



# TEYS AUSTRALIA PTY LTD TERMS OF SALE

## 1. Definitions

In these Terms of Sale the following terms have corresponding meanings:

**Consequential Loss** means any special, indirect or consequential loss or damage and any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill, whether direct or indirect;

**Consumer Law Provisions** means the provisions of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and any other relevant applicable State and/or Commonwealth consumer legislation for the time being in force;

**Customer** means the purchaser or intending purchaser of Products and includes any agent, contractor or representative;

**GST** has the same meaning given to that term in the *A New Tax System (Products and Services) Act 1999* (Cth);

**Teys Australia** means Teys Australia Pty Ltd ABN 38 009 872 600 and each of its divisions and Related Bodies Corporate and any successors and assigns;

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

**PPS Register** means "the register" as defined in the PPSA;

**Products** means any product or Products supplied by Teys Australia;

**Related Entity** has the same meaning given to that term in the *Corporations Act 2001* (Cth);

**Related Body Corporate** has the same meaning given to that term in the *Corporations Act 2001* (Cth); and

The plural includes the singular and vice versa.

## 2. General

Unless otherwise agreed in writing with Teys Australia, these Terms of Sale:

- (a) apply to the purchase of all Products by to the Customer and are the only terms of sale to which Teys Australia and the Customer will be bound and the Customer agrees that these terms will in all circumstances prevail over the Customer's terms and conditions; and
- (b) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Products including, but not limited to, those relating to the performance of the Products or the results that ought to be expected from using the Products.

## 3. Quotations and Purchase Orders

Any brochure, catalogue, price list, quotation or other communication published or provided by Teys Australia constitutes only an invitation by Teys Australia to the Customer to do business. Any purchase order placed by the Customer constitutes only an offer to purchase Products.

## 4. Price and Taxes

Unless Teys Australia has agreed in writing to a fixed price or fee (or the basis for determining such), Teys Australia's then current list prices and fees at the time of order will apply. At any time the Customer can request Teys Australia's current list prices and fees. Teys Australia may revise its list prices and fee from time to time without notice in relation to all purchase orders that have not already been accepted. Unless otherwise specified, all prices and fees are exclusive of GST.

The Customer will pay all taxes, levies and other charges including GST in respect of the sale and purchase of the Products.

## 5. Payment and Interest

Cash purchases must be paid for at the time of the order or prior to delivery, as required by Teys Australia. Credit purchases must be paid for by cash, cheque or electronic funds transfer, within 21 calendar days from the date of the invoice, unless otherwise agreed with the Customer by Teys Australia, without deduction or deferment on account of any claim, counterclaim or set-off (unless otherwise expressly agreed to in writing by Teys Australia). Except as otherwise agreed in writing by the parties, any payment made by the Customer to Teys Australia must be applied by Teys Australia in accordance with section 14(6)(c) of the PPSA.

## 6. Delivery

Unless otherwise agreed in writing, delivery of Products by Teys Australia to the Customer will occur when the Products are collected at Teys Australia's nominated despatch point by the Customer or uplifted from transport arranged by Teys Australia to the Customer.

Teys Australia will make all reasonable efforts to have the Products delivered to the Customer on the date agreed between the parties, but Teys Australia will be under no liability for any loss associated with late delivery of the Products to the Customer.

Customer undertakes to promptly inspect the delivered Products for any short fall, defect or damage that is reasonably discoverable upon physical inspection of such Products, and to immediately notify Teys Australia of any such detected issues.

## 7. Risk

Unless otherwise agreed in writing, all risks associated with the Products purchased will pass to the Customer upon delivery to the Customer.

## 8. Retention of Title

The Customer acknowledges and agrees that:

- (a) title in any Products does not pass to the Customer until the purchase price for the Products has been paid in full, and until then Teys Australia will have a purchase money security interest in the Products and in any proceeds;
- (b) Teys Australia may register its security interest in any Products on the PPS Register in any manner it chooses (including by registering one or more financing

statements, with such expiry dates as it determines, subject to any mandatory requirements of the PPSA);

- (c) Teys Australia need not give any notice under the PPSA (including a notice of a verification statement) or comply with any of the provisions referred to in section 115(1) of the PPSA, unless such obligation cannot be excluded;
- (d) all information relating to the Products or these Terms of Sale is subject to a duty of confidence in favour of Teys Australia. Separately, and without derogating from the Customer's duty of confidence, Teys Australia and the Customer agree that neither of them will disclose information of the kind described by section 275(1) of the PPSA, except as permitted by any other provision of this clause or required by any other law or regulation.

#### **9. Liability where the Consumer Law Provisions do not apply**

If the Consumer Law Provisions do not apply to the Customer:

- (a) Teys Australia warrants that, except to the extent otherwise agreed with the Customer in writing the Products, as at the time of delivery, are of merchantable quality and comply with all applicable Australian laws; and
- (b) all warranties (other than as provided under clause 9(a) above), liabilities or representations in relation to the Products are excluded to the maximum extent permitted by law. Teys Australia's liability for breach of any Terms of Sale is limited to any one of the following, as determined by Teys Australia:
  - (i) the replacement of the Products, the supply of equivalent Products or replacing the Products or of acquiring equivalent Products; or
  - (ii) the refund of the price paid by the Customer for the Products; and
- (c) Teys Australia is not liable to the Customer for any Consequential Loss in connection with these Terms of Sale and/or any related order or contract (whether or not the Consequential Loss was foreseeable).

Any claim by the Customer for short fall in or wrongful delivery of Products must be promptly notified to Teys Australia in writing (including via email) and received within 48 hours of delivery. Any other claims must be notified to Teys Australia in writing and received within 7 calendar days of the date of delivery for Products. Any claim which the Customer does not notify within that time (time being of the essence) will be taken to have been absolutely waived.

#### **10. Liability where Consumer Law Provisions apply**

If the Consumer Law Provisions apply to the Customer:

- (a) nothing in these Terms of Sale is to be construed as excluding, restricting or modifying any express or implied guarantee, condition, warranty, right or remedy conferred by any of the Consumer Law Provisions;
- (b) to the extent permitted by law, Teys Australia's liability for breach of these Terms of Sale (including breach of any condition or warranty implied into these Terms of Sale by the Consumer Law Provisions) or for breach of a consumer guarantee contained in the Consumer Law

Provisions is limited to any one of the following as determined by Teys Australia:

- (i) the replacement of the Products, the re-supply of equivalent Products or acquiring equivalent Products; or
  - (ii) the refund of the price paid by the Customer for the Products or Services; and
- (c) Teys Australia is not liable to the Customer for:
    - (i) in circumstances where Teys Australia has breached a consumer guarantee contained in the Consumer Law Provisions, any loss that was not reasonably foreseeable; and
    - (ii) in all other circumstances, any Consequential Loss arising out of or in connection with these Terms of Sale and/or any related order or contract (whether or not the Consequential Loss was foreseeable).

#### **11. Labelling of the Products**

Except where the Product has been produced specifically for retail sale as part of an additional contract of supply with Teys Australia, this Product is not labelled for retail sale.

If the Customer intends to further process, package or label the Product for retail sale, the Customer must label the Product in accordance with the *Country of Origin Food Labelling Information Standard 2016*.

#### **12. Suitability of Products**

Neither Teys Australia nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the Products Services for any particular purpose or any other matter.

#### **13. Correct Handling**

Teys Australia is not responsible or liable for any damage to or defect in any Products to the extent such damage or defect was either caused or contributed to by the Customer incorrectly or inappropriately utilised, stored, handled or maintained such Products after delivery to the Customer.

The Customer must ensure that all Products comply with all applicable requirements of standards and regulatory bodies before use, on-sale or application and must use or apply the Products in accordance with or Teys Australia recommendations and directions and good commercial practice.

#### **14. Set Off**

Teys Australia can set off any amount due which the Customer or any of its Related Entities owe to Teys Australia under these Terms of Sale or any related or unrelated order or contract, or on any other account, against any amount which Teys Australia owes to the Customer or any of its Related Entities (whether under these Terms of Sale, any related order or contract, in relation to any supply payment or otherwise).

#### **15. Default**

Upon the Customer's breach or default of any of these Terms of Sale, Teys Australia may, at its discretion and without prejudice to its other rights:

- (a) retain all monies paid by the Customer for Products which have been delivered;
- (b) cease further deliveries of Products (unless the Customer demonstrates to Teys Australia (acting reasonably) that the breach or default has been remedied);
- (c) seek to recover from the Customer all direct loss and costs suffered or incurred;
- (d) take possession of any Products not fully paid for;
- (e) otherwise suspend its obligations under these Terms of Sale; and
- (f) terminate these Terms of Sale (including any related purchase order(s)) if such breach or default is either:
  - (i) incapable of remedy;
  - (ii) a repeated act of breach or default by the Customer; or
  - (iii) is not remedied within the remedial period (which must be at least five business days) specified in a notice from Teys Australia to the Customer.
- (g) If the Customer is in breach or default of any related or unrelated order or contract with Teys Australia, and Teys Australia considers (acting reasonably) that such breach or default relates to:
  - (i) the payment (or non-payment) of any amount(s) due and payable by the Customer to Teys Australia; or
  - (ii) conduct by the Customer (including its officers, employees or agents) that may adversely affect the reputation of Teys Australia,

then Teys Australia may, at its discretion and in addition to its rights under such other related or unrelated order or contract, suspend its obligations under these Terms of Sale until such time as the Customer demonstrates to Teys Australia (acting reasonably) that the breach or default has been remedied.

Without limiting any other provisions of these Terms of Sale, unless the purchase price for the Products has already been paid in full, the Customer is in default under these Terms of Sale for the purposes of Section 123(1) of the PPSA if any other secured party seizes the Products (whether under section 123 of the PPSA or otherwise) for the purposes of enforcement or becomes entitled to seize the Products.

#### **16. Insolvency**

If the Customer commits or is involved in any act of insolvency, then Teys Australia may deem this to be a default under these Terms of Sale and may, at its election and with immediate effect, suspend its obligations under or terminate these Terms of Sale and/or any related order or contract without prejudice to any rights it may have.

An act of insolvency includes bankruptcy, liquidation, receivership, administration, failure to comply with a statutory demand, a suspension of payment of debts or the bringing of a winding up application which is not dismissed within 7 days.

#### **17. Anti-Corruption**

Neither party is obliged to take any action that it believes would cause it to contravene any laws prohibiting or relating to bribery, corruption, kickbacks, secret commissions, money

laundering or sanctions (**Anti-Corruption Laws**). Each party agrees, represents and warrants that:

- (a) It shall not commit any act or omission which could cause it or the other party to breach Anti-Corruption Laws;
- (b) It is not the subject of any sanctions and has not been convicted of (and is not being investigated in connection with) any offence involving a breach of Anti-Corruption Laws, and it will notify the other as soon as the above ceases to be true.

#### **18. Variation**

Teys Australia can amend these Terms of Sale at any time by notice to the Customer (which, for the avoidance of doubt, may be satisfied by the publication of the revised terms of sale on Teys Australia's website – [www.teysaust.com.au](http://www.teysaust.com.au)) and the amended terms will apply in respect of all subsequent purchases made under purchase orders placed by the Customer after receiving that notice.

#### **19. Waiver**

Failure by a party to insist on strict performance of any term, warranty or condition of these Terms of Sale or any related order or contract will not be taken as a waiver of it or of any rights that party may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.

#### **20. Severability**

Any part of these Terms of Sale being a whole or part of a clause, shall be capable of severance without affecting any other part of these Terms of Sale.

#### **21. Jurisdiction**

These Terms of Sale shall be governed and construed in accordance with the law of the State of Queensland. Each party submits to the non-exclusive jurisdiction of courts of the State of Queensland.