



Terms and Condition of Sales

Persiana Pty Ltd ATF ILYA Trust Trading As IRALIA, ABN:14907432736 ACN: 601602322

1 Definition

1.1 Claim means any action, claim, suit or demand of any nature whatsoever.

1.2 List Price means the list of prices of goods sold by the Supplier, issued by the Supplier from time to time.

1.3 Loss means any costs, losses, penalties, damages, liabilities and expenses and in relation to a Claim, includes amounts payable on a Claim (whether or not the Claim is successful) And legal costs and expenses on a solicitor and own client basis.

1.4 PPSA means the Personal Property Securities Act (2009), any regulations made under it and any amendments made to other legislation by them.

1.5 Supplier means PERSIANA PTY LTD Trading As IRALIA (ABN 1490 7432 736)

2 Binding Terms and Conditions

2.1 Unless otherwise specifically agreed in writing by the Supplier, these terms and conditions are incorporated into every order for the supply of goods placed by the Customer.

2.2 Any provision of a particular order of the Customer which is inconsistent with or additional to these terms and Conditions is excluded from contracts between the Supplier and the Customer.

3 Orders

3.1 Orders must be placed by telephone or in writing or during a sales meeting.

3.2 The Supplier reserves the right to accept or reject orders placed by the Customer. The Supplier must communicate any non-acceptance of an order to the Customer within one week of receipt of the order.

3.3 The Supplier will supply the goods at the price shown in the list price current when an order is placed.

3.4 Orders may only be cancelled by the Customer on terms that indemnify the Supplier for all Claims and Loss which the Supplier may incur in connection with such cancellation.

4 Price

4.1 The Supplier may at any time change its list prices.

4.2 If prior notice is provided to the Customer of any price increase, the Supplier may refuse any order, before that price increase takes effect, if in its reasonable opinion the volume order is in excess of the Customer's normal buying patterns.

4.3 The list price of goods is exclusive of freight/delivery charges. All freight/delivery charges are payable in addition.

4.4 The list price of goods supplied to the Customer is exclusive of the goods and services tax ("GST") unless otherwise indicated.

4.5 The supplier may recover from the Customer the amount of such GST in addition to and at the same time and in the same manner as the Customer is obliged to pay the list price for that supply of goods.

4.6 Any rebates, discounts or other reductions in price calculated by reference to the sales value to which the Customer is entitled or which are granted by the Supplier are to be calculated on the list price, that is after excluding any amount in respect of the GST payable by the supplier on the relevant sales.

4.7 Rebates, discounts and other allowances are subject to change without notice and are those current at the date of the Supplier's invoice. Rebates will be paid by credit note only (unless agreed otherwise in writing) and the relevant amounts will not be deducted off invoice.

5 Delivery

5.1 Standard delivery term is EXW supplier warehouse Boronia VIC 3155. If both side agree on other delivery term, delivery of the goods to the Customer occurs when actually delivered by the Supplier to the Customer's nominated delivery address in its order, regardless of whether the Customer accepts delivery.

5.2 Any time which the Supplier quotes for delivery is an estimate only.

5.3 The supply of goods is subject to availability. The Supplier may cancel the order if it determines that it



will be unable to deliver the goods within a reasonable time or the Supplier may deliver the order in instalments and the Customer must pay an amount for that instalment as notified by the Supplier in its invoice. Each separate delivery constitutes a separate contact.

5.4 The Customer shall have no Claim against the Supplier if the Supplier cancels the order or fails to deliver (for any reason) the goods, or if there is a delay in delivery of the goods.

6 Payment

6.1 All invoice are due for COD(cash or on delivery or EFT on delivery) unless credit term offered by supplier. Credit terms will only be granted following receipt of an acceptable credit application, with or without security (as may be specified by the Supplier),

6.2 If credit terms are granted the Customer must pay for the goods in full within 30 days from the end of the calendar month in which the invoice is issued, unless stated otherwise in writing or in the completed and approved credit application form.

6.3 The Supplier may vary or withdraw the approved credit limit of the Customer at any time in its absolute discretion. That may include requiring the Customer to pay cash in full prior to delivery if in the Supplier's opinion the credit worthiness of the Customer becomes unsatisfactory.

6.4 The Supplier may charge the Customer interest on all overdue payments and associated fess such as collection costs at the rate of 2% per month from the due date for payment until the date that payment is actually made.

6.5 If the Customer defaults in any payment or if the Customer commits any act of bankruptcy, appoints an administrator or commits an act which entitles a third party to make an application to wind up the Customer or appoint a receiver or receiver and manager to the Customer or any of its assets or if the Customer passes a resolution to wind itself up or enters into any arrangement or compromise with any of its creditors ("Events of Default"), then:

a. the date for payment of all moneys owing and outstanding to the Supplier, irrespective of whether the due date as per the invoice has passed, will accelerate and become immediately due and payable;

b. the Supplier may invoice the Customer for the value of any goods supplied and other out of pocket expenses incurred, but not yet invoiced and all collection costs which amounts will be immediately due and payable upon issue of the invoice;

c. the Supplier may cancel or suspend any unfilled orders, suspend the supply of further goods and cancel any rebate, discount or allowance due or payable by the Customer as at the date of the Event of Default.

6.6 The Customer must pay the Supplier in full for the goods delivered without any set-off, even if:

A. there was a delay in delivery of the goods;

B. the Customer disputes the quality, quantity or condition of the goods delivered.

6.7 All payments must be made in agreed currency.

6.8 The Customer must pay to and indemnify the Supplier against all Claims and Loss suffered or incurred by the Supplier in connection with;

A. default by the Customer under these Terms and Conditions;

B. the recovery of collection costs any monies due and payable but unpaid by the Customer; and

C. the exercise or attempted exercise by the Supplier of any power conferred on it by these Terms and Conditions.

7 Risk

7.1 The risk of loss or damage to the goods shall pass to the Customer on delivery.

8 Retention of Title

8.1 Property in the goods does not pass to the Customer but remains with the Supplier until such time as full payment is made by the Customer for the goods and there are no other amounts owing to the Supplier by the Customer. The Customer in the meantime takes custody of the goods and holds the goods on trust and as a fiduciary Bailee for the Supplier.

8.2 Where the Customer does not make payment in respect of specific goods, payment will be treated as having been made first in respect of goods which have passed out of the possession of the Customer, and then in respect of whatever goods are still in the possession of the Customer, as the Seller elects.

8.3 Until the goods have been paid for in full:

A. the Customer must store the goods in such manner as to show clearly that they are the property of the Supplier;



B. the Customer may sell the goods in the ordinary course of its business, but only as trustee and fiduciary of the Supplier. Any right to bind the Supplier to any liability to a third party by contract or otherwise is expressly negated;

C. the Customer must not sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the re-sale of the goods, other than in favour of the Supplier.

8.4 The Customer irrevocably authorises the Supplier at any time to enter any premises:

A. upon which the Seller's goods are stored to enable the Seller to inspect the goods and/or exercise the rights in clause 8.5; and

B. upon which the Customer's records relating to the goods is held to inspect and copy them. 8.5 If the Customer makes default in any payment of an amount due to the Supplier or an Event of Default occurs, the Supplier may without notice and without prejudice to any other rights and remedies, enter upon any of the Customer's premises and recover and/or re-sell the goods or any part of them and do all things necessary in order to take possession of the goods.

8.6 If the Customer sells the goods the Customer in its capacity as trustee and fiduciary bailee will:

a. hold the proceeds of sale in a separate bank account on trust for the Supplier and not mix any other funds with those proceeds of sale; and

B. pay to the Supplier from those proceeds of sale, the amount which is owed by the Customer to the Supplier at the time the Customer receives those proceeds of sale.

8.7 If the Customer breaches clause 8.6 and mixes other monies with the proceeds of sale being held on trust, then the Customer will continue to hold on trust and as a fiduciary Bailee for the Supplier, that part of the monies as relate to the Goods supplied. That part will be deemed to be equal in dollar terms to the amount which is owed by the Customer to the Supplier at the time the Customer receives the proceeds of sale.

8.8 In the event that:

A. the Customer uses the goods in some manufacturing or processing process of its own or of some third party; and

B. the product resulting from the manufacturing or processing process is sold by the customer; Then the Customer will hold on trust and as a fiduciary Bailee, such part of the proceeds of sale as relates to the goods supplied by the Supplier. Such part shall be deemed to be equal in dollar terms to the amount which is owed by the Customer to the Supplier at the time the Customer receives such proceeds of sale.

8.9 The Supplier may commence a Claim against the Customer if the goods are not paid for by their due date for payment, even though property in the goods has not passed to the Customer.

9 Personal Property Securities Act

9.1 The Customer agrees and acknowledges that:

a. these terms and conditions constitute a security agreement for the purposes of the PPSA, and that this Security Interest will continue until all of the Customer's debts and obligations under these terms and conditions are discharged in full. Capitalised words and phrases used in this clause 9 have the same meaning as in the PPSA.

b. clause 8 creates a Security Interest, which attaches as a Purchase Money Security Interest ("PMSI") under the PPSA, in all goods supplied by the Supplier to the Customer under these terms and conditions, including all future goods that may be supplied by the Supplier and in all products into which the goods are incorporated, processed or comingled;

C. this Security Interest applies to all Proceeds of such goods (including any Accounts); and

D. the Collateral is all goods supplied by the Supplier, being foodstuffs and ancillary products from time to time and includes any Accounts in respect of that part of the Proceeds of the Collateral which will be held on trust by the Customer for the Supplier as set out in clause 8.

9.2 The Customer irrevocably authorises the Supplier and its agents and employees to:

A. applies for any registration or gives any notification, in connection with the Security Interest created under these terms and conditions;

b. complete any blanks in any other document associated with these terms and conditions, including any Financing Statement or Financing Change Statement; and

C. do anything else required to obtain registration of the Security Interest created under these terms and conditions, including any requisitions concerning lodgement.

9.3 The Customer must not without the Supplier's prior written consent, create or attempt to create a Security Interest in or affecting the Collateral described above, other than as set out in these terms and conditions and provided that this does not prevent the Customer entering into a general security



agreement with any financier in respect of any financial accommodation given to the Customer.

9.4 The Customer warrants that the Goods supplied are not intended and will not be used by the Customer for personal, domestic or household use.

9.5 The Customer acknowledges and confirms that:

a. nothing in these terms and conditions is intended as an agreement that the Security Interest under these terms and conditions, Attaches at a later time than the time specified in s.19(2) of the PPSA; and

b. it has not made any other agreement with the Supplier to vary the time of Attachment of the Security Interest except in any express written agreement between the Supplier and the Customer.

9.6 The Customer acknowledges that nothing in these terms and conditions is intended as an agreement to subordinate any Security Interest that the Supplier has in the Collateral in favour of any other person.

9.7 To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement by the Supplier of its Security Interest in the Collateral, the parties agree that the following provisions of the PPSA are excluded:

a. to the extent permitted by s.115(1) of the PPSA – sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA; and

B. to the extent permitted by s.115 (7) of the PPSA – sections 129(2) and (3), 132, 133(1) (b) (as it relates to the Security Interest of the Supplier), 134(2), 135, 136 (3), (4) and (5) and 137.

9.8 To the extent permitted by law, the Customer waives:

A. its rights to receive any notice that is required by any provision of the PPSA (including notice under s.157 (3) (b)) or that is required by any other law before the Supplier exercises a right, power or remedy; and

B. any time period that must otherwise lapse under any law before the Supplier exercises a right, power or remedy. However, nothing in this clause prohibits the Supplier from giving a notice under the PPSA or any other law

9.9 The Customer authorises the Supplier at the Supplier's discretion to disclose to any person claiming to be a secured party under any prior or subsequent Security Interest or encumbrance in or over the Collateral, any details of the outstanding and accruing indebtedness, security held or any other particulars in connection with the monies payable to the Supplier under these terms and conditions.

9.10 Pursuant to section 275(6) of the PPSA, the parties agree that, subject to clause 9.9, neither will disclose to an interested person any of the matters described in section 275 (1) of the PPSA without prior approval of the other party.

10 Warranty and Limitation of Liability

10.1 The Customer agrees that it is not a "consumer" within the meaning of the Australian Consumer Law (as set out in the Competition & Consumer Act 2010) ("ACL") as amended and similar provisions of State and Territory legislation. Accordingly, the Customer does not have the benefit of the consumer guarantees set out in the ACL.

10.2 The Supplier warrants that its goods supplied will be of merchantable quality and free from defects. The Supplier will rectify any defects or breach of warranty, at the Supplier's option, by replacement or supply of replacement or equivalent Goods (or by payment of the cost of doing so).

10.3 The warranty in clause 10.2 is conditional upon:

A. the Customer, strictly following out return of goods policy set out in clause 11 below;

B. the Goods having been properly handled and cared for by the Customer;

C. such defects or breach of warranty are not caused or contributed to by any act or omission of the Customer.

10.4 Nothing in clauses 10.1 – 10.5 is intended to limit or replace any obligations which cannot be lawfully excluded

10.5 To the extent permitted by law:

A. the Supplier's obligation to rectify defects in accordance with this clause 10 will be the Customer's sole and exclusive remedy;

B. all representations, warranties and conditions of any kind, implied by statute, general law or custom relating to the goods are excluded; and

c. subject to clauses 10.1 – 10.4, the Supplier excludes all liability for all Claims or Loss in connection with the sale, re-sale, use or re-use of the Goods, however arising including all loss of profits, loss of revenue, loss of business, loss of production, loss of opportunity or goodwill, business interruption and any indirect or consequential Loss.

10.6 Subject to clauses 10.1 – 10.5, the Supplier's total cumulative liability under or in any way connected with any individual contract for the supply of goods placed by the Customer or its subject matter is limited in aggregate for all Claims to an amount equal to the total price paid or payable by the Customer for the Goods the subject of that contract.



10.7 The limitations and exclusion of liability under clause

10.6 do not apply in respect of

A. death or personal injury; or

B. damage to third party tangible property; To the extent caused or contributed to by the Supplier and then only to such extent that, the Supplier is not otherwise released from liability under these terms and conditions.

11 Return of Goods

11.1 Unless there is a specific agreement to the contrary, the Supplier is not obliged to accept the return of or allow any credit for goods not sold by the Customer;

A. by the use-by-date for the goods; or

B. which the Customer claims are not in accordance with these terms and conditions, unless; (If) a claim that the goods were damaged is notified in writing by the Customer to the Supplier within 5 business days after the Supplier delivered the goods to the Customer; and (ii) The goods are returned by the Customer accompanied by advice of the Supplier's original invoice number.

12 General

12.1 Unless expressed in writing to the Customer, any failure or delay by, the Supplier in exercising any right, power or privilege available to it, will not operate as a waiver or variation of such right, power or privilege, nor will the exercise by the Supplier of any other right, power or privilege prevent us from exercising any other rights, powers or privileges available to it.

12.2 The Supplier and the Customer acknowledge that these terms and conditions together with the Supplier's Credit Application form and quotations, constitute the whole agreement between the Supplier and the Customer and all previous negotiations and agreements between the Supplier and the Customer will cease to have effect.

12.3 If any part of these terms and conditions is held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.

12.4 Nothing in these terms and conditions is intended to create an agency, partnership or joint venture relationship between the Supplier and the Customer. Neither the Supplier nor the Customer has any authority to bind the other to any obligation to any third party unless otherwise agreed in writing.

12.5 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time but only to the extent that compliance is prevented or delayed.

12.6 The Supplier may alter these Terms and Conditions on giving seven (7) days prior written notice to the Customer.

12.7 Any notice to be given by the Supplier or the Customer to the other must be in writing.

12.8 These terms and conditions constitute the entire agreement or contract between the Supplier and the Customer for the supply of goods by the Supplier in addition to any written agreement between the Supplier and the Customer signed by an authorised representative of each party.

12.9 Supplier may add to, delete, or otherwise change any of the terms of this Agreement by notice post on website or emailed. Your new order after notice will constitute your deemed acceptance of such changes.

12.10 Each provision of this Agreement is severable. The Agreement remains enforceable even if individual clauses are removed or deemed unenforceable.

12.11 the laws of VICTORIA is govern this agreement.