

Mansutti Bros. Pty. Ltd.

Terms & Conditions

MANSUTTI BROS. PTY. LTD ("MB")

ABN 67 125 791 068

TERMS AND CONDITIONS OF SALE ("Terms")

1. PURCHASER'S ACCEPTANCE OF TERMS

The person to whom this document is addressed on the front of this form ("Purchaser") shall be taken to have accepted these Terms without qualification, upon:

- (a) The Purchaser or any person acting on its behalf placing an order for all or some of the goods and/or services indicated on the front of this form ("Goods/Services") with MB;
- (b) The Purchaser or any person acting on its behalf accepting or requesting delivery of the Goods/Services verbally or in writing; or
- (c) The Purchaser or any such person confirming these Terms by conduct.

2. INCONSISTENCY

(a) Any order or offer from the Purchaser shall constitute an offer to purchase Goods/Services on these terms, notwithstanding anything in that order or offer.

(b) Notwithstanding any words or conduct by MB inconsistent with or purporting to vary or reject any of these terms, any contract between MB and the Purchaser to purchase Goods/Services is subject to these terms unless and to the extent only that MB expressly agrees in writing to any variation or has agreed in writing to any terms and conditions inconsistent with these Terms ("Inconsistent Terms") in which case any such Inconsistent Terms will prevail to the extent of any inconsistency for so long as such Inconsistent Terms remain in force.

(c) Without limiting the generality of clause 2(b) where a Purchaser is a party to a separate supply agreement signed by MB which remains in force, the terms of that agreement shall prevail over any of these terms which are inconsistent.

3. WARRANTY

MB offers limited warranties in respect of some classes of goods and services ("MB Warranties"). The current terms of the MB Warranties are displayed in the offices of MB and copies of the MB Warranties are available to the Purchaser from MB on request. MB reserves the right to change the terms of the MB Warranties from time to time in its absolute discretion. The warranty applying to the Goods/Services is the relevant MB Warranty specified to apply to the class of goods and/or services in which the Goods/Services come within, on the date of delivery.

4. STATUTORY PROVISIONS

(a) Except as expressly provided in the MB Warranties or these Terms or as required by law, MB does not give any other warranty or make any representation whatsoever, including as to the condition, merchantability, correspondence with description or quality of the Goods/Services or as to their suitability or fitness for any use or purpose, and all statutory and implied conditions and warranties are excluded to the full extent permitted by law.

(b) Where these Terms must, by law, be read and construed subject to any statutory provisions, to the extent permitted by those statutory provisions MB's liability for breach of a condition or warranty implied by any statutory provision is limited at MB's option to:

- (i) in the case of goods to replacement of the goods or the supply of equivalent goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (ii) in the case of services to the supply of the services to the supply of the services again or the cost of having the services supplied again.

5. SUITABILITY FOR PURPOSE

The Purchaser relies on its own skill and judgment and has satisfied itself as to the condition, quality, suitability and fitness of the Goods/Services for the purpose for which the Purchaser proposes to use the Goods/Services.

6. DELIVERY OF GOODS/SERVICES

(a) MB will use reasonable endeavours to meet any delivery or completion date or period quoted but such date or period is an estimate only and is not to be construed as a fixed date or period.

(b) MB shall not be responsible nor accept any liability for delay or non-delivery of the Goods/Services or any part of the Goods/Services and if in any circumstances late delivery or partial delivery is tendered by MB, due to circumstances beyond its control including strikes, shortages of raw materials and accidents, the Purchaser shall accept and pay for the same under these conditions. In no case shall MB be liable for any loss or damage resulting either directly or indirectly from a failure to deliver on any specific date.

(c) Unless stated otherwise in writing, all Goods/Services are supplied ex-works and MB's obligation to deliver is satisfied if MB makes the goods supplied by MB or items to which MB has applied treatment ("Goods") available for collection by the Purchaser at MB's premises. Any charges for delivery or special packing requested by the Purchaser shall be at the Purchaser's expense and shall be added to the price of the applicable Goods/Services and included in the invoice for those Goods/Services.

(d) The Purchaser must collect the Goods within 7 days of the Purchaser being notified that they are available for collection or MB will be entitled to charge the Purchaser MB's reasonable expenses in storing the Goods.

(e) Once the Goods are collected by the Purchaser, the Purchaser is responsible (at its own cost) for the storage of the Goods whilst in transit. MB is not liable to the Purchaser for any Goods lost or damaged in transit.

(f) The Purchaser shall inspect the Goods on delivery and shall notify MB in writing of any variation between the description, quality or quantity of that which was ordered by the Purchaser and the description, quality or quantity of that which is delivered to the Purchaser, within 10 days of delivery to the Purchaser. To the extent permitted by law, if the Purchaser does not so notify MB, the Purchaser shall be deemed to have accepted the Goods in the condition so delivered and shall be deemed to have waived all or any rights to claim that at the time of delivery there existed any variance with the description, quality or quantity of the Goods ordered by the Purchaser and the description, quality or quantity of the Goods actually delivered to the Purchaser. A delivery docket held by MB shall be prima facie evidence of the description, quality and quantity of the Goods delivered.

7. SKIPS

Where any Goods are delivered in re-useable skips ("Skips"), the Skips remain the property of MB at all times. The Skips must be returned at the Purchaser's earliest convenience and at the Purchaser's expense in the same condition as that in which they were supplied by MB. The Purchaser agrees to pay for any Skips not returned in good order and condition within 30 days of delivery of the Goods.

8. RISK

(a) Risk of loss or damage in respect of items of the Purchaser delivered to MB for the application of treatments and which are owned by the Purchaser (or by another party for on-delivery to the Purchaser) will at all times remain with the owner and not MB.

(b) Risk of loss or damage to Goods owned by MB and supplied to the Purchaser shall pass to the Purchaser at the earlier of the time and place where the Goods cease to be in actual possession or control of MB or the expiry of one day from the time MB notifies the Purchaser the Goods are ready for delivery/collection.

9. TITLE

(a) Unless agreed between the Purchaser and MB in writing title and property in Goods supplied by MB remains with MB until the Purchaser has paid the full purchase price to MB, notwithstanding that risk in those Goods may have passed to the Purchaser. Until the Purchaser pays the full purchase price for the Goods:

- (i) it holds the Goods as bailee of MB and acknowledges that a fiduciary relationship exists between them;
- (ii) it must at its own expense, store the Goods in a way that clearly manifests MB's title;
- (iii) it must not pledge or grant any security over the Goods and MB may (in addition to any of its other rights)

enter upon the premises on which the Purchaser holds the goods for the purpose of recovering or reselling them. Any such recovery of Goods is at the discretion of MB and the Purchaser may not return Goods (or any part of them) of its own accord; and

(iv) if the Purchaser resells the Goods before property in the Goods has passed to it and, as a result of such re-sale property in the Goods passes from MB, MB is entitled to the proceeds of such re-sale to the extent of any amount unpaid in relation to the Goods, including any right to or claim for such proceeds and the Purchaser shall keep full records of any such sales, hold such proceeds of sale on trust for MB and keep them separate from its other moneys.

(b) If the Purchaser fails to pay for the Goods on the Due Date (as defined in clause 12), even though MB reserves title to the Goods supplied to the Purchaser and without prejudice to any other rights and remedies MB may have, MB may sue the Purchaser for the price of the Goods as a liquidated sum. If MB has purchased the Goods from a supplier and has agreed with the supplier that title to the Goods will not pass to MB until the supplier has been paid, then clause 9(a) will not apply until the supplier has been paid.

(c) Until the Purchaser pays the full purchase price for the Goods:

- (i) it must at its own expense, take all necessary precautions to keep the Goods safe and free from damage by fire, water, accident, vermin or reckless or malicious damage or any cause whatsoever; and
- (ii) it must insure the Goods for their full insurable value against loss or damage by fire, theft, accident and other such risks.

10. RECOVERY OF GOODS

If any payment by the Purchaser to MB is overdue, in whole or in part, or the Purchaser is otherwise in default under these Terms or any contract with MB, or the Purchaser becomes bankrupt or commits any act of bankruptcy or compounds with its creditors or has judgement entered against it in any court or, being a company, has a provisional liquidator, receiver or manager appointed or otherwise suffers some form of insolvency administration, all sums then owing by the Purchaser to MB in relation to Goods/Services provided by MB will become immediately due and payable and MB may (without prejudice to any of its other rights) recover and resell any Goods and may, for that purpose, enter upon the Purchaser's premises by its servants or agents, and MB is irrevocably authorised to effect such entry, including the use of reasonable force if necessary, to recover possession of the Goods and to detach the Goods from any other object to which they have been attached or of which they form a constituent part. Any such recovery of Goods is at the discretion of MB and the Purchaser may not return Goods (or any part of them) of its own accord.

11. LIEN

Where items are supplied to MB for the application of treatment and MB does not own those items MB shall, subject to any written agreement to provide the Good/Services on credit to the Purchaser, have a lien over those items until the Goods/Services have been paid for in full.

12. PAYMENT

(a) The Purchaser shall pay to MB the total shown on the front of this form which is exclusive of GST ("Purchase Price") within the period and in the manner agreed in writing between the parties or where there is no such written agreement within 30 days of the date of invoice ("Due Date"), time being of the essence.

(b) If any payment is not received by the Due Date, the Purchaser will pay MB on demand interest at 2% above the Commonwealth Bank overdraft rate prevailing at the Due Date, or other such rate as may be notified in writing from time to time (upon 28 days notice) from the Due Date until payment has been made.

(c) The Purchaser shall indemnify MB on demand for any costs incurred in collecting any moneys payable in relation to the supply of the Goods/Services to the Purchaser (including without limitation any fees of any mercantile agent or solicitor on a full indemnity basis).

(d) Without prejudice to any other rights MB may have, if any payment including interest is not made on the date it is due, MB may, without further notice, suspend further provision of Goods/Services and its remaining obligations to the Purchaser under these Terms and any other agreement until the payment due is received by MB in full.

(e) The Purchaser must pay the Purchase Price by providing MB (or, if the right to receive the Purchase Price has been assigned, the assignee of MB) with cleared funds without any set-off, abatement, counter-claim, deduction or withholding whatsoever. The Purchaser must not claim against any such assignee any right of set-off, abatement, counter-claim or other right which the Purchaser has against MB. At the request of MB or the assignee the Purchaser must sign and deliver to the assignee any document MB or the assignee reasonably requires for this purpose. The Purchaser agrees that these obligations will prevail over any other term in any present or future agreement between MB and the Purchaser.

13. PRICE OR PRODUCT VARIATION

(a) MB reserves the right to vary or modify the prices of Goods/Services at any time prior to acceptance of an order by MB.

(b) Where the Purchaser orders Goods/Services to be delivered in instalments, MB reserves the right to vary or modify the prices of Goods/Services in relation to any uncalled instalments at any time prior to the Purchaser notifying MB that it requires the next instalment.

(c) MB reserves the right to alter the specifications and performance data of the Goods/Services in any way prior to acceptance of an order by MB.

(d) In the event that there is a change in the price of the Goods/Services in accordance with sub-clauses (a) or (b), or a change in the specifications or performance data of the Goods/Services in accordance with sub-clause (c) which substantially alters the nature of the Goods/Services provided, the Purchaser may cancel the order or, in the case of sub-clause (b), the remaining instalments, but only if the Purchaser notifies MB that it wishes to cancel the order within 2 business days of receiving notice of the change in price or specification/performance data of the Goods/Services.

14. NOTIFICATION OF CHANGE IN CONTROL

The Purchaser shall at least 14 days prior to the change notify MB in writing of any change in the ownership of the business of the Purchaser or (if the Purchaser is a company) any change in shareholding or in the composition of the board of directors of the company which has the consequence that the persons in control of the business of the Purchaser change.

15. ASSIGNMENT

(a) MB reserves the right to assign or novate its rights or obligations pursuant to any agreement formed on these terms by giving written notice to the Purchaser to that effect.

(b) The Purchaser must not assign its obligations under these Terms without MB's prior written consent.

16. RETURNING OF GOODS

(a) The Purchaser can only return Goods to MB upon written authorisation by MB. MB is not obliged to authorise the return of any Goods in any circumstances. The Purchaser must quote the number of the invoice under which the Goods/Services were purchased.

(b) Transportation costs, both in delivery to MB and return of any Goods to the Purchaser, are the responsibility of the Purchaser.

17. CANCELLATION

Subject to clause 13, the Purchaser must not cancel any order or any undelivered part thereof except with the prior written approval of MB. For each cancellation, MB may, whilst reserving all its rights including any claim for loss, charge an administration fee of the greater of \$150 or 50% of the value of all finishing plus 100% of the metal portion of the order or part thereof cancelled.

18. LIABILITY

MB shall not be under any liability to the Purchaser in respect of any loss or damage (including consequential loss or damage however caused) which may be suffered or incurred or which may arise directly or indirectly in respect of the Goods/Services or the failure or omission on the part of MB to comply with its obligations under these conditions.

19. GST

MB is entitled to charge Goods and Services Tax ("GST") at the prevailing rate of GST on any Goods/Services subject to GST on the amounts payable by the Purchaser for such Goods/Services.

20. NOTICE

A notice, demand, certification, process or other communication including an invoice or statement will be deemed to be properly communicated as required by these Terms if it is left at or sent by prepaid ordinary mail to the party's address, or transmitted to the party's facsimile number or e-mail address or via any other form of written electronic communication, as stated most recently in documentation, correspondence or other written communication.

21. JURISDICTION

These terms and conditions shall be governed by the laws of Victoria and the Purchaser agrees to submit to the jurisdiction of the courts of that state.

22. SEVERABILITY

If any of these Terms is held by a competent authority to be unlawful, invalid or unenforceable in whole or in part then the validity of the other provisions of these Terms and the remainder of the provision in question will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.

23. WAIVER

Failure by MB to enforce at any time any of these Terms will not be a waiver of MB's rights and will not prejudice MB's right to take subsequent action.