

# Terms & Conditions

## 1. Definitions

- 1.1 **ACL** means the Australian Consumer Law under the *Consumer and Competition Act 2010* (Cth) as amended.
- 1.2 **Default Event** means:
  - (a) the Customer fails to pay, when due, any amount owing to Yetimo;
  - (b) the Customer fails to comply with any of these Terms; any step is taken to enter into any arrangement between the Customer and its creditors;
  - (c) the Customer ceases to be able to pay its debts as they become due or ceases to carry on business;
  - (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Customer's assets or business; or
  - (e) in Yetimo's opinion, the Customer's credit standing or financial circumstances has materially changed,
- 1.3 **Force Majeure Event** means circumstances beyond a party's reasonable control, which shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, the Customer's acts or omissions, fires, storms, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, industrial disputes, insurrections, defaults of Yetimo's suppliers or subcontractors, theft, vandalism, delays in transportation, loss or damage to Goods in transit, accidents or embargoes of any kind, breakdown of plant or machinery.
- 1.4 **GST** has the meaning as set out in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.5 **Intellectual Property Rights** means all forms of intellectual property rights throughout the world, whether or not registered including, without limitation, copyright, patent, design, trade mark, business name, domain name and confidential information including know-how and secrets.
- 1.6 **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.7 **PPSR** means the Personal Property Securities Register established by the PPSA.
- 1.8 **Security Agreement** means the security agreement set out in clause 9.
- 1.9 **Security Interest** means the security interest created in clause 9.
- 1.10 **Terms** means these terms and conditions.
- 1.11 **Yetimo** means Yetimo Marketing Pty Ltd (ABN 87 094 375 756);

## 2. Applicability

- 2.1 These Terms shall apply to the sale of all goods and/or services (as applicable) (**Goods and/or Services**) by Yetimo to any individual, sole trader, business or company (the **Customer**).
- 2.2 Any order placed with Yetimo will be confirmation of the Customer's acceptance of these Terms.
- 2.3 Variation to these Terms
  - (a) These Terms may only be varied or waived in writing and signed by a duly authorised officer of Yetimo. Yetimo reserves the right to vary these Terms from time to time.
  - (b) If we vary these Terms or adopt new terms and conditions then you will be given written notice and unless otherwise agreed in writing, the varied or new Terms will apply to any Order for the supply of any Goods subsequent to you being given written notice of any variation to such new terms and conditions.
- 2.4 These Terms prevail over any previous discussions or terms or conditions that may be or have been communicated between Yetimo and the Customer, whether orally or in a letter from the Customer, in negotiations or otherwise unless varied in accordance with clause 2.3.
- 2.5 Any terms or conditions printed on any purchase order or other document of the Customer are hereby expressly disclaimed by Yetimo and will not apply to an order for Goods and/or Services placed by the Customer or on the Customer's behalf with Yetimo. These Terms will prevail over and supersede any such terms and conditions of the Customer's, unless varied in accordance with clause 2.3

## 3. Order Confirmation

- 3.1 An order will be deemed confirmed and placed (and in the event of a contract being entered into between the Customer and Yetimo, it will be deemed to form part of that contract) on the day the Customer confirms in writing the acceptance of a quote supplied by Yetimo and/or accepts in writing (or by signing) an order confirmation form (**Date of Order Confirmation**).

## 4. Cancellation

- 4.1 In the event the Customer wishes to cancel all or any part of a confirmed order, the Customer must:
  - (a) give written notice of the cancellation to Yetimo; and

- (b) pay Yetimo (as determined in its absolute discretion) damages, which may include any and all costs and losses incurred by Yetimo (including loss of profits and any expenses Yetimo has incurred or committed to pay to any third party) in relation to the cancelled order or the cancelled part of the order to the date of cancellation.
- 4.2 Yetimo will make all reasonable endeavors to minimise the costs and liabilities associated with the order whenever possible.

## 5. Prices

- 5.1 The Customer must pay to Yetimo the prices for the Goods and/or Services as fixed by Yetimo at the Date of Order Confirmation, or as quoted to the Customer in writing prior to delivery to the Customer or the Customer's agent or nominee. Any prices quoted orally to the Customer prior to the Date of Order Confirmation are indicative only and are not binding on Yetimo.
- 5.2 All prices and quotations are exclusive of goods and services tax ("GST"). All prices and quotations are in Australian dollars unless stated otherwise. Prices and quotations include freight and insurance costs unless stated otherwise. Yetimo reserves the right to recover from the Customer all GST payable in respect of the supply of Goods and/or Services to the Customer.
- 5.3 In the event of any increase in the cost and liabilities to Yetimo associated with fulfilling the Order caused by any reason whatsoever beyond Yetimo's control (without prejudice to the generality of these Terms) including any changes in the exchange rate, transport costs, port duties, regulation of any government or authority, Yetimo reserves the right to adjust the price of the Goods and/or Services to reflect such increases in costs.

## 6. Payment

- 6.1 The terms of payment are fifteen (15) days from the date of invoice unless otherwise indicated by Yetimo in writing.
- 6.2 Yetimo may seek varied payment terms for a Customer including, but not limited to, request for advance payment of part or the full amount of initial orders. Varied terms will be notified in advance at time of quotation.
- 6.3 Payment means receipt by Yetimo of cash or cleared funds.
- 6.4 In the event the Customer fails to make any payment under these Terms when it falls due, the outstanding amount will incur a service fee of 12.5% per month or part thereof, compounded monthly from the date at which the amount becomes outstanding.
- 6.5 Yetimo reserves the right to allocate payments received from the Customer or any other person on their behalf in the following manner:
  - (a) firstly towards costs, charges and other expenses due and payable or becoming due and payable to Yetimo;
  - (b) secondly towards invoices for Goods and /or Services – oldest invoices first unless otherwise advised at the time of payment.
- 6.6 Yetimo may recover from you any costs incurred in the collection of Payment of any Invoice

## 7. Delivery

- 7.1 Yetimo will advise the Customer, in writing, the delivery date (**Delivery Date**).
- 7.2 The Customer must provide a delivery address to Yetimo at the time of placing an order (Delivery Address). The Delivery Address provided is the address to which delivery will be made (unless the Customer otherwise notifies Yetimo prior to the Delivery Date). If the Customer changes the Delivery Address, the prices and quotations may change accordingly.
- 7.3 The Customer (or its agent or nominee) must be present at the Delivery Address and able to receive and sign for delivery of the Goods and/or Services upon their delivery at the Delivery Address on the Delivery Date during the normal business hours (unless a different timeframe is agreed prior with Yetimo prior to delivery).
- 7.4 Yetimo will use all reasonable endeavors to meet the Delivery Date but Yetimo is not and will not be liable for any loss or damage, however it arises, if the Goods and/or Services are not delivered by the Delivery Date. The delay does not give the Customer a right to cancel an order or terminate these Terms.
- 7.5 Without limiting this clause 7.4, where Yetimo is unable to deliver the Goods and/or Services because of a Force Majeure Event or otherwise as a result of an event beyond its control, the date for delivery of the Goods and/or Services will be extended until the cessation of the effect of such matter or matters.

## 8. Overs + Unders

- 8.1 To the extent that the Goods and/or Services include goods, Yetimo shall be deemed to have fulfilled the order by delivery of quantity within the specified manufacturers' overs and unders tolerances (normally 5% (five) unless otherwise specified in writing). Quantity within the 5% allowance for overs and unders will be billed or deducted accordingly off final invoice.

## 9. Title + Security Interest

- 9.1 This clause 9 sets out the Security Agreement between the Customer (**Grantor**) and Yetimo (**Secured Party**).
- 9.2 After delivery of the Goods, until the full payment has been made the Grantor shall possess the costs as bailee only.
- 9.3 The Secured Party will retain absolute title over the Goods until the Secured Party has received payment in full in respect of the Goods.
- 9.4 The Grantor grants to the Secured Party a Security Interest in the Goods supplied by the Secured Party to the Grantor, including all related proceeds (**Collateral**), as security for all or part of the payment of any amount relating to the Goods in accordance with these Terms or otherwise. For the avoidance of doubt, this Security Interest is also a Purchase Money Security Interest (**PMSI**) in the Collateral.
- 9.5 The Security Interest attaches to the Collateral by virtue of the Grantor's possession of the Goods as bailee under clause 9.2.
- 9.6 The Grantor irrevocably gives authority to the Secured Party to register a financing statement with respect to the Security Interest on the PPSR.
- 9.7 The Grantor shall provide the Secured Party with any information required for the Secured Party to register a financing statement or a financing change statement with respect to this Security Interest on the PPSR.
- 9.8 Until this Security Interest in the Collateral has been extinguished, the Grantor will ensure that, as far as is reasonably practicable:
- (a) any identifying plate, mark or packaging number on any of the Collateral (including Goods) is not removed, defaced or obliterated; and
  - (b) the Collateral is identifiable and distinguishable from any other goods or products that may be in the Grantor's possession and as to each particular Invoice of Goods comprising the Collateral.
- 9.9 The Grantor acknowledges that this Security Interest continues to apply to Collateral that becomes an accession to other goods.
- 9.10 Until this Security Interest in the Collateral has been extinguished, if:
- (a) a Default Event occurs in respect of the Grantor; or
  - (b) the Grantor is in breach of these Terms,
- the Secured Party may as it sees fit and without notice to the Grantor, seize, retain or redeem the Collateral, or seek any and all remedies provided under Chapter 4 of the PPSA or any other remedies provided at law or in equity.
- 9.11 Sections 95, 118, 121(4), 125, 130, 132 and 135 of the PPSA shall not apply to the extent that they impose obligations on the Secured Party.
- 9.12 The Grantor irrevocably waives its right to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this Security Agreement.
- 9.13 The Grantor shall immediately notify the Secured Party in writing of any change of name of the Grantor.
- 9.14 The Grantor acknowledges due notice of this Security Agreement with acceptance of these Terms

## 10. Risk in Goods

- 10.1 To the extent that the Goods and/or Services includes goods, the risk in any goods delivered will, unless otherwise agreed in writing, pass to the Customer upon delivery of the goods to the Customer or its nominee or agent.

## 11. Acceptance + Return of Goods

- 11.1 To the extent that the Goods and/or Services includes goods, the Customer is deemed to have accepted a delivery of goods on the date of delivery unless prior to ten (10) business days after delivery to the Customer the Customer has notified Yetimo in writing of its rejection of that delivery and the reasons for the rejection are accepted by Yetimo.

## 12. Claims for Damaged Goods

- 12.1 To the extent that the Goods and/or Services include goods, any claim for damaged goods must be immediately notified to Yetimo in writing within ten (10) business days after delivery.

## 13. Default

- 13.1 The Customer agrees that if a Default Event occurs, Yetimo may do any or all of the following (in addition to any other rights Yetimo may have):
- (a) require the Customer to immediately pay all amounts that are unpaid and/or to pay in advance for any further delivery of Goods and/or Services (even if specified otherwise in any invoice or acceptance of order given to the Customer by Yetimo);

- (b) for confirmed orders that have not been delivered, require the Customer to immediately pay all amounts associated with these orders already incurred by Yetimo
  - (c) suspend or cease supplying Goods and/or Services to the Customer (whether or not the Customer has ordered Goods and/or Services that have not yet been supplied), until the default has been made good;
  - (d) to the extent that the Goods and/or Services includes goods, demand that the goods be immediately returned to Yetimo at the Customer's expense and the Customer must comply within three (3) days;
  - (e) to the extent that the Goods and/or Services includes goods, enter the Customer's premises and repossess goods for which payment is overdue; and/or
  - (f) cancel or terminate this agreement or any other contract(s) with the Customer as Yetimo sees fit.
- 13.2 The exercise by Yetimo of any of the above rights does not prejudice to any other right or remedy available to Yetimo.

## 14. Exclusions + Limitations

- 14.1 The exclusions and limitations in this clause 14 are subject to clause 15.
- 14.2 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.
- 14.3 No warranty is given and Yetimo will not be liable for:
- (a) alterations to Goods for which Yetimo is not responsible;
  - (b) the suitability of any goods for any particular purpose or use under specific conditions which were not made known or communicated to Yetimo;
  - (c) variations in the quantities or dimensions or any other specifications of any Goods or changes in the specifications or substitution of any material or components if the variation or substitution does not materially affect the characteristics of the goods; or
  - (d) variations in colour, weight or weave mix within a tolerance of plus or minus 5% (five);
  - (e) damage or failure caused by unusual or non-recommended use, misuse or application of the Goods; or
  - (f) loss caused by any factors beyond Yetimo's control.
- 14.4 Yetimo's total liability for breach of these Terms or breach of Yetimo's contractual obligations or duties at law or in equity (however arising) is limited at Yetimo's option to:
- (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) the repair or rectification of the Goods;
  - (c) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
  - (d) the payment of the cost of the repair or rectification of the Goods.
- 14.5 To the fullest extent permitted by applicable law:
- (a) Yetimo will not be liable for any loss or damage suffered by the Customer (whether direct, indirect or consequential including but not limited to loss of profits, loss of opportunity or loss of goodwill) relating to this agreement or its subject matter or arising in any way out of the supply of the Goods and/or Services to the Customer or the use or re-supply of the Goods and/or Services; and
  - (b) Yetimo will not be liable for any negligent act or omission of Yetimo, its officers, employees, contractors or agents (whether direct, indirect or consequential including but not limited to loss of profits, loss of opportunity or loss of goodwill), or for any costs and damages sustained or incurred as a result of a claim by a third party.
- 14.6 The Customer acknowledges that, unless otherwise agreed in writing, any description of the Goods and/or Services given to the Customer by Yetimo:
- (a) is intended only for identification; and
  - (b) is not to be construed or relied upon as being a representation or warranty that the Goods and/or Services will conform to that description.

## 15. Statutory Rights

- 15.1 Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified which operate to protect the purchasers of Goods and/or Services in various circumstances.

## 16. Indemnity

- 16.1 The Customer indemnifies and keeps indemnified Yetimo and its directors, officers, employees and agents (each for whom Yetimo holds this indemnity in trust or as agent, as applicable) jointly and severally, from and against any and all claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, reasonable legal fees) whether for personal injury or property damage, arising out of or in connection with the Customer's purchase, sale, marketing, distribution or use of the Goods and/or Services, whether in their present form or as processed or combined with other materials into another form of goods or services.

## **17. Intellectual Property**

- 17.1 Customer acknowledges Yetimo has valuable Intellectual Property Rights in and relating to the Goods. All of Yetimo's Intellectual Property Rights in and relating to the Goods, including but not limited to the patents and trade marks, remains Yetimo's property and nothing in these Terms operates as an assignment or transfer of any of Yetimo's Intellectual Property Rights.
- 17.2 Upon full payment of all amounts relating to the Goods, Yetimo grants to Customer a non-exclusive perpetual royalty-free licence to use Yetimo's Intellectual Property Rights in the Goods in Australia for the purposes as indicated to us in the order and not otherwise.
- 17.3 The Customer indemnifies Yetimo against all claims, demands, loss, costs and expenses incurred by or made against Yetimo, arising out of any actual or alleged infringement of any intellectual property rights of the Customer or a third party resulting from Yetimo's use of materials provided by the Customer or as requested pursuant to an order for Goods and/or Services.

## **18. Privacy and Personal Information**

- 18.1 Any personal information that is collected, used or disclosed by Yetimo, for the purposes of the sale or supply of Goods and/or Services to the Customer, is treated as confidential and will only be used or disclosed in the following manner:
  - (a) for the purposes of meeting the obligations under these Terms;
  - (b) to respond to any queries that the Customer may have;
  - (c) to recover any goods or money owing to Yetimo; and
  - (d) in compliance with any legislative requirements, including the *Privacy Act 1988* (Cth) (as amended from time to time).

## **19. Force Majeure**

- 19.1 Yetimo will not be liable for any loss caused by its failure or delay to supply, in whole or in part, the Goods and/or Services due to anything outside the reasonable control of Yetimo including but not limited the Force Majeure Events.

## **20. Severance**

- 20.1 Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

## **21. Waiver and Assignment**

- 21.1 No rights of the Customer may be assigned without the express written consent of Yetimo.
- 21.2 No failure, delay, relation or indulgence on Yetimo's part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

## **22. Governing Law**

- 22.1 These Terms will be governed by and construed in accordance with the laws of the State of New South Wales.