

GIPPY GOURMET
TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

"**ACL**" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"**consumer**" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Contract;

"**Contract**" means any contract for the provision of goods or services by Gippy Gourmet to the Customer;

"**Customer**" means the person, jointly and severally if more than one, acquiring goods or services from Gippy Gourmet;

"**Gippy Gourmet**" means Stephen Gardner trading as Gippy Gourmet (ABN 80 083 004 966);

"**goods**" means goods supplied by Gippy Gourmet to the Customer;

"**GST**" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"**Quote**" means a verbal or written (by electronic or other means) representation by Gippy Gourmet as to the offer price for the goods or services contemplated;

"**services**" means services supplied by Gippy Gourmet to the Customer in connection with the goods; and

"**Terms**" means these Terms and Conditions of Trade.

2. Basis of Contract and Orders

2.1 Unless otherwise agreed by Gippy Gourmet in writing, the Terms apply exclusively to every Contract and cannot be varied or replaced by any other terms, including the Customer's terms and conditions of purchase (if any).

2.2 Orders for goods and services may be placed by telephone, email or via the website www.gippygourmet.com.au.

2.3 A Contract is accepted by Gippy Gourmet when Gippy Gourmet accepts the Customer's Order in writing or electronic means, or provides the Customer with the goods or services.

2.4 Gippy Gourmet in its absolute discretion may refuse to accept any Order.

2.5 The Customer must provide Gippy Gourmet with its specific requirements, if any, in relation to its Order.

2.6 All Orders must be placed in accordance with Gippy Gourmet's procedures as specified from time to time.

2.7 Where the Customer has a standing Order with Gippy Gourmet, the Customer must provide Gippy Gourmet with at least 48 hours notice of cancellation or variation to that Order.

2.8 Gippy Gourmet may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to Orders placed after the notice date.

3. Pricing

3.1 The price for the goods or services will be:

- (a) the prices contained in Gippy Gourmet's price list (as amended from time to time) at the time of delivery; or
- (b) as indicated on invoices provided by Gippy Gourmet to the Customer in respect of the goods or services provided.

3.2 Prices quoted for the supply of goods or services exclude GST.

3.3 If the Customer requests any variation to the Contract, Gippy Gourmet may increase the price to account for the variation.

3.4 Where there is any change in Gippy Gourmet's costs incurred in relation to goods or services, Gippy Gourmet may vary its price to take account of any such change, by notifying the Customer.

4. Payment

4.1 Unless otherwise agreed in writing and subject to clause 4.2 payment for the goods or services must be made in full without any deduction or set-off on the due date as specified on Gippy Gourmet's invoice or other order forms. If no time is stated, then payment is due immediately on the delivery of the goods or completion of the services. Gippy Gourmet reserves the right to require payment of a deposit at any time prior to delivery.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at Gippy Gourmet's sole discretion immediately upon giving the Customer written notice.

4.4 The time for payment is of the essence.

5. Payment Default

5.1 If the Customer defaults in payment by the due date of any amount payable to Gippy Gourmet, then all money which would become payable by the Customer to Gippy Gourmet at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Gippy Gourmet may, without prejudice to any of its other accrued or contingent rights:

- (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 2 per cent for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify Gippy Gourmet from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract, to recover any goods, or to recover any sum due;
- (c) cease or suspend supply of any further goods or services to the Customer;
- (d) by written notice to the Customer, terminate any uncompleted contract with the Customer;
- (e) if payment is not made two months after the due date, charge the Customer an administration fee of the greater of \$20.00 or 10.00% of the overdue amount.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at Gippy Gourmet's option:

- (a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the

benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

5.3 The Customer hereby charges all its right, title and interest in the property or properties referred to in Part 1 of this Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of Gippy Gourmet, with the due and punctual observance and performance of all of the obligations of the Customer. The Customer indemnifies Gippy Gourmet against all expenses and legal costs (on a solicitor/own client basis) for preparing, lodging and removing any caveat.

5.4 The Customer hereby acknowledges that Gippy Gourmet may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under this clause. Such registration of a caveat by Gippy Gourmet over the Customer's property or properties must not be challenged by the Customer in any way whatsoever, and the Customer agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Customer has paid all monies owing by it to Gippy Gourmet as claimed from time to time.

6. Passing of Property

6.1 Until Gippy Gourmet receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to Gippy Gourmet by the Customer:

- (a) title and property in all goods remain vested in Gippy Gourmet and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for Gippy Gourmet;
- (c) the Customer must keep the goods separate from its goods and maintain Gippy Gourmet's labelling and packaging;
- (d) the Customer must hold the proceeds of any sale of the goods on trust for Gippy Gourmet in a separate account however failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee;
- (e) Gippy Gourmet may without notice, enter any premises where it suspects the goods are and remove them, and for this purpose the Customer irrevocably licences Gippy Gourmet to enter such premises and also indemnifies Gippy Gourmet from and against all costs, claims, demands or actions by any party arising from such action.

7. Risk and Insurance

7.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer.

7.2 If any goods are damaged or destroyed prior to property in them passing to the Customer, Gippy Gourmet is entitled, without prejudice to any of its other rights or remedies under these Terms (including right to receive payment of the balance of the price of

the goods), to receive all insurance proceeds payable for the goods. This applies whether or not the price has become payable under the Contract. The production of these Terms by Gippy Gourmet is sufficient of Gippy Gourmet's rights to receive the insurance proceeds without the need for any person dealing with Gippy Gourmet to make further enquiries.

7.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by Gippy Gourmet, unless recoverable from Gippy Gourmet on the failure of any statutory guarantee under the ACL.

8. Performance of Contract

8.1 Any period or date for delivery of goods or provision of services stated by Gippy Gourmet is an estimate only and not a contractual commitment.

8.2 Gippy Gourmet will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

8.3 If Gippy Gourmet cannot complete the services by any estimated date, it will complete the services within a reasonable time.

9. Delivery

9.1 Unless otherwise agreed, Gippy Gourmet will arrange for the delivery of the goods to the address nominated by the Customer in writing.

9.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the point of delivery.

9.3 Gippy Gourmet may make part delivery of goods and may invoice the Customer for the goods so delivered.

9.4 The Customer indemnifies Gippy Gourmet against any loss or damage suffered by Gippy Gourmet, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and Gippy Gourmet has not used due care and skill.

9.5 If delivery is attempted but is unable to be completed the Customer is deemed to have taken delivery of the goods.

9.6 If the Customer is to collect the goods itself, then the Customer must arrange, at its own cost, for the collection of the goods from Gippy Gourmet's premises within 24 hours of notification that the goods are ready. If the Customer does not collect the goods within this time, then the Customer is deemed to have taken delivery of the goods from such date and is liable for storage charges payable weekly on demand.

10. Liability

10.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.

10.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against Gippy Gourmet for failure of a statutory guarantee under the ACL.

- 10.3 If the Customer on-supplies the goods to a person who is a consumer, then payment of any amount required under section 274 of the ACL is the absolute limit of Gippy Gourmet's liability to the Customer, howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 10.4 Gippy Gourmet is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, other than if the Customer is a consumer then to the extent the loss was reasonably foreseeable.
- 10.5 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 11. Acknowledgements**
- 11.1 The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by Gippy Gourmet in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication to Gippy Gourmet any purpose for which it requires the goods and services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the Customer's use.
 - (c) Gippy Gourmet may use voice recording technology to record and verify Orders placed.
- 12. Cancellation**
- 12.1 If Gippy Gourmet is unable to deliver or provide the goods or services, then it may cancel the Customer's Order (even if it has already been accepted) by written or verbal notice to the Customer.
- 12.2 No purported cancellation or suspension of an Order or any part of it by the Customer is binding on Gippy Gourmet once the Order has been accepted and Gippy Gourmet reserves the right to charge a cancellation fee.
- 13. Returns**
- 13.1 Subject to clause 13.3 and 13.6, Gippy Gourmet will not be liable for any shortages, damage or non-compliance with the specifications in the Contract unless:
- (a) the Customer notifies Gippy Gourmet with full details within 12 hours of delivery specifying the shortage non-compliance; and
 - (b) Gippy Gourmet is given an opportunity to inspect the goods and investigate the complaint before any further dealing with the goods.
- 13.2 The quantity of goods delivered must not exceed nor fall short of the amount specified in the Order to an extent greater than 5%. If Gippy Gourmet delivers a quantity of goods that exceeds or falls short of the amount specified in the Order by less than 5%, then the Customer must accept delivery of the goods and Gippy Gourmet must adjust the price accordingly on a pro rata basis.
- 13.3 Where Gippy Gourmet accepts any other shortages, claims for damaged goods or non-compliance with the Contract specifications, the Customer must return the goods to Gippy Gourmet at the Customer's cost within 3 days. Gippy Gourmet may, at its option, replace the goods, or refund the price of the goods.
- 13.4 Subject to clause 13.5, Gippy Gourmet will not under any circumstances accept goods for return that:
- (a) have not been stored or handled in accordance with Gippy Gourmet instructions or any legislative requirements pertaining to food safety or food handling;
 - (b) have been specifically produced, imported or acquired to fulfill any contract;
 - (c) have been opened or unpacked in any way;
 - (d) have been displayed for sale;
 - (e) have been used or altered in any way; or
 - (f) are not in their original condition and packaging.
- 13.5 If the Customer wishes to return the goods for reason of change of mind then Gippy Gourmet may at its absolute discretion accept the goods for return and refund the purchase price of the goods less a 20% handling fee. The cost of freight will be the Buyer's responsibility.
- 13.6 If the Customer is a consumer, nothing in this clause 13 limits any remedy available for failure of the guarantees in sections 56 and 57 of the ACL.
- 14. Force Majeure**
- 14.1 Gippy Gourmet is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control, including without limitation industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism, or acts of war. If an event of force majeure occurs, Gippy Gourmet may suspend or terminate the Contract by written notice to the Customer.
- 15. Miscellaneous**
- 15.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 15.2 Gippy Gourmet's failure to enforce any of these Terms shall not be construed as a waiver of any of Gippy Gourmet' rights.
- 15.3 If any of the Terms is unenforceable it shall be read down so as to be enforceable or, if it cannot be so read down, the term shall be severed from the Terms without affecting the enforceability of the remaining terms.
- 15.4 The Customer undertakes to give Gippy Gourmet not less than 14 days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, or business practice).
- 15.5 The Customer authorizes Gippy Gourmet to license or sub-contract all or any parts of its rights and obligations under these Terms.
- 15.6 A notice may be given verbally or in writing. Where given in writing, the notice must be handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by

pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed to be received upon confirmation of successful transmission.