



## TERMS AND CONDITIONS OF SALE OF COLD CHAIN AUSTRALIA PTY LTD

- 1 DEFINITIONS
- 1.1 In this Contract:
- "Company" means Cold Chain Pty Ltd
- "Conditions" means the terms and conditions set out in this Contract
- "Contract" means a contract between the Customer and the Company incorporating these terms and conditions
- "Customer" means the person or firm who purchases the Goods from the Company
- "Due Date" means the date for payment for the Goods stated in Paragraph 3.5 of these Conditions
- "Goods" means the goods, equipment and materials sold by the Company to the Customer
- 1.2 Any reference in this Contract to any provision of a statute shall include any subsequent amended provision, re-enactment or extended provision relevant at any time
- 1.3 The headings in this Contract are for convenience only and shall not affect its interpretation
- 2 CONTENT OF CONTRACT
- 2.1 No variation of the Contract shall have effect unless agreed in writing by the Company and the Customer
- 2.2 Unless agreed in writing by the Company and the Customer every sale of Goods by the Company to the Customer shall be governed by the Conditions and these Conditions shall prevail over any terms and conditions of the Customer
- 2.3 No employee of the Company has authority to make any warranty statement or promise concerning the Goods except in writing signed by a duly authorised officer
- 2.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements, or which do not materially reduce the quality or performance of the Goods or which reflect changes in the specification of the manufacturer of the Goods
- 2.5 The Company reserves the right to decline to fulfil any order made by a Customer for Goods
- 2.6 The Company reserves the right at the Company's discretion to require payment in advance for orders placed by the Customer
- 3 PRICES AND CONDITIONS OF SALE
- 3.1 The price of the Goods shall be either the current price as set out in the Company's price list, at the date the order is received by the Company, or the price given on quotation by the Company. Any quotation given by the Company shall be valid for 3 months
- 3.2 Unless otherwise agreed in writing all prices are net and exclusive of value added tax
- 3.3 All payments shall be made in AUD as notified to the Customer by the Company
- 3.4 The Company reserves the right to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company and/or any change in delivery dates quantities or specifications for the Goods which is requested by the Customer or failure of the Customer to give the Company adequate information or instructions
- 3.5 Subject to any different terms agreed between the Company and the Customer the Company shall be entitled to invoice the Customer and the Customer shall pay for the price of the Goods within 30 days of the date of the invoice under which the Goods are provided. The time for payment shall be of the essence
- 3.6 If the Customer fails to make any payment on the Due Date, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 3.6.1 - terminate the Contract or suspend any further deliveries to the Customer; and
- 3.6.2 - charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate of 3% per calendar month until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest)
- 3.7 The Customer shall pay the price of the Goods without any deduction whether by set off counterclaim or otherwise. The Company shall have a right of set off
- 3.8 This contract is divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment
- 4 DELIVERY
- 4.1 The Goods shall either be delivered by the Company, or any agent appointed by the Company to the Customer's address as stated in the order form or collected by the Customer from the Company as the Company shall see fit
- 4.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods. Times for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date
- 4.3 It is the express responsibility of the Customer to inspect the Goods immediately upon their delivery. The Customer shall notify the Company within 5 days of delivery in respect of any damage to the Goods, shortfall or incorrect specification being delivered. If the Customer does not notify the Company within 5 days following delivery the Goods shall be deemed in accordance with the order placed by the Customer and completely satisfactory
- 5 RISK AND RETENTION OF TITLE
- 5.1 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery of the Goods to the Customer or collection of the Goods by the Customer
- 5.2 Title in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other amounts due to the Company by the Customer
- 5.3 Prior to the passing of title in the Goods to the Customer from the Company the Customer shall keep the Goods identified as the property of the Company so far as is possible.
- 5.4 Prior to the passing of title in the Goods to the Customer from the Company the Customer shall keep the Goods safe and insured against loss theft and damage up to the full replacement value of the Goods
- 5.5 Prior to the passing of title in the Goods from the Company to the Customer the Company shall be entitled at any time to require the Customer to deliver up the Goods so far as the Customer is able to the Company and if the Customer fails to do so forthwith to enter upon or into any premises or vehicles of the Customer or any third party where the Goods is located in order to recover the Goods
- 5.6 Notwithstanding that title to the Goods shall not have passed to the Customer an action for the price of the Goods can be maintained by the Company at any time after the Due Date
- 5.7 The Customer shall ensure that the interest of the Company in the Goods is noted on the insurance policy taken out by the Customer pursuant to the obligation stated in Paragraph 5.4 above and provide proof of the same to the Company upon its request
- 6 FORCE MAJEURE
- The Company shall have no obligation to deliver if delivery is delayed hindered or prevented by any circumstances beyond the Company's control including but not limited to strikes, lockouts or other industrial action, civil disturbance, war, fire, explosion, storm, flood, tempest or other natural disasters, seizure, arrest or requisition government regulations, restrictions shortage, sub-contractor failure or any act of terrorism
- 7 LIMITATION OF LIABILITY
- 7.1 Except where otherwise contained in these conditions the Company has no obligation duty or liability in contract tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of business revenue or profits anticipated savings or wasted expenditure or for any indirect or consequential loss whatever
- 7.2 The Company does not exclude or restrict liability for death or personal injury resulting from its own negligence
- 7.3 Except where otherwise contained in these conditions the Company has no obligation duty or liability in contract tort (including negligence or breach of statutory duty) or otherwise
- 7.4 Subject to Clause 7.2 the Company's liability for any breach of the terms of this Contract or otherwise will be limited to the value of the Goods purchased by the Customer from the Company in the 12 months prior to the breach of this Contract.
- 7.5 The Company shall accept no liability for the use of the Goods by the Customer other than in accordance with the Company's and/or the manufacturer's instructions.
- 8 NOTICES
- Any notice required to be given or served, shall be in writing. Notices shall be served on the Customer at the address stated on the order form. Notices shall be served on the Company 17 Tal Tals Cres, Mt Martha, Victoria 3934
- 9 INTELLECTUAL PROPERTY RIGHTS
- The Customer will not use any of the Company trademarks, logos, trade names or any other intellectual property rights without the prior written permission of the Company
- 10 GENERAL
- 10.1 No waiver by the Company of any breach by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision
- 10.2 The Customer may not assign any of its rights and obligations under this Contract without the Company's consent in writing
- 10.3 If any of these Conditions is held invalid or unenforceable in whole or in part the validity of the remaining Conditions and the remainder of the provision in question shall not be affected
- 10.4 Words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa
- 10.5 This Contract shall be governed by the laws of Australia and the Customer agrees to submit to the nonexclusive jurisdiction of the Australian courts
- 10.6 For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any term of this Agreement.
- 10.7 The terms and conditions set out herein will be automatically incorporated into all future contracts between the Customer and the Company without express reference being made to their incorporation