



## Terms and Conditions for Sale of Goods and Services

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### 1. Definitions and Interpretation

1.1 In these Terms, unless expressed or implied to the contrary:

**Addendum** means the Addendum to these Terms;

**Business Day** means a weekday, excluding Saturdays, Sundays;

**Claim** means any claims, actions, causes of actions, suits, demands, however so arising whether at Law, in equity or under any statute;

**Cool-Off** means Cool-Off Pty Limited (ACN 068 308 225) and/or any subsidiaries of the company;

**Confidential Information** means any information that:

- (i) by its nature is confidential;
- (ii) is designated, marked or otherwise indicated as confidential; or
- (iii) a Party knows or ought to know is confidential;

including the price at which Cool-Off agrees to sell the Goods to the Customer, any confidential and commercially sensitive information regarding a Party and each of its related bodies corporate, their property, business, affairs, trade secrets, finances, accounting, marketing, technical information, know-how, strategic or business information, concepts, plans, strategies, directions or systems;

**Costs** includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatsoever, including where appropriate all reasonable and proper legal fees charged on a solicitor/own client basis;

**Credit Account Agreement** means any agreement governing the provision of credit from Cool-Off to the Customer;

**Customer** means the person, firm or company wishing to purchase the Goods or services from Cool-Off;

**Force Majeure Event** means fire, flood, earthquake, acts of God, strike, full or partial lockdowns of affected areas, quarantines, border closures and travel restrictions, acts of war, terrorism, riots, civil disorders or rebellions or revolutions in Australia, epidemic, pandemic or public health emergency, or any resulting governmental action including work stoppages, mandatory office closures, transport stoppages or transport breakdown; damage to or breakdown of plant, the inability to source or supply raw material, Government interference, or any other cause beyond the control of Cool-Off;

**Goods** means the goods, items or services specified in the Quotation, Order, Sales Confirmation or Invoice;

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law;

**GST Law** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Incoterm** means the Incoterms 2020 published by the International Chamber of Commerce, as amended from time to time;

**Intellectual Property** means registered and unregistered patents; inventions (including utility models and innovation patents); copyright, confidential information (including the right to enforce an obligation to keep information confidential), trade secrets, recipes, software, websites, technical data and know-how; registered and unregistered designs; registered and unregistered trade marks; training and information manuals, assessment forms, and excluding any moral rights or similar personal rights which by law are unassignable;

**Invoice** means a tax invoice rendered by Cool-Off to the Customer in respect of the Goods;

**Law** means any requirement of any statute, rule, regulation, proclamation, ordinance, local law, by-law, or other provision having the force of law present or future, whether state (Victoria), federal (Australia) or otherwise;

**Order** means the request to purchase Goods by the Customer, whether made orally, in writing, via Cool-Off's website or by any other electronic means, whether placed subsequent to and with reference to a Quotation or not, and includes a purchase order issued by the Customer;

**Party** means either Cool-Off or the Customer, as the context requires, and **Parties** means both of them;

**Point of Delivery** means the physical location to which the Goods are to be delivered for collection by the Customer;

**PPSA** means *Personal Property Securities Act 2009* (Cth);

**PPSR** means the Personal Property Securities Register;

**Q fever** means an infection caused by *coxiella burnetii*, a type of bacterium;

**Quotation** means indicative pricing given by Cool-Off to the Customer for the sale of Goods, whether orally or in writing;

**Sales Confirmation** means the document issued by Cool-Off to the Customer which confirms an Order has been accepted;

**Terms** means these terms and conditions.

1.2 In these Terms unless expressed or implied to the contrary:

- (a) words importing the singular include the plural and vice versa;
- (b) headings or margin notes in these Terms are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (c) any reference to a Party includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (d) the word "including" and similar expressions are used without limitation;
- (e) expressions importing a natural person include a corporation and vice versa;

- (f) if any date or deadline specified in these Terms falls on a weekend or a public holiday in New South Wales, such date or deadline will be automatically extended to the next Business Day;
- (g) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of these Terms; and
- (h) a reference to any statutory enactment or any Law includes that statutory enactment or Law as amended, modified or re-enacted from time to time and all rules, regulations or other subordinate legislation made under that statute.

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## **2. General**

- 2.1 Unless and to the extent otherwise stated in these Terms, these Terms together with the specifications set out in a Sales Confirmation, constitute the entire agreement between Cool-Off and the Customer in connection with the supply of the Goods.
- 2.2 The Customer will be bound by these Terms if:
  - (a) the Customer places an Order which is accepted in writing by Cool-Off; and/or
  - (b) Cool-Off provides to the Customer a Sales Confirmation.
- 2.3 Any Terms specified by the Customer deviating from, or inconsistent with, these Terms however conveyed or communicated by the Customer are expressly rejected by Cool-Off.
- 2.4 Variations to these Terms may only be made by agreement in writing between the Parties.
- 2.5 No agent or distributor of Cool-Off has authority to add to, vary, or contradict these Terms.
- 2.6 Where there are inconsistencies between the Sales Confirmation and any other document related to the Goods, the Sales Confirmation will prevail to the extent of those inconsistencies.
- 2.7 Clerical errors in computations or typing in a Quotation, Invoice, or Sales Confirmation will be the subject of correction.

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## **3. Quotations**

- 3.1 Quotations are not and will not be interpreted as an offer capable of acceptance or as creating an obligation to sell.
- 3.2 Quotations are regarded as estimates only and are subject to withdrawal, correction or alteration at any time before acceptance of an Order in accordance with clause 4.

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## **4. Acceptance of Order**

- 4.1 Acceptance of an Order by Cool-Off takes effect when Cool-Off confirms its acceptance in writing to the Customer or provides to the Customer a Sales Confirmation.

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## 5. Orders & Payment

- 5.1 By placing an Order, the Customer acknowledges that the Goods conform to the Customer's requirements and are suitable and sufficient for the Customer's purchase.
- 5.2 The price for the Goods payable by the Customer to Cool-Off will be as specified in the Sales Confirmation and is, unless otherwise specified by Cool-Off in writing, exclusive of any taxes and GST, packing and delivery fees.
- 5.3 Unless otherwise specified in writing by Cool-Off, and subject to clause 8 of these Terms (if applicable), the agreed price agreed will be ex-works.
- 5.4 Cool-Off may either require payment immediately upon the issuance of a Sales Confirmation, or Cool-Off may issue an Invoice to the Customer after the Sales Confirmation has been issued.
- 5.5 Payment will be by electronic funds transfer (EFT) or otherwise as specified in the Invoice or otherwise directed by Cool-Off and will be considered to have been received once Cool-Off has confirmed receipt with its respective financial institution.
- 5.6 The Customer agrees to pay any bank fees incurred by Cool-Off associated with any sale transaction contemplated by these Terms.
- 5.7 If an Invoice is issued, payment must be made within the time prescribed in the Invoice and prior to the Goods being dispatched unless otherwise specified by Cool-Off in writing.
- 5.8 Cool-Off reserves the right to:
- (a) require the Customer to pay a deposit on the placement of the Order by the Customer at a percentage to be determined by Cool-Off; or
  - (b) grant credit facilities to the Customer whereby payment for all Goods sold to the Customer will be within fourteen (14) days from the date an Invoice is issued.
- 5.9 Where the Customer has failed to make payment in accordance with these Terms, Cool-Off may stop delivery of Goods to the Customer and payment will become immediately due for all Goods provided.
- 5.10 In the event that payment is not made in accordance with these Terms:
- (a) Cool-Off may take action to enforce payment;
  - (b) the Customer will be responsible for Cool-Off's Costs of such enforcement action; and
  - (c) the Customer will be liable and will make payment of interest at the rate equal to the Reserve Bank of Australia rate, increased by 2%.
- 5.11 Where payment is made by cheque, payment will not be deemed to have been received until the cheque has been honoured on presentation to the drawer's bank. If a cheque is dishonoured, Cool-Off reserves the right to charge the Customer all accounting fees, bank charges and other fees incurred in respect of such dishonour.

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## **6. Security**

- 6.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 6.2 For the purposes of the PPSA:
- (a) terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA; and
  - (b) these Terms constitute a security agreement and Cool-Off has a security interest in the Goods and in the proceeds of their sale.
- 6.3 The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any time.
- 6.4 The Customer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by Cool-Off on the PPSR as a purchase money security agreement.
- 6.5 The security interest arising under this clause attaches to the Goods when the Customer takes delivery of the Goods.
- 6.6 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under the PPSA.
- 6.7 The Customer must immediately upon Cool-Off's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under these Terms; and
  - (b) procure from any person considered by Cool-Off to be relevant to its security position any such agreements and waivers (including as equivalent to those above) as Cool-Off may at any time require.

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## **7. Variations to Goods**

- 7.1 Variations to the Order requested by the Customer may be agreed to by mutual consent in writing.
- 7.2 If any variations are consented to, the Customer will bear any additional costs to those specified in the Sales Confirmation incurred as a consequence of the variation.
- 7.3 Any materials incorporated into the Goods can vary in finish, texture and material composition. In circumstances where samples are presented to the Customer for approval, these are indicative of the materials that are available at that time and may be subject to change.
- 7.4 Cool-Off reserves the right, at its discretion, to change the techniques used in manufacture to take advantage of any technical developments, improvements or modifications which Cool-Off considers appropriate.
- 7.5 Where measurements or specifications are conveyed by Cool-Off, these are to be regarded as approximate.

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## 8. Delivery within Australia, passing of title and risk

- 8.1 This clause applies when the Goods are to be delivered to a location within Australia.
- 8.2 Delivery will be on an ex-works basis, unless otherwise agreed between the Parties in writing.
- 8.3 If the Parties agree in accordance with clause 8.2 for Cool-Off to deliver the Goods:
- (a) the Customer must notify Cool-Off of the Point of Delivery in writing prior to the issuance of the Sales Confirmation;
  - (b) Cool-Off will indicate on the Sales Confirmation an estimated date by which the Goods will reach the Point of Delivery.
  - (c) Cool-Off and the Customer may agree to delivery of part or portions of the Goods by Cool-Off to the Customer at different times over a longer period of time (i.e. in stages) in which case the Parties will agree to a schedule for delivery of the Goods in writing, specifying the portion of the Goods to be delivered and the date for delivery.
  - (d) Cool-Off will not be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late, early or non-delivery of the Goods.
  - (e) delivery dates specified by Cool-Off are indicative only and do not include delays occasioned by a Force Majeure Event.
  - (f) failure to make delivery of all Goods will not invalidate these Terms in respect of that part of the Goods which have been delivered to the Customer.
  - (g) delivery of the Goods can only be deferred to a time after the specified date of delivery with the written consent of Cool-Off.
  - (h) Cool-Off reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Customer within a reasonable time after a request by Cool-Off for such instructions.
  - (i) where the Goods are transported by Cool-Off or its agent to a Customer's nominated delivery address within Australia, delivery will be defined to have taken place the moment the Goods have been loaded onto the transport vehicle on which they are to be transported to the Point of Delivery.
  - (j) Cool-Off may make delivery of the Goods by any mode of transport which it considers appropriate.
  - (k) the Customer will provide or cause to be provided full and clear access to the Point of Delivery and will at its own expense provide all necessary assistance and equipment in unloading the Goods at the Point of Delivery, including a forklift and licensed forklift driver if necessary.
  - (l) Cool-Off may deliver the Goods loaded on pallets. Upon request by Cool-Off, the Customer must provide to Cool-Off the Customer's CHEP account number and/or any other details as requested by Cool-Off. Where the Goods are delivered on pallets that have been hired by Cool-Off, the Customer consents to the transfer of the hire of those pallets to the Customer upon delivery of the Goods. In the event the Customer is unable to transfer the hire of any pallets delivered to the Customer as a consequence of the Customer's failure to comply with this clause 8.3 (l):
  - (m) Cool-Off may invoice the Customer for the market value of the pallets; and

- (n) the Customer agrees to indemnify Cool-Off and hold Cool-Off harmless for any loss suffered by Cool-Off as a consequence of the Customer's failure.
- 8.4 Cool-Off will not in any circumstances accept liability for damage, shortage or loss during transit.
- 8.5 In the event of the Customer taking delivery of the Goods prior to making payment in full with cleared funds, without prejudice to any other rights of Cool-Off, the Customer will:
- (a) store the Goods in a manner that will enable them to be identified as the property of Cool-Off;
  - (b) not purport to mortgage, charge, transfer, convey or otherwise deal with the Goods without the prior consent of Cool-Off;
  - (c) at all times allow Cool-Off to access the Goods, inspect or retake possession at Cool-Off's discretion; and
  - (d) if Cool-Off has repossessed the Goods, allow Cool-Off to sell or dispose of the Goods as Cool-Off sees fit to recover to any unpaid amounts for the Goods.
- 8.6 Cool-Off and the Customer may agree in writing to make the Goods available for pick-up by the Customer at Cool-Off's warehouse or premises, at a time and place nominated by Cool-Off.
- 8.7 Title in the Goods remains with Cool-Off until payment is made in full with cleared funds.
- 8.8 Risk in the Goods will pass to the Customer upon the Goods leaving the premises of Cool-Off.

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## **9. Delivery outside of Australia, passing of title and risk**

- 9.1 This clause applies when the Goods are to be exported to a final destination outside of Australia.
- 9.2 The Goods will be shipped in accordance with the shipping terms in the Sales Confirmation or otherwise as specified in the Order and agreed by Cool-Off in writing.
- 9.3 Cool-Off will not be liable for any loss, damage or delay occasioned to the Customer or its customers arising from late, early or non-delivery of the Goods.
- 9.4 Delivery dates specified by Cool-Off are indicative only and do not include delays occasioned by a Force Majeure Event.
- 9.5 Failure to make a delivery of all Goods will not invalidate these Terms in respect of that part of the Goods that have been delivered to the Customer.
- 9.6 Cool-Off reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Customer within a reasonable time after request by Cool-Off for such instructions.
- 9.7 Cool-Off will not in any circumstances accept liability for damage, shortage or loss during transit.
- 9.8 Cool-Off may make delivery of the Goods by any mode of transport it considers appropriate.
- 9.9 In the event of the Customer taking delivery of the Goods prior to making payment in full with cleared funds, without prejudice to any other rights of Cool-Off, the Customer will:

- (a) store the Goods in a manner that will enable it to be identified as the property of Cool-Off;
  - (b) not purport to mortgage, charge, transfer, convey or otherwise deal with the Goods without the prior consent of Cool-Off;
  - (c) at all times allow Cool-Off to access the Goods, inspect or retake possession at Cool-Off's discretion; and
  - (d) if Cool-Off has repossessed the Goods, allow Cool-Off to sell or dispose of the Goods as Cool-Off sees fit to recover to any unpaid amounts for the Goods.
- 9.10 Title in the Goods will transfer from Cool-Off to the Customer once the Customer has made payment for the Goods in accordance with clause 5.5.
- 9.11 Risk in the Goods will pass to the Customer in accordance with the applicable Incoterm as outlined in the Order, Sales Confirmation or Invoice, whichever is applicable for the transaction, or as otherwise instructed by Cool-Off to the Customer.
- 9.12 Cool-Off will be responsible for ensuring that the Goods meet all necessary customs and exporting requirements imposed by the Australian Government to facilitate the export from Australia to the Customer.
- 9.13 The Customer must ensure it has obtained all relevant permits, licences and other authorities to enable the Goods to be imported into the country in which the Goods are being imported.

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## **10. Acceptance of Goods**

- 10.1 Unless otherwise specified by Cool-Off in writing, the Customer will have no right to cancel the Order.
- 10.2 Goods cannot be returned except with the written consent of Cool-Off. Where Goods delivered do not in any way meet the specifications contained in the Sales Confirmation, Cool-Off may accept return of those Goods if the irregularities are brought to the attention of Cool-Off within:
- (a) three (3) Business Days where the Goods have arrived at the Customer's premises, where the Goods are to be delivered to a location within Australia; or
  - (b) thirty (30) days after the Goods have left bonded storage, where the Goods are to be exported to a final destination outside of Australia.
- 10.3 Where Goods are accepted by Cool-Off for return, a restocking fee of 15% of the amount paid for the Goods or specified on the Invoice returned will be payable by the Customer including freight charges incurred in returning the Goods.
- 10.4 Goods that have been specially manufactured, machined or cut to size to the Customer's specifications are not returnable.



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## 11. Intellectual Property and Confidentiality

- 11.1 Nothing in any Quotation, Order, Sales Confirmation or these Terms involves a transfer of any ownership or rights to any Intellectual Property in the Goods owned by Cool-Off or a third Party.
- 11.2 The Customer warrants that it will not reverse engineer or disclose, record, handle, publish, disseminate to any third party any Intellectual Property owned by Cool-Off or a third party.
- 11.3 Any technical information, knowledge or processing methods at any time transmitted either orally or in writing by Cool-Off to the Customer will remain the property of Cool-Off and will be considered absolutely confidential by the Customer who will not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without the prior written consent of Cool-Off.
- 11.4 The Customer warrants that the use by Cool-Off of any designs or instructions supplied by the Customer will not infringe the Intellectual Property of any third party and the Customer agrees to indemnify Cool-Off against any Claim relating to or arising from the infringement of any Intellectual Property of any third party.
- 11.5 The Customer must ensure that all Confidential Information of Cool-Off and of its related bodies corporate of which it becomes aware:
- (a) is kept confidential and is not disclosed to any person at any time or in any manner except with the prior written consent of Cool-Off;
  - (b) is used by the Customer for the purpose of performing its obligations under these Terms and for no other purpose;
  - (c) is not copied or duplicated other than as strictly necessary for the Customer to perform its obligations under these Terms;
  - (d) subject to clause 11.6, is not directly or indirectly exploited in any way for the Customer's or any other party's benefit, profit or advantage.
- 11.6 The Customer is authorised to provide Cool-Off's Confidential Information to the Customer's employees who have a legitimate need for access for the purposes of performing the Customer's obligations under these Terms, provided that the Customer ensures that such employees are bound by obligations of confidentiality that are no less stringent than those set out in these Terms.
- 11.7 Without limiting clause 11.5, the Parties agree to keep these Terms strictly confidential and must not make any public announcement concerning or referring to the other Party without the consent of that Party.
- 11.8 It is not a breach of clause 11.5 for the Customer to disclose Confidential Information of Cool-Off which the Customer is obliged by Law to disclose to the person to whom it is disclosed, provided that the Customer immediately notifies Cool-Off of the particulars of the required disclosure and provide Cool-Off with all assistance reasonably necessary to enable Cool-Off to take any steps available to it to prevent or limit disclosure or to ensure that it occurs subject to an obligation of confidentiality.
- 11.9 The Customer must not perform any act or omission which may result in a breach or potential breach of the *Privacy Act 1988* (Cth) or any other applicable privacy laws, or with any guidelines, directions or policies issued by a governmental agency (**Privacy Obligations**) and

must comply with all reasonable directions given by Cool-Off to the Customer from time to time in relation to the Privacy Obligations.

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## 12. Liability of Cool-Off

- 12.1 Cool-Off will not be liable to the Customer for any defect in the Goods, loss, damage or other delay whatsoever caused by or attributed to a Force Majeure Event.
- 12.2 Notwithstanding any other provisions of a Quotation, Invoice or Order, Cool-Off will not be liable to the Customer for any loss of profits howsoever arising nor will Cool-Off be under any liability whether in contract, tort, or otherwise nor for any injury, damage or loss whether consequential or otherwise save as expressly provided in these Terms.
- 12.3 Except where otherwise provided in these Terms, Cool-Off will not be under any liability in respect of defects in the Goods or for any injury, damage or loss resulting from such defects.
- 12.4 Without limiting this clause 12, the Customer releases and indemnifies Cool-Off from and against all Claims, losses (direct, indirect or consequential), obligations, liabilities, damages and Costs arising directly or indirectly out of or in connection to:
- (a) the sale of the Goods to the Customer;
  - (b) the use of the Goods by the Customer;
  - (c) the sale of the Goods or any product manufactured with or incorporating the Goods to a third party (**Customer's Customer**);
  - (d) the use by a Customer's Customer of the Goods or any product manufactured with or incorporating the Goods; or
  - (e) the contraction or alleged contraction by the Customer or any of its employees, contractors or agents of Q fever or any illness caused by a virus, bacteria, fungi, parasites or toxins found in livestock or meat products (**Other Illness**) in connection with or arising out of the supply of Goods or otherwise in connection with these Terms, irrespective of the extent to which any act or omission of Cool-Off caused or contributed to the contraction of Q fever or Other Illness.
- 12.5 The Customer acknowledges that there are inherent risks associated with the handling of raw and processed animal products at various stages in the supply chain and assumes those risks.
- 12.6 Cool-Off will not be responsible for damage or fault in performance arising out of incorrect or inappropriate use of the Goods by the Customer.
- 12.7 The Customer acknowledges that Cool-Off gives no warranty as to the fitness of the Goods for the intended use or application of the Customer and that the Customer has relied entirely on its own evaluation thereof.
- 12.8 Where Cool-Off makes available the Goods by way of loan for trial or evaluation for the Customer to determine if the Goods are suitable for the intended use, then the liability of Cool-Off remains as defined in this clause 12.
- 12.9 Provisions of the *Competition and Consumer Act 2010* (Cth), other statutes from time to time in force in Australia and comparable legislation in foreign jurisdictions may imply warranties or conditions or impose obligations upon Cool-Off that cannot be excluded, restricted or modified except to a limited extent. If any such statutory provisions apply then, to the extent Cool-Off is entitled hereunder to do so, its liability under those statutory provisions will be limited at the option of Cool-Off to any one or more of the following:

- (a) the replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of such Goods; or
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods.

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### **13. Warranties**

- 13.1 All conditions and warranties implied by Law are hereby expressly negated insofar as they lawfully can be.
- 13.2 Goods are not warranted by Cool-Off in any way unless expressly guaranteed or warranted in writing.
- 13.3 Goods sold have only the benefit of any warranty given by:
  - (a) the original manufacturer if the original manufacturer is not Cool-Off; or
  - (b) the manufacturer of the materials used by Cool-Off to manufacture the Goods.
- 13.4 In the event that the Goods are to be delivered to a country other than Australia, the Customer warrants that the port of destination listed on any bill of lading or equivalent is the final destination country of the Goods.

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### **14. Dispute resolution – within Australia**

- 14.1 This clause applies when the Goods are to be delivered to a location within Australia.
- 14.2 The Parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these Terms prior to commencing any proceedings.
- 14.3 Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Australia.
- 14.4 Unless a Party has complied with the provisions of this clause 14 that Party may not commence court proceedings relating to any dispute arising from these Terms except where that Party seeks urgent interlocutory relief, in which case that Party need not comply with the dispute resolution process in this clause before seeking the relief.
- 14.5 If the parties are unable to resolve a dispute between themselves, the parties agree that the dispute may be, upon Cool-Off's election, referred to and resolved by either mediation (in accordance with clause 14.6) or arbitration (in accordance with clause 14.7).
- 14.6 If Cool-Off elects to refer the dispute to mediation:
  - (a) the mediation will be conducted in Melbourne (or another place nominated by Cool-Off) in accordance with the Australian Disputes Centre (ADC) Guidelines for Commercial Mediation (the Guidelines);
  - (b) the Parties will agree on the appointment of the mediator. If the parties do not agree on the mediator to be appointed within two (2) Business Days of either Party referring the dispute to mediation, then the mediator is to be appointed by the ADC in accordance with the ADC Guidelines for Commercial Mediation; and
  - (c) the terms of the Guidelines are hereby incorporated into these Terms.

- 14.7 If Cool-Off elects to refer the dispute to arbitration:
- (a) the arbitration will be administered by the ADC.
  - (b) the arbitration will be conducted in Melbourne (or another place nominated by Cool-Off) in accordance with the ADR Rules for Domestic Arbitration operating at the time the dispute is referred to the ADR (the **Rules**).
  - (c) the terms of the Rules are hereby incorporated into these Terms.

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## **15. Dispute resolution – Outside Australia**

- 15.1 This clause applies when the Goods are to be exported to a final destination outside of Australia.
- 15.2 The Parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these Terms prior to commencing any proceedings.
- 15.3 Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria, Australia.
- 15.4 Unless a Party has complied with the provisions of this clause 15 that Party may not commence court proceedings or arbitration relating to any dispute arising from these Terms except where that Party seeks urgent interlocutory relief, in which case that Party need not comply with the dispute resolution process in this clause before seeking the relief.
- 15.5 If the Parties are unable to resolve a dispute between themselves, Cool-Off may, at its election, submit the dispute to the International Court of Arbitration of the International Chamber of Commerce and the dispute will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 15.6 The arbitration will be conducted in Melbourne.
- 15.7 The arbitration will be conducted in English.
- 15.8 The terms of the Rules of Arbitration of the International Chamber of Commerce are hereby incorporated into these Terms.

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## **16. Insurance**

- 16.1 In the event the Goods are damaged, destroyed, lost, contaminated, spoiled or otherwise affected during delivery, the Customer must bring the event to the attention of Cool-Off immediately upon becoming aware of the event.
- 16.2 Where the Goods are not covered by insurance by reason that the Customer failed to comply with clause 16.1, the Customer must still pay for the Goods and Cool-Off will not be liable for any loss suffered by the Customer as a result
- 16.3 To avoid any doubt, the Customer will bear the cost of storing and/or disposing of the Goods in these circumstances.

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**17. Severance**

If any of the provisions of these Terms are unlawful or invalid by reason of any applicable Law then such provisions will be severed from the rest of these Terms which will remain valid and binding on the Parties.

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**18. Relationship of the Parties**

The Parties agree that nothing in these Terms will be deemed as creating a partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties or to constitute a consignor and consignee relationship.

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**19. Assignment**

The Customer may not assign or transfer its rights under these Terms to any third party without the prior written consent of Cool-Off.

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**20. Entire Agreement**

These Terms and any Credit Account Agreement constitutes the entire agreement between the Parties and supersedes any and all communications, negotiations, arrangements and agreements, whether oral or written, in respect of the subject matter of these Terms.

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**21. Governing Law**

21.1 These Terms will be governed by and construed in accordance with the law in force in Victoria.