

## **TERMS AND CONDITIONS OF SALE**

### **1. Interpretation**

In this document and on any quotation, offer or other agreement "the Company" shall mean Beautiworx Pty Ltd its servants or agents and "the Purchaser" shall mean the person, persons, firm or company to whom the quotation is addressed or the offer of sale is made and shall include their legal representatives, administrators, successors and permitted assigns. "Item" shall mean the goods sold and described on the quotation and on the face hereof. "Intellectual Property" shall mean all formulations, specifications, designs, processes and methodologies relating to Items supplied by The Company.

Headings are included for ease of reference only and do not form part of these Terms and Conditions.

### **2. General**

Subject to any Special Conditions agreed to in writing between the Company and the Purchaser these Terms and Conditions together with a designated written quotation and/or a Letter of Acceptance from the Company shall comprise in entirety the terms and conditions of the contract entered into between the Company and the Purchaser. Any contractual terms and conditions of the Purchaser are expressly excluded.

### **3. Contract**

The Company's quotation is valid for a period of thirty days from the date of the quotation, unless other validity term is stated in the quotation. The Company's offer is subject to review, amendment or withdrawal by the Company at any time prior to acceptance by the Company of a purchase order or like instrument issued by the Purchaser or the expiry of thirty days (or other quoted validity term stated in the quotation), whichever is the earlier. If no purchase order and acceptance thereof occurs, the quotation will automatically lapse at the expiration of the thirty days or other quoted term, unless the period of offer is extended in writing by the Company and notice of the extension forwarded to the Purchaser prior to the expiry of thirty days or other quoted term. The Company's quotation will be deemed to have been accepted and a binding contract entered into between the Company and Purchaser on the date the Company issues a Letter of Acceptance of a purchase order or like instrument received from the Purchaser, or in the event of there being no written quotation by the Company and/or the Company elects not to issue a Letter of Acceptance, on the date the Company receives a written order from the Purchaser, and its being acceptable to the Company, the Company commences supply arrangements for the goods and/or services described in the order.

### **4. Company Documents**

Clerical errors and misprints in computations, typing or otherwise in any Company document are subject to correction by the Company by either re-issuing of the document or adjustment of the document, as the case requires. The Company shall not be liable for any cost, expense or damage incurred by the Purchaser as a result of any correction of any document by the Company.

### **5. Alterations and Other Agreements**

These Terms and Conditions and any other terms and conditions of the Company's offer or of any contract entered into between the Company and the Purchaser may only be varied, altered or waived by written agreement between the Company and the Purchaser. The Purchaser acknowledges and agrees that no verbal agreement between it and any employee servant or agent of the Company will be binding on the Company. These Terms and Conditions shall be read as including the Terms and Conditions of any supplier to the Company provided that these terms and conditions shall override those of the supplier in the event of a conflict.

### **6. Copyright and Intellectual Property**

The Purchaser acknowledges and agrees that copyright in all Intellectual Property and other information provided by the Company in connection with any quotation, contract or otherwise remains with the Company. The Purchaser further acknowledges and agrees that the details and contents of the Intellectual Property and other information shall remain confidential between the Company and the Purchaser.

### **7. Terms of Payment**

Where the Company provides a written quotation for product manufactured, and supplied, by the Company the terms of payment as set out in such written quotation shall apply. In all other cases where the Company offers a credit facility to the Purchaser the terms of payment of any invoice shall be full payment by the end of the month following the month during which the invoice is rendered.

The Company may withdraw an existing Purchasers credit facility prior to the acceptance by the Company of the Purchase Order or at other times.

If there is a change of the name, legal entity, structure or management and control of the Purchaser's business, the Company will only continue to provide credit facilities if it receives from the Purchaser written advice of the changes and has provided to the Purchaser written consent to the changes and to the continuation of the credit facilities.

Where there is no written quotation or no credit facility is offered the Purchaser shall pay the amount stated in the invoice on delivery of the Item to the Purchaser.

If payment is not made by the Purchaser within or at the time specified either or both penalties stated hereunder may be charged by the Company at the Company's absolute discretion -

a) where a discount, concession or allowance is given by the Company and stated in the invoice, the discount,

concession or allowance may be withdrawn in part or in full, and in such case, a written notice by the Company to the Purchaser to that effect will be deemed to be the new invoice; and  
b) interest may be charged at the rate of 1.5% per month on a daily basis on all amounts outstanding as and from the date of the invoice.

#### **8. Prices and Charges**

- a) Unless the invoice otherwise states, all prices are strictly Nett;
- b) All prices are those current at the date of offer and as stated in the quotation, subject only to any variation clauses contained therein and to paragraph (c) hereof;
- c) All prices are subject only to variation where there is a variation of import prices or exchange rates payable by the Company with respect to the Item purchased, the supply of parts or equipment required for the Item or any matter relating to the Item.

#### **9. GST**

a) For the purpose of this clause 9.:

'GST' means GST within the meaning of the GST Act. 'GST Act' means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in this clause bear the same meaning as those expressions in the GST Act.

- b) The Company and the Purchaser warrant that they are registered or required to be registered.
- c) To the extent that a party makes a taxable supply except where express provision is made to the contrary, and subject to this clause 9., the consideration payable by a party represents the value of the taxable supply for which payment is to be made.
- d) If a party makes a taxable supply for a consideration which, under this clause represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- e) A party's right to payment under this clause is subject to a valid tax invoice being delivered to the party liable for the taxable supply.

#### **10. Delivery**

- a) The method and date of all Items purchased shall be on the terms as stated in the Company's quotation, unless the Purchaser nominates and the Company accepts an alternative arrangement of delivery, in which case, delivery shall be at the cost and expense of the Purchaser;
- b) The delivery dates and completion times contained in the quotation are an estimate only unless expressly stated to be an essential term of the offer and may be varied at any time by the Company depending on the Company's production commitments, the availability of materials, labour and transport and other contingencies;
- c) Delivery dates and completion times are subject at all times to variation by the Company due to delay or disruption by or due to any matter beyond the Company's reasonable control; and
- d) Delivery is at all times at the risk of the Purchaser.

#### **11. Inspection and return of goods**

- a) Except where Items supplied by the Company are defective and, subject to any warranty, Items will only be accepted for return by the Company if the invoice number and full details of the reason for return have previously been supplied to the Company in writing and the Company has given the Purchaser prior written notice of its acceptance of the return of the Items;
- b) The Purchaser shall inspect all Items received by it immediately upon receipt of the Items from the Company (receipt being the date of delivery or the date of collection, as the case requires) and the Purchaser must notify the Company in writing of any alleged short or wrong delivery, damage or other contractual breach within seven days of receipt of the Items. If the Company does not receive such notice within the seven days, the Purchaser shall be deemed to have accepted delivery and the Company's obligation will be deemed to have been fulfilled;
- c) If Items are made by the Company to a specified order of the Purchaser or according to the Purchaser's specifications and design, the Company will not accept return of those Items or allow credit to the Purchaser;
- d) The Company's acceptance of return of the Items is not an acceptance of or granting of credit to the Purchaser by the Company; and
- e) Delivery of all Items by the Purchaser is to be at the Purchaser's expense and risk.
- f) No items will be accepted for return if used or not in pristine condition.

#### **12. Property and Risk**

- a) Property in the Items shall pass to the Purchaser at the time the Items are paid for by the Purchaser unless otherwise agreed in writing by the Company;
- b) Until the Company has received payment in full for the Items the Purchaser shall hold the Items and any goods to which the Items are converted by any process as bailee for the Company;
- c) The Purchaser may deal with the Items purchased from the Company in the ordinary course of its business provided that the Purchaser shall hold all proceeds of any such sale on behalf of the Company and shall immediately assign such sale proceeds to the Company upon receiving a request from the Company to do so;
- d) All risks with respect to the Items purchased by the Purchaser will be borne by the Purchaser from the time the Items cease to be within the actual possession of the Company or its agents; and

e) The Company shall be entitled to enter the Purchaser's premises and remove the Items purchased in the event of a default by the Purchaser. The Company shall be entitled to resell or to deal with such Items in any manner it sees fit.

### **13. Default**

If the Purchaser defaults in or commits a breach of its observance and performance of its obligations to the Company, or if the Purchaser being a natural person commits an act of bankruptcy, or if the Purchaser being a company is the subject of any resolution or petition to wind-up the Purchaser's business or is under the control of a receiver or a receiver and manager or an official manager of the Purchaser's undertaking, property or assets is appointed, the Company may, without prejudice to any other remedy open to it :

- a) determine the Contract and cease manufacture and delivery of all outstanding orders;
- b) pursuant to a general lien held by the Company in respect to all Items purchased by the Purchaser in the Company's possession forfeit such Items and deal with them as the Company sees fit; and
- c) repossess Items held by the Purchaser for which payment has not been received and deal with such Items as the Company sees fit.

If the Company elects not to determine the Contract with the Purchaser the Company may by notice in writing to the Purchaser cancel or vary any credit facilities, concessions or discounts available to the Purchaser.

### **14. Security**

The Purchaser hereby consents to the Company lodging at the Office of Titles in the State of Victoria or the equivalent office in other States, a Caveat over any real property owned by the Purchaser for the amount of all monies that are or may become payable under this Contract.

### **15. Warranty**

All items sold by the Company shall be subject to the following warranties and conditions:

- a) Products manufactured and supplied by The Company are warranted against faulty workmanship and/or faulty materials for a period of one month from the date of supply. The Company does not warrant parts subjected to incorrect handling and storage.
- b) Warranty offered is limited to the reworking or replacement of the faulty product(s) and in all claims the faulty product(s) must be returned to the place of original manufacture and subject to clause 10. hereof. The Company will not be held responsible for any damages or costs to the Purchaser (whether consequential or otherwise) which may or may not have occurred due to the failure of said faulty product(s).
- c) Costs involved for the removal and or re-supply of any faulty product(s) would be at the expense of The Purchaser with no claim to The Company.
- d) Third Party Proprietary items would not be covered by the above warranty but covered under the warranty offered (if any) to The Company by the proprietary product(s).
- e) Freight and transport costs for Items returned under warranty shall be at the Purchaser's expense. Freight and transport costs for Items re-supplied under warranty shall be at the Company's expense.
- f) Subject to any express written warranty otherwise given by the Company, and subject to any statutory warranties express or implied which by law cannot be excluded, all warranties conditions and representations whether express or implied are expressly negated.
- g) All warranties supplied by the Company are limited to an amount totalling no more than the unit cost price of the Item;
- h) The Company's warranties shall be null and void and to no effect if
  - (i) the Items sold are abused or operated outside the limits of the specifications in any respect whatsoever,
  - (ii) any defects complained of are caused by, wilful damage, negligence or untrained or unskilled use in the operation, installation or storage of the Items,
  - (iii) the Purchaser in any respect alters the Items purchased by it or adds to it or removes any materials from such Items, or
  - (iv) the Purchaser fails to immediately notify the Company in writing of any defect or fault in the Items purchased or fails to provide full details of any such failure or fault prior to returning the Items to the Company

### **16. Cancellation**

a) Cancellation of any order placed with the Company will incur a minimum of ten per centum of the contract sell price. This minimum amount would only apply where work has not commenced. Where work has commenced, whether it be ordering or production, cancellation charges would include all labour performed, materials purchased, and administrative charges pertaining to the cancelled order. In any case where an order is cancelled only the partially completed or completed product(s) becomes the property of the Purchaser. Payment of cancellation costs would be Nett 30 days and subject to the late payment conditions.

b) Freight and transport costs for goods returned to and from the Company shall be at the Purchaser's expense.

### **17. Production**

No compensation will be considered by the Company for lost business or any expense or penalties incurred with all losses borne by the Purchaser.

### **18. Force Majeure**

The Company shall not be liable or incur any penalty for delays in delivery resulting from acts of war, industrial action, acts of God, Government action, riot, civil commotion, failure by the client to fulfil its commitments in due

time, inability to obtain materials, or any other occurrence (whether of the same or different in kind or nature) which was unavoidable or beyond the control of the Company.

**19. Applicable Law**

Unless otherwise agreed in writing by the Company, the sale of all Items by the Company shall be governed by the applicable law in the State of Victoria.

**20. Service of Notices**

Any notice or document required to be served under these Terms and Conditions or under any Contract entered into between the Company and the Purchaser will be sufficiently served if either left at the address of the respective party as stated in the Contract or as otherwise notified from time to time in writing by that party or if posted by prepaid post to such address. If the document or notice is posted, service will be deemed to have been effected three days after the date on which the document or notice was posted.