

# TRESS DE MODA TERMS & CONDITIONS

## 1. Definitions

"Seller" shall mean TRESS DE MODA PTY LTD and its successors and assigns or any person acting on behalf of and with the authority of TRESS DE MODA PTY LTD.

"Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.

"Guarantor" means that person (or persons), or entity who agrees to be liable for the debts of the Buyer on a principal debtor basis.

"Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are described on the invoices, quotations, order forms or any other forms as provided by the Seller to the Buyer.

"Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

"Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 3 of this contract.

"Consignment Stock" shall mean Goods supplied to the Buyer but ownership is retained by the Seller until Goods are sold by the Buyer and pursuant to condition 19.

## 2. Acceptance

Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.

Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be amended with the written consent of the seller.

None of the Seller's agents or representatives are authorized to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details, address and/or any other change in the Buyer's details.

## 3. Goods

The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.

## 4. Price And Payment

At the Seller's sole discretion the Price shall be either;

- as indicated on invoices, quotation, order form or any other documents provided by the Seller to the Buyer in respect of Goods supplied; or
- the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.

The Seller reserves the right to change the Price for stock held by the Buyer on Consignment basis.

At the Seller's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable. Prior to the order being processed.

Time for payment for the Goods shall be due seven (7) days following the date of the invoice.

Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card (a surcharge of up to 2.75% may be applicable), or by direct credit, or by any other method as agreed to between the Buyer and the Seller Goods and Services Tax and other taxes and duties that may be applicable, shall be added to the Price except when the price expressly includes GST.

## 5. Delivery Of Goods / Services

Delivery of the Goods shall take place when the goods are delivered to the Buyer's address.

5.2 At the Seller's sole discretion the costs of delivery are;

- included in the Price

The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.

Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivered to the Buyer for the purposes of this agreement so long as such direction is in writing.

The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

The Seller shall not be liable for any loss or damage what so ever due to the failure by the Seller to deliver the Goods (or any of them) promptly or at all.

## 6. Risk If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.

## 7. Buyer's Disclaimer

The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.

## 8. Defects

The Buyer shall inspect the Goods on delivery and shall within seven (24) hours notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to replacing the Goods.

Goods will not be accepted for return other than in accordance with 8.1 above.

## 9. Warranty

For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.

## 10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 11. Intellectual Property

Where the Seller has designed Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and may only be used by the Buyer after receipt of the seller's written permission and authority. The Buyer shall indemnify the Seller against any claims by third parties for patent, trademark, design or copyright infringement, directly or indirectly arising out of the design, workmanship, material, construction, or use of

the Goods or any other deficiency therein. Where the Buyer has supplied drawings, sketches, files or logos to the Seller, the Buyer warrants that the drawings, sketches, files or logos do not breach any patent, trademark, design or copyright, and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller.

## 12. Default & Consequences Of Default

Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.

If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

- any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
- the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

## 13. Title

13.1 It is the intention of the seller and agreed by the Buyer that property in the Goods shall not pass until:

- The Buyer has paid all amounts owing for the particular Goods, and
- The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.

13.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership of rights in respect of the Goods shall continue.

13.3 It is further agreed that:

- Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
- The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.
- The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
- The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
- The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
- The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
- The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
- Until such time that ownership in the Goods passes to the Buyer, if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.

## 14. Security And Charge

14.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- The Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1

## 15. Cancellation

15.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice or not less than 30 days. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

15.2 In the event that the Buyer cancels delivery of Goods the Buyer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

## 16. Privacy Act 1988

16.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

16.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- To assess an application by Buyer;
  - To notify other credit providers of a default by the Buyer;
  - To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
  - To assess the credit worthiness of Buyer and/or Guarantor/s.
- 16.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- provision of Services & Goods;
  - marketing of Services and/or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
  - analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
  - enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 16.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Buyer; and/or
  - allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

## 17. Unpaid Seller's Rights

17.1 Where the Buyer has left any item with Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:

- a lien on the item;
- the right to retain the item for the Price while the Seller is in possession of them;
- a right of resale;
- the foregoing right of disposal, provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the Price having been obtained.

## 18. General

18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

18.2 All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.

18.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

18.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

18.5 The Buyer shall not set off against the Price amounts due from the Seller.

18.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

18.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change and such notice shall not be less than 30 days.

18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

## 19. CONSIGNMENT STOCK

19.1 The provisions of this condition 19 apply only to Goods supplied on a Consignment Stock Basis.

19.2 In the event of any inconsistency between the provisions of this condition 19 and the other provisions of these terms and conditions, this condition 19 shall prevail.

19.3 Ownership/Title of the Goods remain with the Seller and does not pass to the Buyer until seller has received in full (in cash or cleared funds) payment for the Goods.

19.4 It is a condition of this clause that the buyer shall have insurance covering all Goods for loss due to fire, theft, or acts of goods at the seller's request, the purchaser shall forward copies of such insurance within 2 days of the written request of the seller.

19.5 Buyer agrees to display the goods in area which is clearly visible to customers and Goods are stored in secure area to minimize potential loss or damage.

19.6 If Buyer requires display stand this will be provided free of charge. If these stand are damaged in anyway the Buyers will be charged \$100.00.

19.7 The seller will determine the retail price of the Goods and is to communicate this price to the Buyer at the time of order completion. The Buyer will not be permitted to sell Goods at higher price if desire can sell at discount price only.

19.8 On each delivery of Goods, the Seller shall submit to the Buyer a part-completed form ("Stock Usage Form") which the Buyer shall complete and return to the Seller before delivery is completed. The completed Stock Usage Form shall specify the quantities of Goods used by the Buyer since the last delivery.

19.9 When stock usage form is completed as per clause 19.3 the buyer must pay in full for goods specified on stock usage form. In the event that the Buyer does not submit a Stock Usage Form the Seller shall be entitled to invoice the Buyer for the full amount of Goods delivered by the Seller in the previous month.

19.10 The Buyer agrees to permit the Seller's authorised representatives access to the Buyer's premises at least once every two weeks in order to verify the amount of Goods held and used by the Buyer. The Buyer shall make available such of its records and information and provide such assistance as the Seller shall reasonably require for this purpose. Any Goods removed from the Buyer's premises (other than by the Seller) or which have perished will be deemed to have been used by the Buyer.

19.11 The Seller's records of the amount of Goods supplied to and used by the Buyer shall be final and conclusive, save in the case of manifest error.

19.12 Unless otherwise agreed, the Buyer agrees to pay for the Goods on completion of stock usage form.

19.13 At any time following termination of the Consignment Stock Agreement the Seller shall be entitled to invoice the Buyer for any balance owing to the Seller after taking into account:

- the amount of Goods supplied to the Buyer; and
- the amount of Goods paid for by the Buyer.

19.14 The Seller reserves the right to terminate this agreement for any reason upon giving seven (7) days written notice.