

## COMCATER TERMS AND CONDITIONS OF SALE ( ISSUE 009 – 03/05/2018 )

1. These terms and conditions ("terms of trade") apply to all transactions between the supplier ("we/us") Comcater Pty Ltd (ABN 53 005 974 185) 156 Swann Drive, Derrimut, 3030, Victoria and the customer ("you") notwithstanding any statement to the contrary which may be contained in the order. They may be varied by us at any time by notice in writing to you.
2. In these terms of trade:
  - (a) "goods" refers to goods supplied to you by us and comprises equipment, accessories and spare parts;
  - (b) "services" refers to any services supplied to you pursuant to a quotation and these terms of trade;
  - (c) "quotation" means a written description of the goods or services to be provided, and/or an estimate of our charges for the performance of the work required;
  - (d) "non-standard items" means goods not normally stocked by us.

### QUOTATIONS AND ORDERS

3. Quotations:
  - (a) are valid and open for acceptance for a period of 60 days from the date of the quotation;
  - (b) are based upon the cost of materials available at the time of preparation of the quotation and on delivery occurring within 180 days from the date of the quotation; and
  - (c) are to be construed as an invitation to treat and not as an offer to sell the goods the subject of the quotation.
4. We reserve the right to amend any quotation before completion of an order to take into account:
  - (a) any change in your original order; and
  - (b) any rise or fall in the cost of completing the order.We will notify you of any amendment as soon as practicable, at which point the amended quotation will be the estimate or quotation for the purposes of these terms of trade.
5. An agreement for sale of the goods arises when an order for the goods is placed in writing by you on our standard order form (unless otherwise agreed) specifying the required date of delivery and:
  - (a) that order is signed by us and accepted in writing; or
  - (b) that order is otherwise satisfied or performed in whole or in part by us.
6. Placement of an order by you signifies acceptance by you of these terms of trade and the most recent quotation.
7. We may in our absolute discretion refuse to provide goods where:
  - (a) goods are unavailable for any reason whatsoever;
  - (b) credit limits cannot be agreed upon or have been exceeded;
  - (c) payment for goods previously provided to you or any related corporation of you or to any other party who is, in the reasonable opinion of us, associated with the you under the same or another supply contract, has not been received by us; or
  - (d) they do not comply with all applicable Australian standards and regulatory requirements.
8. All prices quoted and any other charges applicable are:
  - (a) exclusive of GST, insurance and delivery charges. GST will be payable by you upon supply of Goods. "GST" means GST within the meaning of A New Tax System (Goods & Services Tax) Act 1999 (as amended);
  - (b) based upon foreign exchange rates at the date of the quotation and subject to change in accordance with any change in applicable foreign exchange rates between the date of the quotation and the date of payment;
  - (c) based upon the manufacturer's price for the goods at the date of the quotation and subject to change due to any change in the manufacturer's price between the date of the quotation and the date of payment; and
  - (d) to the extent that they include non-standard items, quoted on the basis that each item is available for sale in Australia and complies with all applicable Australian standards and regulatory requirements.
9. Goods will be supplied in carton quantity only. Your order quantity will be adjusted to nearest carton quantity. The Cambro product range is sold in carton quantities only. Your orders will be adjusted to the nearest carton quantity.
10. Where you withdraw or cancel any order following acceptance by us you must pay us as liquidated damages an amount equivalent to twenty percent (20%) of the agreed price of the goods as compensation. ORDERS FOR NON-STOCK ITEMS MAY NOT BE CANCELLED OR RETURNED UNDER ANY CIRCUMSTANCES AT ANY STAGE.

### PRICE

11. Prices are to be paid in Australian currency.
12. Where a written Comcater quotation refers to a specific foreign currency rate, variations in that rate greater than +/-3% in the value of the rate for the AUD\$ against the relevant foreign currency referred to in the quotation between the date of the quotation and the date of delivery shall be applied to the price of the goods, resulting in an extra cost to you in the event of a less favourable rate for the AUD\$, or a credit in the event of a more favourable rate for the AUD\$. The ANZ Bank sell exchange rate at noon on the relevant day shall apply as the exchange rate for these purposes.

### DELIVERY

13. Delivery shall occur on the later of the original "required-by" date specified by you in the order. Delivery of spare parts shall be effected FOB or, in the case of equipment and accessories other than spare parts, FIS to the capital city in the State in which the order is placed. Such delivery shall only be made to your ground floor or kerbside goods-receiving areas. We do not freight orders directly to our distributors' end users. For orders of equipment and/or accessories to a value of less than \$250 (excluding GST), a \$45 (excluding GST) freight charge applies.
14. Any time given for delivery of goods is an estimate only. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon us and we shall not be liable for any loss or damage whatsoever by reason of any delays in delivery of the goods and you shall not be relieved of any obligation to accept or pay for the goods by reason of such delay. If we, in our sole and absolute discretion, determine that we may be unable to complete our obligations within a reasonable time or at all, the contract may be terminated by us. In the event of such a termination, you shall have no claim against us for any damage, loss, cost or expense whatsoever.
15. If you fail to advise us in writing of any fault in goods or failure of goods to accord with the order within 48 hours of delivery, you are deemed to have accepted the goods and to have accepted that the goods are not faulty and accord with your order. Nothing in this paragraph affects your rights to any alleged failure of a guarantee under the Australian Consumer Law.
16. You authorise us to store goods which we are unable to have delivered to you due to your failure or inability to accept delivery at your expense pending notification from you to deliver them and you undertake to indemnify us for all costs incurred due to the inability to deliver, including but not limited to storage charges, freight charges and demurrage.
17. Goods accepted as returned for credit may incur a restocking fee equal to a percentage of the value of the items returned as indicated on the invoice, but not less than 30%, plus repacking costs if required. Goods will not be accepted for return without prior written authorisation from a Comcater manager. Non-stock items will not be accepted as returns. Cambro returns will be accepted only in original packaging within 14 days of invoice.
18. We accept no responsibility to deliver goods that do not comply with Australian standards and regulatory requirements.

### WARRANTIES

19. On all goods except those referred to in clause 20, we offer a warranty against defects in materials, manufacture and workmanship, of 12 months following delivery. The warranty does not extend to those goods or parts of goods that are routinely replaced in the course of operation and are properly regarded as consumables.
20. The exceptions to the 12 month warranty in clause 19 are: goods branded Brema, Purevac, RATIONAL, Tecnomac, FRIMA, Vollrath and Mareno, which carry a warranty of 24 months; Vitamix equipment, which carries a materials warranty of 36 months on the motor and base, 12 months on the container, lid, blade assembly, drive socket and sound enclosure (if included) against defects in material and workmanship, and 12 months labour warranty on the motor and base only; RATIONAL replacement parts, which carry a 12-month warranty from the date of installation; and all other replacement parts, which carry a 90-day warranty from date of installation. Warranty period for Clearance items may differ.
21. To obtain the benefit of the warranty, you must call Comcater Equipment Servicing (24/7) on 1800 810 161 or email service@comcater.com.au as soon as practicable after you notice

- a problem with the goods. In addition, equipment such as Vitamix blenders, Vollrath, Server and Antunes goods and other small, portable equipment (Carry-In Items) must be delivered to us or our Authorised Service Agent after you have called or emailed Comcater Equipment Servicing and been given a job number and instructions regarding delivery.
22. To honour the warranty, we (or our Authorised Service Agent) will arrange the following at no cost to you: in the case of goods that are not Carry-In Items, staff of Comcater or our Authorised Service Agent will attend at your premises between the hours of 8 am and 4pm Monday to Friday (Normal Hours) to repair the goods and replace defective parts; in the case of Carry-In Items, we will arrange for the repair of the goods and notify you when they are to be collected.
  23. We will charge you for warranty work: at your premises, where you require it to be performed outside Normal Hours (at penalty rates); and where you require repairs to Carry-In Items to be undertaken at your premises (call-out and travelling time, but not labour costs, which we will bear).
  24. This warranty will be void if: you or a third party have installed or operated the goods otherwise than in accordance with the manufacturer's instructions and recommendations; or the goods have been repaired, serviced, modified or tampered with in any way by someone who is not qualified to do so and in any manner not complying with the manufacturer's specifications.
  25. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

### TITLE AND RISK

26. Title to the goods shall remain with us until such time as we have received payment of the purchase price of the goods and the purchase price of any other goods or services previously or subsequently supplied by us to you, whereupon such title shall pass to you.
27. Until such time as title of the goods passes to you, you shall hold the goods as the bailee from us and you shall remain liable to account to us for the goods.
28. Subject to clause 30, you shall be entitled to sell, lease or deliver the goods in the ordinary course of your business. If the goods are sold by you prior to when title passes to you:
  - (a) must be able upon demand by us to separate and identify as belonging to us goods supplied by us from other goods which are held by you;
  - (b) must keep separate records in relation to the proceeds of the sale of any goods which have not been paid for;
  - (c) agree that you hold the proceeds of resupply of the goods on trust for and as agent for the us immediately when they are receivable or are received;
  - (d) agree that you must either pay the amount of the proceeds of resupply to us immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for us;
  - (e) agree that any accessory or item which accedes to any of the goods by an act yours or any person at the direction or request of you, becomes and remains our property until we have received payment of the purchase price of the goods in accordance with Clause 30 when the property in the goods (including the accessory) passes to you;
  - (f) agree that we may repossess the goods if payment for the goods is not made within the time prescribed in clause 32 (or such longer time as we may, in our complete discretion, approve in writing);
  - (g) grant an irrevocable licence to us and our agent to enter your premises in order to recover possession of goods pursuant to this paragraph. You indemnify us in respect of any damage to property or personal injury which occurs as a result of the our entering your premises; and
  - (h) irrevocably appoint us your attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of us with respect to the goods.
29. For the avoidance of doubt, if any goods are used in a manufacturing process mixed with other materials, you must record the value of goods so consumed in relation to each unit of

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- finished product and upon sale of any unit of finished product, immediately remit that amount from the proceed of sale to us. You must provide us monthly or quarterly with records of such use.
30. Your right to sell the goods in the ordinary course of its business:-
- may be revoked at any time by us by giving notice to that effect if you are in default for longer than seven days in the payment of any sum whatsoever due to us;
  - shall automatically cease if a receiver, controller, liquidator or administrator is appointed to any of your assets, undertaking or property, or a winding up application or order is made against you, or any petition or order in bankruptcy against you is presented or made, or you go into voluntary liquidation or call a meeting of or make arrangements or compositions with your creditors.
31. Risk in goods passes to you immediately upon delivery. Pending payment in full for the goods, you:
- must not supply any of the goods to any person outside the ordinary or usual course of business;
  - must not allow any person to have or acquire any security interest in the goods, and
  - must insure the goods for the full insurable or replacement value (whichever is the higher), with an insurer licensed or authorised to conduct the business of insurance in the place where you carry on business.

### INVOICING AND PAYMENT

32. The invoiced amount for the goods is to be paid by you no later than the last day of the month following the month in which the invoice is first issued ("the due date"). Where you fail to pay for the goods in full by the due date, we may at our discretion and without attracting any liability to you withhold delivery of all other goods for which orders have been placed by you and accepted by us.
33. Where payment is not made by the due date, interest on the amount outstanding shall be payable at the greater of the rate of one per cent above our overdraft rate from time to time, calculated from the due date until payment is made in full.
34. You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due by you to us.
35. You authorise us to:-
- obtain credit reports from credit reporting agencies and other credit providers concerning the your credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by you for credit and your credit worthiness,
  - to disclose reports and information to other credit providers about the your credit worthiness, credit standing, credit history and credit capacity for the purpose of assessing an application by you for credit and your credit worthiness.
36. As beneficial owner and/or registered proprietor hereby charge in our favour all of your estate and interest in any real property (including but not limited to any applicable land owned by you named or described as your street address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by us to you for the delivery and/or supply of goods, including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by us and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat. You further agree to execute a mortgage or mortgagees in registerable form promptly at our request. If, upon request, the mortgage(s) are not executed and returned within fourteen days, then you authorise any duly authorised officer of ours to sign as your attorney. A statement of certificate signed by our duly authorised officer as to the goods supplied and any indebtedness by you shall be prima facie evidence of the supply and indebtedness.

### DEFAULT AND TERMINATION

37. Each of the following occurrences constitutes an event of default:
- you breach or are alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fail to remedy that breach within 14 days of being given notice by us to do so;
  - you, being a corporation, are subject to:
    - a winding up application or an order made against you or a meeting being called to consider a resolution for you to be

- wound up, deregistered or dissolved;
  - a receiver, receiver and manager or administrator being appointed under part 5.3A of the Corporations Act 2001 to all or any part of your property or undertaking;
  - you enter into a scheme of arrangement (other than for the purposes of restructuring);
  - any assignment by you for the benefit of creditors;
  - any purported assignment by you of your rights under these terms of trade without our prior written consent;
  - you cease or threaten to cease conduct of your business in the normal manner.
38. In the event of any default, except where payment in full has been received by us, we may:
- terminate these terms of trade;
  - terminate any or all orders and credit arrangements (if any) with you;
  - refuse to deliver goods or provide further services;
  - repossess and resell any goods delivered to you, the payment for which has not been received; or
  - retain (where applicable) all money paid on account of goods or services or otherwise.
- (f) in addition to any action permitted to be taken by us under this clause on the occurrence of an event of default, all invoices will become immediately due and payable.

### LIMITATION OF LIABILITY

39. Save and except for the express warranty set out above, and to the maximum extent permitted by law, all guarantees, conditions and warranties which may at any time be implied by the common law, the Australian Consumer Law, the Fair Trading Act, the Goods Act or any other State or Federal Act or legislation are excluded. To the extent that these cannot be excluded and where the law permits, our liability in respect of any such condition or warranty shall be limited at our option to the repair or replacement of the goods or the supply of equivalent goods or the payment of the costs of replacing or repairing the goods or having them replaced or repaired.
40. Under no circumstances are we responsible in any way to you or any other person for any loss, damages, costs, expenses or other claims (including consequential damages, loss of profit or loss of revenue), as a result, direct or indirect, of any defect, deficiency or discrepancy in the goods or services including in their form, content and timeliness of deliveries, failure of performance, error, omission or defect, including, without limitation, for or in relation to any of the following:
- any goods or services supplied to you;
  - any delay in supply of the goods or services; or
  - any failure to supply the goods or services.

### INDEMNITY

41. You indemnify us, and will keep us, our servants and agents indemnified in respect of any claim or demand made or action commenced by any person (including, but not limited to, you) against us or for which we are liable, in connection with any loss arising from or incidental to the provision of the goods or services, any order or the subject matter of these terms of trade including, but not limited to any legal costs incurred by us in relation to any claim or demand or any party/party legal costs for which we are liable in connection with any such claim or demand. This provision remains in force after the termination of these terms of trade.

### PPS LEGISLATION

42. You grant us a Security Interest in the goods supplied as Commercial Property, more particularly described as other goods and their Proceeds to secure your obligation to pay the purchase price of the goods and any other obligations of you to us under this agreement (together the "Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable, or their recoverable value is insufficient to pay the Indebtedness, the Security Interest shall also extend to all your present and after acquired property, of which the goods form part, to the extent required to secured the Indebtedness.
43. As and when required by us you shall, at your own expense, provide all reasonable assistance and relevant information to enable us to register a Financing Statement or a Financing Change Statement and generally to obtain, maintain, register and enforce our Security Interest in respect of the goods supplied, in accordance with the Personal Property

Securities Act 2009 ("PPSA").

44. You shall not change your name without first notifying us of the new name not less than 7 days before the change takes effect.
45. You warrant that the goods are not purchased for personal, domestic or household purposes.
46. Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by you on more than one invoice/order, any payments received from you shall be deemed to be made by you and applied by us in the following order:
- to any obligation owed by the you to us which is unsecured, in the order in which the obligations were incurred;
  - to any obligations that are secured, but not by a Purchase Money Security Interest ("PMSI"), in the order in which those obligations were incurred;
  - to obligations that are secured by a PMSI, in the order in which those obligations were incurred.
47. You and we agree to contract out of the PPSA in accordance with Section 115 of the PPSA to the extent that Section 115 applies for the benefit of, and does not impose a burden on us. You waive your right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of us in respect of the Security Interest created by these terms and conditions.
48. For the purpose of clauses 42 to 47, all words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of the PPS.

### AGENCY AND ASSIGNMENT

49. You agree that we may at any time appoint or engage an agent to perform an obligation of ours arising out of or pursuant to these terms of trade.
50. We have the right to assign and transfer to any person all or any of our title, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations we owe to you under these terms of trade.
51. You are not to assign, or purport to assign, any of your obligations or rights under these terms of trade without our prior written consent.

### FORCE MAJEURE

52. If circumstances beyond our control prevent or hinder the provision of the goods or any services, we are free from any obligation to provide the goods or services while those circumstances continue. We may elect to terminate this agreement or keep it on foot until such circumstances have ceased. Circumstances beyond our control include but are not limited to, unavailability of materials or components, strikes, lockouts, rights, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

### APPLICABLE LAW

53. These terms and conditions shall at all times be governed, construed and interpreted according to the law of the State of Victoria and the you hereby irrevocably submits to the jurisdiction to the courts of that State and all courts of appeal there from.

Terms and Conditions are subject to change without notice. To ensure you are always viewing our latest Terms & Conditions, please visit [www.comcater.com.au/terms](http://www.comcater.com.au/terms)

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