

Haverford Brands PTY LTD T/as Shade Matters- Terms and Conditions of Sale

1. Definitions and interpretation

In this Agreement, the following words have the following meanings:

Agreement means this Agreement and includes the Order Form.

Company means Haverford Brands PTY LTD ACN 000 022 551 and its successors and assigns.

Customer means the Customer described in the Order Form or any approved account held with the Company.

Goods means the netting, tackle, rope, twine, accessories or any other goods supplied by the Company to the Customer as described in the Order Form.

Large Business Customer means a Customer who is not a Retail or Small Business Customer.

Price means the price for the Goods (expressed in Australian dollars) plus GST if applicable described in the Order Form plus the price of postage/handling.

Retail or Small Business Customer means a Customer that falls within the operation of the "unfair terms" in the Australian Consumer Law pursuant to section 23 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

Order Form means the Order Form annexed to this Agreement or on the website www.shadematters.com.au.

Headings are for convenience only and will not affect interpretation.

2. Orders and payment

- 2.1. The terms and conditions in this Agreement apply to every order placed by the Customer with the Company for the Goods upon acceptance of that order by the Company. The Company is not obliged to accept any order placed by a Customer, whether the Customer is an account holder or not.
- 2.2. The Company will issue a tax invoice to the Customer in respect of an accepted order. For Customers that do not have accounts with the Company, the Customer must pay the Price in full before supply of the Goods and all invoices issued are payable immediately. For Customers that do have an account with the Company and are not otherwise in default of any obligation owed to the Company, the Customer must pay the Price of the Goods within 30 days of supply of the Goods pursuant to an order and the tax invoice will be issued on 30 day terms. The Company may cancel a Customer's account at any time in its absolute discretion.
- 2.3. The Company will sell the Goods at the price nominated by the Company on its website or published promotional materials and special or customised orders will be charged at a Price to be agreed between the Company and the Customer. The Company reserves the right to amend the Prices for Goods at any time (but not in relation to an accepted order).
- 2.4. If the Price (or any part of it) is not paid strictly in accordance with this Agreement, the Customer agrees to pay to the Company interest on any amounts due to the Company but unpaid at the rate of 5% per annum, calculated daily until paid.
- 2.5. The Customer further agrees that all costs and disbursements incurred by the Company in recovering payment of any overdue invoice, retaking possession of the Goods or in otherwise enforcing its rights under this Agreement including, without limitation, legal costs on the solicitor and client basis are recoverable against the Customer as a debt (**Recovery Expenses**).
- 2.6. The Customer hereby charges in favour of the Company any real property and other property in which it has an interest with payment of any outstanding invoices, costs and expenses, including Recovery Expenses (**Charge**) and the Customer irrevocably authorises the Company to lodge caveats to notify and protect that Charge in relation to any real property in which you have an interest. Where the Customer is a corporation, if any tax invoice remains unpaid for 14 days after the due date for payment, the Company may enforce the Charge by the appointment of a receiver by the Supreme Court of New South Wales and the Customer consents to the appointment of such a receiver.
- 2.7. The Company shall be entitled to register its interest and retention of title in any Goods whilst they remain unpaid by the Customer by charging the Goods and recording its interest on the Personal Property Securities Register and the Customer consents to such registration. Such registration may be recorded by the Company as a purchase money security interest. The Customer must provide all assistance and information required by the Company to perfect the Company's interest in any unpaid Goods.
- 2.8. Once accepted by the Company, no order from the Customer may be cancelled by the Customer except with the written consent of the Company and on terms that the Customer must immediately pay to the Company all costs and expenses which have reasonably been incurred by the Company in providing or preparing to provide the Goods to the time of cancellation, including any courier, packing and postage costs.
- 2.9. The Company may at any time and for any reason cancel an order. In those circumstances, any amount paid by the Customer in respect of that cancelled order will be refunded to the Customer by cheque to the address nominated in the Order Form within 7 days.

3. Provision of Goods

- 3.1. Upon acceptance by the Company of an order placed by a Customer, the Company will prepare to provide the Goods ordered.
- 3.2. The Goods will be dispatched as soon as reasonably practicable in the case of account holders who are not in default of any obligations owed to the Company and as soon as reasonably practicable after receipt of the payment of the Price in full in the case of non-account Customers.
- 3.3. Upon receipt of the Goods, the Customer must inspect the Goods and satisfy itself through a hazard and risk assessment that the Goods are suitable for purpose, of merchantable quality, without defect and can be used without risk. The Customer must notify the Company within 7 days of receipt of the Goods of any issues identified in relation to the Goods.
- 3.4. The Company will endeavour to provide all reasonable assistance to the Customer in relation to the installation of the Goods or the referral of the Customer to third parties to install the Goods, however, the Customer is solely responsible for the proper installation, use and maintenance of the Goods and acknowledges that the Company is not responsible for the installation of the Goods by a third party.
- 3.5. The Customer has no right of action for damages or otherwise against the Company in respect of any loss occurring by reason of any delay in the provision of the Goods,

arising from the incorrect use or installation of the Goods or from cancellation of an order.

4. Title and risk

- 4.1. Risk of damage to or loss of the Goods passes to the Customer upon the receipt of the Goods.
 - 4.2. Title in the Goods does not pass to the Customer until payment in full of the Price.
- ### 5. Force majeure
- 5.1. The Company will not be liable to the Customer in any manner or be deemed to be in breach of this Agreement because of any delay in performing or any failure to perform any of the Company's obligations under this Agreement if the delay or failure was due to any cause beyond the Company's reasonable control.
 - 5.2. The following will be included (without limitation) as causes beyond the Company's reasonable control: (a) governmental actions, war or threats of war, national emergency, riot, civil disturbance, sabotage or requisition; (b) acts of God, fire, explosion, flood, epidemic, pandemic (including the impact of COVID-19) or accident; (c) import or export regulations or embargoes; (d) labour disputes not including disputes involving the Company's work-force; (e) any kind of carriage or postal delay; or (f) inability to obtain or delay in obtaining supplies of the Goods or materials which are components of the Goods.

6. Warranties

- 6.1. The Company will supply the Goods in accordance with any applicable industry or statutory standards. The company provides a 1 year warranty on pre-made shade sails and shade sail hardware.
- 6.2. The Customer warrants that it has accurately and completely filled in the Company's approved Order Form and it has made all proper enquiries to satisfy itself that the Goods are suitable for their intended use in every respect. To the maximum extent permitted by law, the Company offers no warranty in this regard.
- 6.3. The Customer acknowledges that the Goods need to be properly installed and regularly checked and maintained or replaced and the Customer warrants to the Company that it will take all reasonable precautions in using, supervising the use of, installing and regularly maintaining the Goods to minimise any risk of personal injury or damage to or loss of property, including animals.
- 6.4. The Customer acknowledges that the Company has intellectual property and other similar rights in relation to the Goods and warrants that it will not and will not assist, whether directly or indirectly, any entity to take any steps to derogate from or impede those rights.
- 6.5. In the unlikely event of faulty manufacture or workmanship of Goods, the Company will fully refund or exchange the Goods, provided that the Customer returns the Goods intact to the Company within a reasonable period after purchase.
- 6.6. Large Business Customers warrant that they have adequate insurance to cover all liabilities incurred as a result of the use of the Goods. All Retail or Small Business Customers warrant that they have adequate insurance to cover all liabilities incurred as a result of the use of the Goods or that it does not require insurance and is willing to accept any loss that may arise from the use of the Goods.
- 6.7. The Customer warrants that all persons using or installing the Goods are suitably instructed in its safe and proper use and that the Goods will not be used except for the Company's intended use of the Goods.
- 6.8. The Customer warrants they will not tamper with, reverse engineer, damage, misuse or alter the Goods.
- 6.9. The Customer will ensure that any repair or maintenance it conducts or arranges will be in accordance with the Company's or manufacturer's specifications. The Company assumes no liability for any repair or maintenance performed by the Customer or any third party.

7. Limitation of liability

- 7.1. To the maximum extent permitted by law, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement is excluded.
- 7.2. Where such liability cannot be excluded completely, liability is limited to the Price, the repair or replacement of the Goods or provision of further Goods at the Company's absolute discretion.
- 7.3. Whilst the Company endeavours to ensure the Goods are of a high standard and quality, it is possible that the Goods may become damaged or break. This can occur due to general wear and tear over time through normal use as well as due to environmental conditions and other factors. The Customer should regularly inspect the Goods for any damage (including before each use, where relevant) and, where necessary, replace the Goods. The Customer agrees and acknowledges that in no circumstances will the Company be liable for any Consequential Loss arising from this Agreement or the Customer's use of the Goods. "**Consequential Loss**" means any indirect, incidental, economic, special or consequential loss including loss of revenue or profits or any other opportunity, loss of the benefit of this Agreement and any other agreement, failure to realise anticipated savings or benefits, business interruption, loss of production, loss of use, loss of goodwill, reputational damage or other unforeseeable loss, unforeseeable damage, or punitive damages.
- 7.4. The Customer acknowledges that use of the Goods carries the risk of potential injury, loss or damage. Such risk could arise whether or not the Goods are properly maintained or regularly inspected. Use of the Goods is at the Customer's own risk. The Customer understands and voluntarily accepts these risks.

8. **Indemnity**

To the full extent allowed by law, the Customer indemnifies the Company and its contractors, delegates, employees, directors, officers, agents and advisers for any and all loss, cost, damage, liability or expense, whether direct, indirect, special or consequential, including but not limited to loss of profits or damage to goodwill, in relation to any claim in relation to the use of the Goods, including but not limited to any claim in relation to any injury caused to any person or damage to or loss of any real property or other property, including but not limited to animals and any other Consequential Loss.

9. **Governing law and jurisdiction**

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales and all courts competent to hear appeals from those courts in respect of all proceedings arising in connection with this Agreement.

10. **Variation and Waiver**

- 10.1. The terms of this Agreement may be varied only by a written agreement between the parties.
- 10.2. No right or remedy of the Company under or arising from this Agreement may be waived other than in writing signed by the Company. Accordingly, any non-exercise or partial exercise of, or any delay in exercising any right or remedy of the Company does not constitute a waiver of that right or remedy.

11. **Severance**

If any provision of this Agreement should be held to be void, illegal or unenforceable in any way, it may be severed and the remaining provisions will not in any way be affected or impaired thereby and this Agreement will be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

12. **Entire agreement**

This Agreement constitutes the entire agreement of the parties about its subject matter and any previous document, understanding and negotiation on that subject matter ceases to have any effect.

13. **Third party rights**

No person other than the parties have or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this Agreement, but without prejudice to any rights of the Company's insurers.

14. **No Assignment or Novation**

The Customer may not assign or novate this Agreement or otherwise transfer or deal with the benefit of this Agreement or an obligation, right or remedy under it, without the prior written consent of the Company. The Company shall be entitled to assign or novate this Agreement or otherwise transfer or deal with the benefit of this Agreement or an obligation, right or remedy under it without requiring the consent of the Customer.