

Terms and conditions of contract of Cacao Tree (2010) Ltd ('Vendor')

All goods supplied by the Vendor are supplied on the following terms of trade. The Vendor may vary these terms by notice.

1. Ownership

- a) Ownership of goods remains with the Vendor until payment of the goods is paid in full.

2. Risk and Delivery

- a) Delivery occurs at the time possession of the goods passes from the Vendor to the Buyer or a person nominated by the Buyer. The date on which delivery occurs is referred to in these terms as the possession date.
- b) The risk in goods supplied passes to the Buyer on delivery. The Buyer must insure goods from delivery.
- c) The Vendor is not liable to the Buyer for any delay or failure to supply goods.

3. Price

- a) All orders for goods will be filled at prices prevailing on the Possession Date and the Buyer must pay the prices charged.
- b) All prices are Ex warehouse or factory (unless otherwise stated), and exclusive of packaging and freight, GST and other taxes which are payable by the Buyer.

4. Terms and Payment

- a) Payment for goods is due on the 20th day of the month following the Possession Date except where the Vendor has agreed in writing that the other terms shall apply.
- b) If payment is not made by the Buyer on the due date, the Buyer must pay interest at a rate equal to 1.1/2% per month, which interest shall accrue on a daily basis from the due date to the date of payment.
- c) Payment of all money is without set-off or deduction of any kind.
- d) The Vendor will apportion payments to outstanding accounts as it thinks fit.

5. Personal Properties Securities Act 1999 (PPSA)

- a) All items in this clause 5 have the meaning given in the PPSA and section references shall be to sections of the PPSA.
- b) Clause 1 creates a security interest in all present and after acquired goods and their proceeds.
- c) On the request of the Vendor the Buyer will promptly execute any documents, provided all necessary information and do anything else required by the Vendor to ensure that the security interests created under this Agreement constitutes a perfect security interest in the goods and their proceeds which will have priority over all other security interests in the goods.
- d) The Buyer will pay the Vendor all fees and expenses incurred by the Vendor in relation to the filing of the financial statement or a financing change statement in connection with these terms of trade.
- e) The Buyer waives its rights under sections 114(a), 116, 117, 119, 120(2), 121, 125, 131, 132, and 133.

6. Limitation of Liability

- a) The Vendors liability for any defects in the goods is limited to the purchase price of those goods. If goods are returned by the Buyer, the Vendor may, in its discretion, repair or replace the goods, or refund the purchase price to the Buyer, provided that;
 - i) The goods must be returned to the Vendor within seven (7) days of the Possession Date unless otherwise agreed in writing by the Vendor; and
 - ii) The Buyer must supply the date and number of any invoice relating to the goods; and
 - iii) The Vendor must have a reasonable opportunity to inspect the goods.

- b) The Vendor shall not be responsible for any damage to or deterioration of the goods where the products have been affected by improper handling or storage, contamination, the use of application of the goods outside the normal or intended purpose of the goods or outside the directions or limitations imposed by the Vendor.

- c) The Vendor shall have no further liability or responsibility for any direct, indirect or consequential injury, loss or damage arising from any supply of goods.

7. Consumer Guarantees Act 1993.

- a) Where the supply is for business purposes, the Buyer agrees that the provisions of the Consumers Guarantees Act 1993 do not apply.
- b) Nothing in these terms limits the rights the Buyer may have under the Consumer Guarantees Act 1993.

8. Default

- a) The security interest created by clause 1 of these terms becomes enforceable if any of the following events occur;
 - i) The Buyer fail to pay any money owing by the due date;
 - ii) The Buyer sells, parts with possession leases or disposes of any goods or does anything inconsistent with the Vendors goods prior to making payment in full to the vendor;
 - iii) The Vendor believes the Buyer has committed or will commit an act of bankruptcy, has had or is about to have a receiver appointed, or is declared insolvent.
 - iv) The goods are at risk, as that term is defined in the PPSA;
 - v) The Buyer neglects or fails to carry on its business to the reasonable satisfaction of the Vendor, or if there is a significant deterioration in the trading or asset position of the Buyer.
- b) In addition to its statutory rights, the Vendor may enter on the Buyer's premises and take possession of any goods where there has been a default under clause 8.1.

9. Costs

- a) The buyer must pay the Vendor's cost (including legal costs, as between solicitor and Client) of and incidental to the enforcement or attempted enforcement of the Vendor's rights, remedies and powers under these terms of trade.

10. Privacy of Information

- a) The Buyer authorizes the Vendor;
 - i) to use any information the Vendor holds about the Buyer (whether now or in the future) in connection with the usual business and activities of the Vendor;
 - ii) to collect information about the Buyer from any person;
 - iii) to disclose information about the Buyer;
 - a. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the buyers obligation to the Vendor;
 - b. to such person as may be necessary or desirable to enable the Vendor to exercise any power, enforcement or attempted enforcement of the Vendor's rights, remedies and powers under these terms and conditions of sale;
 - c. To any potential assignee or transferee of the Vendor may wish to enter into arrangements with in connection with any agreement with or any indebtedness of the Buyer.