

## DIRECT HOSPITALITY PTY LTD TERMS OF TRADE

**THE CUSTOMER NAME:** .....

### 1. INTERPRETATION

In these terms of trade-"The Customer" means the person (which expression includes any body corporate) specified above, or if no such person is specified, the person to whom these terms are provided by Direct Hospitality Pty Ltd." Direct Hospitality Pty Ltd " means the persons or entity trading as Direct Hospitality Pty Ltd, including any successors of those persons or entity. "Goods" means any goods sold or provided to the Customer by Direct Hospitality. "Special order" means any order for goods placed by the Customer with Direct Hospitality Pty Ltd in circumstances where such goods are not normally stocked by Direct Hospitality Pty Ltd.

### 2. TERMS TO BE CONTAINED IN EVERY AGREEMENT

These terms of trade shall apply to every provision of goods by Direct Hospitality Pty Ltd to the Customer. They constitute a full and complete statement of the agreement between Direct Hospitality Pty Ltd and the Customer and no modification or variation of any term of the agreement shall be binding unless it is made in writing and signed by Direct Hospitality Pty Ltd. The agreement shall not be modified or varied by the acknowledgement, receipt or acceptance by Direct Hospitality Pty Ltd of a purchase order form or other document containing Terms and Conditions put forward by the Customer. Nothing contained in these terms shall be read as excluding, restricting or modifying any conditions or warranties which are implied by legislation (including Schedule 2 of the Competition and Consumer Act 2010) or any other legislation and which cannot be lawfully excluded, restricted or modified by agreement.

### 3. DIRECT HOSPITALITY TO PROVIDE GOODS TO THE CUSTOMER

The Customer agrees that in return for Direct Hospitality Pty Ltd providing goods to the Customer from time to time it will pay Direct Hospitality Pty Ltd's fees and charges (including GST), such fees and charges to be calculated based on Direct Hospitality Pty Ltd's schedule of charges applicable at the time of order, such schedule being available upon request.

### 4. PAYMENT BY CUSTOMER FOR GOODS

- a. Direct Hospitality Pty Ltd may, at its discretion, require that payment for the goods be made prior to delivery of the goods to the Customer;
- b. In the event that Direct Hospitality Pty Ltd does not require payment from the Customer in advance of the goods being delivered than payment shall be due on the 25th day of the month following the provision of the goods to the Customer;
- c. Should any amount payable under this agreement not be paid when due then Direct Hospitality Pty Ltd shall be entitled to interest on all sums overdue, calculated from the date the amount became due, at a rate equal to the rate at that time applicable pursuant to the Penalty Rate Interest Act 1983 (Vic), or any equivalent superseding legislation. Such interest shall accrue and be calculated on a daily basis on the amount overdue until the date on which payment is received in full by Direct Hospitality Pty Ltd;
- d. The Customer hereby agrees to indemnify and/ or reimburse Direct Hospitality Pty Ltd in relation to any costs incurred by Direct Hospitality Pty Ltd in attempting to recover amounts owed by the Customer to Direct Hospitality Pty Ltd pursuant to this agreement.
- e. In the event that some, or all, of the costs incurred by Direct Hospitality Pty Ltd are legal costs, those costs shall be reimbursed by the Customer to Direct Hospitality Pty Ltd on a solicitor/ client basis and shall be recoverable from the Customer regardless of whether legal proceedings were issued by Direct Hospitality Pty Ltd against the Customer;
- f. If the Customer is a company it shall, should Direct Hospitality Pty Ltd require, arrange for one of its directors or such other persons as may be specified by Direct Hospitality Pty Ltd, to complete the Directors Guarantee attached to this agreement and thereby guarantee the obligations of the Customer;
- g. Payment shall be made by cash, bank cheque or otherwise by way of clear funds. Direct Hospitality Pty Ltd may at its sole discretion receive payment by way of credit card or cheque; and
- h. Title to the goods does not pass to the Customer until payment in full is received by Direct Hospitality Pty Ltd from the Customer. If the Customer does not pay for any goods on the due date specified in this agreement, Direct Hospitality Pty Ltd is irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort or trespass, negligence or payment of any compensation to the Customer or anyone claiming through the Customer whatsoever.

### 5. PERSONAL PROPERTY & SECURITIES ACT

- a. In respect of this clause 5, the term "the Customer" shall also mean the "grantor" as defined under the Personal Property Securities Act 2009.
- b. The Customer acknowledges it will grant Direct Hospitality Pty Ltd a security interest (preferably, a Purchase Money Security Interest) in all present and after acquired Goods supplied by Direct Hospitality Pty Ltd and their proceeds to secure all moneys owing to Direct Hospitality Pty Ltd now and in the future in respect of the supply of Goods.
- c. The Customer undertakes to provide any information that Direct Hospitality Pty Ltd may reasonably require to enable Direct Hospitality Pty Ltd to perfect and maintain the perfection of Direct Hospitality Pty Ltd's security interest (including by registration of a financing statement).
- d. The Customer undertakes to immediately notify Direct Hospitality Pty Ltd in writing of any changes 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, trading name or business practice). The Customer will not have the right to transfer any Goods provided by Direct Hospitality Pty Ltd to any potential purchaser or purchaser of the Customer's business, unless the Goods are first paid for in full to Direct Hospitality Pty Ltd.
- e. The Customer waives (and provides an on-going waiver of) the Customer's right to receive a verification statement in respect of any financing statement and agree to the extent permitted by law that where Direct Hospitality Pty Ltd has rights in addition to, or existing separately from those in Chapter 4 of the PPSA, those rights will continue to apply and in particular, will not be limited by Part 4.3 in Chapter 4 and the rights of the Customer as debtor under Sections 130, 132, 135 and 137 shall not apply to these Terms of Trade.
- f. The Customer waives the right to receive any notices dealing with the goods and default as far as the law allows.
- g. The Customer agrees to waive any rights associated with Section 143 of the PPSA so long as sale of the Goods (collateral) by the Customer to a third party has not occurred.
- h. The Customer will pay all costs, expenses and other charges incurred, expended or payable by Direct Hospitality Pty Ltd in relation to the filing of a financing statement or financing change statement in connection with these Terms of Trade.
- i. The Customer agrees that the Customer will not allow security interests to be created or registered over the goods in priority to the security interest(s) held by Direct Hospitality Pty Ltd.
- j. The Customer agrees to allow Direct Hospitality Pty Ltd to register a security interest over the security interest that the Customer may have over third parties so far as the law allows.

- k. The Customer agrees that in the event of external administration of the Customer, the Customer will disclose the quantity/volume of Direct Hospitality Pty Ltd's Goods which are in manufactured / commingled/mixed goods or otherwise which may be work in progress as at the date of appointment of the external administrator.
- k.1 In respect of the PPSA, Goods means all goods Direct Hospitality Pty Ltd supply to the Customer from time to time, provided that (but solely for the purpose of the application of the PPSA) where the goods supplied are the Customer's inventory, then all references to Goods in these Terms of Trade shall in respect of those goods, be read as references to inventory for so long as they are held as inventory and
- k.2 where the goods supplied are not, or are no longer held as, the Customer's inventory, then all references to Goods in these Terms of Trade shall, in respect of those goods mean the goods described in any one or more of the relevant order form, packing slip or invoice (or its equivalent, whatever called) prepared by Direct Hospitality Pty Ltd and relating to those goods, on the basis that each such order form, packing slip or invoice (or its equivalent) is deemed to be assented to by the Customer, incorporated in, and form part of these Terms of Trade, and
- k.3 unless the context requires otherwise, includes all proceeds of such Goods and any product or mass which the Goods subsequently become part of.
- l. As far as the Personal Property Securities Act 2009 allows, Property and ownership in the Goods will not pass to the Customer but will remain in Direct Hospitality Pty Ltd until payment in full of the purchase price of the Goods and all other amounts owing is made to Direct Hospitality Pty Ltd by the Customer.
- m. Any risk in the Goods will pass at the time of delivery and the Customer must insure the Goods.
- n. In the event that the Customer defaults under these Terms of Trade, Direct Hospitality Pty Ltd may in accordance with clause 123 of the Personal Property Securities Act 2009 seize the Goods and in accordance with clause 125 of the Personal Property Securities Act 2009 retain or dispose of the Goods. Divisions 3 and 4 under Chapter 4 of the Personal Property Securities Act 2009, will provide the rights of Direct Hospitality Pty Ltd in respect of retaining or disposing the Goods.
- o. In so far as the Personal Property Securities Act 2009 allows, the Customer acknowledges that if it mixes the Goods with other products or items or that the Goods are no longer separately identifiable, the Customer and Company will be owners in common of the new product and thereafter each party will have a right to share in any proceeds of sale. The proceeds of sale will be divided between the Customer and Company in accordance with their own respective value of contributed product or ingredient.
- p. The authority of the Customer to sell the Goods does not extend to the making of any warranties or conditions which exposes Direct Hospitality Pty Ltd to liability to another person (except as to the price, the terms of payment and like provisions) and the Customer must ensure that to the full extent permitted by law all conditions, warranties implied or imposed by law are excluded and where such a condition cannot be excluded that Direct Hospitality Pty Ltd's liability is limited to the full extent permitted by law.
- q. In the event that the Customer is in default of payment for Goods, Direct Hospitality Pty Ltd has the right to appoint a receiver, manager, administrator under the Corporations Act 2001.
- r. The conditions of this clause 5 apply notwithstanding any arrangement between the parties under which Direct Hospitality Pty Ltd grants the Customer credit."

## 6. DELIVERY OF GOODS

Direct Hospitality Pty Ltd will endeavour to supply the goods in a timely manner however unless otherwise agreed in writing provides no guarantee as to the timing of delivery of the goods. In the absence of an express written guarantee as to the timing of delivery no liability whatsoever shall exist on Direct Hospitality Pty Ltd's part to the Customer in relation to any delay or failure to deliver the goods, (other than in the case of failure to deliver the goods at all, refund of any purchase price which may have been paid).

## 7. SEVERABILITY OF PROVISIONS

Any provision or part of these terms which is deemed to be unenforceable shall be severable in whole or in part and shall not affect the remaining terms of the agreement or the portion of the particular term from which the part has been severed.

## 8. EXERCISE OF RIGHTS

- a. No failure or delay on the part of Direct Hospitality Pty Ltd in exercising any of its rights under these terms shall operate as a waiver of any of those rights;
- b. No single or partial exercise of any of the rights of Direct Hospitality Pty Ltd under these terms shall preclude the exercise of any rights it may have; and
- c. The rights of Direct Hospitality Pty Ltd under this agreement are cumulative and not exclusive of any other rights that Direct Hospitality Pty Ltd may have whether under Statute or by virtue of common law.

## 9. GOVERNING LAW

The rights and obligations of Direct Hospitality Pty Ltd and the Customer under these general terms shall be governed in all respect by the Laws of the State of Victoria.

## 10. COMPETITION AND CONSUMER ACT 2010

Where the Terms of Trade would otherwise be subject to the Competition and Consumer Act 2010 ("Act"), the Customer agrees that the Customer is acquiring the Goods for business purposes and that the Act does not apply to the supply of the Goods to the Customer.

If the Customer is a consumer as defined in section 4B of the Competition and Consumer Act 2010, and the Customer has not contracted out of the Act under clause 10(a) of these Terms of Trade, nothing in these Terms of Trade will limit any rights the Customer may have under this Act."

## 11. PRIVACY ACT 1988

The Customer agrees that this information is being collected in accordance with the Privacy Act 1988 and that the Customer has rights of access to and correction of personal information held by Direct Hospitality Pty Ltd. The Customer agrees and authorises Direct Hospitality Pty Ltd to obtain or divulge any information about the Customer from or to any third party in the course of our business activities including credit assessment, debt collection and direct marketing activities.

The Customer and the Customer's guarantor/s authorise Direct Hospitality Pty Ltd to collect and hold personal information from any source Direct Hospitality Pty Ltd considers appropriate for the purposes of considering your credit worthiness, marketing activities, debt collection purposes and any other purpose related to Direct Hospitality Pty Ltd providing goods to the Customer. The Customer further authorise Direct Hospitality Pty Ltd to disclose personal information held by Direct Hospitality Pty Ltd to any third party for the purposes set out above. The Customer understands that the Customer has a right of access and may request correction of personal information held by Direct Hospitality Pty Ltd about the Customer.

## 12. CANCELLATION

- a. In the case of special orders those orders may not be cancelled by the customer and the customer shall be compelled to take delivery of the goods and make payment of the purchase price in accordance with the terms of this agreement; and
- b. In the event of cancellation of orders other than special orders the Customer shall be liable to pay to Direct Hospitality Pty Ltd a "restocking fee" such amount being the equivalent of 20% of the value of the order.

## DIRECTORS GUARANTEE

**To: Direct Hospitality Pty Ltd Trading as Evolve North**

I, the undersigned, in consideration of you agreeing to provide goods to the Customer hereby covenant with you and your successors and assigns as follows:

1. I guarantee the performance and observance of the terms and conditions outlined in Direct Hospitality Pty Ltd's terms of trade on the part of the Customer and hereby specifically agree and declare that this Guarantee shall be a continuing Guarantee and shall in no way be avoided, released or affected and shall remain in full force and effect notwithstanding any time or indulgence given or allowed to the Customer by you or any variation of the terms and conditions, irrespective of whether I have consented to or received notice of any such time, indulgence or variation.
2. I indemnify you against all losses, costs and expenses whatsoever (including but not limited to any legal costs and disbursements on a solicitor and client basis) which may be incurred by you by reason of any default on the part of the Customer in the performance and observance of the terms and conditions on the Customers part contained in the general terms and conditions of repairs.
3. This Guarantee shall be enforceable against me by you notwithstanding any action that you may take against the Customer in pursuance of your rights under the terms of trade
4. You may at any time grant to the Customer any time or indulgence and may compound or compromise with or release the Customer, without releasing, discharging or affecting the liability of me under this Guarantee irrespective of whether I have consented to or received notice of any such act, mater or thing.
5. You may act as though I were the Customer and I hereby waive any and all of our rights as surety which may at any time be inconsistent with the provisions of the Guarantee herein contained.
6. I undertake to exercise my power as director of the Customer to ensure its compliance with the provisions of the general terms and conditions of repairs.
7. Any claim or right that you may have against the Customer shall in all respects take priority over any similar or competing right that I may have against the Customer under the general terms and conditions of repairs or otherwise how so ever arising.

SIGNED BY: .....  
(Print name of Person Signing)

SIGN HERE: .....  
(Signature)

IN THE PRESENCE OF: .....  
(Print name of Person Signing)

WITNESS SIGNATURE: .....  
(Witness to Sign here)