

Terms and Conditions of CTAE Pty Ltd trading as Coffee Tools Distributing (“Supplier”)

1. Application

These Terms and Conditions (“T&Cs”) will apply to any supply of Goods and/or Services supplied by the Supplier to the Customer under an Order.

2. Definitions

In these T&Cs:

“**Claim**” means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

“**Confidential Information**” means information in any form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter which is by its nature confidential, which is designated as confidential, or which the Customer knows or ought to know is confidential, and all trade secrets, knowhow, financial information and other commercially valuable information of the Supplier;

“**Consumer Law**” has the meaning set out in clause 11(c);

“**Contract**” means the contract formed as a result of an acceptance of an Order by the Supplier. It includes these T&Cs, any covering letter, quotation, estimate and any other document that refers to these T&Cs which is issued by the Supplier. It does not include any terms and conditions on a document issued by the Customer (e.g. on a purchase order) unless those terms have been expressly pre-agreed by the Supplier in writing;

“**Control**” has the meaning set out in the Corporations Act;

“**Corporations Act**” means the *Corporations Act 2001* (Cth);

“**Customer**” means the customer who placed the Order or set out in any quotation, offer or other document provided by the Supplier;

“**Goods**” means the goods in the Contract;

“**Insolvency Event**” means any of the following, or any analogous, events:

- (a) the Customer disposes of the whole or majority of the Customer’s assets, operations or business other than in the ordinary course of business;
- (b) the Customer ceases, or threatens to cease, carrying on business;
- (c) the Customer is unable to pay the Customer’s debts as the debts fall due;
- (d) any step is taken by a creditor to take possession or dispose of the whole or any part of the Customer’s assets, operations or business;
- (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer’s creditors or any class of the Customer’s creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer’s assets, operations or business;

“**Intellectual Property Rights**” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential

information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

“**Liability**” means any loss, liability, cost, payment, damages, debt or expense including but not limited to reasonable legal fees;

“**Order**” means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

“**Personnel**” means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

“**Price**” means the price of the Goods and/or Services including but not limited to any shipping charges;

“**Security Interest**” means a security interest within the meaning of the *Personal Property Securities Act 2009* (Cth);

“**Services**” means the services in a Contract and any services associated with the Goods.

3. Acceptance of terms and placement of orders

- (a) The Customer, by placing the Order to the Supplier, agrees to be bound by the T&Cs and acknowledges that the T&Cs form part of the Contract.
- (b) The Customer acknowledges that the Supplier may accept an Order (giving rise to a Contract) in its sole discretion.

4. Price

- (a) The Supplier will invoice the Customer for the Price for each Order that forms part of a Contract.
- (b) The Price is exclusive of GST unless otherwise stated by the Supplier in writing and may be subject to change without notice.

5. Payment Terms

- (a) Payment terms are as specified on the relevant invoice, and if no such payment terms are specified then the Customer must pay the invoiced amount within 30 days of the date of the invoice.
- (b) The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- (c) Without limiting any other remedies available to the Supplier, if the Customer fails to pay any amount payable under any Contract then:
 - i. the Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 6.5% per annum; and
 - ii. the Supplier may suspend or defer its performance of any Contracts until the outstanding amount is paid.
- (d) The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to recover money from the Customer.

6. Delivery

Delivery time frames are estimation only – time is not of the essence. The Supplier is not responsible for any Liability relating to delays in delivery.

7. Risk and Title

- (a) The risk in Goods passes to the Customer immediately on the delivery of the Goods by the

Supplier to the address nominated in the Order or, if earlier, on collection of the Goods by the Customer.

- (b) The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
- (c) Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer will:
 - i. be only a bailee of the Goods;
 - ii. ensure the Goods are kept separate and identifiable from other goods;
 - iii. not grant any charge over, or interest in, the Goods to any third party;
 - iv. return any Goods to the Supplier immediately on request;
 - v. authorise the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
 - vi. hold the proceeds from any sale or disposal of the Goods on trust for the Supplier.
- (d) The Customer agrees to grant the Supplier a charge over the whole of the Customer's present and future property and assets (including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land, and personal property as defined in the *Personal Property Securities Act 2009* (Cth)) as security for any amount owed by the Customer to the Supplier. The Customer acknowledges the Supplier may lodge caveats over land or Security Interests on the Personal Properties Securities Register, and take any action to enforce the Supplier's security over the charged property.

8. Limitation on resale

The Customer acknowledges that:

- (a) the Goods are not to be sold to or shipped to a location outside of Australia;
- (b) the Goods are not to be distributed for the purpose of resale or drop shipping, the Customer must not distribute the Goods to retailers unless with written agreement with the Supplier (which the Supplier may give or withhold in its sole discretion);
- (c) the Goods are not to be made available for sale via online marketplaces including but not limited to eBay, Kogan/Dick Smith, catch.com.au, Ozbargain; Amazon; Facebook or Gumtree;
- (d) the Goods may only be sold or otherwise distributed online through a website or App which has been preapproved by the Supplier in writing;
- (e) should the Supplier require a sales report from the Customer for any of the Goods sold, including the number of units sold, the sales price, where it was sold (website, storefront, etc) and where the Goods were delivered to, the Customer must promptly provide such information to the Supplier; and
- (f) any breach of this clause 8 by the Customer may cause significant loss or damages to the Supplier, including by causing the Supplier to breach the terms under which it acquires the Goods.

9. Force Majeure

The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control. If any such failure or delay continues for a period of 14

days the Supplier may terminate any affected Contract.

10. Confidential Information and Intellectual Property

- (a) The Customer will not use, or disclose to any third party, any Confidential Information.
- (b) No supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services.
- (c) The Customer must only use Intellectual Property Rights such as trademarked materials and logos in accordance with the consents (if any) and requirements of the owners of the Intellectual Property Rights notified in writing to the Customer from time to time.

11. Warranties

- (a) To the fullest extent permitted by law, the Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known by the Customer or any third party to the Supplier or any member of the Supplier's Personnel.
- (b) The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services and these T&Cs except those conditions or warranties that cannot be excluded by law.
- (c) Nothing in these T&Cs is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any equivalent Act of any State or Territory of Australia ("**Consumer Law**") except to the extent permitted by such Acts.

12. Liability

- (a) Subject to clause 12(c), the Supplier's liability for any Liability or Claim in relation to these T&Cs, the Contract, and any supply of Goods and/or Services will be limited to the amount of the Price paid by the Customer to the Supplier in respect of those Goods and/or Services.
- (b) The Supplier will not be liable to the Customer or any other person for any Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss, or any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use; or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.
- (c) If Consumer Law or any other legislation provides that there is a guarantee in relation to any good or service supplied by the Supplier in connection with a Contract and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 12(a) and (b) do not apply to that liability and instead the Supplier's liability for such failure is limited to (at the Supplier's election), in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

13. Indemnity

The Customer indemnifies the Supplier and each member of the Supplier's Personnel on a full and continuing indemnity basis from and against any Liability or Claim arising directly or indirectly in relation to the Customer's breach of clause 8 or clause 10(c) of these T&Cs.

14. Termination

The Supplier may immediately terminate, or suspend the performance of, any Contract (including ceasing the supply of Goods to the Customer) and the Customer must immediately pay any money owed to the Supplier if:

- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days;
- (b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
- (c) an Insolvency Event arises in relation to the Customer; or
- (d) if the Supplier is prohibited by way of its arrangements with a third party (such as an equipment manufacturer, distributor of the Goods or similar) from providing the Goods or Services to the Customer.

15. Dispute resolution

- (a) This clause 15 applies to any dispute which arises between the Supplier and the Customer in connection with any Contract ("**Dispute**").
- (b) If either the Supplier or the Customer considers that a Dispute has arisen, it may send a notice to the other party, setting out reasonable particulars of the matters in dispute ("**Dispute Notice**").
- (c) The Customer acknowledges and agrees that while a Dispute remains unresolved, the Supplier is entitled to cease its supply of Goods and Services to the Customer.
- (d) Subject to clause 15(h), the Supplier and the Customer must not commence or maintain any action or proceeding in any court, tribunal or otherwise regarding a Dispute without first giving a Dispute Notice and complying with this clause 15.
- (e) The Supplier and the Customer must promptly hold discussions between representatives of each party after the issue of a Dispute Notice to attempt to resolve the Dispute ("**First Level Discussions**").
- (f) If the Dispute has not been resolved within five business days after commencement of First Level Discussions, the Supplier and the Customer must attempt to resolve the Dispute by holding discussions between a senior executive of the Supplier and a senior executive of the Customer ("**Second Level Discussions**").
- (g) If the Dispute has not been resolved within ten business days after commencement of Second Level Discussions, either party may pursue its rights and remedies under these T&Cs as it sees fit.
- (h) Notwithstanding anything in this clause 15, a party may at any time commence court proceedings in relation to a dispute or claim arising in connection with these T&Cs where that party seeks urgent interlocutory relief.

16. Miscellaneous

- (a) These T&Cs or any Contract may only be amended with the Supplier's express written agreement. Any

waiver by the Supplier must be express and in writing.

- (b) The Supplier's rights under these T&Cs or any Contract do not exclude any other rights the Supplier may have at law.
- (c) If any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- (d) The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the Control of the Customer.
- (e) The Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party.
- (f) The Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent.
- (g) These T&Cs and any Contract will be governed by the law Queensland.
- (h) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- (i) In these T&Cs:
 - i. the headings do not affect interpretation;
 - ii. the singular includes the plural and vice versa, and a gender includes other genders;
 - iii. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - iv. a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
 - v. a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity;
 - vi. a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
 - vii. a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
 - viii. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
 - ix. any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
 - x. if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on the next business day.