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TERMS AND CONDITIONS OF SALE

1. Scope

- 1.1 The terms and conditions set out below (**Terms**) govern all contracts for the sale or supply of goods (**Goods**) or services (**Services**) by Polo Citrus Australia Pty Ltd ACN 064 601 332 (**Polo Citrus**) to each of its customers (**Customer**) and constitute the agreement between the parties (**Contract**). All other terms, conditions, warranties and representations express or implied and statutory or otherwise are excluded to the fullest extent permitted by law, including without limitation any term or condition put forward by the Customer.
- 1.2 Any agreement which modifies or amends these Terms, any supplement to these Terms and all terms and conditions of the Customer will only be valid if a director of Polo Citrus has consented in writing in this regard, and the Customer has received a signed notice from Polo Citrus entitled "Our Standard Terms Do Not Apply".
- 1.3 Polo Citrus may at any time and from time to time alter these Terms, and the altered Terms will apply after Polo Citrus has notified the Customer of the altered Terms.
- 1.4 Polo Citrus sales representatives are not authorised to amend these Terms on behalf of Polo Citrus.

2. Quotation

Unless previously withdrawn, a quotation by Polo Citrus for any Goods or Services is valid for 30 days from the date of issue of the quotation or such other period as stated in the quotation and is subject to withdrawal or change at any time. Any quotation provided by Polo Citrus is a mere invitation to treat and is not a contractual offer. Any documentation which accompanies a quotation is preliminary information only and is in no case to be considered as a warranty regarding the quality of the relevant Goods or Services. The Customer must not disclose any quotation or accompanying documentation to any third party without Polo Citrus' prior written consent.

3. Orders

- 3.1 Orders are binding upon the Customer, and any order made by a Customer will be taken to be an offer incorporating these Terms, notwithstanding any inconsistencies between these Terms and the terms of the order.
- 3.2 No order will be binding on Polo Citrus and a contract for the sale or supply of Goods or Services will not come into existence until an authorised employee of Polo Citrus accepts the Customer's offer in writing.
- 3.3 An order may only be varied if the Customer requests the variation in writing, and the variation is accepted by Polo Citrus in writing.
- 3.4 An order that has been placed with, and accepted by Polo Citrus, cannot be cancelled without Polo Citrus's prior written consent.

4. Prices and Terms of Payment

- 4.1 Prices of Goods:
 - (a) quoted to the Customer are based on the costs of the Goods on the date of the quotation. If there is any increase in the manufacturing and standard packaging costs of the Goods between the date of the quotation and the date of delivery of such Goods, Polo Citrus may, by notice to the Customer, adjust prices to reflect such an increase. If the quoted prices are increased by more than 10% the Customer is entitled to rescind the contract without further liability, after giving written notice to Polo Citrus within 7 days from having received notice of the price adjustment; and
 - (b) unless otherwise previously agreed, do not include freight, sales tax, goods and services tax, or other similar charges, which are the responsibility of the Customer. Any shipping charges, tax, duty or levy on the production, sale, transportation or shipment of any Goods sold by the Customer

will be added to the price quoted and must be paid by the Customer to Polo Citrus.

- 4.2 The Customer is responsible for all costs associated with any variation to or cancellation of an order.
- 4.3 The Customer is also responsible for all costs related to delays which are caused by the Customer.
- 4.4 Polo Citrus will issue the Customer with an invoice at the time of despatch of Goods or on or about the first date on which Services are provided to the Customer.
- 4.5 Unless otherwise agreed in writing, and subject to paragraph 4.6, payment is COD.
- 4.6 Where Polo Citrus has approved an application made by the Customer for a credit account, payment is to be made within 30 days from the end of the month of the date of the relevant invoice. Polo Citrus is also entitled to stipulate on any particular quote or invoice that payment is due on delivery of the Goods or Services.
- 4.7 Polo Citrus can vary or withdraw any credit facility at any time at its discretion, without liability to the Customer or any other party.
- 4.8 The Customer is only entitled to set-off or refuse payment for Goods and Services on the basis of uncontested claims or claims awarded by a final judgement issued by a court. Under no circumstances will the Customer be entitled to refuse payment for any Goods or Services by raising counterclaims which are not based on these Terms.
- 4.9 If any amount owing by the Customer to Polo Citrus is overdue:
 - (a) Polo Citrus is entitled to charge interest on the overdue amount at the rate of 2% per annum above the base rate of Polo Citrus's principal bankers or 10% per annum, whichever is greater; and
 - (b) the Customer will indemnify and keep indemnified, Polo Citrus against all costs (including solicitor and own client costs and commercial agents' fees and commissions) associated with the recovery of payment of the outstanding amount.

5. Delivery and Risks

- 5.1 Unless otherwise agreed in writing, any times quoted for delivery of the Goods are to be treated as non-binding estimates only and Polo Citrus will not be liable for any failure to deliver within such time, nor in such circumstances will the Customer be entitled to cancel or terminate any order or contract.
- 5.2 All risk passes to the Customer from the time the Goods are dispatched from Polo Citrus's premises and the Customer is liable for and must insure fully against such risk and the Customer agrees to indemnify and to keep Polo Citrus indemnified against any loss which may arise in this regard.

6. Retention of Title

- 6.1 Title in the Goods will not pass to the Customer until Polo Citrus has received full payment for the Goods as well as all other goods or services supplied by Polo Citrus to the Customer (regardless of the time at which such payment may be due) and all amounts owed by the Customer to Polo Citrus have been paid.
- 6.2 If Polo Citrus agrees to deliver the Goods prior to payment in full by the Customer:
 - (a) the relationship between the parties is fiduciary and the Customer must hold the Goods as bailee; and
 - (b) the Customer:
 - (i) must insure the Goods against all usual risks to full replacement value until ownership passes to the Customer;

- (ii) must hold on trust for Polo Citrus in a separate bank account any insurance monies received by the Customer for Goods supplied to the Customer but owned by Polo Citrus;
 - (iii) must store each delivery of Goods separately, clearly identified as Polo Citrus's property and in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible;
 - (iv) must not pledge or allow any lien, charge or other interest to arise over the Goods; and
 - (v) may use or sell the Goods in the ordinary course of business, provided that the Customer will be deemed to be agent for Polo Citrus in any sale if the Goods are sold. The Customer must account to Polo Citrus for the proceeds of any such sale and must hold any proceeds in a separate bank account on trust for Polo Citrus. Any such agency will only extend to the obligation to account for proceeds and Polo Citrus will not be bound by any contract between the Customer and the Customer's purchaser.
- 6.3 The Customer gives Polo Citrus, its agents and servants, leave and licence, without the necessity of giving any notice, to enter at any time on and into any premises occupied by the Customer, in the event of a receiver, liquidator or official manager being appointed to manage the affairs of the Customer, to inspect, search for or remove the Goods.
- 6.4 If the Customer fails to make full payment for any Goods supplied by Polo Citrus, Polo Citrus is entitled to possession of those Goods and may recover and sell the Goods. The Customer must place the Goods at Polo Citrus's disposal and Polo Citrus is entitled to enter upon any premises of the Customer to remove those Goods.
- 7. Examination and Notice of Defects**
- 7.1 The Customer must provide Polo Citrus with a written notice containing an exact specification of defects in relation to any defective Goods (**Defect Notice**) within 14 days after delivery of the Goods (**Notice Period**).
- 7.2 If a Defect Notice is not dispatched within the Notice Period, the Goods will be deemed to be accepted by the Customer.
- 7.3 Defects which were not apparent on reasonable inspection must be notified in writing by the Customer to Polo Citrus within 14 days from their discovery.
- 7.4 The Customer must return defective Goods to Polo Citrus in the original product packaging supplied by Polo Citrus and must provide Polo Citrus with a copy of the original invoice issued by Polo Citrus in respect of the Goods.
- 8. Warranty and Liability for Defects**
- 8.1 To the extent permitted by law and subject to any quotations issued by Polo Citrus which state that a warranty applies to the relevant Goods or Services, Polo Citrus excludes any express or implied condition or warranty other than those, if any, implied by statute which cannot be excluded by agreement.
- 8.2 The Customer agrees that Polo Citrus's liability under any warranty referred to in a quotation issued by Polo Citrus is limited to:
- (a) the repair, or at Polo Citrus's sole discretion, the replacement of the Goods, except where the defect relates to defective components, services provided by an individual nominated by the Customer, or where the defect is caused by the Customer; or
 - (b) the re-supply of the Services (or of those materials used in connection with Services supplied).
- 8.3 Under the *Trade Practices Act 1974* (Cth) and other similar legislation, when implied conditions and warranties cannot be excluded, Polo Citrus limits its liability to the repair or replacement of the Goods or the re-supply of the Services.
- 8.4 Without prejudice to the generality of this clause 8, Polo Citrus will not be liable for:
- (a) any damage to the Customer's reputation or goodwill;
 - (b) any loss or damage suffered by the Customer as a result of any claim made by a third party; or
 - (c) any incidental, indirect or consequential damages or loss of any nature including loss of profits that might arise as a direct or indirect result of the sale or the use of the Goods or as a result of Polo Citrus's non-performance or inadequate performance of its obligations or the negligence of Polo Citrus, whether based on contract, tort or any other legal basis and whether or not Polo Citrus is advised of the possibility of such damages.
- 8.5 Without prejudice to clause 8.3, the Customer agrees that Polo Citrus's aggregate liability in contract, tort (including negligence or breach of statutory duty) or caused by, resulting from, or in relation to the Goods or Services supplied by Polo Citrus, is limited (to the extent permitted by law) to an amount equal to the price received by Polo Citrus for the Goods or Services.
- 8.6 Save as specified in this clause 8, the Customer warrants that it has made itself aware of the law relating to the storage, handling and the use of the Goods and will indemnify and keep indemnified Polo Citrus in relation thereto.
- 9. Force Majeure**
- Polo Citrus is not liable for delay in performing, or non-performance, of any of its obligations under these Terms caused by unforeseeable circumstances beyond Polo Citrus's reasonable control (including, without limitation, acts of God, civil or military authority, accidents, earthquakes, strikes, the elements, labour disputes, shortage of suitable part or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances, Polo Citrus will be entitled to a reasonable extension of time for the performance of its obligations.
- 10. Waiver**
- 10.1 Waiver of a breach or of any right of election arising from a breach of these Terms must be in writing and signed by the party granting the waiver.
- 10.2 A breach or any right of election arising from a breach of these Terms is not waived by any failure to or delay in the exercise, or partial exercise, of that right of election or any other right.
- 11. Assignment**
- 11.1 Polo Citrus is entitled to sub-contract or assign the contract for the sale or supply of Goods or Services or all or any of its rights and obligations to a third party. Polo Citrus will provide the Customer with notice if it assigns all of its rights and obligations to a third party. Upon despatch of such notice, Polo Citrus will be relieved of any further obligations to the Customer under the contract.
- 11.2 The Customer may not assign or otherwise transfer the contract or any of its rights and obligations under these Terms without the prior written consent of Polo Citrus.
- 12. Notices**
- All notices which are required to be given under these Terms must be in writing and must be sent to the registered business address of the recipient. Any such notice may be delivered personally by pre-paid letter, email or facsimile transmission and will be deemed to have been served:
- (a) if by hand, when delivered;
 - (b) if by post, 48 hours after posting; and
 - (c) if by email or facsimile transmission, when despatched.
- 13. Severability**
- If any provision of these Terms is held by a court of competent jurisdiction to be contrary to law or unenforceable, in whole or in part, such provision or part will to that extent be deemed not to form part of these Terms but the remaining provisions of these Terms will remain in full force and effect to the maximum extent permissible.
- 14. Governing Law and Jurisdiction**
- These Terms and the contract to which they relate are governed by and construed in accordance with the laws of Victoria and the parties irrevocably submit to the jurisdiction of the Courts of that state.