

Cappuccine Australia

Terms & Conditions

1. GENERAL

1.1 The Terms of Trade govern all orders placed by the Applicant and apply to and form part of any contract for the supply of Goods by the Company to the Applicant.

1.2 These Terms of Trade replace any previous terms and conditions of trade.

2. PRICES, QUOTATIONS AND ORDERS

2.1 No quotation given by the Company to the Applicant shall constitute an offer.

2.2 Orders must be placed by purchase order issued by the Applicant. Any order from the Applicant for the supply of Goods shall not be binding on the Company until accepted by the Company.

2.3 Orders must be accompanied by necessary ordering information as requested by the Company.

2.4 The prices for the Goods may be varied to the Company's general prices in effect at the requested date of delivery of the Goods notwithstanding any prior orders or sales order acceptances in respect of the Goods.

2.5 Prices given in any quotation are applicable to that quotation only and will not apply in any other instance.

2.6 Quotations are valid for a period of 30 days from the date of issue by the Company, unless otherwise agreed in writing.

2.7 Unless expressly included, the prices given in any quotation, price list or any Invoice and the consideration for any supply under or in connection with the Terms of Trade, do not include GST.

2.8 Prices for the Goods will be as stated in each Invoice and are subject to change without notice.

3. TERMS OF SALE

These Terms of Trade apply to the Applicant and to the Company in respect of Goods ordered by the Applicant. Any terms and conditions set out in the Applicant's order deviating from or inconsistent with these Terms of Trade will not bind the Company notwithstanding any statement by the Applicant in its order that its terms and conditions shall prevail over these Terms of Trade. No variation or modification or substitution of these Terms of Trade shall be binding on the Company unless specifically accepted by the Company in writing.

4. NO LIABILITY

The Company accepts no liability for Goods supplied by any third party who has not purchased the Goods directly from the Company.

5. DELIVERY

5.1 In relation to deliveries within the Company's nominated metropolitan distribution areas, for orders over \$250.00 (exclusive of GST), the Company shall arrange for the Goods to be delivered F.I.S., except for refrigeration, stainless steel benches and sinks, and display cabinets hot or cold.

5.2 In relation to deliveries within other intra state destinations, for orders over \$250.00 (exclusive of GST), the Company will arrange for the Goods to be delivered F.O.B.

5.3 The Company is not liable for any claims for non fulfilment or late delivery of Goods or for any loss or damage (including consequential loss or damage) suffered by the Applicant arising from delay in delivery or a failure to deliver. The Applicant shall accept and pay for the Goods notwithstanding late delivery.

5.4 The Applicant shall upon placing its order advise the Company of the nominated delivery point and requested delivery date.

5.5 Unless otherwise agreed by the Applicant and the Company, the Company shall be entitled to deliver the Goods in one or more lots. Where delivery of the Goods is effected by way of part delivery, the Company shall be entitled to invoice the Applicant for pro rata progress payments in respect thereof.

5.6 Notwithstanding the Applicant's inability to accept delivery of the Goods, the Company shall be deemed to have delivered the Goods in accordance with these Terms of Trade.

5.7 All claims by the Applicant in relation to delivery quantities or loss or damage to the Goods must be made within 7 days of delivery of the Goods, time being of the essence. Any claims made outside this time frame will not be recognised by the Company.

6. TERMS OF PAYMENT

6.1 Unless otherwise agreed by the Company in writing, all Goods will be supplied on a cash before delivery basis.

6.2 The extension of credit to the Applicant by the Company shall be at the absolute discretion of the Company, which discretion may be varied from time to time, and where extended unless otherwise advised in writing by the Company, the Company requires cash payment in full by the last Business Day which is 30 days following the date of the Invoice. A letter signed by a director of the Company will be sufficient evidence as to the terms of credit applicable to the Applicant at any point in time.

6.3 In the event that payment for any Invoice has not been received by the Company within 30 days of Invoice, the Company may, in its discretion:

(a) immediately cease any extension of credit; and/or

(b) charge the Applicant interest on overdue amounts, such interest to be calculated daily on the balance outstanding; and/or

(c) charge to the Applicant all administration and other costs incurred by the Company in relation to collection of outstanding amounts owed by the Applicant to the Company.

6.4 The Applicant may not withhold payment or make any deductions from any amount owing without the Company's prior written consent, which consent may be withheld in its absolute discretion.

6.5 The Company will forward a statement monthly to those Applicants granted an extension of credit pursuant to clause 6.2.

- (a) legal and equitable ownership of the Goods;
- (b) to enter the Applicant's premises or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (c) to keep or or resell any of the Goods pursuant to clause 8.6(b).

6.6 The Applicant must, so long as the Company is entitled to the property in the Goods, store the Goods so that they are clearly identifiable as the property of the Company.

6.7 In the event that the Goods are resold by the Applicant, it will be deemed to have done so as agent for the Company and only on the following terms:

- (a) on such disposal or dealing, the Applicant transfers all rights to the proceeds of that disposal or dealing to the Company absolutely;
- (b) the Applicant as bailee and fiduciary of the Goods must hold the proceeds of any sale or dealing of the Goods (to the extent of any liability to the Company in respect of the Goods) in trust for the Company;
- (c) the Applicant must keep separate records of any sale of the Goods and must maintain the proceeds in a separate account; and
- (d) the Applicant must account to the Company for any proceeds from such Goods and must direct any purchasers of the goods to pay the proceeds to the Company.

6.8 If payment for the Goods is not made by the Applicant by the due date specified by the Company to the Applicant then the Applicant must return the Goods to the Company on demand. If the Applicant does not return the Goods to the Company within 48 hours of receipt of the demand, the Company shall be entitled to enter upon the Applicant's premises at any time to do all things necessary to recover the Goods. The Applicant shall be liable for all costs associated with the exercise by the Company of its rights under this clause which shall be repayable on demand.

7. COMPANY'S WARRANTY

7.1 The Goods distributed by the Company are guaranteed against defective workmanship and materials for a period of 12 months from the date of purchase, the Company's obligations pursuant to this express warranty being limited to the repair or replacement of the defective Goods or materials at its option and subject to the terms and conditions stated in the warranty card attached to the Goods. Glass and lamps are not included in this warranty. RCD tripping due to moisture absorption by Tubular Heating Elements is not considered a warranty fault.

7.2 Any item that can be picked up and put into a normal vehicle, is covered by a back to base warranty. This means the end user needs to return it (freight pre-paid) to either the place where it was purchased from, or our closest appointed service agent, or back to our head office. A call out for refrigeration and other non portable equipment is covered by an on site warranty during the hours of 8am – 5pm Monday to Friday only. Travel costs for on site warranty are limited to 50km from our nearest appointed service agent.

7.3 Except as provided in this clause, the Company shall not be liable for any loss or damage, whether direct or indirect (including consequential losses or damage) arising out of any breach of contract by the Company or any negligence of the Company, its employees or agents.

7.4 To the extent permitted by law all implied conditions and warranties are expressly excluded.

7.5 The Company will not be liable in respect of any claims for parts damaged in transport, misused by the Applicant or its authorised parties or modified in any way without the approval of the Company.

7.6 Any repairs or replacement of defective Goods or materials pursuant to the warranty set out in this clause, must be authorised by a director of the Company prior to any action being taken. The Company reserves the right to reject a warranty claim if it is not completely satisfied with the circumstances under which such fault or defect occurred.

7.7 Nothing in these Terms of Trade shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting, modifying any condition warranty guarantee right or remedy implied by law (including the Trade Practices Act 1974 (Commonwealth)) which by law cannot be excluded, restricted or modified.

7.8 This warranty does not extend to cover loss of profits or damage to other equipment.

7.9 Warranty does not cover products which have been subject to misuse, neglect, unauthorised alteration, incorrect installation, power surges, accident, use of inappropriate chemicals for cleaning, flooding, fire or acts of God.

7.10 Failure to honour payments for a notice or non warranty call out by end user, will result in immediate voiding of warranty on that item.

8. APPLICANT'S WARRANTY AND INDEMNITY

8.1 The Applicant acknowledges and warrants to the Company that as at the date of entry into a contract to purchase the Goods, the Applicant is not insolvent nor has he committed any act of bankruptcy or, being a company, knows of no circumstances which would entitle a debenture holder or unsecured creditor to appoint a receiver to petition for winding up of the Applicant or exercise any other rights over or against the Applicant's assets.

8.2 Without prejudice to any other rights the Company may have against the Applicant, the Applicant shall indemnify the Company for and save it harmless from any loss, damage or expense incurred by the Applicant as a result of the Applicant:

- (a) cancelling any order (or part thereof) for the Goods; or
- (b) breaching these Terms of Trade.

9. DEFAULT

Should the Applicant fail to make payment for any Goods supplied by the Company on the dates due for payment or commit a breach of any term of the sale or, being a natural person, commit an act of bankruptcy or, being a corporation, an act or omission enabling the appointment of an administrator, scheme manager, trustee, official manager, receiver, receiver and manager, liquidator or any other person authorised to enter into possession or assume control of any property of the Applicant pursuant to a mortgage or other security, then:

- (a) the right of the Applicant to sell the Goods in the ordinary course of business or otherwise immediately terminates without the need for the Company to provide written confirmation; and
- (b) the Company may without prejudice to any other rights it may have, do any or all of the following:
 - (i) immediately withdraw any credit facilities which may have been extended to the Applicant and require immediate payment of all moneys accrued or owing to the Company.
 - (ii) withhold any further deliveries of Goods or performance of service required under the contract;
 - (iii) in respect of Goods already delivered, enter onto the Applicant's premises to recover and resell same for its own benefits;
 - (iv) suspend and/or terminate performance of any other contracts which the Company has with the Applicant.

10. GOODS RETURNED

10.1 The Applicant shall inspect the Goods immediately upon delivery and if the Goods are damaged or not otherwise in conformity with the contract relating to their supply shall give written notice to the Company of the details in respect thereof within 7 days of the date of delivery.

10.2 Subject to clause 12.3, any Goods the subject of a notice under clause 12.1 shall be left in the state and condition in which they were delivered until such time as the Company or its duly authorised agent has inspected the Goods, such inspection to be carried out within a reasonable time after notification by the Applicant. If the Goods are not so left in the state and condition in which they were delivered, the Applicant shall be deemed to have accepted the Goods and shall pay the purchase price for the Goods to the Company.

10.3 Upon receipt of a notice under clause 12.1, the Company will advise a return authorisation number and the mode of transport (if clause 12.2 is not to apply) acceptable to the Company. Any Goods returned to the Company will be at the Applicant's entire risk as to loss or damage. In relation to Goods returned to the Company, the Applicant undertakes to follow the Company's instructions, prepay the freight and clearly mark the freight with the return authorisation number advised by the Company.

10.4 Deliveries not complying with clause 12.3 will not be accepted by the Company.

10.5 Subject to clauses 12.1 and 12.3, valid claims for incorrectly sent Goods will be credited in full. A 12% handling fee will apply to all Goods returned against orders correctly executed. The Company reserves the right to charge for any cost incurred in such execution.

10.6 Subject to clause 12.1 acceptance of the Goods shall be deemed for all purposes to have taken place when delivery has occurred.

10.7 In the case of a non-standard manufacture, where a "Confirmation of Non-standard Items" form has been signed, and where orders have been correctly executed, no returns will be accepted.

10.8 The Company will charge a restocking fee for goods returned out of the original packing.

11. DISPUTES

11.1 Any disputes between the parties arising from the performance of the provisions of these Terms of Trade must be settled through friendly consultation by the parties. All disputes arising in respect of these Terms of Trade which are not resolved within 30 days of first arising will be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules. The place of arbitration will be Sydney New South Wales. The procedural law applicable to the arbitration will be that of New South Wales. The decision of the arbitration is final and binding upon both parties.

11.2 During the period in which the dispute is being resolved, the parties must continue to perform all of the provisions of these Terms of Trade which are not under dispute and which are able to be performed by the parties.

12. SEVERABILITY

All provisions contained in these Terms of Trade shall be construed so as not to be invalid, illegal or unenforceable in any respect but if any such provision on its true interpretation is illegal, invalid or unenforceable that provision may, at the option of the parties, be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all circumstances so as to give it a valid operation of the partial character. In the event that any such provision or part thereof cannot be so read down, such provision shall be deemed to be void and severable and the remaining provisions thereof shall not in any way be affected or impaired thereby.

13. FORCE MAJEURE

The Company shall not be liable for non-fulfilment or late delivery should actual delivery of the Goods or any parts be delayed in consequence of unforeseen events such as strikes, unforeseen breakdown, of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, rail-road embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply components by the due date.

14. APPLICABLE LAW

These Terms of Trade shall be governed by and construed in accordance with the laws in force in the State of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

15. DEFINITIONS

The following words have the following meaning:

"Applicant" means the person or entity purchasing the Goods from the Company.

"Business day" means a day other than a Saturday or Sunday when trading banks in Sydney are open for general banking business.

"Company" means Cappuccine Australia Pty Ltd 49085483352.

"F.I.S." means free into store as referred to in the Incoterms.

"F.O.B." means free on board as referred to in the Incoterms.

"Goods" means all Goods ordered by the Applicant from time to time and supplied by the Company under these Terms of Trade and includes any services forming part of the supply of Goods.

"GST" means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

"GST Law" has the same meaning as in the GST Act.

"Incoterms" means the International Rules for the Interpretation of Trade Terms, ICC Publishing S.A., Paris 2000 edition.

"Invoice" means an invoice sent by the Company to the Applicant for payment of the Goods supplied to the Applicant at the request of the Applicant.

"Terms of Trade" means the terms and conditions of trade as set out above.