

## Terms and Conditions of Sale

- the fitness or suitability of the Products for the Customer's particular purposes.
- 1 Application of Conditions**
- 1.1 These Conditions of Sale ("Conditions") apply to all quotations, offers and purchase orders made or accepted by Best Feet First Pty Ltd (ABN 28 149 692 848) of 15 Primmer Street, Coorparoo QLD ("Company") and to deliveries of all goods manufactured or supplied by the Company ("Products") to any person, firm or company which enters into an agreement with the Company ("Customer").
- 1.2 So far as applicable these Conditions also apply to the provision of any services including advice accompanying the supply of, or provided in relation to, Products ("Services") and, where the context allows, any reference to the supply of Products includes the provision of such Services.
- 1.3 These Conditions (which can only be waived or varied in writing by the Company) will prevail over all conditions of the Customer to the extent of any inconsistency.
- 2 Orders**
- 2.1 Neither a Customer's quotation nor any order submitted or placed by a Customer ("Order") shall be binding on the Company unless and until the Company has given written acknowledgement of its acceptance on terms which include these Conditions ("Order Confirmation"). If Products are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
- 2.2 Each supply which the Company makes in response to an Order will be regarded as a separate contract for sale.
- 2.3 Unless previously withdrawn, all quotations by the Company are binding and valid for 30 days from the date of the quotation or such other period as stated in that quotation.
- 3 Specification**
- 3.1 Products are supplied in accordance with a specification and test results proving conformance with the specification (if any) in force at the time of concluding the agreement between the Company and the Customer ("Specification"). Any additions and alterations made to a Specification by the Company at the request of the Customer shall be subject to an additional charge as specified by the Company.
- 3.2 The Customer is solely responsible, and must itself examine and test the Products at its cost, to ensure they are fit or suitable for the Customer's purposes. Save as provided in clause 8 of these Conditions, the Company accepts no liability for
- 4 Prices and Payment**
- 4.1 The prices of the Products are the prevailing prices at the time of delivery, whether expressly set out in an Order Confirmation or in a price list published by the Company ("Prices").
- 4.2 Unless otherwise specified all prices are:
- (a) quoted Ex Works (INCOTERMS 2010) the Company's nominated warehouse, factory or depot; and
- (b) inclusive of all freight costs, import charges, including customs duties, imposts and levies relating to the import, supply or use of the Products.
- 4.3 Unless otherwise agreed by the Company in writing, payment is due in full at the time of placement of the Order ("Payment Date").
- 4.4 If the Customer defaults in the payment of any money due to the Company pursuant to these Conditions on the Payment Date, then in addition to any other rights which may be conferred upon the Company by law or equity, the Company will be entitled to be paid interest by the Customer on such money at the rate prescribed in Rule 36.7 of the Uniform Civil Procedure Rules 2005 (NSW) from the date of such default until payment to the Company.
- 4.5 If payment is not made in accordance with clause 4.3, or if at any time the credit standing of the Customer, in the opinion of the Company, is at risk or has been impaired, the Company may refuse delivery of any Products ordered until alternative arrangements as to payment or credit in terms satisfactory to the Company have been agreed.
- 4.6 If GST is imposed on a Taxable Supply made by the Company to the Customer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-exclusive consideration that the Customer must pay to the Company for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable by the Customer on that Taxable Supply and the GST Amount is, subject to the Company issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates. In these Conditions "GST" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "Taxable

Supply” and “Tax Invoice” have the same meaning as in the GST Act.

- 4.7 The Customer may not withhold or set off any payment or make deductions from any amount owing to the Company without the Company's prior written consent.

## **5 Cancellation**

- 5.1 A notice of cancellation or variation of an Order must be submitted by the Customer in writing and is only effective upon the written approval by the Company, whereby such approval can be withheld by the Company in its discretion.
- 5.2 When a Customer gives written notice of cancellation or variation and the Company approves such a request in accordance with clause 5.1, without prejudice to its other rights, the Company reserves the right to charge for all Products and Services it has performed and shall need to perform in fulfilling the Order or, if the work is substantially complete or the Products were made to order or are otherwise not immediately available for sale to another customer at an equivalent price, to charge for the full amount set out in the applicable Order Confirmation in addition to any other costs the Company incurs on the Customer's behalf.

## **6 Delivery**

- 6.1 Unless the Company otherwise agrees, delivery of Products shall be made to the delivery point specified in the applicable Order Confirmation. The Customer shall be responsible, and will be charged for any costs incurred in delivery and transport.
- 6.2 Stated delivery times are no more than an estimate by the Company and shall not be binding upon the Company. The Company will not be liable for any consequential or other loss resulting partly or wholly from late delivery.
- 6.3 If the quantity of Products delivered does not correspond with the quantity stated in an Order Confirmation, the Customer shall only be liable to pay for the quantity delivered in the case of short-delivery and for the price stated in the Order Confirmation in the case of over-delivery (subject in the latter case to the Customer permitting the Company to collect the surplus Products), provided that in no event shall such short or over-delivery entitle the Customer to damages or give the Customer a right to rescind the agreement of which these Conditions form part.
- 6.4 Any surplus Products delivered shall remain the property of the Company and the Customer shall take all necessary precautions for the safe custody and protection of such surplus Products until the time of their removal by the Company.

- 6.5 In no circumstances shall any Products be returned to the Company without its prior written consent.

## **7 Passing of Risk and Title**

- 7.1 Unless otherwise agreed by the Company in writing, risk in the Products shall pass to the Customer when the Products are delivered in accordance with clause 6
- 7.2 Notwithstanding that risk passes to the Customer under clause 7.1, legal and beneficial title (“Ownership”) in the Products shall remain with the Company until:
- (a) the Products are the subject of an Order Confirmation; and
  - (b) the price for the Products as well as any other amounts the Customer may owe the Company have been paid in full.
- 7.3 Until such time as Ownership in the Products passes to the Customer, the Customer shall:
- (a) be in a fiduciary relationship with the Company;
  - (b) store the Products in a manner which makes them readily identifiable as the property of the Company;
  - (c) hold the Products as bailee of the Company;
  - (d) keep, and provide the Company at any time on reasonable request, proper and complete stock records covering the receipt, identification, storage, location, sale and movement of the Products; and
  - (e) keep the Products insured against theft, damage and destruction.
- 7.4 Notwithstanding clauses 7.2 and 7.3 the Customer is entitled until notified by the Company or until the happening of any of the events set out in clause 7.7 to:
- (a) sell the Products in the normal course of its business, in which case the proceeds of resale must be held in trust for the Company in a separate account; or
  - (b) convert the Products into other products or attach, affix or incorporate the Products to or with other products.
- 7.5 The Company is entitled at any time while any debt remains outstanding by the Customer to notify the Customer of its intention to take possession of the Products and for this purpose the Customer irrevocably authorises and licenses the Company and its servants and agents to enter upon the land and buildings of the Customer with all necessary equipment to take possession of the Products. The Company is not

liable for damage or injury to any premises caused by the Company exercising its rights under this clause.

7.6 On receipt of notice from the Company or on the happening of any of the events set out in clause 7.7, the following applies:

- The Customer's authority to sell or otherwise deal with the Products as set out in clause 7.4 is withdrawn;
- The Company may withhold delivering further Products;
- The Customer must immediately deliver to the Company all Products which are in the Ownership of the Company.

7.7 The Customer shall give immediate notice to the Company of:

- (a) any notice to the Customer that a receiver or manager is to be or has been appointed over its assets or any part of its business or undertakings;
- (b) any notice to the Customer that a petition to wind up the Customer is to be or has been presented or any notice of a resolution to wind up the Customer;
- (c) a decision by the Customer that it intends to make any arrangements with its creditors;
- (d) any act of bankruptcy as defined in section 40 of the *Bankruptcy Act 1966* (Cth.).

## **8 Personal Property Securities Act 2009 ("PPSA")**

The Customer acknowledges and agrees that it grants the Company a security interest in the Products and their proceeds by virtue of the Company's retention of title pursuant to clause 7.

The Customer undertakes to:

- a) do all things necessary and provide the Company on request all information the Company requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
- b) not to change its name in any form or other details on the PPSR without first notifying the Company.

The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created by these Conditions.

To the maximum extent permitted by law, the Customer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:

- (a) section 95 (notice of removal of accession);
- (b) section 123(2) (notice of seizure);
- (c) section 125 (obligation to dispose of or retain collateral);
- (d) section 129(2) (notice of disposal by purchase);
- (e) section 130 (notice of disposal);
- (f) section 132(3)(d) (contents of statement of account after disposal);
- (g) section 132(4) (statement of account if no disposal)
- (h) section 135 (notice of retention);
- (i) section 142 (redemption of collateral); and
- (j) section 143 (reinstatement of security agreement).

The Customer appoints the Company as its attorney to sign in the Customer's name all documents which the Company considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.

The Customer will reimburse the Company for any fees payable by the Company in relation to the registration of the security interest created by these Conditions, including registration fees and maintenance fees.

These Conditions create a security interest in all Products which the Company has supplied to the Customer and all Products which the Company supplies to the Customer in the future. Initial registration of a financing statement by the Company in respect of the Customer under the PPSA covers security interests in Products supplied now or subsequently under these Conditions

Unless otherwise defined in these Conditions, the terms and expressions used in this clause 8 have the meanings given to them, or by virtue of, the PPSA.

## **9 Conditions and Warranties**

9.1 Save as expressly provided in these Conditions or the agreement of which these Conditions form part or in the *Competition and Consumer Act 2010* (Cth.) ("Act") and equivalent State and Territory legislation:

- (a) all conditions, warranties or consumer guarantees (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the quality of the Products or their

fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or any other matter covered by the conditions and warranties implied by Part 3-2 Div. 1 of the Act (other than sections 51, 52 and 53) are hereby expressly excluded; and

- (b) the Company accepts no liability for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of special, indirect or consequential loss ("Loss") whether suffered by the Customer or by any third party and whether or not the Company was aware that such Loss was possible or such Loss was otherwise foreseeable, whether such Loss arises from any representation, recommendation or advice made or given in relation to the Products, the use of the Products, or the failure by the Company to observe and fulfill its obligations under these Conditions or otherwise.

9.2 To the fullest extent permitted by law, the Company's liability for any breach of a consumer guarantee implied by the *Competition and Consumer Act 2010 (Cth)* (and which cannot be excluded) shall be limited to any one or more of the following (as determined by the Company in its absolute discretion:

- (a) in the case of Products, the replacement repair or payment of the cost of replacement or repair of the Products; and
- (b) in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.

## **10 Warranty for Defective Products**

10.1 Subject to clause 10.2, the Company undertakes that if the Products are found upon inspection by or on behalf of the Company not to conform to the applicable Specification, the Company shall (at its option):

- (a) replace the Products found not to conform to the Specification;
- (b) bring the Products into conformity with the Specification; or
- (c) take back the Products found not to conform to the Specification and refund the appropriate part of the purchase price,

provided that:

- (d) the liability of the Company shall in no event exceed the purchase price of the Products; and

- (e) the Customer has performed all its contractual obligations under these Conditions.

10.2 The warranty set out in clause 10.1 does not apply unless:

- (a) the Products have been properly handled, stored, used and/or maintained and any instructions by the Company in relation to the Products have been fully observed;
- (b) The Customer gives written notice to the Company of the alleged defect in the Products, such notice to be received by the Company within 7 days of the date when such defect appeared or ought to have been discoverable;
- (c) The Customer gives the Company a reasonable opportunity to inspect the Products; and
- (d) the Customer makes no further use of the Products that are alleged to be defective, after the Customer discovers or ought to have discovered that the Products were defective.

## **11 Force Majeure**

The Company shall not be liable for any loss or damage caused by delay in the performance or non-performance of any of its obligations under these Conditions occasioned by any cause whatsoever that is beyond the Company's control including but not limited to: Act of God; war; civil disturbance; requisitioning governmental restrictions, prohibitions or enactments of any kind; import or export regulations; strikes; lock-outs or other industrial disputes (whether involving its own employees or those of any other person); difficulties in obtaining workmen or materials; breakdown of machinery; fires; or accident. If any such event occurs the Company may vary, cancel or suspend any Order Confirmation or agreement of which these Conditions form part without incurring any liability for any such loss or damage.

## **12 Intellectual Property**

12.1 The Company for and on behalf of itself and its related bodies corporate reserves ownership in any intellectual property rights, relating to the Products. Nothing in these Conditions operates or is intended to deny the Company or its related bodies corporate, or confer on the Customer, such rights or any other intellectual property rights in the Products.

12.2 If a third party asserts a claim for breach of its intellectual property rights arising from the supply or use of the Products the Customer shall immediately inform the Company and the Company shall be solely responsible for the defence, resolution and settlement of any such

claim. The Customer shall at the Company's cost and request render such reasonable assistance as the Company requires in defending any such claim. In no circumstances shall the Customer acknowledge or concede the validity of any such claim except with the Company's express written consent. If any such claim against the Company succeeds, the Company shall at its option use its best endeavours to obtain a right to use or license any such intellectual property rights or modify the Products or replace them at its cost.

12.3 The Customer shall indemnify the Company for and in respect of claims by any third party in relation to the Products which arise from, or can be attributed to, the special requirements or specifications of the Customer.

12.4 In this clause 12 a reference to intellectual property rights includes patents, trade marks, copyright, registered designs and licences and applications in respect of any of the above.

### **13 Local Standards**

13.1 The Company warrants that the Goods have been approved by the Therapeutic Goods Administration for the intended purpose set out in the Australian Register of Therapeutic Goods Certificate with the ARTG Identifier 189247 Class 1.

13.2 Subject to clause 13.1, it is the responsibility of the Customer at its own costs to:

- ensure that the Products comply with the relevant safety standards and product laws in Australia, including, if required, undertake any necessary testing to ensure such compliance;
- observe any applicable laws in Australia in regard to the use and storage of the Products;
- apply for and obtain all necessary licences, permits or other authorisations required by the local law in relation to the use of the Products.

### **14 Confidentiality**

The Customer shall not without the written consent of the Company disclose to any third party or use for any purpose other than contemplated under the agreement of which these Conditions form part any proprietary or confidential documents, knowledge and information, prices, tools, formulas, samples, models, drawings, data standard sheets, manuscripts and other technical documentation supplied or made known to the Customer by the Company.

### **15 Assignment**

The agreement of which these Conditions form part is personal to the Customer and may only be assigned by the Customer with the prior written and informed consent of the Company.

### **16 Waiver**

No neglect, delay or indulgence on the part of the Company in enforcing these Conditions shall prejudice the rights of the Company or be construed as a waiver of any such rights.

### **17 Severability**

If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

### **18 Governing Law**

The Conditions and any agreement of which they form part are governed by and must be construed in accordance with the laws which apply in the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters or things arising out of these Conditions.