

UNCLE BILLS (AUSTRALIA) PTY LTD
UNCLE BILLS (NZ) LTD
Terms and Conditions of Trade
(Effective August 2012)

** Uncle Bills – refers to both Uncle Bills (Australia) Pty Ltd and Uncle Bills NZ Ltd, unless stated otherwise in specific paragraphs.

1. APPLICATION

- (a) Uncle Bills and the purchaser (Purchaser) agree that these terms and conditions of trade (Terms) will apply to any goods (including electrical goods and goods and services) supplied by Uncle Bills to the Purchaser (Goods).
- (b) If there is a conflict between these Terms and any other terms and conditions of the Purchaser (or included as part of any Purchaser documentation) these Terms will prevail unless Uncle Bills has specifically agreed in writing that these Terms no longer apply.
- (c) If there is a conflict between these Terms and a written supply agreement signed between the Purchaser and Uncle Bills then those provisions of the supply agreement will apply only to the extent that they conflict with these Terms.
- (d) Uncle Bills may amend these terms at any time. The amended terms will apply in respect of all orders placed with Uncle Bills following the date that the terms are amended in our terms and conditions on our web page Please go to www.unclebills.com.au, terms and conditions to see the amended terms and conditions.

2. ORDERS

- (a) The Purchaser will place written / email / fax / verbal orders for Goods which comply with the ordering process specified by Uncle Bills from time to time (Order).
- (b) Each Order received in writing or email or fax, or verbal will be considered an offer to purchase the Goods and will only be accepted once Uncle Bills either supplies the Goods or sends a written confirmation of the Order to the Purchaser.
- (c) Uncle Bills may accept the Order or decline to accept the Order in whole or in part, in its sole discretion.
- (d) Orders accepted by Uncle Bills are subject to Uncle Bills ability to supply the Goods. Following acceptance of an Order, Uncle Bills may cancel or refuse to supply any Order at any time in its sole discretion.
- (e) Any Order accepted by Uncle Bills may not be revised, altered or cancelled by the Purchaser unless agreed in writing by Uncle Bills.

3. PRICE AND PAYMENT

- (a) The price for any Goods supplied to the Purchaser (Price) will be:
 - (i) the price agreed between the parties; or
 - (ii) in the absence of any agreement between the parties, Uncle Bills prices applicable for the Goods at the time of the acceptance of the Order by Uncle Bills.
- (b) Uncle Bills may change any Prices by giving 30 days notice to the Purchaser. The new Prices will apply to any Orders accepted by Uncle Bills after the 30 day notice period elapsed.
- (c) Uncle Bills will invoice the Purchaser the Price for all Goods as required.
- (d) The Purchaser will pay the Invoiced Amount in full and without deduction or set off , unless other terms are agreed in writing, terms of payment are within 30 days from date of Invoice or where Uncle Bills has agreed to any extended credit terms, the Invoiced Amount will be payable by the Purchaser on the date specified by Uncle Bills in any Invoice (Due Date).
- (e) Local or FIS terms, Invoice price will include GST. FOB and CNF terms are not subject to GST.(and any other relevant taxes and duties (if any) which will be payable by the Purchaser in addition to the Price.
- (f) If the Purchaser fails to pay any amount owing to Uncle Bills in full on or before the Due Date, without prejudice to any other right or remedy, Uncle Bills may:
 - (i) charge the Purchaser (who will pay Uncle Bills on demand) default interest at 2% per month on the overdue amount, calculated daily from the Due Date until the date on which payment of the overdue amount is made in full;
 - (ii) charge the Purchaser (who will pay Uncle Bills on demand) all costs (including all legal costs on a solicitor-client basis and all collection costs) incurred by Uncle Bills in the collection of such overdue amounts; and
 - (iii) refuse to deliver any Order, cancel or suspend any Order, place any overdue account on hold or stop providing credit facilities to the Purchaser and any related entity of the Purchaser.

4. DELIVERY

- (a) Uncle Bills will deliver all Goods to the address nominated by the Customer on its Purchase Order. In the event that Customer fails (for whatever reason) to accept the delivery of Good within 7 days of the date on which they become available for Delivery, the customer must pay Uncle Bills such charges for detention and storage as Uncle Bills determines to be reasonable.
- (b) Definition of delivery: For FOB and CNF terms – delivery will be deemed completed only when Uncle Bills receives payment from the customer and release of original documents has taken place. Risk and possession for these goods pass to the Customer at this time and not before.
- (c) For Local / FIS terms – delivery will be deemed complete, when stock is received by the customers store / yard. Goods delivered via 3PL warehousing or contractors, will remain the property of Uncle Bills until all Goods have been received by the customer. Risk and possession for these goods pass to the Customer at this time and not before.
- (d) The Goods will be properly and suitable packed by Uncle Bills and in such manner as to reach the intended destination in good condition under normal conditions of transport;
- (e) Uncle Bills will act as the agent for an on behalf of the Purchaser and will not be liable for, or responsible for, any damage that occurs after Delivery, provided that it has complied with clause 4(b)(c); and
- (f) Uncle Bills will not be liable to the Purchaser for any loss of revenue, loss of profits or any other indirect or consequential losses or liabilities incurred by the Purchaser if any Goods are not delivered on any specified date.

5. RISK AND TITLE

- (a) Unless agreed in writing by Uncle Bills, all risk of loss, damage, deterioration or destruction to the Goods will pass to the Purchaser on Delivery. Title to any Goods will not pass to the Purchaser until Uncle Bills has received payment in full for all Goods supplied to the Purchaser.
- (b) Until title to the Goods passes, the Purchaser will:
 - (i) hold the Goods as a bailee only
 - (ii) clearly designate the Goods as Uncle Bills property and store the Goods in such a way that they are identified as Uncle Bills property; and
 - (iii) maintain the Goods in good order and condition and preserve the Goods in their present form.
 - (iv) hold the proceeds from sales for any unpaid goods and this amount must be paid to Uncle Bills on request
- (c) Without limiting Uncle Bills other rights and remedies, Uncle Bills will be entitled to retake possession of any Goods at any time prior to payment in full being received for those Goods. The Purchaser grants Uncle Bills an irrevocable right and authority to enter onto any place where such Goods are, or thought to be, at any time, and to take and resell the Goods and to retain the proceeds from such sale. Any shortfall arising from such sale will be a debt due and owing to Uncle Bills by the Purchaser.

6. RETURN OF GOODS

- (a) Any claims by the Purchaser that any Goods supplied do not correspond to the relevant Order, or that any Goods received are defective, must be made in writing to Uncle Bills within 7 working days after Delivery.
- (b) If no claim is received by Uncle Bills within the 7 working day period the Purchaser will be considered to have irrevocably accepted the Goods.
- (c) If a claim is made by the Purchaser under clause 7(a):
 - (i) the Purchaser will advise Uncle Bills of the defect in the Goods and seek Uncle Bills permission to return those Goods to Uncle Bills for testing or verification (at the Purchaser's costs); and
 - (ii) subject to verification, and on receipt of the Goods returned:
- (d) if Uncle Bills supplied incorrect or defective Goods, Uncle Bills will (at the Purchaser's election) either issue a credit note for the Goods or, if the possible, transport the applicable replacement Goods to the Purchaser at no additional cost to the Purchaser; or
- (e) if Uncle Bills has not supplied incorrect or defective Goods, or the claim is made outside the applicable period, then Uncle

Bills will return the Goods to the Purchaser at the cost of the Purchaser and the Purchaser will have no further claim against Uncle Bills in relation to those Goods.

7. LIMITATION OF LIABILITY

Without prejudice to clause 7, the Purchaser acknowledges and agrees that:

- (a) Uncle Bills is not liable to the Purchaser in any manner in connection with any breach of these Terms, other than to compensate the purchaser for the cost of replacement of any Goods pursuant to clause 7; and
- (b) Nothing expressed or implied in these Terms will confer any liability on Uncle Bills for any consequential, indirect or special loss, damage, cost or expense suffered incurred by the Purchaser as a direct or indirect result of:
 - (i) a breach by Uncle Bills of any of its obligations under these Terms: or
 - (ii) any use of the Goods otherwise than in accordance with any relevant specifications notified by Uncle Bills to the Purchaser.

8. NO WARRANTIES

- (a) Unless warranted in writing by Uncle Bills (in relation to any of any specific Goods), Uncle Bills makes no representation, warranty or undertaking (whether express or implied) in relation to any Goods (including as to the merchantability, quality, or condition of the Goods, compliance with the description of the Goods, the suitability or fitness of the Goods for the Purchaser's purposes, or the use of the Goods) and to the maximum extent permitted by law, all such representations, warranties and undertakings are excluded.
- (b) Where the Purchaser is acquiring (or represents itself as acquiring) any Goods for the purposes of a business, in terms of section 43(2) of the Consumer Guarantees Act 1993 (Act), the Purchaser will not assert or attempt to assert any rights or claims against Uncle Bills under the provisions of the Act.
- (c) The Purchaser acknowledges that it is not relying on Uncle Bills skill or judgement as to the suitability or otherwise of the Goods for any purpose.
- (d) Where the purchaser onells any Goods to consumers who purchase those Goods for business purposes, the Purchaser will contract out of the Act in the same manner as provided in clause 10(b). if the Purchaser fails to do so, the Purchaser will indemnify Uncle Bills against any claim, expenses or loss suffered or incurred by Uncle Bills as a direct or indirect consequence of such failure.

9. PRIVACY

Any information about the Purchaser provided at any time to Uncle Bills may be used by Uncle Bills for any purpose connected with Uncle Bills business including (but not limited to) direct marketing, debt collection and credit reporting or assessment. Uncle Bills is authorised to provide such information to external agency or party for credit information and assessment purposes and that agency or party is authorised by the Purchaser to use and continue to use such information as part of its business services. Uncle Bills and any external agency or party may retain and/or use such information for as long as they see fit.

10. GENERAL

- (a) The Purchaser will not assign or otherwise transfer its rights or obligations under these Terms to any person without the prior written consent of Uncle Bills.
- (b) Uncle Bills will not be liable for any act, omission or failure by it under these Terms if that act, omission or failure results directly or indirectly from an event or circumstances beyond the reasonable control of Uncle Bills, the extent permitted by law.
- (c) Any waiver by a party of any of its rights or remedies under these Terms will be effective only if it is recorded in writing and signed by a duly authorised senior representative of that party. If the waiver relates to a breach of any provision of these Terms, this will not (unless stated otherwise) operate as a waiver of any other breach of that provision. No waiver of any breach, or failure to enforce any provision, of these Terms at any time by either party will in any way affect, limit or waive that party's right to subsequently required strict compliance with these Terms.
- (d) If any provision of these Terms is or becomes invalid or unenforceable, that provision will be deemed deleted from these Terms. The invalidity or unenforceability of that provision will not affect the other provisions of these Terms, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

- (e) These Terms are governed by the laws of Australia and New Zealand. The parties submit to the non-exclusive jurisdiction of the Australian and New Zealand courts in respect of all matters relating to these Terms.

11. Uncle Bills NZ Purchasers:

PERSONAL PROPERTY SECURITIES ACT 1999

- (a) The Purchaser acknowledges that the retention of title in clause 5 gives rise to a security interest in all present and after acquired Goods supplied by Uncle Bills (NZ) Ltd to the Purchaser to secure the Purchaser's performance of its obligations to Uncle Bills (NZ) Ltd.
- (b) The Purchaser undertakes to:
 - (i) promptly do all things, execute all documents and/or provide any information which Uncle Bills (NZ) Ltd to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
 - (ii) give Uncle Bills (NZ) Ltd not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and
 - (iii) immediately on request by Uncle Bills (NZ) Ltd (and at the Purchaser's expense) obtain from any third party such agreements and waivers of any security interest that third party has in the Goods, to ensure that at all times Uncle Bills (NZ) Ltd has a first priority security interest in the Goods.
- (c) The Purchaser waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Uncle Bills (NZ) Ltd and the Purchaser:
 - (i) the Purchaser will have no rights under (or by reference to) sections 113(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA; and
 - (ii) where Uncle Bills (NZ) Ltd has rights in addition to those in Part 9 of the PPSA, those rights will continued to apply

12. Uncle Bills (Australia) Purchasers:

Personal Property Securities Act 2009

- (a) The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the PPSA.
- (b) The Customer acknowledges and agrees that by accepting these terms and conditions which form part of the Contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA:
 - (i) Uncle Bills holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by Uncle Bills to the Customer and any Proceeds of the sale of those goods ("Collateral");
 - (ii) that any purchase by the Customer on credit terms from Uncle Bills or retention of title supply pursuant to this Contract will constitute a purchase money security interest as defined under section 14 of the PPSA ("PMSI");
 - (iii) the PMSI granted herein will continue to apply to any goods coming into existence or proceeds of sale of goods coming into existence;
 - (iv) Uncle Bills will continue to hold a Security Interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled or become an accession with other goods.
 - (v) any Uncle Bills Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
 - (vi) until title in the goods pass to the Customer, it will keep all goods supplied by Uncle Bills free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of Uncle Bills under the Contract or the PPSA; and
 - (vii) in addition to any other rights under these terms and conditions or otherwise arising, Uncle Bills may exercise any and all remedies afforded to it as a Security Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Customer to search for and seize, dispose of or retain those goods in respect to which the Customer has granted a Security Interest to Uncle Bills.
- (c) The Customer undertakes to:
 - (i) sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects)

which Uncle Bills may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR")

- (ii) not register a financing change statement as defined in section 10 of the PPS or make a demand to alter the financing statement pursuant to s 178 of the PPSA in respect of the Goods without prior written consent of Uncle Bills;
- (iii) give Uncle Bills not less than 14 days written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, email address, trading name or business practice);
- (iv) pay all costs incurred by Uncle Bills in enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordinated agreements
- (v) be responsible for the full costs incurred by Uncle Bills (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to s 182 of the PPSA; and
- (vi) the Customer waives any rights it may have under s 115 of the PPSA upon enforcement.

Pursuant to s 157 of the PPSA, unless otherwise agreed to in writing by Uncle Bills, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to security interest.

Uncle Bills and the Customer agree that sections 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under this Contract.

The Customer hereby waives its rights to receive notices under sections 188, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

The Customer waives its rights as a Grantor and/or a Debtor under sections 142 and 143 of the PPSA.

The Customer shall unconditionally ratify any actions taken by Uncle Bills under this clause.

This clause will survive the termination of the Contract to the extent permitted by law.