

Terms of Supply – SCOUT BRAND SUPPLY

1.

2. DEFINITIONS

2.1. In this Agreement unless inconsistent with the context or subject matter:

- (a) **"ACL"** means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth));
- (b) **"Agreement"** means these Terms of Service and any Invoice;
- (c) **"Client"** means the person to whom an Invoice is made out to, as set out on the Invoice;
- (d) **"Client's Address for Service"** means the email address that the Client generally uses in communications with SCOUT from time to time;
- (e) **"Credit Terms"** means the terms contained in clause 4.6;
- (f) **"Claim"** means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity) in respect of any Loss or alleged Loss;
- (g) **"Client Intellectual Property"** means Intellectual Property Rights subsisting in any material, designs, information or data of any kind provided by the Client to SCOUT;
- (h) **"Confidential Information"** means information relating directly or indirectly to SCOUT, including without limitation the Purchase Price for the Goods;
- (i) **"Design"** means any design, drawing or specification in respect of the Goods (and any part of them), including any artwork, whether supplied by SCOUT or the Client;
- (j) **"Force Majeure"** means an act, omission or circumstance over which SCOUT could not reasonably have exercised control;
- (k) **"Goods"** means any goods supplied by SCOUT to the Client from time to time;
- (l) **"GST"** has the meaning given to it in the GST Act;
- (m) **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (n) **"Insolvency Event"** means
 - i) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they fall due; a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation; a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself; a person presents a declaration of intention under section 54A of the Bankruptcy Act 1966 (Cth); or
 - ii) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation; an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days; a controller is appointed in respect of any property of a corporation; a corporation is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to the corporation,
or anything similar to the above under the laws which apply to the Client occurs;
- (o) **"Intellectual Property"** means Intellectual Property Rights, including patents, copyright, trade marks, any right to have Confidential Information kept confidential and any application or right to apply for registration of any of these rights, and includes the following:
 - i) the Goods (including the specifications for the Goods);
 - ii) ideas, information, data, specifications and designs relating to or connected with the Goods;
 - iii) books and records relating to or connected with the Goods; and
 - iv) any other material or information provided by SCOUT to the Client;
- (p) **"Intellectual Property Rights"** means all present and future rights conferred by law in or in relation to copyright, trade marks, designs, patents, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include without limitation:
 - i) all rights in all applications to register those rights;
 - ii) all renewals and extensions of those rights; and
 - iii) all rights in the nature of those rights, such as moral rights;

- (q) **"Invoice"** means an invoice provided by SCOUT to the Client in respect of the manufacture and supply of Goods;
- (r) **"Loss"** includes (without limitation) the following, whether direct or indirect, special or consequential in nature:
 - i) loss, damage, costs (including legal costs on a solicitor and own client basis), action or expense of any kind; and
 - ii) to the extent not covered in the preceding subclause, loss of profits, opportunity, use, revenue, goodwill, bargain, production, sales turnover, income, reputation (or damage to it), employment, corruption or destruction of data, customers, loss relating to or in connection with any other contract, business or anticipated savings, reduction in value, any delay or financing costs or increase in operating costs, or any other financial or economic loss; and
 - iii) anything referred to in the preceding subclauses relating to or arising out of or in connection with:
 - iv) personal injury (including death or disease) to the Client;
 - v) personal injury (including death or disease) to any third party; or
 - vi) loss of or damage to the property of SCOUT, the Client or any third party; and
 - vii) a breach or non-compliance by SCOUT or the Client with any law;
- (s) **"Personnel"** means SCOUT's agents, suppliers, contractors, employees and service providers;
- (t) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;
- (u) **"PPS Register"** means the Personal Property Securities Register established under the PPSA;
- (v) **"Production Sample"** means a sample of the Goods provided by SCOUT to the Client prior to the bulk production of the Goods commencing;
- (w) **"Purchase Price"** means the price payable for the Goods as set out in an Invoice or as otherwise agreed by the parties in writing;
- (x) **"SCOUT"** means Scout Brand Supply Pty Ltd ACN 637 559 981 as trustee for Scout Brand Supply Trust;
- (y) **"SCOUT's Address for Service"** means hello@scout.supply; and
- (z) **"Tax Invoice"** has the same meaning as in the GST Act.

2.2. In this Agreement unless inconsistent with the context or subject matter:

- (a) A reference to a legal entity includes a person and vice versa;
- (b) Words importing the singular number include the plural number and vice versa;
- (c) A reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (d) Clause headings are for reference purposes only and must not be used in interpretation;
- (e) Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (f) A reference to a statute includes all regulations and subordinate legislation and amendments;
- (g) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail;
- (h) A reference to a monetary amount is a reference to an Australian currency amount;
- (i) An obligation of two or more parties binds them jointly and each of them severally;
- (j) An obligation incurred in favour of two or more parties is enforceable by them severally;
- (k) Reference to time are to local time in Queensland;
- (l) Where time is to be reckoned from a day or event, the day or event must be excluded, and reference to a month means a calendar month;
- (m) A reference to a business day means any day on which trading banks are open for business in Queensland; and
- (n) If any time period specified in this Agreement expires on a day which is not a business day, the period shall expire at the end of the next business day.

3. SUPPLY OF GOODS

- 3.1. In the event that the Client accepts an Invoice, SCOUT and the Client agree that SCOUT will supply the Goods to the Client on the terms and conditions contained in this Agreement.
- 3.2. The Client will be deemed to have accepted an Invoice and this Agreement by:
 - (a) advising SCOUT to proceed with the supply of the Goods (either in writing or verbally); or
 - (b) paying any amount to SCOUT in connection with the Invoice.
- 3.3. Once an Invoice is accepted by the Client, the Client may not withdraw their acceptance other than with the agreement of SCOUT.

- 3.4. In the event of any inconsistency between this Agreement and any Invoice, the terms contained in the Invoice will prevail to the extent of such inconsistency.
- 3.5. Should the Client require amendments to the scope of the Goods set out in the Invoice, then the Client may request SCOUT provide such amendments, and SCOUT may accept or reject such request at its sole discretion. If SCOUT accepts such request then SCOUT will provide an additional Invoice (with additional fees required to be paid as advised by SCOUT) which the Customer may accept in accordance with this Agreement.

4. APPLICABLE TERMS

- 4.1. The Client acknowledges and agrees that they must not attempt to include any terms and conditions within their acceptance of any Invoice. In the event that the Client includes any such terms within their acceptance or otherwise sends terms and conditions to SCOUT at any time, the parties acknowledge and agree that any such terms and conditions provided by the Client are not binding on SCOUT and do not form part of this Agreement. This Agreement contains the entire agreement between the parties in respect of its subject matter.

5. PAYMENT

- 5.1. The Client agrees to pay to SCOUT the Purchase Price for the Goods as specified in the Invoice or as otherwise agreed between the parties in writing.
- 5.2. Unless otherwise stated in the Invoice, the Purchase Price must be paid as follows:
 - (a) 50% on acceptance of the Invoice; and
 - (b) 50% upon SCOUT advising the Client that the Goods are available for delivery to the Client.
- 5.3. Payment instructions are as contained in the Invoice.
- 5.4. The Client will also pay to SCOUT, on demand, on a full indemnity basis, all amounts that SCOUT may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis) as a result of the Client defaulting on any of the terms of this Agreement.
- 5.5. If payment is not made by the Client in accordance with the terms of this Agreement, SCOUT may in its discretion (without limitation to its other rights):
 - (a) require the Client to pay SCOUT interest on all outstanding monies from the due date until the date of payment at the rate of 12% per annum accruing daily;
 - (b) refuse to supply any further part of the Goods to the Client until all outstanding monies, including any accrued interest, are paid in full;
 - (c) exercise such other rights in accordance with clause 12.2;
 - (d) terminate this Agreement whereupon the full price for the Goods then supplied, whether or not the time for payment under this Agreement has arrived, will be immediately due and payable; and/or
 - (e) sue the Client for breach of contract.
- 5.6. The Client may not withhold payment or make any deduction from any amount owing without SCOUT's prior written consent, irrespective of any claim the Client may have against SCOUT whether related to the provision of the Goods or not.
- 5.7. The Client acknowledges that the Purchase Price quoted in an Invoice is based on current foreign exchange rates. In the event of a currency fluctuation prior to the date that the Goods are supplied which results in SCOUT incurring additional costs in connection with the manufacture and supply of the Goods (including where SCOUT's suppliers increase the costs of materials or manufacture):
 - (a) SCOUT reserves the right to terminate this Agreement (in which case SCOUT will refund all amounts paid by the Client to SCOUT for Goods not yet supplied promptly following the termination); or
 - (b) vary the Purchase Price of the Goods to reflect the increased costs incurred by SCOUT, and the Client agrees to pay the increased Purchase Price upon SCOUT substantiating the increase by providing the Client with any relevant documentation. In this case, SCOUT will provide the Client with an Invoice for the difference in the fees payable which the Client must pay in accordance with the payment terms as stated on the Invoice. The Client acknowledges and agrees that it must pay this amount and is deemed to have accepted the Invoice immediately on it being provided.

6. CREDIT TERMS

6.1. Application

In the event that an Invoice states that the Client is on approved Credit Terms, the terms of this clause 4.6 will apply.

6.2. Payment Terms

Unless otherwise stated in the Invoice or otherwise agreed by the parties in writing, the Client agrees to pay any Invoice rendered by SCOUT within 30 days after the date that the Goods the subject of the Invoice are delivered in accordance with this Agreement.

6.3. Right to refuse further credit or vary the credit limit

SCOUT may at any time, for any reason whatsoever:

- (a) vary the credit limit of the Client to increase or decrease the credit limit; or
 - (b) refuse further credit to the Client,
- without any liability to the Client whatsoever.

7. WARRANTIES

- 7.1. The warranties contained in clause 6.2 are additional to warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of this Agreement.
- 7.2. The Client warrants to SCOUT that as at the date of this Agreement and for the duration of this Agreement:
- (a) if the Client is on Credit Terms, it represents they have disclosed all relevant information to SCOUT to assess their credit-worthiness;
 - (b) it has the legal right and power to enter into this Agreement;
 - (c) the execution, delivery and performance of this Agreement by the Client has been duly and validly authorised by all necessary corporate action on its part;
 - (d) this Agreement is a valid and binding Agreement on the Client, enforceable in accordance with its terms;
 - (e) the Client is not suffering an Insolvency Event;
 - (f) no partner, director or shareholder of the Client is or has suffered in the past an Insolvency Event; and
 - (g) it has the capacity to make the payment in accordance with this Agreement.

8. CONFIDENTIAL INFORMATION

- 8.1. The Client acknowledges that the Client may become acquainted with or have access to Confidential Information, and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company other than its advisers on a need to know basis.

9. DESIGN APPROVAL

- 9.1. The Client acknowledges that by:
- (a) expressly approving or confirming that it is satisfied with any Design;
 - (b) making any payment of the Purchase Price after receiving any Design; and/or
 - (c) not otherwise raising any issue with the Design within 3 business days of that design first being shown to the Client (including by email)
- the Client is deemed to have approved the Design and agrees that the Goods will be manufactured and supplied to the Client by SCOUT on that basis and the Client must accept the Goods so supplied.
- 9.2. In the event that there are errors in any Design approved under clause 8.1 the Client acknowledges that SCOUT is not liable for any Loss suffered by the Client and releases and indemnifies SCOUT in respect of all such Losses.

10. PRODUCTION SAMPLE APPROVAL

- 10.1. The Client acknowledges that by:
- (a) expressly approving or confirming that it is satisfied with any Production Sample;
 - (b) making any payment of the Purchase Price after receiving a Production Sample; and/or
 - (c) not otherwise raising any issue with the Production Sample within 3 business days of that design first being shown to the Client (including by email)
- the Client is deemed to have approved the Production Sample and agrees that the Goods will be manufactured and supplied to the Client by SCOUT on the basis of the approved Production Sample and the Client must accept the Goods so supplied in that manner.
- 10.2. In the event that the Client is not satisfied with the Production Sample on the basis that it is not of acceptable quality (as contemplated by the ACL), not fit for a purpose described (as contemplated by the ACL) or does not reflect the Design approved by the Client under this Agreement, the Client must notify SCOUT of this no later than three business days of the Production Sample first being provided to the Client. SCOUT will then review the Client's concerns to determine whether they are justified. If justified (as determined by SCOUT acting reasonably), SCOUT will address the concerns in the bulk production of the Goods.
- 10.3. In the event that there are errors in any Production Sample approved under clause 9.1 the Client acknowledges that SCOUT is not liable for any Loss suffered by the Client and releases and indemnifies SCOUT in respect of all such Losses.

11. INTELLECTUAL PROPERTY

- 11.1. The Client grants to SCOUT and its Personnel a non-exclusive, transferable, royalty-free licence to use the Client Intellectual Property solely for the purpose of performing its obligations under this Agreement.
- 11.2. The Client warrants that it owns the Client Intellectual Property and the use of the Client Intellectual Property by SCOUT and its Personnel, including the incorporation of such property in the Goods and providing that property to third parties in connection with the design, manufacture, supply and delivery of the Goods, will not infringe the rights of any third party, including any intellectual property rights.
- 11.3. The Client must indemnify SCOUT against all Losses suffered or incurred by SCOUT arising out of or in connection with any claim made against SCOUT for actual or alleged infringement of a third party's intellectual property rights or moral rights arising out of or in connection with the use of the Client Intellectual Property and all amounts payable under this clause are a debt immediately due and owing by the Client to SCOUT.
- 11.4. SCOUT grants to the Client a perpetual, royalty free, non-transferable/non-assignable/non-sublicensable license of the Intellectual Property for the sole purpose of using the Goods for its intended purpose.
- 11.5. The Client agrees that SCOUT will own all rights, title and interest (including Intellectual Property Rights) which subsist in or which may be obtained from the Intellectual Property and undertakes not to (and must ensure that its personnel and any third party to whom it supplies the Goods to do not):
- (a) take or permit or omit any action which would or might invalidate or put in dispute SCOUT's title to the Intellectual Property or any part of it;
 - (b) oppose any application for registration or invalidate any registration of the Intellectual Property or any part of it (including without limitation a registration of the Intellectual Property as a patent worldwide);
 - (c) support any application to remove or undo SCOUT's title in the Intellectual Property or any part of it;
 - (d) assist any other person directly or indirectly in any of the above; or
 - (e) except as necessary to obtain the benefit of the Goods for their intended purpose, use, copy, reproduce, distribute, export, adapt, alter, modify, translate, publish, share, or create derivative works of the Intellectual Property anywhere in the world, without the prior written consent of SCOUT.
- 11.6. The Client grants SCOUT an irrevocable licence to use the Client's name and logo in SCOUT's marketing materials in respect of SCOUT's business, and SCOUT may publicly name the Client as a client and indicate broadly what Goods were purchased by the Client.

12. NO ASSIGNMENT

- 12.1. In the event the Credit Terms apply to the Client, the Client must not transfer or assign its rights under this Agreement to anyone else, without the prior written consent of SCOUT, which may be withheld in its discretion. The Client must provide any information SCOUT requires to consider whether to grant its consent. Any change in 50% or more of the shareholding of the Client will constitute a deemed assignment which requires SCOUT's prior written consent.
- 12.2. In the event the Client is not on Credit Terms, the Client must not transfer or assign its rights under this Agreement to anyone else, without the prior written consent of SCOUT, which must not be unreasonably withheld.
- 12.3. The Client acknowledges and agrees that SCOUT may transfer, assign or otherwise dispose of its interest in this Agreement upon giving written notice to the Client.

13. OWNERSHIP

- 13.1. Notwithstanding anything to the contrary express or implied in this Agreement, the parties agree that SCOUT retains full title to the Goods and title will not at any time pass to the Client until the Purchase Price for the Goods and all other amounts owing in respect of the Goods other otherwise payable under this Agreement are paid to SCOUT notwithstanding:
- (a) the delivery or collection of the Goods to/by the Client (as the case may be);
 - (b) installation in or attachment of the Goods to the Client's property; and/or
 - (c) the possession and use of the Goods by the Client.
- 13.2. Prior to ownership passing to the Client, the Client acknowledges and agrees that:
- (a) it will not agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, hire or otherwise part or attempt to part with personal possession of or otherwise deal with the Goods without the express written consent of SCOUT;
 - (b) it will, if requested by SCOUT, return the Goods to SCOUT following non-fulfilment of any obligation of the Client (including payment of monies) without limiting any other right SCOUT may have;
 - (c) it will deliver up the Goods to SCOUT upon demand by SCOUT and give SCOUT and its agents and/or authorised representatives the right to enter any premises occupied by the Client and any premises where it believes any Goods may be stored (without liability for trespass or any resulting damage) and to use the name of the Client and to act on its behalf, if necessary, to recover possession of the Goods and agrees to

- indemnify SCOUT and its agents and/or authorised representatives from any damage, injury and/or Loss arising from such recovery or attempted recovery of the Goods from the Client's possession or control;
- (d) it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the Goods on trust for and as agent for SCOUT immediately when they are receivable or are received; and
 - (e) SCOUT may recover as a debt due and immediately payable by the Client all amounts owing by the Client to SCOUT in any respect even though title to the Goods has not passed to the Client.

14. PERSONAL PROPERTY SECURITIES

14.1. Application

For Clients who are on approved Credit Terms the terms of this clause 13 will apply.

14.2. Personal Property Securities

- (a) The Client acknowledges and agrees that notwithstanding any other provision of this Agreement:
 - i) the PPSA applies to any supply of Goods by SCOUT to the Client;
 - ii) the Goods are used by the Client only for commercial purposes and are not used by the Client for personal, domestic or household purposes;
 - iii) by agreeing to and/or accepting or adopting this Agreement the Client grants to SCOUT a purchase money security interest in the Goods (on the basis that the Goods are sold on retention of title terms) to secure SCOUT's interest in the Goods and all moneys owing or payable by the Client under this Agreement and any other moneys payable by the Client to SCOUT from time to time on any account whatsoever;
 - iv) if a purchase money security interest is not able to be claimed by SCOUT in respect of the Goods for any reason, SCOUT will have a security interest in the Goods;
 - v) the Client agrees that SCOUT's security interest in Goods covered by this Agreement may be registered on the PPS Register and the Client agrees to do all things necessary and required by SCOUT to effect registration of SCOUT's security interest on the PPS Register in order to give SCOUT's security interest the best priority possible and anything else SCOUT requests the Client to do in connection with the PPSA without delay;
 - vi) the Client warrants that all information provided by the Client to SCOUT, including but not limited to the Client's details, including the entity, name, ACN or ABN and address set out in the Invoice is correct in all respects and must not change its name, address or other details set out in the Invoice without providing SCOUT with at least 20 business days prior written notice;
 - vii) the Client unconditionally and irrevocably appoints SCOUT as its attorney to do any of acts and matters set out in this clause 13 in the event that the Client fails, delays or declines to execute such documents or do such acts;
 - viii) the Client agrees that it will not grant a security interest or other encumbrance in the Goods whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of SCOUT, which SCOUT may refuse to provide or grant in its absolute and unfettered discretion. SCOUT may request and the Client must provide any information that SCOUT requires, acting reasonably, in order to fully consider whether to grant its consent;
 - ix) SCOUT's security interest in the Goods extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring of the Goods by the Client;
 - x) it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to SCOUT under this Agreement;
 - xi) the Goods are located in Australia at the date of the supply of the Goods and the Client warrants that the Goods will remain located in Australia for the duration of the Agreement;
 - xii) neither SCOUT nor the Client will disclose any information to any interested person unless required to do so under the PPSA;
 - xiii) the Client waives its right under the PPSA:
 - A. to receive a copy of any verification statement, financing change statement, or any notice that SCOUT intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to SCOUT under this Agreement or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
 - B. to object to a proposal by SCOUT to dispose of or purchase or retain the Goods in satisfaction of any obligation owed by the Client to SCOUT;
 - C. to receive a statement of account following the sale of the Goods; or
 - D. to redeem the Goods;

- xiv) will not give (or allow any person to give) to SCOUT a written demand requiring SCOUT to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPS Register a financing change statement under the PPSA; and
 - xv) a default under any other security agreement under which it has granted a security interest to any other party in respect of the Goods is deemed to be a breach of this Agreement.
- (b) The parties agree that SCOUT is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

14.3. Further Supplies

The parties acknowledge and agree that any supply of Goods of any kind by SCOUT to the Client which is not specifically set out in the Invoice but for which SCOUT has or later issues a Tax Invoice or any other documentation to the Client is deemed to form part of the Agreement and is subject to the terms of the Agreement.

14.4. Enforcement

- (a) The enforcement provisions contained in this Agreement are in addition to any rights available to SCOUT under the PPSA and apply to the maximum extent permitted by law.
- (b) Without limitation to clause 13.4(a) and any other provision of this Agreement section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

14.5. Power of Attorney

The Client irrevocably nominates constitutes and appoints SCOUT and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Client on behalf of and in the name of the Client to do all things necessary and sign all such documents as may be necessary to deal with the Goods in accordance with the enforcement provisions of this Agreement, the PPSA or otherwise, if the Client is in default of this Agreement.

14.6. Interpretation

A term used in this clause 13 is taken to have the meaning defined under the PPSA.

15. DELIVERY OF GOODS

- 15.1. Unless otherwise stated in an Invoice:
- (a) SCOUT will arrange for the Goods to be delivered to the delivery location set out in the Invoice; and
 - (b) the costs of delivery, including customs duties, are included in the Purchase Price.
- 15.2. In the event that SCOUT is not responsible for delivery or the costs of delivery (including customs duties) are not included in the Purchase Price then the Client is solely responsible for arranging for delivery of the Goods at its cost. SCOUT will notify the Client when the Goods are available for collection at SCOUT's nominated address (which may be the address of the manufacturer of the Goods and may be outside of Australia) and the Client must arrange for collection of the Goods within seven days.
- 15.3. At SCOUT's sole, absolute and unfettered discretion, delivery of the Goods is completed when:
- (a) the Client (or its employees or agents) takes possession of the Goods at SCOUT's address; or
 - (b) SCOUT (through its delivery partner) places the Goods at the Client's nominated delivery address (in the event that the Goods are delivered to the Client).
- 15.4. Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Agreement.
- 15.5. Any times provided by SCOUT to the Client in respect of the delivery of the Goods are estimates only and are non-binding on SCOUT. Whilst SCOUT attempts to deliver all Goods on time, sometimes delays are inevitable and SCOUT will not be responsible for any Losses suffered by the Client in the event of delay (without limitation, the Client acknowledges that delays can occur in customs processing, due to logistics and due to third party suppliers). Late delivery of Goods does not entitle the Client to:
- (a) refuse to take delivery of the Goods;
 - (b) claim damages; or
 - (c) terminate this Agreement.
- 15.6. If the Client fails to take delivery of Goods on the date that they are tendered for delivery SCOUT will arrange to store the Goods until delivery takes place again, and may charge the Client for all related costs and expenses (including insurance).

16. WARRANTIES

- 16.1. Other than those expressly set out in this Agreement, and to the maximum extent permitted by law, SCOUT excludes all rights, representations, guarantees, conditions, warranties, undertaking, remedies or other terms in relation to the Goods.

17. ACCEPTANCE AND DEFECTIVE GOODS

- 17.1. The Client must inspect all Goods immediately on receipt of the Goods and before use and must notify SCOUT within the earlier of 2 business days of receipt or before the Goods are used of any defective Goods. For the avoidance of doubt and without limitation, Goods will not be regarded as defective to the extent that they are reflective of any Production Sample approved in accordance with clause 9.1.
- 17.2. Upon such notification of defective Goods, the Client must:
- (a) provide any photographic evidence requested by SCOUT; and
 - (b) allow SCOUT to inspect the Goods to determine whether they are defective (this includes granting SCOUT unimpeded access to inspect such Goods).
- 17.3. If the Client is aware or ought reasonably to be aware that the Goods are defective for any reason, then the Client must take all necessary steps to mitigate any loss or damage.
- 17.4. If SCOUT is notified of defective Goods and agrees that they are defective (acting reasonably) then SCOUT will at its election either:
- (a) replace the defective Goods with Goods that comply with the terms of this Agreement;
 - (b) provide a partial refund in return for the Client accepting the defective Goods;
 - (c) provide a full refund for any defective Goods;
 - (d) repair the defective Goods and return the Goods to the Client; or
 - (e) pay to the Client the costs of repairing the Goods.
- 17.5. Goods will only be dealt with in accordance with this clause 16 provided that:
- (a) the Client has complied with the other terms of this clause 16;
 - (b) SCOUT has agreed (in its reasonable opinion) that the Goods are defective;
 - (c) the Goods are returned (if necessary) as soon as possible at the Client's cost or the Client has otherwise complied with SCOUT's direction in respect of the Goods; and
 - (d) the returned Goods are accompanied by all original delivery documentation.
- 17.6. Notwithstanding the above clauses, SCOUT will not be liable to the Client for any Loss, or required to accept any return for any defect or damage in the Goods where:
- (a) such defect or damage is caused by, or partly caused by, or arises as a result of, the Client (or the Client fails to take reasonable steps to prevent them from becoming defective);
 - (b) the Client makes any further use of those Goods after giving notice in accordance with clause 16.1;
 - (c) the defect arises because the Client failed to follow SCOUT's oral or written instructions for the storage or use of the Goods or (if there are none) good trade practice regarding the same;
 - (d) the defect arises as a result of SCOUT following any drawing, design or specification supplied by the Client;
 - (e) the Client alters or repairs the Goods without the written consent of SCOUT;
 - (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
 - (g) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - (h) the problem caused by or contributed to by any modification to the Goods by the Client.

18. RISK

- 18.1. Even if SCOUT retains ownership of the Goods, all risk for the Goods passes to the Client on delivery of the Goods to the Client in accordance with this Agreement (unless risk passes earlier, as contemplated by an Invoice).
- 18.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SCOUT is entitled to:
- (a) receive payment for the Goods; and
 - (b) receive all insurance proceeds payable for the Goods. The production of this Agreement by SCOUT is sufficient evidence of SCOUT's rights to receive the insurance proceeds without the need for any person dealing with SCOUT to make further enquiries.

19. INDEMNITY AND RELEASE

- 19.1. Except as provided under this Agreement and to the extent permitted by law:
- (a) the Client:
 - i) releases SCOUT and its officers, employees and agents from any and all Claims by the Client or any of its officers, employees, agents or invitees;
 - ii) indemnifies SCOUT and its officers, employees and agents against any and all Claims made by third parties against SCOUT;

- iii) indemnifies SCOUT and its officers, employees and agents against any Loss suffered by or incurred by the Client or SCOUT, arising from any act, default, omission, negligence or breach of contract or otherwise, by the Client or any of its directors, employees, agents or invitees.
 - (b) SCOUT is not liable for any Claim or any Loss arising from any event or cause, beyond the control of SCOUT including but not limited to:
 - i) any act or omission of the Client, including any delay caused by the Client;
 - ii) delays in delivery;
 - iii) damage after delivery;
 - iv) any problem caused by misuse, abuse, wear and tear or abnormal movement; and
 - v) any problem caused in connection with any of those matters set out under clause 16.6.
- 19.2. The Client will indemnify and hold harmless SCOUT, its officers, directors, employees and agents and parent, subsidiary or affiliated companies, from and against any and all damage, Loss, Claims and demands of any nature caused by or arising out of the acts or omissions of SCOUT in providing the Goods.
- 19.3. Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of SCOUT in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 19.4. If SCOUT is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, SCOUT's total liability to the Client for that failure is limited to, at the option of SCOUT:
 - (a) in the case of services, the resupply of the services or the payment of the cost of resupply; and
 - (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- 19.5. Without limitation to the other terms of this Agreement, SCOUT excludes any liability to the Client, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement.

20. TERMINATION

- 20.1. SCOUT may in its absolute discretion, by written notice to the Client, immediately terminate this Agreement (and shall have no liability for any Loss suffered by the Client due to the termination):
 - (a) if the Client fails to make payment in accordance with this Agreement;
 - (b) if the Client suffers an Insolvency Event;
 - (c) in the event of Force Majeure (such as if there are issues with SCOUT's supplier and SCOUT is unable to supply the agreed Goods); or
 - (d) if the Client breaches any warranty or obligation contained in this Agreement and fails to rectify the breach within 7 days of being given a notice to do so.
- 20.2. The Client may terminate this Agreement if SCOUT breaches the terms of this Agreement and fails to rectify the breach within 30 days of being given a notice to do so.
- 20.3. Upon termination of this Agreement:
 - (a) the Client shall not be entitled to any refund of any amount paid;
 - (b) in the event of termination by the Client under clause 19.2, the Client shall be liable to pay SCOUT for all Goods supplied by SCOUT up until the date of termination, and such amounts shall be a debt immediately due and owing; and
 - (c) in all other cases, the Client shall be liable to pay SCOUT all amounts under any Invoices which are unpaid (whether or not the date for payment has arisen), and such amounts shall be a debt immediately due and owing. The Client acknowledges that this is fair and reasonable given the customisation of the Goods for the Client and given production commences upon an Invoice being accepted.
- 20.4. The rights and remedies of the parties contained in this clause 19 are in addition to any other rights and remedies by law, in equity or under this Agreement.

21. GENERAL

- 21.1. Any notice required to be given in accordance with this Agreement is deemed to be sufficiently given if provided to the Client's Address for Service or SCOUT's Address for Service (as the case may be) and, if it is:
 - (a) delivered by hand, upon which the time of giving notice will be the time of delivery;
 - (b) sent by pre-paid post, upon which the time of giving notice will be two (2) business days after the date of postage;

- (c) sent by email, upon which the time of giving notice will be the time shown on the email generated by the sending machine identifying proof of transmission to the designated email address.
- 21.2. The following will constitute proof of receipt:
 - (a) if sent by registered post, proof of posting by registered post;
 - (b) if sent by email, proof of sending.
- 21.3. This Agreement is governed by the laws of Victoria and the Commonwealth of Australia which are in force in Queensland.
- 21.4. The parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 21.5. This Agreement contains the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- 21.6. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect.
- 21.7. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- 21.8. No waiver or amendment of a provision of this Agreement is binding unless made in writing and signed by both parties.
- 21.9. The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Agreement.
- 21.10. If a provision of this Agreement is void or unenforceable it must be severed from this Agreement and the provisions that are not void or unenforceable are unaffected by the severance.
- 21.11. The rights and remedies of a party to this Agreement are in addition to the rights or remedies conferred on the party at law or in equity.
- 21.12. This Agreement may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by email.
- 21.13. Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- 21.14. The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 21.15. Time is in all cases and in every respect of the essence of this Agreement.