

## Terms and Conditions and Conditions of Sale

These Terms and Conditions apply to the Ordering, purchase and delivery of Goods from the Website, and form a contract between you and Leonard Enterprises Pty Ltd t/as Breeze Balm (“**Breeze Balm**”) (“**Terms and Conditions**”). These Terms and Conditions contain important information about the Ordering, processing and delivery of Goods, including limitation of liability.

### 1 Definitions and interpretation

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#### 1.1 Definitions

‘**Breeze Balm**’ means Leonard Enterprises Pty Ltd A.C.N 614 989 678 t/as Breeze Balm or its related body corporate;

‘**Business Day**’ means a day on which banks open for trading in Queensland excluding Saturdays, Sundays and public holidays;

‘**Buyer**’ means you as the purchaser of Goods from Breeze Balm pursuant to these Terms and Conditions;

‘**Delivery Address**’ means the address to which the Goods are to be delivered as stated on the Order form on the Website.

‘**Delivery Agent**’ means any nominated third-party delivery or shipping company engaged by Breeze Balm.

‘**Delivery Fee**’ means the fees charged by the Delivery Agent of Breeze Balm for the delivery of Goods.

‘**Goods**’ means the items offered for sale on the Website;

‘**Order**’ means a request by the Buyer to purchase Goods from Breeze Balm under these Terms and Conditions through the Website;

‘**Personal Information**’ has the meaning given in the *Privacy Act 1988* (Cth);

‘**Price**’ means the purchase price of each individual Good, as specified on the Website;

‘**Tax**’ means any goods and services tax, value added tax, or other taxes, import fees, duties, tariffs, or other imposts or charges which may be payable in relation to the Buyer’s Order.

‘**Terms and Conditions**’ means the Terms and Conditions outlined in this document.

‘**Website**’ means the website available from [www.breezebalm.com](http://www.breezebalm.com)

‘**Website Terms and Conditions**’ means the Website Terms and Conditions governing your use of the Website in addition to these Terms and Conditions. View the Website Terms and Conditions at: <https://www.breezebalm.com>

## **2 Terms and Conditions of sale**

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The Goods are sold by the Breeze Balm on these Terms and Conditions. The Buyer will be bound by these Terms and Conditions each time it submits an Order. Each Order the Buyer places will be a separate contract between the Buyer and Breeze Balm for the supply of Goods.

## **3 Placing Orders for Goods**

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- (a) The Buyer agrees that all Goods purchased under these Terms and Conditions and Conditions are intended for personal non-commercial use only and will not be re-sold.
- (b) Breeze Balm will not be liable to the Buyer, for loss the Buyer or any third party suffers, for a delay or failure to process the Order or deliver Ordered Goods, due to inaccurate or incomplete details provided in an Order.
- (c) The Buyer agrees to obtain consent to provide Breeze Balm with Personal Information of recipients of gifts or Goods Ordered by the Buyer.
- (d) The Buyer may Order from Breeze Balm if the Buyer is aged 18 years or over and has an active email account or a telephone number at which the Buyer can be contacted.
- (e) In completing the electronic Order form, the Buyer agrees to provide complete and accurate information as to the Buyer's personal details (or those of the Buyer's nominated recipient for gifts) to enable the processing and delivery of the Buyer's Order. This information will also be used by the Delivery Agent to fulfil your Order. Without limitation, if the Buyer provides inaccurate shipping details in an Order, Breeze Balm is under no obligation to resend the Order if it is shipped to the address provided in the Order and if the Order is not subsequently returned to Breeze Balm.
- (f) Breeze Balm reserves the right to accept or decline, in whole or in part, any Order for Goods placed by the Buyer.
- (g) If the Buyer places consecutive or separate Orders, Breeze Balm reserves the right not to consolidate the Buyer's Orders. If Breeze Balm does not consolidate the Buyer's Orders, a separate Delivery Fee will apply to each Order.
- (h) Breeze Balm reserves the right to accept or reject an Order for any reason at any time. If Breeze Balm rejects the Buyers Order, the Buyer will receive a refund of any money paid for the subject Ordered Goods.
- (i) The Buyer's Order becomes a sale when the Buyer's Order is dispatched and Breeze Balm issues the Buyer a tax invoice.
- (j) Unless otherwise specified, all Prices are inclusive of GST.
- (k) Unless otherwise specified, there will be no delivery charges for standard shipping worldwide of each accepted Order, where such Order has a total value of more than AUD \$75.00 (inclusive of GST and any other taxes). Delivery charges will apply to each accepted Order of a total value of AUD \$74.99 (inclusive of GST and any other taxes) or

less, or an accepted Order with a total value of more than AUD \$75.00 ( inclusive of GST and any other taxes ) where any delivery option other than standard shipping is requested. For example: Express post within Australia, shipping or express courier for International deliveries. For all delivery options including standard shipping within Australia whether provided to you with or without charges, you will continue to be liable for any insurance, tax, tariff or duty where applicable.

- (l) The Price does not include costs incurred by Breeze Balm arising out of late notification by the Buyer of a change to the Delivery Address or time of delivery.

Any queries regarding items shown on tax invoices issued by the Breeze Balm in relation to the Ordered Goods shall be lodged by the Buyer with Breeze Balm within 48 hours of receipt of the Ordered Goods by the Buyer.

#### **4 Availability of Goods**

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- (a) From time to time, some Goods may be out of stock or are unavailable and Breeze Balm may not be able to fulfil all or part of the Buyer's Order. If this occurs, Breeze Balm will refund the Buyer the Price paid by the Buyer for the Ordered Goods impacted.
- (b) Breeze Balm may withdraw or suspend from sale any Good displayed on the Website, either temporarily or permanently, at any time. Breeze Balm will not be liable to the Buyer for any loss the Buyer or any third party suffers as a result of a withdrawal or suspension of sale of any Goods.
- (c) Where Goods, which are the subject of an Order, have been withdrawn or suspended from sale and the Buyer's payment for the Good/s has already been processed, Breeze Balm will refund the Buyer the Price paid for the Ordered Goods impacted.
- (d) Breeze Balm reserves the right not to honour any incorrect offers represented on the Website made by genuine human or system error.
- (e) If the Order is affected by a genuine error (including in a description, an image or a price or incorrect offers represented on the Website), Breeze Balm reserves the right to cancel the Order and refund any money paid for the Goods the subject of the Order. If applicable, Breeze Balm will proceed to fulfil the remainder of the Order in accordance with these Terms and Conditions. If the Buyer is not satisfied with the partial fulfilment of the Order, the Buyer can return the entire Order to Breeze Balm, provided the Goods are undamaged and unopened.
- (f) Without limitation, due to legal and other restrictions applicable for Orders placed for international delivery, some of Breeze Balm products may not be available for delivery to certain locations outside Australia. Breeze Balm retains the right to determine what it can and cannot deliver to any particular location.
- (g) The Buyer acknowledges and agrees:-
  - (i) All pictures and images of Goods displayed are for illustrative purposes only; and

- (ii) Any accessory featured with the Goods is for illustrative purposes only and may be sold separately.

## **5 Shortage, defects, inaccuracies and specifications**

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- (a) The Buyer shall check all Goods received immediately upon receiving them and shall notify Breeze Balm in writing of any inaccuracies or short supply of Goods or any damage or defect in Goods or failure of Goods to comply with these Terms and Conditions or any applicable Laws within two (2) Business Days of the date of delivery of the Goods.
- (b) Subject to the Australian Consumer Law and any other applicable Law, if the Buyer does not notify Breeze Balm in writing within two (2) Business Days of the date of delivery, Breeze Balm will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies, or short supply of Goods, or damage or defect in Goods or failure of Goods to comply with these Terms and Conditions.
- (c) Unless inconsistent with the Australian Consumer Law, all particulars of weights and dimensions of the Goods are approximate only and any deviation from any of these things does not vitiate any contract with Breeze Balm or form grounds for any claim against Breeze Balm.

## **6 Delivery**

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- (a) Breeze Balm uses Delivery Agent's to deliver Goods. The Buyer agrees to the Buyer's details, including Delivery Address, being supplied to the Delivery Agent for the purpose of Delivering the Buyer's Goods.
- (b) The Buyer should refer to the Shipping Options on the Website for the applicable Delivery Fee of the Goods.
- (c) The delivery times made known to the Buyer are estimates only and Breeze Balm shall not be liable for late delivery or non-delivery.
- (d) Breeze Balm reserves the right to arrange delivery by any means in its absolute discretion. However, if the Buyer has requested a particular method of delivery, then Breeze Balm shall endeavour to utilise that method of delivery, if it is available.
- (e) Delivery of the Ordered Goods will take place at the Delivery Address specified by the Buyer during the Order process. The Buyer will need to submit separate Orders for Goods where the Buyer requires multiple delivery destinations.
- (f) Where the Buyer does not collect the Goods from the location specified on the delivery calling card within the time required of a failed delivery, the Buyer must contact Breeze Balm customer care, for further information with respect to claiming the Order. If Goods are required to be redelivered, the Buyer will be required to pay any associated fees for redelivery.

- (g) The Buyer warrants to Breeze Balm that any nominated representative receiving the Goods on behalf of the Buyer at the nominated Delivery Address is duly authorised to do so by the Buyer.
- (h) Breeze Balm may at its option deliver the Goods to the Buyer in any number of instalments.
- (i) If Breeze Balm delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - (i) this does not constitute a repudiation of the contract of sale formed by these Terms and Conditions; and
  - (ii) the defective instalment is a severable breach that may give rise only to a claim for compensation.
- (j) The Buyer or the Buyer's representative may be required to sign a delivery form to confirm acceptance of delivery. If the Buyer or the Buyer's representative refuses to sign the delivery form, this will be taken as refusal to accept delivery. Where redelivery is required due to refusal to accept delivery, the Buyer will be required to pay additional delivery fees.
- (k) If Goods are required to be redelivered to the Buyer, for any reason caused by the Buyer (including the Buyer providing an incorrect delivery address or refusing to accept delivery), the Buyer shall pay any associated fees for redelivery within 14 days of demand by Breeze Balm. Such fee for redelivery, repackaging and handling shall be \$17.00 (GST inclusive) per parcel or such other amount as decided by Breeze Balm acting reasonably from time to time. For the sake of clarity, this redelivery fee covers, the cost of return of Goods to Breeze Balm and subsequent redelivery to the Buyer. Payment of redelivery fees is to be made to: Breeze Balm Pty Ltd, BSB 084 462 Account: 98 802 3199 or PayPal to [accounts@breezebalm.com](mailto:accounts@breezebalm.com); Should the Buyer fail to pay such redelivery fees within 14 days of demand by Breeze Balm, the relevant Goods shall be deemed abandoned and title ownership shall belong to Breeze Balm, in which event Breeze Balm shall refund the Price of those Goods less any sum initially charged for shipping (GST inclusive) per parcel that was initially delivered (or to which delivery was attempted). The Buyer acknowledges and agrees this sum is reasonable to compensate Breeze Balm for its initial attempted delivery costs.

## **7 Payment**

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- (a) When the Buyer places an Order, Breeze Balm will charge the Buyer and the Buyer agrees to pay the Price specified on the Website and any applicable Delivery Fee.
- (b) The Price in respect of each Good is specified on the Website and is dependent on the nominated delivery address being correct.
- (c) Prices are displayed in Australian Dollars. Where a delivery address within Australia has been nominated, the Price includes Australian GST (currently 10%). Where a delivery address outside Australia has been nominated, additional Taxes may be payable by the

Buyer as levied by authorities in the country of delivery upon importation to that country. If goods are over the relevant country's threshold and customs entry is required, there may be additional administration charges from the Delivery Agent handling customs clearance.

- (d) The Buyer will be charged the Price in Australian Dollars regardless of the delivery location. Any currency conversion fees or rates used to determine the amount the Buyer pays for the Goods is determined by the Buyer's credit card provider, After Pay or PayPal. Breeze Balm is not liable for any difference between the Price quoted on the Website and the actual amount charged to the Buyer for the Goods as determined by the fees and conversion rate used by the Buyer's credit card provider, After pay or PayPal.
- (e) Breeze Balm reserves the right to change or alter Prices without notice to the Buyer. If the Buyer has already submitted an Order at a particular Price, Breeze Balm will supply the Goods at that Price (unless the Buyer's Order is affected by a pricing error, in which case clause 4 shall apply).
- (f) Payment methods are specified on the Website. They may include credit card, Lay buy, After pay and PayPal. The name on any credit card used for payment must match the name of the Buyer on the Order. Cash and cheque cannot be used as a payment method for any purchases from Breeze Balm, including Orders.
- (g) Any payment for an Order must be cleared by Breeze Balm before Goods are dispatched. If the Buyer's payment cannot be processed, the Order will be rejected and the Buyer will be notified by direct email to the Buyer. If a credit card payment cannot be processed the Buyer should contact the Buyer's card issuer to try to resolve the problem or use an alternative payment method.
- (h) In paying or attempting to pay for Goods, the Buyer agrees that the Buyer has not engaged in any fraudulent conduct or contravened any Law.

## **8 Title and Risk**

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- (a) Risk and title in the Goods pass to the Buyer on the date and time of delivery of the Goods by Breeze Balm to the Delivery Agent.

## **9 Cancellation and Returned Goods**

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- (a) Unless provided for under these Terms and Conditions or as otherwise agreed by Breeze Balm, no Order may be cancelled or varied by the Buyer once accepted by Breeze Balm except with the written consent of Breeze Balm.
- (b) If Breeze Balm cannot contact the Buyer about the Buyer's Order using the contact details provided in the Order, after having made reasonable attempts to contact the Buyer, Breeze Balm may elect to cancel the Order and refund any money paid for the Goods the subject of the Order.
- (c) Delivery Fees will not be refunded if the Goods are returned for change of mind or an incorrect selection;

- (d) If the original payment for the Ordered Goods was made on a credit card then refunds will be processed on the same card as the original payment was first made.
- (e) Except for any provisions to the contrary contained in these Terms and Conditions or at Law, Breeze Balm is not under any duty to accept Goods returned by the Buyer. Breeze Balm will do so only on Terms and Conditions to be agreed on in writing, in each individual case.
- (f) If Breeze Balm agrees to accept returned Goods from the Buyer under clause 9(e) of these Terms and Conditions, the Buyer must return the Goods to Breeze Balm at Breeze Balm's principal place of business or nominated address and must pay any applicable delivery costs.

## **10 Default and Indemnity**

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- (a) Breeze Balm may, at its discretion, terminate these Terms and Conditions for the supply of Goods to the Buyer:-
  - (i) For convenience, at any time, on giving notice to the Buyer;
  - (ii) Immediately if Breeze Balm reasonably believes the Buyer has breached these Terms and Conditions and;
    - (A) that the breach is not capable of remedy; or
    - (B) if the Buyer has been provided with notice of the Breach, and the Buyer has failed to remedy that breach within fourteen (14) days (where the breach is capable of being remedied).
- (b) The Buyer will be in default of these Terms and Conditions if the Buyer:-
  - (i) fails to pay any money owing by the Buyer (or its related body corporate) under these Terms and Conditions to Breeze Balm, by the due date;
  - (ii) fails to comply with any other obligation under these Terms and Conditions;
  - (iii) if the Buyer enters into any composition or arrangement with the Buyer's creditors or has an administrator or a receiver appointed over any of the Buyer's assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction), or the Buyer commits an act of bankruptcy.
- (c) Without limitation to any other rights of Breeze Balm at Law or in accordance with these Terms and Conditions, in the event of any default by the Buyer, the Breeze Balm may do any one or more of the following:-
  - (i) terminate these Terms and Conditions;

- (ii) refuse to provide any further Goods to the Buyer (other than if required by the Australian Consumer Law);
  - (iii) recover from the Buyer any loss suffered by Breeze Balm (including expectation loss if applicable) as a result of the Buyer's default; and
  - (iv) exercise any of Breeze Balm's other legal rights.
- (d) Termination of these Terms and Conditions does not affect any party's accrued rights before termination;
- (e) If Breeze Balm terminates these Terms and Conditions as a result of the Buyer's breach, Breeze Balm may recover, in addition to any other right at Law, from the Buyer in addition to damages and amounts recoverable apart from this clause:-
- (i) Any amounts due and unpaid under these Terms and Conditions as at the date of termination;
  - (ii) any other amount necessary to compensate Breeze Balm as a direct or indirect result of the Buyer's default and Breeze Balm's termination of these Terms and Conditions, including, but not limited to costs and expenses incurred by Breeze Balm (including legal costs on an indemnity basis) in relation to the Buyer's default.
- (f) If Breeze Balm breaches these Terms and Conditions, the Buyer must give a notice to Breeze Balm specifying the breach and allow Breeze Balm a reasonable time in which to remedy the breach.
- (g) The Buyer agrees to indemnify Breeze Balm (including its related companies, its directors, officers, employees, agents and contractors) for any loss or damage any of the foregoing suffer if the Buyer breaches these Terms and Conditions.

## **11 Limitation of liability**

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- (a) Subject to clause 11(b) and to the extent permitted by the Australian Consumer Law and relevant state legislation or other Law, the sole obligation of Breeze Balm under these Terms and Conditions is to use reasonable endeavors to provide the Goods (unless Breeze Balm has a right under these Terms and Conditions not to provide the Goods). Breeze Balm will not be liable for any other claims or damages including, but not limited to, claims for negligent or misleading advice, damages arising from loss or use of the Goods, loading, unloading or delivering the Goods, removal of defective Goods, defect in the Goods by any person and any indirect, special or consequential damages or injury (including personal injury) to any person, corporation or other entity.
- (b) If any Goods supplied under these Terms and Conditions are supplied to the Buyer as a "consumer" of goods or services within the meaning of that term in the Australian Consumer Law (as amended) or relevant state legislation, the consumer will have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar

legislation is so conferred. If the product is a product not ordinarily acquired for personal, domestic or household use or consumption, under section 64A of the Australian Consumer Law and similar provisions of relevant state legislation, Breeze Balm limits its liability to payment of an amount equal to the lowest of:

- (i) the cost of replacing the Goods or supplying equivalent goods;
  - (ii) the cost of repair of the Goods;
  - (iii) the cost of having the Goods repaired or replaced.
- (c) Subject to clause 11(b), Breeze Balm is not liable for default or failure in performance of its obligations pursuant to these Terms and Conditions resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of Breeze Balm.
- (d) Subject to clause 11(b), and notwithstanding any other provision of these Terms and Conditions, Breeze Balm has absolute discretion to refuse to supply Goods to the Buyer (without liability to the Buyer), where:
- (i) Goods are unavailable or insufficient for any reason whatsoever;
  - (ii) The Buyer or a related body corporate of it has breached a contract with Breeze Balm or a related body corporate of it including these Terms and Conditions; or
  - (iii) the Breeze Balm considers it necessary or desirable to do so for any reason at all.
- (e) Except as provided in these Terms and Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose are expressly excluded. Subject to clause 11(b), Breeze Balm is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of the Goods or arising out of Breeze Balm's negligence or in any way.
- (f) The Buyer represents and warrants to Breeze Balm that Breeze Balm will not be liable for any expense or injury (including direct loss such as loss of revenue, profits, anticipated savings, goodwill or business opportunity, injury to representation) in contract, tort, under statute or otherwise, howsoever caused including arising directly or indirectly from or in connection with these Terms and Conditions.
- (g) Breeze Balm's liability to the Buyer for loss or damage of any kind arising out of these Terms and Conditions will be reduced or limited to the extent (if any) that the Buyer causes or contributes to the loss or damage.

## 12 Privacy

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- (a) Breeze Balm's third-party providers of advertisements and content may collect location and other information such as URL or advertisement the Buyer came from or linked to, IP address, browser type, and pages the Buyer visited from the Website etc. (even if you do not register to the Website);
- (b) Unless otherwise indicated by the Buyer at the time of placing the Order, Breeze Balm may send the Buyer marketing information. The Buyer can opt out of receiving the marketing information by contacting a representative of Breeze Balm;
- (c) Breeze Balm reserves the right to conduct and implement fraud detection processes, including without limitation to validating the Buyer's credit card details.

## 13 Miscellaneous and interpretation

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- (a) These Terms and Conditions will be governed by and construed in accordance with the law applicable in Queensland. The parties irrevocably and unconditionally submit to the jurisdiction of the Courts of Queensland and all Courts having jurisdiction in appeal from the Courts of Queensland;
- (b) These Terms and Conditions supersede all previous agreements in respect of the Ordered Goods and embodies the entire agreement between Breeze Balm and the Buyer in respect to its subject matter. Breeze Balm reserves the right to amend these Terms and Conditions without notice.
- (c) The Buyer must not assign or permit a third party to obtain the benefit of its rights and interests under these Terms and Conditions. Breeze Balm may assign or permit a third party to obtain the benefit of its rights and interests under these Terms and Conditions;
- (d) If any provision of these Terms and Conditions is void, voidable, unenforceable, or illegal in its Terms and Conditions, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, that provision will be read down accordingly.
- (e) If, notwithstanding clause (d) above, a provision is still void, voidable, unenforceable or illegal:-
  - (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed; and
  - (ii) in any other case, the whole provision is severed, and the remainder of these Terms and Conditions will be of full force and effect.
- (f) Any provision in these Terms and Conditions which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of that provision in another jurisdiction.

- (g) These Terms and Conditions will be binding upon and inure to the benefit of the parties and unless repugnant to the sense or context, to their respective administrators, personal representatives, successors and permitted agents and assigns.
- (h) In these Terms and Conditions except to the extent that the context otherwise requires:
- (i) any term defined in the statement of the names and descriptions of the parties has the meaning there defined;
  - (ii) reference to legislation or a provision of legislation includes change or re-enactment of the legislation or a legislative provision substituted for, and legislation and statutory instruments and regulations issued under the legislation;
  - (iii) words denoting the singular include the plural and vice versa;
  - (iv) headings are for convenience only and will not affect interpretation;
  - (v) reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
  - (vi) reference to a document or these Terms and Conditions includes reference to that document, or these Terms and Conditions as changed, notated or replaced from time to time;
  - (vii) words denoting any gender include all genders;
  - (viii) where a word or phrase is given a definite meaning in these Terms and Conditions as a part of speech, or other grammatical form for that word or phrase, has a corresponding meaning;
  - (ix) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
  - (x) where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done, that thing will be done on the next succeeding Business Day.