

# **BUSINESS ECOM PTY LTD T/AS B2BHERE (ABN 80621837125)**

## **TERMS AND CONDITIONS**

### **1. CONTRACT**

1.1. An Order for the purchase of Goods from the Company made by the Customer will be taken to be an offer to the Company incorporating these terms and conditions of sale.

1.2. The contract for the sale and purchase of the Goods will arise upon the purchase of the goods acceptance of the offer of the Customer by the Company.

1.3. The items contained in these terms and conditions of sale will be the terms and conditions of the contract, notwithstanding anything that may be stated to the contrary on the Customer's Orders or in the Customer's enquiries.

### **2. PRICE**

2.1. The Price shall be the amount set out for each product and by quantity as indicated on the Platform.

2.2. All prices quoted by the Company include GST unless specifically stated to exclude GST.

2.3. In addition to the price, the Customer must pay to the Company any freight where applicable including all GST incurred or payable with respect to the supply of the Goods.

### **3. PAYMENT**

3.1. Unless the Company otherwise agrees all sales will be on the following basis:-

3.1.1 The Price will be 100% of the total purchased from the platform.

3.2. Should the Company agree to grant credit to the Customer such credit will, in the absence of the written agreement of the Company to the contrary, be upon the basis that payment will be made in full without deduction of any kind whatsoever on or before the 20th day of the month following invoice to the Customer.

3.3. The Company reserves the right to treat each separate delivery as a separate contract for the purpose of payment.

3.4. All payments due to the Company are to be made in full on the due date without deduction of any nature whatsoever whether by way of set-off counterclaim or other equitable or lawful claim or otherwise howsoever.

3.5. Receipt of a cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Customer shall remain liable for the full purchase price until such cheque, bill of exchange, or other negotiable instrument is paid in full.

3.6. The Company may, without notice, apply money received from the Customer in such order as the Company may determine.

3.7. Should payment in full not be paid to the Company by the due date then:

3.7.1. the Customer shall pay interest on the outstanding monies at a rate four per centum (4%) per annum above the indicator lending rate charged by the Australia and New Zealand Banking Group

Limited at the time when the payment was due, which interest shall accrue on a daily basis and shall accrue after as well as before judgment;

3.7.2. the Customer shall also be liable to pay all expenses and legal costs of the Company (calculated between solicitor and own client) in relation to obtaining or seeking to obtain remedy of any default in payment by the Customer;

3.7.3. the Company shall have the option of suspending delivery to the Customer until the Customer has effected payment in full; and

3.7.4. the Company may also terminate the contract on giving the Customer notice in writing.

#### **4. FREIGHT**

4.1. All freight will be arranged by the Company.

4.2. The cost of such freight will be included in the Price, unless otherwise specified or agreed

4.3. The company reserves the right to negotiate at its discretion any freight subject to falling outside any area deemed a Company non-standard delivery area

#### **5. ORDERS AND DELIVERY**

5.1. The Company shall use its reasonable endeavours to have the Goods delivered to the Customer by the delivery date included in the purchase or as indicated on the platform, if any, but the Company shall not be liable for any loss or damages suffered by the Customer as a result, whether direct or indirect, of any delay in completion of delivery.

5.2. Delivery shall be complete on arrival of the Goods at such place(s) as notified by the Customer.

5.3. The Customer shall accept delivery of the Goods on or before the date(s) notified by the Customer or if the Company is unable to make delivery on such date(s) on such later date(s) on which the Company is able to make delivery.

5.4. If the Customer does not accept delivery of the Goods or should the Company withhold delivery pending payment or adequate arrangement as to payment, delivery shall be deemed to have been made when the Company is or was willing to deliver the Goods and:

5.4.1. the Company shall be entitled to charge as an accretion to the purchase price of the Goods reasonable storage and transportation charges; and

5.4.2. the Customer shall nevertheless make any payments provided herein upon the basis that such delivery has been effected.

5.5. Failure to make any delivery shall not prejudice the right of the Company to make subsequent deliveries nor shall that entitle the Customer to refuse to accept the same or to terminate the contract either as a whole or in part or to any right or claim for damages whether for delay or non-delivery or otherwise howsoever.

5.6. All claims for errors or short delivery must be made in writing within seven days of receipt of the Goods by the Customer.

5.7. The Company shall not be liable to the Customer or any other person claiming through or under the Customer for any errors or omissions in the execution or performance of the contract arising partly or wholly from any ambiguity in the specifications, if any, provided by the Customer.

## **6. RISK AND INSURANCE**

6.1. Risk shall pass to the Customer on departure of the Goods from the premises of the Company or its Supplier.

6.2. Freight and transit insurance are to the Customer's account unless specified to the contrary.

6.3. The Customer will insure the Goods for the full insurable value from the time of departure to the Customer until payment in full in the name of the Company.

## **7. RETENTION OF TITLE**

7.1. The Customer agrees that the legal and equitable title to the Goods is retained by the Company until the Company receives payment in full from the Customer for the Goods and all other goods and services supplied to the Customer by the Company at any time. Prior to title in the Goods passing to the Customer, the Customer:

7.1.1. holds the Goods as bailee and fiduciary agent of the Company

7.1.2. where the Customer processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, holds such part of the new goods (Processed Goods) on trust for the Company as bailee and fiduciary agent of the Company.

7.1.3. must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by the Company; and

7.1.4. must ensure that, at all times, the Goods and such part of the Processed Goods are properly stored, protected, readily identifiable and insured.

7.2. The Customer hereby agrees to accept this appointment as bailee and fiduciary agent of the Company.

7.3. The Customer may sell or deal in the ordinary course of business with the Goods and such part of the Processed Goods provided that –

7.3.1. any such sale or dealing is at arms' length and on market terms; and

7.3.2. The Customer holds the proceeds of any sale of or dealing in the Goods and such part of the proceeds of any sale of or dealing in the Processed Goods on trust for the Company in a separate identifiable account as the beneficial property of the Company and the Customer must pay such amount to the Company on demand.

7.4. For the purpose of this clause 7, "such part" means an amount equal in dollar terms to the amount owing by the Customer to the Company at the time the Goods are used in the manufacture of or incorporated into the Processed Goods.

7.5. Notwithstanding any other provision to the contrary, the Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company in respect of the Goods and all other goods and services supplied to the Customer by the Company at any time are fully paid:

7.5.1. legal and equitable ownership of the Goods;

7.5.2. to retake possession of the Goods; and

7.5.3. to keep or resell any of the Goods repossessed.

7.6. In the event of a breach of this contract by the Customer including, without limitation, failure by the Customer to make payment for the Goods by the date specified by the Company to the Customer, the Customer must return the Goods to the Company immediately on demand. If the Customer does not return the Goods to the Company on demand the Supplier shall be entitled (without further notice) to enter upon the Customer's premises at any time to do all things necessary to recover the Goods.

7.7. The Customer hereby grants full leave and irrevocable licence to the Company and any person authorised by the Company to enter upon any premises where the Goods may for the time being be placed or stored for the purpose of retaking possession of the Goods.

7.8. The Purchaser agrees that:

7.8.1 it shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by the Company (including consequential losses and damages) as a result of the Company exercising its rights under this clause; and

7.8.2 it shall indemnify the Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Company in connection with the retaking possession of the Goods or the exercise by the Company of its rights under this clause, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.

7.9. The parties agree that this clause is not intended to create a charge or any other form of security interest and that if and to the extent that, as a matter of law, this clause creates a charge or any other form of security interest, the offending words shall be deleted.

## **8. WARRANTY**

The Company shall remedy any defect upon delivery within a period of 7 days from the date upon delivery to the Customer, where such defect is caused by the delivery, poor materials, bad workmanship or manufacturing defect provided that:-

8.1 the Customer provides written notice and description of the defect within seven (7) days of the defect becoming apparent.

## **9. EXCLUSION OF WARRANTIES**

9.1 Save as provided in these terms and conditions, to the fullest extent permitted by law, all warranties, descriptions, representations and conditions as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether expressed or implied by law trade custom or otherwise are expressly excluded.

9.2 No agent or representative of the Company is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and the Company is not in any way bound by any such unauthorised statements nor can any statement be taken to form part of any contract with the Company collateral to this contract.

## **10. LIABILITY**

10.1 To the extent permitted by law, the liability of the Company whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or noncompliance in respect of the Goods or from any other breach of the Company's obligations hereunder shall not in any event exceed an amount equivalent to the purchase price of the Goods.

10.2 The Company shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever nor shall the Company be liable for any damage or loss caused by the Customer's servants, agents, Customers or other persons whatsoever (whether similar or not to the foregoing).

#### **11. FORCE MAJEURE**

The Company shall not be liable for failure in supply or delivery to the Customer occasioned by strike, combination of workmen lockout, Act of God, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar or not to the foregoing) beyond the Company's reasonable control.

#### **12. WAIVER AND FORBEARANCE**

12.1. All the original rights, powers, exemptions and remedies of the Company shall remain in force notwithstanding any neglect, forbearance or delay in the enforcement thereof.

12.2. The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of a director of the Company and any such waiver unless the contrary shall be expressly stated shall apply to and operate only in the particular transaction dealing or matter in respect of which it was given.

#### **13. JURISDICTION**

The law of the State of Victoria is the proper law for these terms and conditions. The parties irrevocably submit to the non-exclusive jurisdiction of the courts in the State of Victoria.

#### **19. DEFINITIONS**

19.1. Company means Business Ecom Pty Ltd T/as B2BHere being that party identified as the Company on the website or in the attached quote or otherwise being the party which accepts an Order for the purchase of Goods in accordance with clause 1;

19.2. Customer means the party identified as such in the attached Quotation or otherwise the party which places an Order in accordance with clause 1;

19.3. Platform means the website [www.b2bhere.com](http://www.b2bhere.com),

19.4. Goods means the goods the subject of an Order,

19.5. GST means the tax payable on Taxable Supplies within the GST Act;

19.6. GST Act means the A New Tax System (Goods and Services Tax) Act;

19.7. Order means an order for Goods made by the Customer in accordance with these Terms and Conditions of Sale.

19.8. Price means the price of the Goods described in the offer by the Customer, subject to variations agreed in writing.