

Terms of Delivery and Sale ('Terms')

BSH Home Appliances Pty. Ltd. A.B.N. 22 109 198 405.
(HEREIN REFERRED TO AS 'BSH')

1. Application of terms, validity of contracts

- 1.1 A contract will only be formed between the Buyer and BSH when an order from the Buyer is received by BSH and accepted by BSH in writing or by execution of the order by BSH ('contract').
- 1.2 These Terms apply to every contract where BSH is the supplier of products or services or both, except where BSH agrees in writing signed by a director of BSH that all or part of these Terms do not apply. Where there are inconsistencies between these Terms and terms contained in any order, these Terms prevail.
- 1.3 Quotations, offers and estimates given by BSH may be subject to alteration by BSH.
- 1.4 Orders received by BSH can not be cancelled without BSH's written consent.
- 1.5 BSH reserves the right to correct any significant errors or omissions of any kind in its offers, quotations, order confirmations or invoices, and the correction will be binding on BSH and the Buyer.
- 1.6 In these Terms, 'products' mean all goods supplied by BSH to the Buyer (or a third party nominated by the Buyer).

2. Price Variation

- 2.1 At any time during the contract, BSH reserves the right to vary selling prices to take account of any change to the costs of manufacture or supply prevailing at the time of quotation.
- 2.2 Each amount quoted by BSH is the GST exclusive amount ('GST exclusive amount') unless otherwise stated. Each amount payable for a taxable supply made by BSH will be the GST inclusive amount. The GST inclusive amount will be calculated by multiplying the GST exclusive amount by the GST rate on the date of the supply (currently 10%) and adding the resultant product to the GST exclusive amount. BSH reserves at its discretion the right to charge a lesser amount than the GST inclusive amount.
- 2.3 Unless otherwise stated in the quotation, prices quoted for export are ex works despatching BSH warehouse and do not include freight costs or import taxes in the destination country.

3. Delivery

- 3.1 BSH will use its best endeavours to effect delivery in the time stated (if a time is stated in writing) but if BSH fails to do so by reason of:
 - (a) inability to obtain supplies of materials or parts from approved sources,
 - (b) any strike, shortage of labour or lockout;
 - (c) war, riots, accident, civil commotion, fire, Act of God; or
 - (d) any other event whatsoever beyond the reasonable control of BSH,BSH may at its option cancel the contract or any unfulfilled part or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery.
- 3.2 Unless otherwise agreed in writing, BSH will deliver the products to the Buyer's premises during business hours. A delivery docket listing the quantity and type of products delivered will accompany each delivery. Unless otherwise agreed all costs associated with delivery will be borne by BSH.
- 3.3 Delivery is deemed to occur when the products are unloaded at the Buyer's premises (or other premises agreed by the parties). If the Buyer fails or refuses, or indicates to BSH that it will fail or refuse, to take or accept delivery, then (unless BSH otherwise agrees) the products will be deemed to have been delivered when BSH was ready, willing and able to deliver them.

4. Risk

- 4.1 Subject to clause 4.2, the products shall be at the Buyer's risk after delivery has been, or has deemed to have been effected, notwithstanding that delivery of the products may be staggered or that the Buyer may not have signed a receipt for the products.
- 4.2 BSH shall not be liable for any loss or deterioration of, or damage to, the products:
 - (a) where a carrier is engaged by BSH to deliver the products to the Buyer, from such time as the Buyer or carrier commences unloading the products or the Buyer acknowledges receipt of the products, whichever occurs first;
 - (b) in all other cases, from such time as the products are loaded onto the carrier's vehicle at the place of dispatch.

5. Property

- 5.1 The Buyer acknowledges and agrees that until it has paid, in cleared funds, to BSH the full purchase price of all products supplied by BSH and all moneys otherwise owing by the Buyer to BSH for any reason whatsoever:
 - (a) the Buyer holds the products as bailee for and on behalf of BSH;
 - (b) as between BSH and the Buyer, BSH retains full title and ownership in all products supplied to the Buyer;
 - (c) for such time as the Buyer retains possession of the products, the Buyer shall:
 - (i) insure them for the full purchase price;
 - (ii) store them securely and in such manner that they may be identified as the property of BSH and easily removable by BSH; and
 - (iii) ensure the products are properly maintained in the condition in which they were delivered and shall make good any damage or deterioration.
- 5.2 Notwithstanding clause 5.1 above, subject to clauses 5.3, 5.4, 5.5 and 5.6 below, the Buyer may sell the products in the ordinary course of its business as fiduciary agent for and on behalf of BSH.
- 5.3 The Buyer acknowledges and agrees that, if it sells any of the products in accordance with clause 5.2 above, it receives those proceeds of sale as trustee for and on behalf of BSH but only to the extent that those proceeds do not exceed the invoice price of the goods (including GST) supplied by BSH. It must account to BSH on demand for the proceeds of sale held by it as trustee for BSH.
- 5.4 The Buyer acknowledges and agrees that:
 - (a) BSH may, from time to time, enter the Buyer's premises to inspect, copy or take extracts from the books, records and files of any kind of the Buyer relating to the sale of the products or the identification of sale proceeds in respect of the products;
 - (b) it will keep its books, records and files of any kind available for inspection by BSH at its principal place of business; and
 - (c) BSH's failure to exercise any right under 5.4(a) or any other right is not a waiver of the trust arising under clause 5.3.
- 5.5 A default event will occur if:
 - (a) in the sole opinion of BSH, there is a material risk that the Buyer is, or will be, unable to pay any amounts owing to BSH or perform any other obligation under these Terms and BSH gives notice in writing to the Buyer of this opinion;
 - (b) the Buyer defaults in paying any sums due to BSH;
 - (c) the Buyer is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors;

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- (d) the Buyer is a company and has a provisional liquidator, liquidator, receiver, receiver and manager or official manager, trustee for creditors or in bankruptcy, voluntary administrator or analogous person appointed to it or its property;
- (e) has judgment entered against it in any court and BSH gives notice in writing to the Buyer that, in its sole discretion, BSH considers it to be a default event; or
- (f) a secured creditor seizes or takes possession of any collateral in the possession of the Buyer and BSH gives notice in writing to the Buyer that, in its sole discretion, BSH considers it to be a default event.

5.6 If a default event occurs, then:

- (a) all moneys accrued or owing by the Buyer to BSH shall become immediately due and payable without the need for any demand by BSH;
- (b) the Buyer shall not sell or otherwise deal with any products in its possession;
- (c) the Buyer irrevocably authorises BSH and/or any agent of BSH to enter any premises, by the use of reasonable force if necessary, where BSH reasonably suspects the products are kept and to use the name of the Buyer and to act on its behalf to recover possession of BSH's products;
- (d) if BSH recovers possession of, and resells the products to any other party, then to the extent permitted by law:
 - (i) the Buyer will have no claim to any surplus proceeds received by BSH from the sale of the products; and
 - (ii) the Buyer will indemnify BSH against any deficiency from the sale of the products; and
- (e) BSH may cease performance of and cancel any unperformed contract for the sale of products, reserving all of BSH's rights and remedies against the Buyer, without being liable for any loss suffered by the Buyer as a result of the cancellation of the contract.

5.7 The Buyer acknowledges and agrees that if a default event contemplated by clauses 5.5(c) or 5.5(d) occurs or the Buyer ceases to carry on business, unless otherwise agreed to in writing by BSH, all rebates, discounts and like allowances allowed to the Buyer in the 12 months immediately preceding the relevant default event are cancelled and, if already paid, become immediately due and repayable to BSH and the balance of amounts owing are calculated as if the cancelled rebates, discounts and like allowances never applied.

5.8 Technical information: All information relating to development and manufacture of product remains the exclusive property of BSH. On request of the Buyer and to be determined on a case by case basis, BSH may at its discretion disclose specific information about the products to the Buyer.

'BSH' in this clause 5 includes its related bodies corporate (as defined in the Corporations Act 2001).

6. Personal Property Securities Act 2009 (Cth) ('PPSA')

- 6.1 The Buyer acknowledges that these Terms (and, where applicable, any contract) constitute a security agreement for the purposes of the PPSA. A security interest is taken in all products previously supplied by BSH to the Buyer (if any) and all products that may be supplied in the future by BSH to the Buyer securing the performance by the Buyer of its obligations under the Terms and any contract between BSH and the Buyer.
- 6.2 The Buyer must ensure that no security interest is (within the meaning of the PPSA) created, exists or subsists over the products in its possession or control prior to title to the products passing to the Buyer, other than a security interest arising under these Terms.
- 6.3 The Buyer must assist BSH to complete the registration of any financing statement in respect of the products, and will do all things and provide all information necessary to enable BSH to perfect its security interest in the products and complete any financing change statement.
- 6.4 To the extent permitted by law, the Buyer irrevocably waives any rights it may have to receive notices under ss 121(4), 130, 132(4) and 135 of the PPSA, or reinstate a security agreement following termination under s143.
- 6.5 The Buyer agrees that it irrevocably waives any rights it may have to receive a verification statement (as defined in the PPSA).

7. Intellectual Property

- 7.1 The Buyer shall leave in position and not cover, deface or erase any notices or other marks which BSH may place on or affix to the products.
- 7.2 All patents, trademarks, copyrights and any other intellectual property in the products remains the sole property of BSH at all times and the Buyer agrees that it will not infringe any of BSH's intellectual property rights.
- 7.3 Unless otherwise agreed by BSH in writing, BSH maintains the right to bring claims against the Buyer and any third party for any breaches of intellectual property rights.

8. Consumer Rights and Guarantees

- 8.1 Where the products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, BSH limits its liability (if any) arising from the consumer guarantees in the Competition and Consumer Act 2010 (Cth) (CCA), at its election to:
 - (a) repairing the products or the cost of repairing the products;
 - (b) replacing the products, supplying equivalent products or the cost of doing so; or
 - (c) resupplying the services or the cost of doing so.
- 8.2 BSH will not be liable to the final consumer or the Buyer where the products do not meet the consumer guarantees in the CCA:
 - (a) due to an act, default or omission of, or representation made by, any person other than BSH or an employee or agent of BSH;
 - (b) due to a cause independent of human control that occurs after the goods left BSH's control;
 - (c) due to the Buyer charging a higher price than the recommended retail price or the average price for goods; or
 - (d) in relation to the guarantee as to acceptable quality, where the final consumer was aware of, or ought reasonably to have been aware of, the flaw in the goods at the time of purchase.

9. Indemnity and Exclusion of Liability

- 9.1 To the extent to which the consumer guarantees contained in the CCA do not apply:
 - (a) all warranties, conditions, liabilities, or representations in relation to, inter alia, the quality or fitness of products or services sold or provided by BSH which might otherwise be implied by law are expressly negated and excluded;
 - (b) any civil liability of BSH to the Buyer in respect of, or in any way related to, the products or parts or any other products or information or advice or other services supplied in respect of the products, shall, in so far as the same may be legally done, be limited at BSH's option in the case of services, to supplying the services again or paying the cost of having the services supplied again, and in the case of the products or parts of any products at BSH's option, to the repair or replacement of the products or parts of products or the supply of equivalent products parts of products or the payment of the cost of having the products repaired or replaced or having equivalent products supplied.
 - (c) neither BSH nor its servants or agents shall be liable for the cost of consequential repairs, alterations or replacement or any consequential expense or loss made or incurred by the Buyer or its agents or servants, except upon written authority from BSH;
 - (d) the Buyer shall not make any claim for and indemnifies and agrees to keep BSH indemnified against all claims, costs and demands arising directly or indirectly from the incorrect or unintended use of operation of the products supplied by BSH to the Buyer.
 - (e) Neither BSH nor its servants or agents shall be liable for any loss or damage to the Buyer arising from or caused or contributed to by the negligence of BSH, its directors, servants or agents, including, but not limited to economic loss, loss of profits or revenue or costs arising from, the loss of use of products or cost of substituted products or services or the cost of materials expended during operation of the products.

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- (f) Without limiting any other rights of BSH, the Buyer shall indemnify, and on demand reimburse, BSH and keep BSH indemnified against all claims, suits, actions, demands, loss, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards made against BSH or incurred by BSH to the extent that such liability, cost, expense or loss is caused by:
- (i) a breach of these Terms or any contract by the Buyer;
 - (ii) any negligent act or omission, by the Buyer or any of its officers, employees, contractors or agents; or
 - (iii) BSH repossessing the products or enforcing any other rights BSH has under clauses 5 or 6, or at law.

10. Notification of Faults

- 10.1 The Buyer shall notify BSH of any shortages in any delivery of products within 48 hours after receipt. Failure to so notify BSH shall result in the loss of any rights the Buyer may have against BSH for the shortage.
- 10.2 The Buyer shall within seven days of each delivery of products give notice to BSH of any matter or thing not in accordance with the conditions of the supply contract other than because of any shortage to which Clause 10.1 applies. Failing such notice the products delivered shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same.

11. Forbidden or Restricted Products

BSH shall not be liable for any loss or damage arising from restrictions imposed on the resale or use of the products by any trade protection or other legislation.

12. Payment and Interest

- 12.1 Unless otherwise agreed in writing or stated in any quotation or order confirmation, prices are net cash payable at BSH's Head Office at Heatherston, Victoria, on the last business day of the month following the month of the invoice date.
- 12.2 BSH's express or implied approval of a credit facility to the Buyer may be revoked or withdrawn by BSH at any time.
- 12.3 A payment made to BSH by or on behalf of the Buyer shall, unless such payment is dealt with by BSH otherwise, be deemed to be a payment made to the credit of the oldest account outstanding. Interest is payable on overdue accounts at the rate fixed under Section 2 of the Penalty Interest Rates Act 1983 (Victoria).
- 12.4 All payments shall be made on or before the due date as a condition precedent to future deliveries. The failure of the Buyer to make payments in accordance with these Terms and the contract shall entitle BSH to treat such failure as a repudiation of the whole of the balance of the contract by the Buyer. This repudiation shall entitle BSH to elect, without prejudice to any other rights of BSH, to continue with or to terminate the contract and in either case, to recover damages for the breach of contract and it shall not be necessary for BSH to tender to the Buyer the products or any portion or portions thereof before bringing action for damages.
- 12.5 If a dispute arises, the Buyer acknowledges that it is not entitled to withhold payment of any undisputed balance then due to BSH for the products, and agrees that it must pay the whole of any undisputed amount in accordance with clause 12.

13. Governing Law

These Terms and any contract between the Buyer and BSH is governed by the laws of the State of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

14. Returns

- 14.1 The Buyer may return products for credit only with BSH's prior approval. If BSH, in its absolute discretion, approves a return of products:
- (a) BSH will issue the Buyer a claim number; and
 - (b) the Buyer must return the products, with the claim number and invoice or packing slip number, to BSH within 14 days of delivery.
- 14.2 A handling fee of 15% (with a minimum charge of \$6.00 on each item, including spares) will be payable on the return of products to BSH when the products have been returned without cause and where the Buyer has determined that the products are surplus to its requirements.
- 14.3 BSH reserves the right to charge the Buyer for the cost (including freight costs) of returning a product to BSH in accordance with clause 14.1.

15. Entire Agreement

These Terms and any confirmation in writing from BSH constitute the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter, including any inconsistent terms in any order.

16. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

17. Arbitration

- 17.1 If a dispute arises out of these Terms or any contract, each party must exercise their reasonable endeavours to resolve the dispute.
- 17.2 If the parties cannot resolve the dispute within a reasonable time, the dispute shall be determined by arbitration to be held in the State of Victoria, Australia pursuant to the arbitration rules of the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations. The result of the arbitration shall be final and the arbitral award shall be binding upon the parties hereto.

18. Subject to law

These Terms and any contract shall be construed and read as being limited to the minimum extent required by law. In particular, these Terms and any contract shall be read down to the extent that they exclude, restrict or modify the application of any of the provisions of the CCA, the exercise of a right conferred or any liability under the CCA, except to the extent permitted by law.

19. Severability

Part or all of any provision of these Terms or any contract that is illegal or unenforceable may be severed from these Terms or any contract and the remaining provisions will continue in force.