

ECO ART AND CRAFT PTY LTD (ABN 82 646 452 299)

(EAC)

and

SPECIFIED BUSINESS PURCHASING - STOCKIST (PURCHASER)

SUPPLY AGREEMENT

TABLE OF CONTENTS

Contents

1.	DICTIONARY	1
2.	INTERPRETATION	
3.	TERM	
4.	SALE AND PURCHASE OF PRODUCTS	3
5.	TRANSPORT AND DELIVERY	
6.	RESTRICTIVE COVENANTS	
7.	GRANT OF RIGHT	6
8.	TAKE OR PAY ERROR! BOOKMARK NOT DEFIN	IED.
9.	INTELLECTUAL PROPERY	6
10.	OWNERSHIP/PPSR	
11.	WARRANTIES, QUALITY CONTROL DEFECTIVE PRODUCTS AND LIABILITY	<i>1</i> 8
12.	TERMINATION	9
13.	DISPUTE RESOLUTION	11
14.	FORCE MAJEURE	11
15.	CONFIDENTIALITY	11
16.	VARIATION	
17.	ASSIGNMENT	
18.	FURTHER ACTION	
19.	AGREEMENT AND COUNTERPARTS	12
20.	COSTS OF AGREEMENT	12
21.	LEGAL TENDER	12
22.	NO WAIVER	12
23.	TIME OF THE ESSENCE	12
24.	ENTIRE AGREEMENT	12
25.	SEVERANCE	
26.	SURVIVAL	13
27.	GOODS AND SERVICES TAX	13
28.	NOTICES	
29.	MODE OF SERVICE	14
30.	DEFINITION	
31.	GOVERNING LAW AND JURISDICTION	14

GENERIC AGREEMENT DATED 04/07/2022 APPLIES TO ALL WHOLESALE PURCHASES

BETWEEN

Eco Art and Craft Pty Ltd (ABN 82 646 452 299) of C/- East Partners Pty Ltd 248 Payneham Road Payneham SA 5070 (EAC)

AND

SPECIFIED BUSINESS PURCHASING - STOCKIST (PURCHASER)

INTRODUCTION

- A. EAC manufactures and supplies plant based art and craft products.
- B. Purchaser is in the business of retailing art and craft products and is desirous of reselling EAC's Products.

TERMS

1. DICTIONARY

In this Agreement the following terms have the following meanings:

Background Intellectual Property means Intellectual Property developed prior to or independently of, and without reference to, the provision of the Product.

Business Day means a day that is not a Saturday, Sunday or Public holiday in the Place where a right is to be exercised, an obligation is to be performed, or a notice is to be received (as the case may be).

Business Hours means between the hours of 9.00am and 5.00pm on a Business Day.

Commencement Date means the date specified in Item 3 of the Schedule or the date of this agreement if not specified.

Committed Quantity means the minimum amount of Product the Purchaser shall be required to purchase in a Contract Year – one order of Minimum Order Value (MOV).

Confidential information means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) was known by the recipient as at the date of this Agreement; or
- (c) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information.

where the burden of establishing any of the exceptions referred to in (a), (b) and (c) shall be upon the recipient.



GST Law means *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time and also includes any associated legislation and delegated legislation.

EAC means the party or parties so described on page 1 of this Agreement and the heirs, executors, administrators, successors and assigns of such party or parties.

Expiry Date means the date upon which this agreement is due to expire or has expired or terminated (as the case may be), as determined under clause 12.

Force Majeure means an act or omission or circumstance over which the party could not have reasonably exercised control or taken steps to anticipate or avoid.

Intellectual Property means all statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions (including registered and unregistered patent rights), registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial scientific, literary or artistic (including musical) fields;

Product means the goods, services and/or products which EAC makes available for the Purchaser for resale and as notified to the Purchaser from time to time in the Product Inventory Schedule.

Product Manufacture Timeframe means the estimated timeframe to manufacture any specific Product.

Product Inventory Schedule means a table or catalogue provided by EAC to the Purchaser (with this Agreement or anytime thereafter) or via the Website at https://ecoartandcraft.com/collections/wholesale-products which sets out the Product, Product Manufacture Timeframe and Purchase Price which EAC may update from time to time at their discretion and shall be the obligation of the Purchaser to check for any updates prior to placing an order.

Purchase Price means the price for each product set out in the Product Inventory Schedule.

Purchaser means the party or parties so described on page 1 of this Agreement and the heirs, executors, administrators, successors and assigns of such party or parties.

Special Conditions means the conditions set out in Item 5 in Schedule 1 and in which this Agreement will be subject to.

Term means the term of this Agreement referred to in clause 3.

Website means EAC's website at https://ecoartandcraft.com/.

2. INTERPRETATION

In this Agreement unless the contrary intention appears:

- 2.1 The singular includes the plural and vice versa and words importing a gender include other genders.
- 2.2 Reference to any legislation or any provision of any legislation includes any amendment, modification, consolidation or re-enactment of the legislation or any



- legislative provision substituted for and all legislation and statutory instruments of and regulations issued under the legislation.
- 2.3 Other grammatical forms of defined words and expressions have corresponding meanings.
- 2.4 A reference to a clause, paragraph, schedule or annexure is a reference to a clause or paragraph of or schedule or annexure to this Agreement and a reference to this Agreement includes its schedules and annexures.
- 2.5 Words importing persons include firms, bodies corporate, unincorporated associations or authorities.
- 2.6 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns.
- 2.7 An agreement, representation, warranty or indemnity given or undertaken by 2 or more persons binds them and is given jointly and severally.
- 2.8 Headings are for ease of reference only and do not affect the construction of this Agreement.
- 2.9 A reference to an amount of money is a reference to the amount in a lawful currency of the Commonwealth of Australia.
- 2.10 A document expressed to be an annexure means a document a copy of which has been initialled for the purposes of identification by or on behalf of the parties.
- 2.11 If any day appointed or specified by this Agreement for the payment of money falls on a day which is not a Business Day the day appointed or specified is deemed to be the next Business Day.
- 2.12 A reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Adelaide, Australia even if the obligation is to be performed elsewhere.

3. TERM

- 3.1 This agreement shall commence on the Commencement Date and continue in full force and effect for the Term, unless extended under clause 3.2 or until terminated under clause 12, whichever is the earlier.
- 3.2 This agreement will continue indefinitely on the same terms and conditions after the expiry of the Initial Term unless and until one party gives the other party at least 14 days prior written notice that it wishes to terminate this agreement.
- 3.3 Unless waived by EAC, this agreement shall automatically expire, without penalty, if the Purchaser fails to place an Order Notice within 30 days from commencement of this Agreement.

4. SALE AND PURCHASE OF PRODUCTS

4.1 Sales

- 4.1.1 From time to time, during the Term, EAC will make sales of the Products to the Purchaser (a **Sale**). Each sale order shall be submitted to EAC (**Order Notice**).
- 4.1.2 Each Order Notice shall be in writing and specify the specific Product and quantity of that Product which is being purchased from EAC and may be placed via the wholesale portal on the Website.
- 4.1.3 If an Order Notice is received outside of the Business Hours or a non Business Day it is deemed to be received on the next Business Day.



4.2 Acceptance of Order Notice

- 4.2.1 EAC shall no later than close of business within 2 Business Days upon receipt of an Order Notice either confirm the order in or provide notice to Purchaser specifying why the order cannot be dispatched and provide an estimated timeframe for completion.
- 4.2.2 EAC may reject an Order Notice during the Term at its sole discretion.
- 4.2.3 There shall be no changes to the Purchase Price after acceptance of an Order Notice, unless:
 - (a) the cause of the increase in the Purchase Price is due to a material change in the price of materials required to manufacture the Product, and the Purchase Price increases shall be limited to the additional percentage cost to now manufacture the product.
- 4.2.4 Purchaser may within 2 Business Days of being notified of an increase in the Purchase Price amend any Order Notice in relation to products that have not yet been dispatched. If no amendment is made in that time, or if Purchaser confirms it wishes for the order to proceed, EAC shall dispatch the Products. EAC shall not be responsible for any delay in dispatch caused by it waiting for confirmation to having a Purchase Price increase.
- 4.2.5 For the avoidance of doubt, nothing in this clause 4.2 excuses Purchaser from being required to purchase the Committed Quantity.

4.3 **Invoice and payment**

- 4.3.1 EAC shall as soon as practicable after each sale of Product issue a tax invoice for that sale.
- 4.3.2 The Purchaser waives any right to dispute anything on an invoice not notified in Writing (giving reasonable details) to EAC within 5 Business Days after Purchaser received that invoice (disputed amount). If the dispute cannot be resolved by the time payment of the invoice is due in accordance with clause 4.3.3 then the Purchaser shall make payment of the disputed amount to EAC and the matter shall be referred to dispute resolution in accordance with clause 13.
- 4.3.3 Unless credit terms have otherwise been agreed, the Purchaser shall make payment of undisputed invoices within 14 days of Purchaser receiving the invoice or upon dispatch of the Products, whichever is soonest.
- 4.3.4 Notwithstanding any other provision, EAC may, at its discretion, require the Purchaser to make payment for any Product at the time of placing the order.
- 4.3.5 If EAC needs to manufacture a Product to fill the Order Notice, EAC may require Purchaser to pay a deposit (plus GST) in advance.
- 4.3.6 EAC requires payment of its invoices by electronic transfer in clear funds to a bank account last nominated to Purchaser in writing.
- 4.3.7 If Purchaser does not pay for any Product within time, including any disputed amount, EAC may:
 - (a) recover from Purchaser daily interest at 6% per annum on the unpaid amount of the price that for Product, calculated on and from the due date until the date of payment in full (plus accrued late payment interest) is made to EAC:
 - (b) without liability, cancel or suspend delivery of any Product not fully paid for and yet to be delivered;



- (c) resume possession of the Product not fully paid for and then credit the Customer with EAC's estimated re-sale value of that Product, less costs; and/or
- (d) exercise any rights or remedies EAC has in relation to default.
- 4.3.8 Interest accrued under this term and not paid for 30 days adds to the debt (is capitalised), and thereafter attracts interest.

5. TRANSPORT AND DELIVERY

- 5.1 If EAC need order in or manufacture Product as to fill the Purchaser's order, any delivery date or time EAC quotes or proposes is an estimate only.
- 5.2 Unless otherwise agreed, the Purchaser must take delivery of Product at EAC's premises.
- 5.3 Purchaser shall be responsible for the cost of transport and delivery;
- 5.4 If at the Purchaser's request EAC agrees to procure transport of Product to or at the direction of the Purchaser, then:
 - 5.4.1 If the Customer does not specify a method of transport or particular carrier, EAC may decide the method of carrier, but all carriers will be the Purchaser's agents only;
 - 5.4.2 The Purchaser bears the risk of loss/damage or deterioration in Product in transit:
 - 5.4.3 EAC does not guarantee a particular arrival date or time;
 - 5.4.4 A receipt signed by an apparently responsible person at the nominated destination is sufficient evidence of arrival of the Product unless proved to the contrary;
 - 5.4.5 EAC need not provide proof of arrival unless the Purchase made prior written request of proof of arrival; and
 - 5.4.6 EAC may recover the agreed cost of transport from the Purchaser, or if the cost was not agreed in advance, a reasonable cost.
- 5.5 Risk and liability for the Product, including any damaged, loss or deterioration caused in transit, shall pass to Purchaser upon being loaded for dispatch from EAC's premises, and Purchaser must insure the Product for its full insurable value and have that insurance extend to EAC's ownership of the Product until ownership passes to Purchaser, EAC may requested evidence of insurance and Purchaser shall hold on trust for EAC any proceeds of any insurance claim in respect of EAC's property;
- 5.6 If EAC provides pallets, or reusable bulk containers (such as bulk bags, ISO tanks, bulk bins and tank containers) for that purpose, then:
 - 5.6.1 Such shall remain EAC's property;
 - 5.6.2 Such must be returned to EAC in the same condition (fair wear and tear excepted) within 30 days if they are not returned or not in the same condition (fair wear and tear excepted) then EAC may invoice to Purchaser the cost of an equivalent replacement.



6. **RESTRICTIVE COVENANTS**

Purchaser agrees and covenants with EAC not to:

- 6.1 seek to or to reverse engineer, translate, and disassemble any Product or any portion thereof or provide the Product to or authorise a third party for that purpose;
- 6.2 knowingly sell Products for the purpose of wholesale re-supply or distribution; and
- 6.3 any restrictive covenants listed in item 7 of Schedule 1.

7. GRANT OF RIGHT

7.1 EAC grants to Purchaser, and Purchaser accepts, the non-exclusive right to market, sell and distribute the Products throughout the Term of this Agreement and upon the terms and subject to the conditions set out in this Agreement.

8. INTELLECTUAL PROPERY

8.1 Licence to use Intellectual Property

8.1.1 Subject to the terms of this Agreement, EAC grants to Purchaser an non-exclusive, revocable, royalty free, non-sub-licensable licence to use Intellectual Property embodied in the Products for the purpose of using, selling and marketing the Products, provided that Purchaser complies with clause 8.2.

8.2 Use of EAC Intellectual Property

Purchaser shall:

- 8.2.1 use EAC's Intellectual Property only for the purpose of using, selling and marketing the Products during the Term, not to modify;
- 8.2.2 have no other rights in or to EAC's Intellectual Property;
- 8.2.3 notify EAC promptly of any possible infringement of EAC's Intellectual Property, which comes to its notice;
- 8.2.4 not purport to assign its right under clause 8.1, which is personal to the Purchaser;
- 8.2.5 not alter, remove or in any way tamper with the EAC's trade marks or numbers on the Products or affix any other trade-mark, logo or other mark on the Products or on any labels on, or on the packaging of, any products;
- 8.2.6 not use or assist any third party to use EAC's Intellectual Property in a manner that would tend to devalue, injure, demean or dilute the goodwill or reputation of EAC's Intellectual Property;
- 8.2.7 must not use any trade mark or trade name similar to any trade mark or trade name of EAC as to be likely to cause confusion or deception and must not use for any purpose any trade mark which is a derivation or variation of a trade mark of EAC or a formative or colourable imitation of it:
- 8.2.8 without the prior written approval of EAC, affix their name and logo on the Product in a manner approved by the Producer; and



8.2.9 immediately cease and deist, upon notice from EAC, from using any of EAC's Intellectual Property in a manner which EAC deems in its sole discretion to be contrary to its interests, marketing strategy or brand and co-operate with EAC in any recall request or remedial action required to reasonably remedy any harm caused to EAC's Intellectual Property.

8.3 Ownership of Intellectual Property

- 8.3.1 Background Intellectual Property is not transferred by virtue of this agreement.
- 8.3.2 For the avoidance of doubt, EAC's Intellectual Property will remain the property of the EAC at all times.
- 8.3.3 Any modifications to EAC's Intellectual Property and/or their Background Intellectual Property developed in the course of the delivery of the Product shall be owned by EAC and the Purchaser agrees to assign, including to execute any document necessary, to record EACs ownership.
- 8.3.4 Any modifications to The Purchaser's Background Intellectual Property developed in the course of this Agreement shall remain theirs, unless it incorporates any of EAC's Intellectual Property and/or Confidential Information at which time the modification shall vest in EAC.

9. OWNERSHIP/PPSR

9.1 **Ownership**

- 9.1.1 Ownership of each Product sold passes from EAC to Purchaser only when the Product is fully paid for. Until that time, Purchaser holds the Product for EAC as owner, if EAC so requires, Purchaser must store that product in a way that allows it to be identified as EAC's property; and
- 9.1.2 If Purchaser's payment for any product is voided or conceded to be voidable or void, EAC resumes ownership of the Product.

9.2 Purchase Money Security Interest

If and so long as any of the Purchase Price (and any interest thereon) of any Product remains unpaid to EAC, EAC has a purchase money security interest (**PMSI**) in that Product under section 14(1)(a) of the *Personal Properties Securities Act 2009* (**PPSA**); and:

- 9.2.1 any time EAC may register in relation to such PMSI one or more financing statements/financing charge statements on the register maintained under the PPSA:
- 9.2.2 to extent EAC reasonably requests, within 2 working days Purchaser must do all things necessary to assist such registration/s and/or to ensure the PMSI priority over any other security interest (present or future) over the same Product or its proceeds granted by Purchaser to a third party; and
- 9.2.3 the parties agree to contract out of the following provisions of the PPSA 118, 121(4), 123, 125, 128, 129, 130, 132, 135, 142 and 143, at the time of this contract and their equivalent in as amended and as permitted by law.



10. WARRANTIES, QUALITY CONTROL DEFECTIVE PRODUCTS AND LIABILITY

10.1 Mutual Warranties:

- 10.1.1 Each party warrants to the other that:
 - (a) it has authority to enter and to perform its obligations under this Agreement; and
 - (b) they will use their best endeavours to support the other to resolve complaints with customers in an efficient manner;
 - (c) it has the ability to perform its obligations under this agreement.

10.2 Purchaser Warrants that:

If EAC is to manufacture any Product using specification/materials sourced from Purchaser, then:

- 10.2.1 such specifications do not infringe third party rights or applicable laws;
- 10.2.2 EAC is not obliged to check specifications or test materials before use; and
- 10.2.3 the use of those specifications or materials are wholly at Purchaser's risk.

10.3 EAC Warrants that:

- 10.3.1 all Products supplied shall be fit for their intended purpose so long as that purpose has been expressly notified to them by Purchaser either in this Agreement or otherwise in writing;
- 10.3.2 all Products supplied will be of good quality, however EAC cannot warrant that all Products will be free from defect, subject to clause 11.4; and
- 10.3.3 to the extent required under the Competition and Consumer Act 2010 Schedule 2 (Australian Consumer Law), if it applies, EAC provides the required guarantees and warranties.

10.4 Defective Products:

- 10.4.1 Subject to any applicable laws:
 - (a) a claim that a Product is defective for reasons that are EAC's responsibility is not valid unless advised in writing (with reasonable details) to EAC within 7 Business Days after the defect was first known to Purchaser:
 - (b) Purchaser shall arrange for the defective Product to be returned to EAC within 5 Business Days of notifying EAC of the defect, who shall either accept the defect or elect to obtain an independent report from a suitability qualified person, within a reasonable time;
 - (c) Upon receiving the independent report EAC shall provide a copy to Purchaser:
 - (d) If the defective Product claim is found or admitted to be without merit, EAC may recover from Purchaser as a debt all reasonable costs EAC incurs investigating the claim; and
 - (e) To the extent permitted by law any claim for any defective product not made within time is barred for all purposes.

10.5 Short delivery

A claim that a delivery of Product was not of the kind or quantity ordered for is not valid unless advised in writing (with reasonable details) to EAC within 5 Business Days from delivery to Purchaser;



10.6 Liability:

- 10.6.1 if a Product EAC delivery was not of the kind or quantity as stipulated in the Order Notice EAC's total liability is limited to prompt delivery of the kind of Product contracted for or prompt delivery of the shortfall quantity that specific Product shall remain the property of EAC and be returned to them at EAC's cost.
- 10.6.2 If a Product EAC delivers is found to be defective for reasons that are EAC's responsibility then EAC's liability is limited to, at EAC's cost and choice:
 - (a) prompt delivery of a replacement Product or equivalent goods; or
 - (b) prompt repair of the Product; or
 - (c) payment of the cost of Purchaser acquiring equivalent goods or having the Product repaired.
- 10.6.3 If EAC is to replace a Product that is or is likely to be defective for reasons that are EAC's responsibility, EAC retains ownership of the original defective Product.
- 10.6.4 Subject to the Australian Consumer Law, if it applies, in no case is EAC liable for any loss of revenue/ profits/ goodwill or any incidental, consequential or punitive damages as a result of any claim in connection with its supply of Product, with the exception of gross negligence, maleficence or wilful misconduct.

11. TERMINATION

11.1 Notice

A party may terminate this Agreement for convenience with 30 days written notice.

11.2 Insolvency

A party may terminate this Agreement, with immediate effect, by notice to the other party, if any of the following events occur in relation to the latter party:

- 11.2.1 an application is made to a court for an order, or an order is made, that it be wound up;
- 11.2.2 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of it, or one of them is appointed, whether or not under an order;
- 11.2.3 a receiver, manager or controller is appointed or takes possession on respect of any of its property;
- 11.2.4 an administrator is appointed to it under section 436A, 436B or 436C of the *Corporations Act 2001 (Cth);*
- 11.2.5 it enters into, or resolves to enter into, a deed of company arrangement, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any of them;
- 11.2.6 it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so:
- 11.2.7 it is, or its directors state that it is, unable to pay its debts as and when they become due and payable;
- 11.2.8 it is presumed to be insolvent within the meaning of section 459C(2) of the *Corporations Act 2001 (Cth)*;



11.2.9 anything having a substantially similar effect to any of the events specified above happens under any law of any applicable jurisdiction.

11.3 **EAC rights on insolvency or default**

In addition to any right in this Agreement EAC may upon any event stipulated in 12.2 or if Purchaser is otherwise in default of this Agreement:

- 11.3.1 retake possession of any Product not fully paid for;
- 11.3.2 resell any Product repossessed; and
- 11.3.3 apply the proceeds of any sale to the unpaid portion of the contract.

11.4 Breach

- 11.4.1 EAC may by notice in writing to Purchaser terminate the Agreement if Purchaser fails to pay any monies payable under this Agreement within 14 days from the due date of payment.
- 11.4.2 This Agreement shall immediately terminate if a party repudiates this Agreement or commits a material breach of this Agreement, which is incapable of remedy or which it fails to remedy within 14 days of being given notice of it. For the avoidance of doubt the following are not a material breach:
 - (a) a Product defect; and
 - (b) the Product Manufacture Timeframe being longer than estimated by EAC:

11.5 Consequences

Upon termination of this Agreement for any reason:

- 11.5.1 all orders submitted by Purchaser, that have not been filled shall be deemed to be cancelled;
- 11.5.2 neither party shall have any claim against the other party for indemnification or compensation as a result of the termination (unless termination was for a breach of this Agreement);
- 11.5.3 neither party shall say or do anything to prejudice the other party's business, reputation or goodwill or the integrity or reputation of the Products;
- 11.5.4 subject to any right other right of EAC to the return or ownership of the Product, Purchaser shall have the right to sell through any remaining Products it holds within 60 days; and
- 11.5.5 the Purchaser must immediately cease using EAC's Intellectual Property (with the exception of selling through any remaining Product in accordance with 12.5.4), including but not limited to removing all reference to EAC, its products, brand and trade marks from marketing materials, their website, social media accounts (including product images).



12. DISPUTE RESOLUTION

- 12.1 The parties must work in good faith to resolve any dispute between them arising from this Agreement.
- 12.2 Any dispute shall be initially referred to the nominated representative of each party for resolution. The parties agree to meet, whether in person or remotely, within 14 days of a dispute being raised to seek a resolution.
- 12.3 If the dispute remains unresolved after a period of 30 days after the meeting referred to in clause 14.2, the parties shall refer the matter to mediation.
- 12.4 The parties shall agree upon an appropriate mediator. Failing agreement the President of the Law Society of South Australia shall appoint a mediator. Agreement as to the allocation of costs shall be determined through mediation.
- 12.5 A party may not commence court proceedings until 30 days after referral to a mediator pursuant to clause 14.3 except that nothing in this clause shall prevent any party from seeking urgent interlocutory relief through courts of appropriate jurisdiction.
- 12.6 The parties acknowledge that the purpose of any exchange of information or documents, or the making of any offer of settlement, pursuant to this clause, is an attempt to settle the dispute between the parties in dispute.
- 12.7 No party may use any information or documents obtained through the dispute resolution process for any other purposes.

13. FORCE MAJEURE

Neither party will be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay is due to Force Majeure. A party affected by Force Majeure shall notify the other party as soon as practicable of any anticipated delay due to Force Majeure. The performance of that party's obligations under this Agreement will be suspended for that period of the delay due to the Force Majeure, but such party shall take all practicable steps to remove, mitigate and overcome the effects of Force Majeure as soon as practicable.

14. CONFIDENTIALITY

Each party shall keep strictly confidential, both before and after the Expiry Date:

- 14.1 all Confidential Information concerning either party;
- 14.2 the terms of this Agreement; and

except that such information may be disclosed by a party to its officers, employees or legal or other advisers who owe it duties of confidence or as required by law.

15. VARIATION

- 15.1 This agreement cannot be varied unless EAC has agreed to such variation in writing.
- 15.2 This agreement may be varied by EAC providing written notice of the varied terms to the Purchaser notifying them of the variation and any such variation applies to any Order Notice that forms after the change was so notified, but not before.

16. ASSIGNMENT

16.1 The Purchaser may not assign this Agreement or any right created by it except with EAC's prior written consent, which they may withhold at their sole discretion.



16.2 Upon notice to but without need for consent of the Purchaser, EAC may assign, subcontract or sub-licence this Agreement or any right hereunder.

17. FURTHER ACTION

Each party must do everything reasonably necessary or desirable to give full effect to this Agreement.

18. AGREEMENT AND COUNTERPARTS

- 18.1 The Purchaser accepts this Agreement if after receipt of a copy of it they place an order for Product.
- 18.2 The Purchaser's failure to acknowledge these terms is not evidence these terms do not apply.
- 18.3 This Agreement may be executed in any number of counterparts, each executed counterpart is deemed an original of this document and all those counterparts taken together are regarded as one instrument.

19. COSTS OF AGREEMENT

Each party shall bear their own costs in respect of the preparation of this Agreement.

20. LEGAL TENDER

Any payment due under this Agreement may be made or tendered either in cash or by cheque drawn by a bank (as defined in the *Banking Act 1959* or established by an Act of the Parliament of South Australia).

21. NO WAIVER

21.1 No Extinguishment

The failure of a party to exercise or delay in exercising a right, power or remedy under this Agreement does not prevent its exercise.

21.2 In Writing

A provision of or right under this Agreement may not be waived except by a waiver in writing signed by each party granting the waiver, and will be effective only to the extent specifically set out in that waiver.

22. TIME OF THE ESSENCE

Time shall be of the essence as regards any date or period determined under this Agreement except to the extent that any such date or period may be altered by agreement between the parties and then time shall be of the essence as regards such altered date or period.

23. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties as to its subject matter and any and all previous understandings or agreements on that subject matter cease to have any effect from the date of this Agreement.

24. SEVERANCE

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement are and continue to be valid and enforceable in accordance with their terms.



25. SURVIVAL

- 25.1 No term of this Agreement merges on completion of any transaction contemplated by this Agreement.
- 25.2 This clause together with any other term which by its nature is intended to do survives termination or expiry of this Agreement.

26. GOODS AND SERVICES TAX

26.1 Amounts are exclusive of GST

Any amounts payable under this Agreement are calculated or expressed exclusive of GST.

26.2 Payment of GST

If GST is or become payable by a Supplier under this Agreement the Recipient must pay to the Supplier an amount equal to the GST payable on the supply.

26.3 Time of Payment

An amount payable under this clause must be paid:

- 26.3.1 at the same time as the payment of the amount in respect of that supply is due;
- 26.3.2 in addition to the amount payable under this Agreement.

26.4 Recovery

If the Recipient fails to pay such GST when due, the Supplier may recover it from the Recipient as a debt under this Agreement.

26.5 Tax Invoices

Unless a tax invoice for an amount payable under this clause has already been provided, the Supplier must deliver a tax invoice to the Recipient within 14 days after receiving such payment.

26.6 **Terms**

In this clause expressions that have particular meanings in the GST Law take those meanings.

27. NOTICES

27.1 To be in writing

A notice required or authorised to be given or served on a party under this Agreement must be in writing and may be given or served by electronic mail (email), post or hand to that party at its email address or address as the party may have last notified the other party or parties in writing.

27.2 Method of Service

A notice is deemed to have been given or served on the party to whom it was sent:

- 27.2.1 in the case of hand delivery, on delivery during Business Hours;
- 27.2.2 in the case of pre-paid post 2 Business Days after the date of despatch; or



27.2.3 in the case of email transmission, if sent during Business Hours, on else in the next Business Day, provided no notice of a failure to deliver the email is received by the party giving the notice.

27.3 Sufficient Service

A notice given or served under this Agreement is sufficient if:

- 27.3.1 in the case of company it is signed by a director, officer or secretary of that company; or
- 27.3.2 in the case of an individual it is signed by that party; or
- 27.3.3 given or made for or on behalf of such party by his authorised agent of by his solicitors.

28. MODE OF SERVICE

The provisions of this clause are in addition to any other mode of service permitted by law

29. DEFINITION

In this clause **notice** includes a demand, request, consent, approval, offer and any other instrument or communication made, required or authorised to be given under this Agreement.

30. GOVERNING LAW AND JURISDICTION

30.1 **SA Law**

This Agreement is governed by the law of South Australia.

30.2 **Submit**

Each party irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of South Australia.

EXECUTED as an Agreement Executed by Eco Art and Craft Pty Ltd (ABN 82 646 452 299) in accordance with s127 of the Corporations Act (2001)))
Naomi Sarah Parsons	
Sole Director	

Note: under s127 or s126 of the Corporations Act 2001 (Cth) for a contract to be properly executed by a company, it should be signed by an individual with the authority of the company or by two directors, one director and the secretary or in the circumstance of a single director company then the sole director.

