

## TERMS AND CONDITIONS OF SALE

*These Terms and Conditions apply to Retail Customers. Account Customers (i.e. customers with ongoing accounts with Real Flame) should refer to the complete Terms and Conditions provided to you by Real Flame.*

The supply of all goods (**Goods**) by Real Flame (**Supplier**) shall be subject to these terms and conditions as amended from time to time (**Terms and Conditions**). These Terms and Conditions shall prevail over any other terms and conditions including those implied by statute to the extent permissible at law. You (**Customer**) acknowledge having read the Terms and Conditions prior to purchasing the Goods.

### RETENTION OF TITLE, INSURANCE AND PERSONAL PROPERTIES SECURITIES ACT

Until Goods are paid for in full, the Supplier retains full property, title and interest in such Goods, but risk of loss or damage to such Goods shall pass to the Customer on delivery. While the Supplier retains rights, title and interest in the Goods, the Customer shall store such Goods separately from its own, and must ensure that such Goods are insured with a reputable insurance company, to their full value. The Customer must provide such proof of insurance as is reasonably requested by the Supplier.

While the Customer has not paid in full for the Goods, the Supplier, by its employees or agents, has an irrevocable right to enter any premises occupied by the Customer without notice to search for and remove the Goods supplied. The Customer acknowledges and agrees that it grants the Supplier a security interest in such Goods and their proceeds by virtue of the Supplier's retention of title pursuant to these Terms and Conditions. The Supplier has the right to resell any such Goods regardless of the location of those Goods.

The Customer undertakes to do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the Personal Properties Securities Register ("**PPSR**") under the *Personal Properties Securities Act 2009* (Cth) ("**PPSA**"), and not to change its name in any form or other details on the PPSR without first notifying the Supplier.

The Customer waives its rights to receive a verification statement in respect of any financing statement or financing change statement in respect of the security interest created under these Terms and Conditions. The Supplier need not give any notice under the PPSA unless the notice is required by the PPSA and cannot be excluded.

The terms and expressions used in these Terms and Conditions have the meanings given to them by, or by virtue of, the PPSA.

### ON-SALE

The Supplier authorises the Customer to on-sell the Goods. The Customer shall however, not represent to any parties that it is in any way acting as an agent for the Supplier and the Supplier will not be bound by any contracts with third parties to which the Customer is a party. The Customer shall not modify, amend, or add to the Goods, their packaging or advertising materials in the process of on-selling, or deal with the Goods other than as provided in these Terms and Conditions, or in any way so as to bring the Goods into disrepute or otherwise adversely affect their marketability.

### INTELLECTUAL PROPERTY

The Supplier owns all intellectual property in the Goods and their packaging (**Intellectual Property**). The Supplier grants to the Customer a non-exclusive, royalty free license to use the Intellectual Property solely for the purpose of on-selling the Goods in accordance with these Terms and Conditions. The Customer must provide the Supplier with all such assistance as the Supplier reasonably requests in relation to the protection of the Intellectual Property.

### OBLIGATIONS OF THE CUSTOMER

Should the Customer on-sell the Goods, the Customer must conduct all marketing, distribution and sales activities in connection with the Goods in a lawful manner and comply with all reasonable directions by the Supplier as to how the Customer conducts its dealings with customers.

The Customer agrees to promptly and accurately notify the Supplier of any complaints received by it from any customer in relation to the Goods. The Customer must not make any representations or give any warranties or other benefits in favour of any person in relation to the Goods other than those authorised in writing by the Supplier.

### CLAIMS

Claims in respect of faulty Goods, shortfall or deficient packaging, labelling or delivery must be made in writing to the Supplier within two (2) business days of delivery. Any loss incurred or suffered by the Supplier in respect of or arising as a result of an attempt to return Goods or make a claim in respect of Goods that is not in accordance with these Terms and Conditions may be deducted by the Supplier from any credit granted by it to the Customer, or added to the amount then outstanding.

### RETURNS

All returns other than those relating to faulty Goods must be made in writing to the Supplier within two (2) business days of delivery. A 20% restocking fee will apply to all such returns. No returns will be accepted for custom-made Goods.

### LIABILITY FOR DAMAGES AND WARRANTIES

The Customer and the Supplier agree that the Supplier accepts no responsibility or liability whatsoever or howsoever arising whether in contract or tort or otherwise for loss of profits, business or savings or for any indirect or consequential loss of any nature arising out of or from the use, custody, supply or purchase of the Goods to the fullest extent permitted by law, and the Customer forever discharges the Supplier from all such responsibilities and liability, claims, demands or actions in respect thereof.

Notwithstanding any other clause in this agreement the Supplier gives no express warranty in relation to the supply of the Goods and the Customer acknowledges that it has not relied on any representation or warranty made by or on behalf of the Supplier in relation to the Goods and their supply.

Where the *Australian Competition and Consumer Act 2010* (Cth) and similar State and Territory legislation implies covenants and warranties into the agreement for the supply of the Goods for the benefit of the Customer, then to the extent that those conditions and warranties may as between the Customer and Supplier be lawfully excluded, all such conditions and warranties are expressly excluded.

Where the Supplier becomes liable to the Customer in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of Goods then the Supplier's liability will be limited, at the Supplier's sole and absolute discretion, to either (a) the replacement of the Goods (or the supply of equivalent Goods); (b) the price paid to the Customer for the Goods; (c) the cost to repair the Goods; or (d) the cost of the resupply of the Goods.

### GENERAL

**Service:** Service of any notice, document or court proceeding on the Customer shall be deemed to have occurred if they are served to the business address specified on the invoice.

**Receipt:** Under no circumstances may the Customer deny that it has evidenced receipt of Goods by signature, if any employee, agent or carrier utilised or employed by the Customer provides such signature.

**Trusts:** Should the Customer be a Trustee of a Trust then the Customer shall be liable both in its own capacity and in its capacity as Trustee of the Trust for the performance of all obligations to the Supplier.

**Disputes:** Any disputes with the Supplier shall be subject to the Laws and Courts of the State of Victoria.