on the Purchase defaulting in its obligations under clause 7.1), the Purchaser must deliver all Retained Goods to Peleguy Distribution or as otherwise directed by Peleguy Distribution . Peleguy Distribution may enter upon any premises under the Purchaser's control for the purposes of recovering any Retained Goods the subject of a demand made in accordance with this clause and, in so entering upon such premises, Peleguy Distribution and its authorised representatives will not be trespassers.

6.3 The Purchase may, in the ordinary course of business, sell Retained Goods on behalf of Peleguy Distribution or mix or combine Retained Goods with other goods in the course of a manufacturing process and sell the product or products thereof ("Products"), in which case the Purchaser must:

- (a) keep separate records of all sales of such Retained Goods or Products; and
- (b) account to Peleguy Distribution for all proceeds of the sale of such Retained Goods or Products (as applicable).

6.4 All risk in the Goods, unless otherwise agreed in writing by the parties, passes to the Purchaser on dispatch of the Goods by Peleguy Distribution. The Purchaser must ensure that it is adequately insured against losses and damage arising out of Goods in transit.

### 7. PAYMENT OF SETTLEMENT PRICE

7.1 Purchase must pay Peleguy Distribution the Settlement Price prior to noon on the 28th day of the month in which payment is due, as prescribed in the Statement provided by Peleguy Distribution to the Purchaser.

7.2 Unless agreed otherwise in writing, the cost of delivery of the Goods shall be payable by the Purchaser and, to the extent that any payment is required to be made to Peleguy Distribution in respect of such cost, the Purchaser must make such payment together with the Settlement Price in accordance with clause 7.1.

7.3 All prices quoted in this Contract are excluding of GST. The Purchaser expressly agrees to pay to Peleguy Distribution the statutory rate of GST as prescribed from time to time under the relevant GST legislation.

### 8. NON-PAYMENT

8.1 Subject to clause 6.2, if any payment is not received by Peleguy Distribution in accordance with clause 7.1 then, without prejudice to any other right or remedy, all outstanding money carries interest which is 2% above the interest

rate prescribed by the Penalty Interest Rate Act 1983( VIC). Interest shall be calculated daily on the outstanding balance until the Settlement Price is paid in full

8.2 The Purchaser irrevocably undertakes to pay, in addition to the Settlement Price, all Enforcement Expenses incurred by Peleguy Distribution in the recovery of any monies owing in respect of the Contract. The Purchaser agrees that Peleguy Distribution may admit this Contract as evidence in a court of competent jurisdiction as an agreement for the Purchaser undertaking to pay Peleguy Distribution on an indemnity basis all Enforcement Expenses.

8.3 Peleguy Distribution may, without prejudice to any other right or remedy, suspend all future deliveries of Goods or other products to the Purchaser, whether under this Contract or otherwise, until any Settlement Price or other amounts outstanding under this or any other Contract are paid in full to Peleguy Distribution .

#### 9. WARRANTIES AND LIABILITY

9.1 To the maximum extent permitted by law, all conditions, warranties, representations, liabilities and obligations, whether implied or imposed by statute, common law or otherwise, in respect of the supply of Goods, including any conditions or warranties as to merchantability, fitness for purpose or correspondence with description, are excluded and all liability for loss or damage, whether consequential or otherwise and whether arising from negligence or from any other cause whatsoever, is excluded.

9.2 In the event that Peleguy Distribution is found to be in breach of any condition, warranty, representation, liability or obligation not excluded under clause 9.1, the liability of Peleguy Distribution in respect of such breach, subject to clause 9.3, will be limited at the option of Peleguy Distribution to one of more of the following (as applicable):

- (a) the resupply of the relevant Goods; or
- (b) the payment of the cost of having the relevant Goods resupplied; or
- (c) the repair of the relevant Goods; or
- (d) the cost of having the relevant Goods repaired.

9.3 If Peleguy Distribution is held or found to be liable to the Purchase for any matter relating to or arising in connection with this Contract, whether based on an action or claim in contract, negligence, tort or otherwise, the maximum amount of damages the Purchaser will be entitled to recover from Peleguy Distribution will be limited to the amount paid by the Purchaser under clause 7.

9.4 The Purchaser warrants and represents to Peleguy Distribution that it does not acquire the Goods or services for domestic or household purposes and it expressly represents that all Goods or services are acquired for the purpose of resupply in the course of business.

9.5 By entering into the Contract each of the parties (where relevant) represents and warrants that on the date of execution of this Contract that:

- (a) (status) it is registered, or taken to be registered, under the Corporations Act as a company limited by shares;
- (b) (power) it has full power to enter into, exercise its rights and perform its obligations under this Contract;
- (c) (authorisation) all conditions and things required by applicable law to be fulfilled or done (including the obtaining of any necessary Authorisations) in order:
  - to enable it lawfully to enter into, and exercise its rights and perform its obligations under, the Contract; and
  - except for stamping of this document, to make this Contract admissible in evidence in the courts of each State and Territory including the Commonwealth of Australia, have been fulfilled or done;
- (d) (obligations binding) this Contract constitutes valid and legally binding obligations, enforceable against it in accordance with its terms except to the extent limited by equitable principles and laws affecting creditors' rights generally;
- (e) (no contravention) neither its execution of, nor its exercise of its rights or performance of its obligations under, this Contract in all material respects does or will contravene any applicable law to which it or any of its property is subject or contravene any undertaking or instrument binding on it or any of its property or contravene any provision of its constitution.
- (f) (no insolvency event) as at the date of this Contract, neither party suffered an Insolvency Event.

#### 10. TERM AND TERMINATION

10.1 This Contract commences on the date Peleguy Distribution accepts the credit application as provided to the Purchaser and will continue in operation until 7 days after the date on which the last of the Goods are delivered or the Settlement Price is paid in full whichever is the latter.

10.2 If a party commits a breach of any provision of this Contract, and has not remedied that breach within 14 days of being requested in writing by the other party to do so, then that other party may terminate this Contract immediately by notice in writing to the first party.

10.3 This Contract will immediately terminate if an Insolvency Event occurs in respect of the Purchaser

#### 11. RETURNED GOODS

11.1 Peleguy Distribution is not under any duty to accept Goods returned by the Purchaser and will do so only in accordance with the Peleguy Distribution Credit Returns Policy

11.2 All goods returned to Peleguy Distribution must be accompanied by a credit.

11.3 Goods returned to Peleguy Distribution without a Return Tax invoice will not be attended to.

11.4 Any Goods which you return for credit will only be accepted if they are in the original packaging and in saleable order and condition.

11.5 If we authorise the return of Goods, the Goods must be carried by our nominated carrier. Despite the choice of carrier, the carrier shall be regarded for the purpose of Clause 6 to be the Purchaser's agent and all risk in the returned Goods shall be born by the Purchaser until these Goods are received by Peleguy Distribution.

11.6 All credit requests must be made in writing to Peleguy Distribution's head office

#### 12. GOVERNING LAW AND FORCE MAJEURE

12.1 This contract is governed by the laws of the state of Victoria and the parties hereby submit to the none exclusive jurisdiction of the courts of that State and any courts taking appeal from them.

12.2 Neither party shall be liable to the other for any loss or damage suffered by the other as a direct result of either party being prevented, hindered or delayed in the performance of its obligations under this agreement by reason of any cause beyond that party's control including but not necessarily limited to an event of Force Majeure. An event of Force Majeure shall not excuse or limit the Purchaser's obligations and liability to pay the Settlement Price for Goods in transit (however damaged through the event) or Goods destroyed following receipt of such Goods by the Purchaser.

#### 13. INTELLECTUAL PROPERTY

The Purchaser expressly agrees that any Intellectual Property and related rights, worldwide, in any Goods or services, unless specifically indicated otherwise, is solely vested with Peleguy Distribution.

#### 14. NOTICE

- (a) a notice or direction given under this Contract shall be in writing and shall be served on the other party at the address indicated in the Contract.
- (b) a notice may be given to any party at the address shown in this Agreement or as subsequently notified in any of the following ways:
  - by personal delivery;
  - by registered mail postage prepaid;
  - by facsimile transmission; and
  - by Email (if agreed by the parties).notice is to be taken as duly given:
  - in the case of registered mail on the second day after posting;
  - in the case of a facsimile transmission, on the day it is sent if transmitted before 5.00 PM or on the next Business Day if transmitted after 5.00 PM; and
  - in the event of an email when a system receipt confirmed receipt, if applicable, or within 48 hours of dispatch of email provided that accurate records can be shown of transmission.
  - in the case of a facsimile transmission, the printout from the sending facsimile machine showing the date and time of sending, the number of pages sent and the receiver's facsimile number shall be sufficient evidence of the notice having been given.
- (c) a party may change its address for service by giving notice of that change in writing to the other parties

#### 15. SURVIVING OBLIGATIONS

The parties agree that the obligations set out in Clause 6, 9 and 13 shall survive termination or expiration of this Contract.

#### 16. VARIATIONS

Peleguy Distribution reserves the right to vary the terms of supply under a Contract from time to time provided that Peleguy Distribution will advise the Purchaser of any changes in the Contract no later than 7 calendar days prior to the changes taking affect.

#### 17. PRIVACY CONSENT FORM

By executing this Contract, you acknowledge receipt of the Peleguy Distribution Privacy consent Form and represent that you have read and understood the form and agreed to be bound by its terms. You consent to Peleguy Distribution use of personal information as stated in the form.

#### TRADING TERM FEES

##### ORDER SERVICE FEE

An Order Service Fee of \$12.00 (inc. GST) per order applies to purchases below \$100.00 (excl. GST).

##### CREDIT CARD PAYMENTS

Credit card payments made at time of order and/or up to 7 days from invoice date may not incur additional surcharge. However all credit card payments made after 7 days of receiving the goods will incur a 2% surcharge.

##### DANGEROUS GOODS FEE

All dangerous goods fees charged by courier companies, or others, will be passed on in its entirety to the Purchaser and payable in full by them.

##### ACCOUNTS TRADING UNDER \$300.00 (excl. GST) PER MONTH

Accounts trading under \$300.00 per month (ex GST) for three consecutive months may have their status changed to a COD account.

#### TERMS OF PAYMENT

##### RECEIPT OF PAYMENT

Payment of account must be received no later than the 28th day of the due month.

##### OTHER DISCOUNTS

Where other discounts are offered for direct supply, promotional or special orders invoiced by Peleguy Distribution regardless of whether such discounts are offered by Peleguy Distribution or third parties, such discounts will only be applied if payment of the account to which the order is placed is received no later than the 28th day of the due month and minimum trade levels are met.

##### OVERDUE ACCOUNTS

Interest is charged for all amounts past the due date at the rate as set out in Clause 8 of the Standard Terms and Conditions of supply. Interest will be charged from the first day after the due date until the date of receipt of full payment for the outstanding amount.

##### CLOSURE OF ACCOUNT/SALE OF THE BUSINESS

Regardless of any prior arrangements, upon closure of an account or sale of a business all outstanding monies, including current and forward dated amounts, become due and payable immediately.

##### DISHONOR FEE

A fee of \$38.50 (incl. GST) will be charged per payment dishonoured.

##### DELIVERY

Unless agreed by Peleguy Distribution in writing, all delivery costs whether from Peleguy Distribution warehouse or directly from the supplier to the Purchaser shall be to the Purchaser's account. If such costs were met by Peleguy Distribution, the Purchaser acknowledges and agrees that Peleguy Distribution has done so on behalf of the Purchaser and the Purchaser agrees to indemnify Peleguy Distribution against such delivery cost.

##### WITHHOLDING SUPPLY

We reserve the right, irrespective of whether or not an order has been accepted and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:

- we have insufficient Goods to fill the order;
- the Goods ordered have been discontinued; or
- we have determined, in our absolute discretion that credit should no longer be extended to you.

##### CREDIT RETURNS POLICY

##### CLAIMS

Any claims by you for short delivery must be made within 7 days of the delivery. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 30 days of delivery. Any claims by you associated with trade promotions in relation to our products must be made in writing within 7 days of completion of the trade promotion and must be accompanied by copies of all documents that are necessary to justify your claim.

##### ITEMS WHICH ARE NOT RETURNABLE

- Goods provided as a "Buy-in" or procured especially for the Purchaser, when not normally stocked by Peleguy Distribution.
- Goods marked with a Retail Price.
- Unsaleable items, such as damaged, obsolete or part quantities of goods sold by Peleguy Distribution in carton lots. (Unless proven damaged on receipt by the Purchaser in which case the entire stock of damaged item should be returned.)
- Dated stock (unless within the Supplier's Policy).

- Turnover Orders and associated Back Orders, unless authorised by Peleguy Distribution, or allowable under the "returnable" guidelines indicated below.
- Goods supplied direct by the supplier and charged through Peleguy Distribution. In relation to (6), see above comment

##### ITEMS WHICH ARE RETURNABLE OR ALLOWABLE FOR ADJUSTMENT

- Incorrect goods, quantity or size supplied.
- Incorrect price charged. Only after verification with Peleguy Distribution Customer Service Department.
- Goods supplied which are received damaged at the time of delivery.
- Dated Stock, within the supplier's policy.
- Goods returned accompanied by supplier's or Peleguy Distribution's authorisation.
- Short Sent Goods (Claims will not be recognised unless made within 3 days of receipt of invoice.)
- Missing goods (Claims will not be recognised unless Peleguy Distribution Customer Service Department is notified within 24 hours of receipt of invoice or delivery of goods). A signature on the delivery manifest is evidence of receipt of the items listed thereon.

##### RECALLS AND WITHDRAWALS

Recalls and withdrawals only as formally notified by Peleguy Distribution. (Must be on separate claim form. The claim form must include details of the Purchaser account number and product numbers of items being returned to Peleguy Distribution).

##### CLERICAL ERRORS

We reserve the right to correct clerical errors without notification.

##### RETAIL PRICING & GST EXPLANATION

Recommended Retail Prices are not obligatory. Peleguy Distribution reminds you that, as a retailer, it is your right and obligation, subject to the law, to set your own selling prices. Peleguy Distribution's RRP's are suggestions only. You are not obliged to use them. Therefore please ensure that you are aware of the provisions of the Trade Practices Act 1974 (Cth) and the guidelines issued by the Australian Consumer and Competition Commission from time to time which may impact the SRPs on the margins of your products before you apply them.

##### GST ON YOUR TAX INVOICES AND ADJUSTMENT NOTES

Our invoices and adjustment notes to you include GST as required.

##### PRIVACY STATEMENT AND CONSENT

#### 1. PURPOSES FOR WHICH WE COLLECT AND USE PERSONAL INFORMATION

- (a) You agree that personal information about you which may at any time be provided to us in connection with the credit application may be held and used by us to assess and process the application.
- (b) You agree that, in assessing an application for credit we may seek and obtain personal information about you from a credit reporting agency or another financial institution and may give personal information about you to another financial institution.
- (c) The collection of information about you is not required by law, but without it, we may not be able to provide you with the facility for which you apply.

#### 2. DISCLOSURE OF PERSONAL INFORMATION

You agree that we may collect personal information about you from, and disclose it to, the following, as appropriate, even if the disclosure is to an organisation overseas which is not subject to privacy obligations equivalent to those which apply to us:

- credit reporting agencies;
- your agents and contractors, including your finance broker, legal adviser, financial adviser, builder and settlement agent;
- you referees, including your employer;
- regulatory bodies, government agencies, law enforcement bodies and courts;
- debt collecting agencies;
- any person to the extent necessary, in our view, in order to carry out any instruction you give to us; and

#### 3. ACCESS TO YOUR PERSONAL INFORMATION AND CONTACTING US

Subject to the provisions of the privacy Act 1988, you may access personal information which we hold about you at any time by asking us. We may charge you a fee for accessing your personal information. You will be advised at the time of your application for access of the applicable fee.

#### 4. REPORTING UNPAID BALANCE TO REPORTING AGENCIES

If you owe us money and the amount outstanding is not settled within the term of the invoice and remain unpaid in part or full for period exceeding 60 days, we reserve the right and you expressly authorise us to report such a failure to any credit reporting agency relevantly operating in the market in Australia. Please be advised that adverse consequences will follow if such a report is made. A report will only be removed once the account has been paid in full.