

Comcater Pty Ltd (ABN 53 005 974 185).

COMCATER TERMS AND CONDITIONS OF SALE

- 1 These terms and conditions apply to all transactions between the supplier and the customer notwithstanding any statement to the contrary which may be contained in the customer's order.
- 2 These terms and conditions of sale, may be varied by the supplier at any time by notice in writing to the customer.
- 3 Quotations provided by the supplier are to be construed as an invitation to treat and not as an offer to sell the goods the subject of the quotation by the supplier.
- 4 An agreement for sale of the goods arises when an order for the goods is placed by the customer and;
 - (a) That order is accepted by the supplier in writing; or
 - (b) The order is otherwise satisfied or performed in whole or in part by the supplier.
- 5 (a) All prices quoted and any other charges applicable will be exclusive of GST, insurance and delivery charges. GST will be payable by the customer upon supply of Goods. "GST" means GST within the meaning of *A New Tax System (Goods & Services Tax) Act 1999 (as amended)*.
 - (b) Price quotes are subject to variation without notice.
 - (c) Please note that all goods will be supplied in carton quantity only. Customer order quantity will be adjusted to nearest carton quantity.
 - (d) The Cambro product range is sold in carton quantities only. Customer orders will be adjusted to the nearest carton quantity. Cambro returns accepted only in original packaging within 14 days of invoice. Non-stock items ordered cannot be returned. Minimum orders \$200 Nett excluding GST. Orders under this value customer must pay freight. Freight is paid on deliveries meeting minimum order requirements and where previously agreed is F.I.S. to capital cities. We do not freight orders directly to our distributors end users.
- 6 Where the Customer withdraws or cancels any order following acceptance by the supplier the customer will pay to the supplier as a result of such withdrawal by way of liquidated damages an amount equivalent to twenty per cent (20%) of the agreed price of the goods. **ORDERS FOR NON-STOCK ITEMS MAY NOT BE CANCELLED OR RETURNED UNDER ANY CIRCUMSTANCES AT ANY STAGE.**
- 7 Delivery of the goods shall be effected F.O.B. or, in the case of category A items F.I.S. to the capital city in the state in which the order is placed. Such delivery shall only be made to ground floor or kerbside goods receiving areas.
- 8 Any time given for delivery of goods is an estimate only. The supplier shall not be liable for any loss or damage whatsoever by reason of any delays in delivery of the goods and the customer shall not be relieved of any obligation to accept or pay for the goods by reason of such delay. If the supplier, in its sole and absolute discretion, determines that it is or may be unable to complete its obligations within a reasonable time or at all, the contract may be terminated by the supplier. In the event of termination, the customer shall have no claim against the supplier for any damage, loss, cost or expense whatsoever.
- 9 All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the customer's purchase order must be submitted by the customer to the supplier in writing within fourteen (14) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the customer's purchase order.
- 10 (a) The goods shall be subject to a materials and labour warranty (excluding consumables) for 12 months following delivery, in any case where the goods are found to be defective in materials, manufacture or workmanship. Spare parts will be covered by a 90 day warranty for replacement parts only from date of installation. Rational parts carry a 12 month warranty from date of installation. This warranty applies only for the benefit of the customer and is void if installation or operation is not in accordance with the manufacturers instructions and recommendations. Furthermore, all warranty work must be conducted by Comcater staff or their authorised service agents. All warranty calls are to be placed and authorised through our branch offices.
 - (b) All warranty work will be undertaken in normal working hours from Monday – Friday 8am – 4pm. Penalty rates for after hours service apply and when charged, the excess between normal hour labour rates and penalty rates will be the customer's responsibility. Equipment such as Savory toasters, Server products, Maximum blenders and other small equipment are classed as 'carry in' items. These items are to be returned to Comcater/Authorised Service Agent workshop for repair. Transport/freight costs to and from the customer for 'carry in' items are to be covered by the customer. If the customer requests on site service (an option always available to the customer) the customer will be charged callout and travelling costs; the labour for warranty repair time on site will be covered by Comcater.
 - (c) Service work carries a 30 day warranty on workmanship. Penalty rates apply for service work conducted outside of normal working hours Monday-Friday 8am – 4pm.
- 11 Save and except for the express warranty set out above, and to the maximum extent permitted by law, all conditions and warranties which may at any time be implied by the Common Law, the Trade Practices Act, the Fair Trading Act, The Goods Act or any other State or Federal Act are excluded. To the extent that these cannot be excluded and where the law permits, the supplier's liability in respect of any such condition or warranty shall be limited at the option of the supplier to the repair or replacement of the goods or the supply of equivalent goods or the payment of the costs of replacing or repairing the goods or having them replaced or repaired.
- 12 Notwithstanding Clause 17, title to the goods shall remain with the supplier until such time as the supplier has received payment of the purchase price of the goods and the purchase price of any other goods or services previously or subsequently supplied by the supplier to the customer whereupon such title shall pass to the customer.
- 13 Until such time as title of the goods passes to the customer, the customer shall hold the goods as the fiduciary agent of the supplier and shall remain liable to account to the supplier for the goods.
- 14 Subject to Clause 15, the customer shall be entitled to sell the goods in the ordinary course of its business. If the goods are sold by the customer prior to the time when title passes to the customer,
 - (a) the customer must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for,
 - (b) the customer agrees that it holds the proceeds of resupply of the goods on trust for and as agent for the supplier immediately when they are receivable or are received,
 - (c) the customer agrees that it must either pay the amount of the proceeds of resupply to the seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for the seller,
 - (d) the customer agrees that any accessory or item which accedes to any of the goods by an act of the customer or any person at the direction or request of the customer becomes and remains the property of the supplier until the supplier has received payment of the purchase price of the goods in accordance with Clause 12 when the property in the goods (including the accessory) passes to the customer,
 - (e) for the avoidance of doubt, if any goods are used in a manufacturing process or mixed with other materials, the customer must record the value of goods so consumed in relation to each unit of finished product and upon sale of any unit of finished product, immediately remit that amount from the proceed of sale to the supplier. The customer must provide to the supplier monthly or quarterly records of such use.
- 15 That the customer's right to sell the goods in the ordinary course of its business:-
 - (a) may be revoked at any time by the seller giving notice to that effect if the customer is in default for longer than seven days in the payment to any sum whatsoever due to the supplier;
 - (b) shall automatically cease if a receiver, controller, liquidator or administrator is appointed to the assets, undertaking or property of the customer, or a winding up order against the customer is made or petitioned, or any petition or order in bankruptcy against the customer is presented or made, or the customer goes into voluntary liquidation or calls a meeting of or makes arrangements or compositions with its creditors.
- 16 Upon determination of the customer's right of sale pursuant to Clause 15, the customer shall place the goods at the disposal of the supplier who shall be entitled to enter any premises of the customer for the purpose of removing the goods and to remove the goods from the said premises. If the goods have been sold pursuant to Clause 14, the customer must pay to the supplier the proceeds then held by the customer as trustee for the supplier.

- 17 The customer must assume full risk of loss or damage to the goods immediately upon delivery. Pending payment in full for the goods, the customer must not supply any of the goods to any person outside of its ordinary or usual course of business, must not allow any person to have or acquire any security interest in the goods, and must insure the goods for the full insurable or replacement value (whichever is the higher), with an insurer licensed or authorised to conduct the business of insurance in the place where the customer carries on business.
- 18 The invoiced amount to the goods is to be paid by the customer no later than the last day of the month following the month in which the invoice is first issued ("the due date"). Where the customer fails to effect payment within this period, the supplier may at its discretion and without attracting any liability to the customer withhold delivery of all other goods for which orders have been placed by the customer and accepted by the supplier.
- 19 Where payment is not made on the due date, interest on the amount outstanding shall be payable at the greater of the rate of one per cent above the supplier's overdraft rate from time to time, calculated from the due date of the payment until payment is made in full.
- 20 The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by the supplier for enforcement of obligations and recovery of monies due from the Customer to the supplier.
- 21 These terms and conditions shall at all times be governed, construed and interpreted according to the law of the State of Victoria and the customer hereby irrevocably submits to the jurisdiction to the courts of that State and all courts of appeal there from.
- 22 The customer authorises the supplier to:-
 - (a) obtain credit reports from credit reporting agencies and other credit providers concerning the customer's credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by the customer for credit and the customer's credit worthiness.
 - (b) to disclose reports and information to other credit providers about the customer's credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by the customer for credit and the customer's credit worthiness.
- 23 The customer as beneficial owner and/or registered proprietor now charges in favour of Comcater Pty Ltd all of the customer's estate and interest in any real property (including but not limited to any applicable land owned by the customer named or described as the customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by the supplier to the customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by the supplier and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat. The customer further agrees to execute a mortgage or mortgagees in registerable form at the request of the supplier. If, upon request, the mortgage(s) are not executed and returned within fourteen days, then the customer authorises any duly authorised officer of the supplier to sign as attorney. A statement of certificate signed by a duly authorised officer of the supplier as the goods supplied to any indebtedness of the customer should be prima facie evidence of the role.
- 24 Goods returned for credit may incur a restocking fee equal to the percentage of the value of the items returned as indicated on the invoice. Authorisation for return of goods must be sought before the goods are returned.
- 25 The customer grants Comcater a Security Interest in the goods supplied as Commercial Property, more particularly described as Other Goods and their Proceeds to secure the obligation of the customer to pay the purchase price of the goods and any other obligations of the customer to Comcater under this contract (together the "Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the Indebtedness, the security interest shall also extend to all the customer's present and after acquired property, of which the goods form part, to the extent required to secured the Indebtedness.
- 26 As and when required by Comcater the customer shall, at its own expense, provide all reasonable assistance and relevant information to enable Comcater to register a Financing Statement or a Financing Change Statement and generally to obtain, maintain, register and enforce Comcater's Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 2009 ("PPSA").
- 27 The customer shall not change its name without first notifying Comcater of the new name not less than 7 days before the change takes effect.
- 28 The customer warrants that the goods are not purchased for personal, domestic or household purposes.
- 29 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the customer on more than one invoice/order, any payments received from the customer shall be deemed to be made by the customer and applied by Comcater in the following order:
 - (a) To any obligation owed by the customer to Comcater which is unsecured, in the order in which the obligations were incurred.
 - (b) To any obligations that are secured, but not by a Purchase Money Security Interest, in the order in which those obligations were incurred.
 - (c) To obligations that are secured by a Purchase Money Security Interest, in the order in which those obligations were incurred.
- 30 Until the Customer has paid all money owing to Comcater the customer shall at all times ensure that:
 - (a) Goods supplied by Comcater, while in the customer's possession, can be readily identified and distinguished, and/or
 - (b) All Proceeds (in whatever form) that the customer received from the sale of any of the goods are readily identifiable and traceable.
- 31 Where the goods are purchased by the customer and held as Inventory, nothing in this Contract shall prevent the customer from selling or leasing and delivering the goods in the ordinary course of the customer's business. Otherwise until the customer has paid all money owing to Comcater the customer shall not sell or grant a Security Interest in the goods without Comcater's written consent.
- 32 The parties agree to contract out of the PPSA in accordance with Section 115 of the PPSA to the extent that Section 115 applies for the benefit of, and does not impose a burden on Comcater. The customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of Comcater in respect of the Security Interest created by these terms and conditions.
- 33 For the purpose of clauses 25 to 33, all words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of the PPSA.