

A man with dark hair and a beard, wearing a blue button-down shirt, is shaking hands with a woman with blonde hair, wearing a dark green button-down shirt. They are both smiling. The woman is holding a grey folder. They are standing in front of a large window that looks out onto a building and green trees. The scene is brightly lit, suggesting daytime.

# General Terms and Conditions of Trade

These Terms and Conditions of Sale ("Conditions") apply to all transactions in relation to the supply by Blum Australia Pty. Ltd. ABN 80 076 459 713 ("Blum") of goods ("Goods") to buyers, including all quotations, offers and purchase orders made or accepted by Blum.

These Conditions (which can only be waived or varied in writing by Blum) will prevail over all conditions of buyers to the extent of any inconsistency.

These Conditions can be amended from time to time by Blum giving written notice ("Change Notice") of the amendment to buyers. Any such amendments only apply to orders for Goods which are placed after the date of the Change Notice .

### **Price**

1. Blum will notify buyers of its current prices by distributing its standard price list. However, Blum may change its prices by at any time by giving notice in writing ("Price Change Notification"). These alterations may arise from material changes in raw material costs, fluctuations in foreign currency exchange rates or changes in transport costs. Also, Blum may make changes to its Goods which cause alterations to their price. The changed prices shall apply to orders for Goods which are placed after the Date of the Price Change Notification.
2. Unless specifically stated, prices quoted are exclusive of any GST, costs of removal or installation of Goods, freight costs and costs for labour or services supplied by third parties.

### **Orders**

3. Neither a buyer's quotation nor any order submitted or placed by a buyer ("Order") shall be binding on Blum unless and until Blum has given written acknowledgement of its acceptance on terms which include these Conditions ("Order Confirmation"). If Goods are supplied without an Order Confirmation, the applicable invoice shall be deemed to constitute the Order Confirmation.
4. Each supply which Blum makes in response to an Order will be regarded as a separate contract for sale.

### **G.S.T.**

5. If GST is imposed on a Taxable Supply made by Blum to the buyer under or in connection with these Conditions, the Price of the Taxable Supply shall be equal to the GST-exclusive consideration that the buyer must pay to Blum for the Taxable Supply under these Conditions increased by an amount (the GST Amount) equal to the amount of GST payable on that Taxable Supply and the GST Amount is, subject to Blum issuing a Tax Invoice to the Customer, payable at the same time and in the same manner as the consideration to which it relates. In these Conditions "GST" means the goods and services tax or similar value added tax levied or imposed in Australia under the GST Act and includes any replacement or subsequent similar tax; "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and "Taxable Supply" and "Tax Invoice" have the same meaning as in the GST Act.

### **Payment**

6. Unless otherwise agreed in writing, accounts are payable at Blum's address (see above) after receipt of Goods no later than the date stated on the account. All payments must be made directly and exclusively to Blum. Blum does not accept payment by third parties. Blum's servants or agents are not entitled to collect payments.
7. Blum may refuse to make further deliveries to a buyer who has reached the credit limit as approved by Blum or who has not met its payment obligations in accordance with these Conditions.
8. The buyer may not withhold or set off any payment or make deductions from any amount owing to Blum without Blum's prior written consent.

### **Delivery**

9. Unless the buyer specifies otherwise in writing, Blum will deliver the Goods to the buyer's premises. Blum uses its reasonable endeavours to deliver by any agreed delivery date. However, failure to do so does not entitle the buyer to cancel its order nor will Blum be liable for any consequential or other loss resulting partly or wholly from late delivery.
10. Unless otherwise agreed, the buyer will be responsible for payment of any freight charges for deliveries.
11. Buyers must inspect Goods on delivery.
12. Any claims that Goods are not as ordered or are faulty must be made to Blum in writing within 5 business days of delivery and must be supported by copies of the invoice, full details of the reason for the claim and, where appropriate, the return of the Goods. If such a claim is not made within 5 business days of delivery, the Goods are deemed accepted by the buyer and cannot be rejected.
13. The buyer may only return incorrectly ordered Goods within 5 business days from the date of delivery and subject to Blum providing its prior written consent. Where a buyer returns Goods in accordance with this clause, the buyer must do so at its own cost and Blum has the right to charge the buyer an administrative charge of 10% of the invoice value of the Goods so returned and an amount equal to the normal depreciable wear on a pro-rata basis as determined by Blum in its absolute discretion.

**Risk, Retention of Title and Default**

14. The risk in the Goods passes to the buyer at the time the Goods leave the warehouse of Blum and the buyer will insure all Goods that are at the buyer's risk.
15. Notwithstanding that risk passes to a buyer, until the buyer has effected full payment for the Goods and any other goods previously supplied by or on behalf of Blum:
  - (a) title and property in the Goods will remain with Blum;
  - (b) the relationship between the buyer and Blum will be fiduciary;
  - (c) the buyer will hold the Goods as bailee for Blum, keep the Goods separate from other Goods and label the Goods so that they are identifiable as the Goods of Blum;
  - (d) Blum may without demand take possession of the Goods and may without notice sell the Goods on such terms and in such manner as it determines and will be entitled to deduct all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, the buyer irrevocably authorises and licenses Blum and its servants and agents to enter any premises where any Goods may be stored and to take possession of the Goods; and
  - (e) with Blum's consent (which is given), the buyer is at liberty to sell the Goods, in the ordinary course of the buyer's business, provided that the buyer is not an agent of Blum in any sale of the Goods by the buyer. The buyer agrees to assign to Blum any payment claims which the buyer has against the purchaser of the Goods, whereby the amount payable to Blum as a result of this assignment shall not exceed the amount owing by the Buyer to Blum in respect of the Goods.
16. If:
  - (a) the buyer fails to pay Blum in accordance with these Conditions,
  - (b) if Blum has reasonable grounds to believe that the Goods will be destroyed, damaged, endangered or removed from the buyer's normal place of business or normal location; or
  - (c) on the happening of any of the events set out in clause 17, the following applies:
    - (i) Blum has the right to withhold delivering further Goods;
    - (ii) Blum can exercise its rights under clause 15, whereby Blum is not liable for any damage or injury to any premises caused by Blum exercising its rights under clause 15(d) unless such damage is solely caused by wilful negligence of Blum, its servants or agents; and
    - (iii) Blum has the right to require payment of all monies payable by the customer whether due then or later.
17. The buyer shall give immediate notice to Blum if:
  - (a) the buyer becomes insolvent under administration as defined in Section 9 of the Corporations Act 2001;
  - (b) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the buyer or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
  - (c) the buyer resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
  - (d) the buyer becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;
  - (e) proceedings are commenced to make the buyer bankrupt or the buyer becomes bankrupt
  - (f) an event analogous to any of those set out in clauses 17(a) to 17(e) occurs.

**Personal Property Securities Act 2009 ("PPSA")**

18. The buyer acknowledges and agrees that it grants Blum a security interest in the Goods and their proceeds by virtue of Blum's retention of title pursuant to clause 15.
19. The buyer undertakes to:
  - (a) do all things necessary and provide Blum on request all information Blum requires to register a financing statement or financing change statement on the Personal Property Securities Register ("PPSR"); and
  - (b) not to change its name in any form or other details on the PPSR without first notifying Blum.
20. The buyer 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 by these Conditions.
21. To the maximum extent permitted by law, the buyer waives any rights it may have pursuant to, and the parties contract out of, the following sections of the PPSA:
  - (a) section 95 (notice of removal of accession) to the extent that it requires Blum to give notice to the buyer;
  - (b) section 123(2) (notice of seizure);
  - (c) section 125 (obligation to dispose of or retain collateral);
  - (d) section 129(2) (notice of disposal by purchase);
  - (e) section 130 (notice of disposal) to the extent that it requires Blum to give notice to the buyer;
  - (f) section 132(3)(d) (contents of statement of account after disposal);
  - (g) section 132(4) (statement of account if no disposal);
  - (h) section 134(1) (retention of collateral);
  - (i) section 135 (notice of retention);
  - (j) section 142 (redemption of collateral); and
  - (k) section 143 (reinstatement of security agreement).



22. The buyer appoints Blum as its attorney to sign in the buyer's name all documents which Blum considers necessary to enforce or protect its rights and powers under these Conditions and to perfect, preserve, maintain, protect or otherwise give full effect, under the PPSA and related regulations, to these Conditions and the Security Interest created by these Conditions.
23. These Conditions create a Security Interest in all Goods which Blum has supplied to the buyer and all Goods which Blum supplies to the buyer in the future. Initial registration of a financing statement by Blum in respect of the buyer under the PPSA covers Security Interests in Goods supplied now or subsequently under these Conditions.
24. Unless otherwise defined in these Conditions, the terms and expressions used in clauses 18 to 23 have the meanings given to them by, or by virtue of, the PPSA.

**Limitation of Liability and Warranties**

25. Nothing in these Conditions excludes, restricts or modifies the Application of Part 3-2 Div. 1 of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) ("ACL").
26. To the extent permitted by law and subject to clause 25, all conditions and warranties (whether express or implied by statute or common law or arising from conduct or by previous course of dealing or trade custom or trade usage or otherwise) as to the Goods and services, including but not limited to its quality or fitness for any particular purpose (even if that purpose is made known expressly or by implication to the buyer) are hereby expressly excluded.
27. Subject to clause 25, Blum shall not be liable to the buyer in any circumstances for any loss, damage, cost, loss of profits, anticipated savings, wasted expenditure, loss of contracts with third parties, goodwill or any type of special, indirect or consequential loss whether suffered by the buyer or by any third party and whether or not Blum was aware that such loss was possible or such loss was otherwise foreseeable, whether such loss arises from any representation, recommendation or advice made or given in relation to the Goods, the use of the Goods or the failure by Blum to observe and fulfil its obligations under these Conditions or otherwise.
28. To the fullest extent permitted by law, Blum's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by Blum in its absolute discretion:
- (a) in the case of Goods, the replacement repair or payment of the cost of replacement or repair of the Goods; and
  - (b) in the case of services, supplying the services again or payment of the cost of having the services supplied again.
29. The buyer shall indemnify Blum for and in respect of claims by any third party under the ACL in relation to the Goods which arise from, or can be attributed to, an act or omission of the buyer, its employees, agents or contractors.

**Force Majeure**

30. Without limiting the generality of clause 25, Blum is not liable to a buyer or any other person for any consequential or other loss caused by Blum's failure to perform its obligations under these Conditions if such failure is caused by anything beyond Blum's reasonable control including, but not limited to, war Act of God, strike, lock out, shortened hours of labour, transport delays, inability to obtain supplies, accidents, destruction of or damage to offices or factories, interference by any government or other authority, fire, flood, tempest, or breakdown in machinery (including computer equipment. In this case Blum will have the right to either suspend deliveries without notice or to cancel the contract without liability.

**Severability**

31. If any one or part of these Conditions is illegal, invalid or unenforceable it shall be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it shall be severed from these Conditions, but in any event the remaining Conditions and any other provisions of the agreement of which these Conditions form part shall remain in full force and effect.

**Law and Jurisdiction**

32. These terms and conditions are governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State.

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