

Disclosure of Key Terms relating to the supply of goods or services to consumers

Section 47A Fair Trading Act 1987 (NSW) ("the Act")

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Trading Terms between Trendep Pty Ltd t/as Cook-N-Dine Australasia (**Us, We, Our**) and the Customer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

1. Clause 3.2- Exclusion of Warranties

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate you for:

- (a) Any increased costs or expenses you may incur;
- (b) Any loss of profit, revenue, business, contract or anticipated savings;
- (c) Any loss or expense resulting from a claim by a third party; or
- (d) Any special, indirect or Consequential Loss or damage of any nature.

2. Clause 4 – Limitation of Liability

This clause limits the remedies available to You if the Goods or services provided by Us are faulty, for example we may replace the Goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

3. Clause 16 – Indemnity

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

**Trendep Pty Ltd t/as Cook 'N' Dine Australasia
ACN 641 461 458
(Company)
Trading Terms and Conditions
For Sale of Goods**

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

1 Interpretation

In these Terms unless the contrary intention appears:

Additional Charges includes all delivery, handling and storage charges including air freight charges, goods and services and or taxes, duty, custom charges, import charges, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Company arising out of the sale of the Goods.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means the person to or for whom the Goods are to be supplied by Company.

Force Majeure Event means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Customer by Company and includes any services provided by Company to Customer.

Intellectual Property Right means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Purchase Price means the list price for the goods as charged by Company at the date of delivery or such other price as may be agreed by Company and the Customer prior to delivery of the Goods.

Site means the Company's website at <http://www.cookndine.com.au> or such other website address of the Company from time to time.

Special Order means an order for Goods that has been either made to order for a Customer or which is not held in stock in Australia by the Company.

2 Order for Goods

2.1 An order given to Company is binding on Company and the Customer, if:

2.1.1 a written or verbal acceptance is given for or on behalf of Company (including by way of issue of an invoice to the Customer); or

2.1.2 the Goods are supplied by Company in accordance with the order.

2.2 An acceptance of the order by Company is then to be an acceptance of these Terms by Company and the Customer and these Terms will override any conditions contained

in the Customer's order. Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on Company until accepted by it.

- 2.3 An order which has been accepted in whole or in part by Company cannot be cancelled by the Customer without obtaining the prior written approval of Company, which it may refuse in its absolute discretion.

3 Warranties

- 3.1 If the Customer is deemed to be a consumer pursuant to the Australian Consumer Law, then:

3.1.1 For Goods:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3.1.2 For Services:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

- 3.2 A manufacturer's warranty may apply to the Goods and if applicable, will be provided separately to these Terms.
- 3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Company are

excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

- 3.3.1 any increased costs or expenses;
- 3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;
- 3.3.3 any loss or expense resulting from a claim by a third party; or
- 3.3.4 any special, indirect or Consequential Loss or damage of any nature whatsoever caused by Company's failure to complete or delay in completing the order to deliver the Goods.

4 Limitation of Liability

- 4.1 The Company's liability is limited, to the extent permissible by law and at the Company's option, to;

4.1.1 in relation to the Goods:

- 4.1.1.1 the replacement of the products or the supply of equivalent products
- 4.1.1.2 the repair of the products
- 4.1.1.3 the payment of the cost of replacing the products or of acquiring equivalent products; or
- 4.1.1.4 The payment of the cost of having the products repaired

4.1.2 Where the Goods are services:

- 4.1.2.1 the supply of service again; or
- 4.1.2.2 the payment of the cost of having the services supplied again.

- 4.2 To the extent permitted at law, any claims to be made against the Company for short delivery of Goods must be lodged with the Company in writing within 7 days of the delivery date.

5 Delivery

- 5.1 The times quoted for delivery are estimates only and Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Company.
- 5.2 The Company may, as far as reasonably practicable, provide the Customer with an estimate of the delivery charges prior to despatch.
- 5.3 Risk in accepting the Goods passes on delivery to the Customer.

- 5.4 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.
- 5.5 Return of Goods will not be accepted by Company except by prior agreement in writing with Company. Any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods. The Customer must pay the freight costs associated with the return of Goods under this clause. For the avoidance of doubt and to the extent permitted at law, a return of Goods will not be accepted for Special Order Goods.

6 Price and Payment

- 6.1 The Customer must pay the Purchase Price and the Additional Charges to Company.
- 6.2 The Customer may be required to pay a deposit of 50% of the Purchase Price or such other percentage to Company on placing of an order.
- 6.3 Unless the Customer has a credit account in the Customer's name with the Company, the total amount of an invoice (less any deposit paid) including the Additional Charges are payable by the Customer on placement of order for the Goods by the Customer.
- 6.4 If the Customer has a credit account in the Customer's name with the Company, all payments are due within 7 days of the date of invoice. Interest is charged at the rate of 1.5% per month from the expiry of that period until the date payment is received by Company.
- 6.5 If the Customer is in default, Company may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.
- 6.6 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

7 Orders placed on the Company's Site

- 7.1 This clause 7 applies to all orders placed on or via the Company's Site.
- 7.2 The Customer may make payment by via EFT to a bank account nominated by the Company or by credit card or debit card.
- 7.3 All prices listed on the Site are subject to change. In the event Goods are listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from the Company's suppliers, the Company will have the right, to refuse or cancel any such orders whether or not the order has been confirmed and the Customer's credit card, debit card or other account charged. If the Customer's credit card, debit card or other account has

already been charged for the purchase and the Customer's order is cancelled, the Company shall issue a credit to the Customer's credit card, debit card or other account in the amount of the charge.

- 7.4 The availability of Goods and other items on the Site may change at any time, but the Company will update the Site as soon as reasonably practicable.
- 7.5 Due to photographic and screen limitations associated with the representation of Goods, some Goods may differ to a small extent in visual appearance (for example in colour) from the way they appear on the Site.
- 7.6 Occasionally there may be information on the Company's Site that contains typographical errors, inaccuracies, or omissions that may relate to descriptions of the Goods, pricing, promotions, offers, and availability. The Company reserves the right to correct any errors, inaccuracies or omissions and to change or update information as soon as reasonably practicable after it becomes aware of such errors, inaccuracies or omissions or to cancel or ceasing the processing of orders if any information on the Site is inaccurate at any time and cancellation of any order in these circumstances shall be deemed reasonable notice to the Customer (including if it occurs after the Customer has submitted an order). If the Customer's credit card or debit card has already been charged, a credit will be issued.
- 7.7 The Company reserves the right at any time after receipt of the Customer's order to accept or decline the Customer's order for any reason. If the availability of stock changes after receipt of a Customer's order, the Company reserves the right to supply less than the ordered quantity. The Company may require additional verifications or information before accepting any order. Notwithstanding the foregoing, the Customer agrees that, if the Company cancels all or a portion of the Customer's order or if the Company provides the Customer with less than the quantity the Customer ordered, then to the extent permitted at law, the Customer's sole and exclusive remedy will be one of the following:
 - 7.7.1 the Company will issue a credit to the Customer's credit card, debit card or other account in the amount charged for the cancelled portion or the quantity not provided (if the Customer's credit card, debit card or account has already been charged for the order); or
 - 7.7.2 the Company will not charge the Customer for the cancelled portion of the order or the quantity not provided.

7.8 Where the Company uses third-party payment processors ("**Payment Processors**") to process the Customer's payments, the processing of payments will be subject to the terms conditions and privacy policies of the Payment Processors in addition to these Terms. The Company is not responsible for any error by the Payment Processors.

7.9 The Payment Processors are regulated and authorised to provide payment services in the countries where they operate. The Company may share the Customer's personal or transactional information with Payment Processors when it's necessary to process payments.

8 Special Order Goods

8.1 Notwithstanding any other clause of these Terms, the Customer must pay the Purchase Price in full for any Special Order Goods on placement of order as well as any Additional Charges.

8.2 To the extent permitted at law, Special Order Goods will not in any case be eligible for a refund after the Customer has placed the order for Special Order Goods with the Company.

9 Storage

9.1 In the event the Company is required or request by the Customer to hold the Goods for any period of time after the Company is ready, willing and able to delivery the Goods or make them available for collection, the Company will store the Goods either at its premises or at any storage facility it deems suitable for the purpose until the Goods are required to be delivery to or collected by the Customer. The Company will charge and the Customer agrees to pay reasonable storage costs as Additional Charges.

10 Installation

10.1 The Customer acknowledges that:

- 10.1.1 built-in models of the Goods must be installed by the Customer;
- 10.1.2 the Goods must be installed in accordance with any installation instructions provided by the Company to the Customer;
- 10.1.3 operation of the Goods before installation is completed will cause irreparable damage to the Goods; and
- 10.1.4 to the extent permissible at law, if the Goods are not installed in accordance with any installation instructions or the Goods are operated before installation any warranty provided by the

Company or a manufacturer will be voided and the Company is not liable for any loss or damage suffered by the Customer.

11 Intellectual Property

11.1 All branding and artwork provided by the Customer is the intellectual property of the Customer. Artwork and branding supplied will only be used for the purposes of satisfying these Terms.

11.2 Customer warrant that the use by Company of any intellectual property provided by Customer to Company so that Company may provide the Goods and/or services under these Terms does not infringe any Intellectual Property Rights.

11.3 Customer must indemnify and keep indemnified Company against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, alleging that the Goods infringe the Intellectual Property Right of the third part due to Company's use in the production of the Goods of any branding, artwork or other intellectual property provided to Company by Customer.

12 Retention of Title

12.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with Company until payment in full for the Goods and all sums due and owing by the Customer to Company on any account has been made. Until the date of payment:

12.1.1 the Customer has the right to sell the Goods in the ordinary course of business;

12.1.2 the Goods are always at the risk of the Customer.

12.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:

12.2.1 if any payment to Company is not made promptly before the due date for payment;

12.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Company is dishonoured;

12.3 In the event of a default by the Customer, then without prejudice to any other rights which Company may have at law or under this Agreement:

12.3.1 Company or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

12.3.2 Company may recover and resell the Goods;

12.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of Company and the Customer may be ascertained. Company must promptly return to the Customer any goods the property of the Customer and Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

12.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay Company such funds held in trust upon the demand of Company.

12.4 Separately, Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined in the PPSA) as original collateral, or any of it, in favour of the Company.

13 PPSA

13.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

13.2 Company and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:

13.2.1 a Purchase Money Security Interest ("PMSI") in favour of Company over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and

13.2.2 a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.

13.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

13.4 The Proceeds of sale of the Collateral referred to in clause 13.2.1 falls within the PPSA classification of "Account".

13.5 Company and the Customer acknowledge that Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.

13.6 To the extent permissible at law, the Customer:

13.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Company.

13.6.2 agrees to indemnify Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

13.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Company; and

13.6.2.2 enforcement or attempted enforcement of any Security Interest granted to Company by the Customer;

13.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;

13.6.4 agrees to waive its right to do any of the following under the PPSA:

13.6.4.1 receive notice of removal of an Accession under section 95;

13.6.4.2 receive notice of an intention to seize Collateral under section 123;

13.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;

13.6.4.4 receive notice of disposal of Collateral under section 130;

13.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);

13.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

13.6.4.7 receive notice of retention of Collateral under section 135;

13.6.4.8 redeem the Collateral under section 142; and

13.6.4.9 reinstate the Security Agreement under section 143.

13.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

14 On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

14.1 inform any third party involved of these Terms;

14.2 inform any third party of Company's product warranties if any; and

14.3 not make any misrepresentations to third parties about the Goods.

15 Trustee Capacity

If Customer is the trustee of a trust (whether disclosed to Company or not), Customer warrants to Company that:

15.1 Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;

15.2 Customer has the right to be indemnified out of trust assets;

15.3 Customer has the power under the trust deed to enter into this Agreement; and

15.4 Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

16 Indemnity

To the full extent permitted by law, Customer will indemnify Company and keep Company indemnified from and against any liability and any loss or damage Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

17 Force Majeure

17.1 The Company will not be liable for the consequences of any failure or delay in

performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.

17.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these terms in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

18 General

18.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010 (Cth)* (**CCA**) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

18.2 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

18.3 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

18.4 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

18.5 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

Signature: _____

Position: _____

Date: _____