

1 Term**1.1 This agreement:**

- (a) commences on the Commencement Date;
- (b) ends on the End Date; and
- (c) applies to all Orders given by the Reseller to Cambur.

1.2 Cambur may refuse to supply the Reseller in its discretion if the Reseller is in breach of this agreement.

2 Reseller Pre-requisites**2.1 The Reseller's must ensure:**

- (a) that its primary place of business is not a residential address;
- (b) keep Cambur informed of its true and correct ABN and address; and
- (c) ensure that it has exclusive use of a publicly-accessible:
 - (i) retail operation; or
 - (ii) showroom displaying the Products.

3 Reseller's general obligations**3.1 The Reseller must:**

- (a) use its best endeavours to promote retail sales of the Products in the Territory;
- (b) immediately inform Cambur in writing of any improper or wrongful use in the Territory of any of Cambur's Intellectual Property rights which comes to the attention of the Reseller;
- (c) assist Cambur in taking all steps to defend the rights of Cambur in the Product and in the Intellectual Property other than by the institution of legal proceedings;
- (d) promptly report to Cambur any alleged fault or defect in a Product;
- (e) comply with the Law in relation to the Reseller's activities in respect of the Products; and
- (f) in all respects comply with all reasonable and lawful orders, directions, instructions, policies, processes and procedures given by Cambur to the Reseller from time to time in Cambur's discretion.

4 Supply and sale

4.1 Notwithstanding anything stated elsewhere in this agreement, Cambur is not obliged to supply any Order unless:

(a) for the first Order, it is:

- (i) of a value no less than the Initial Order Minimum to a each delivery location; and
 - (ii) paid prior to Shipment Date;
- (b) for subsequent Orders, it is of a value of no less than Ongoing Order Minimum to each delivery location; and
- (c) the Order is in the bulk quantities as directed by Cambur from time to time.

4.2 Cambur is not obliged to supply any Order if any website the Retailer uses to sell a Product:

- (a) does not incorporate the Retailer's trading name;
- (b) is of an appearance and design that does not comply with Cambur's standards as determined from time to time in its discretion; or
- (c) offers for sale Products that Cambur does not approve of in its discretion.

4.3 A Retailer must not offer any Product for sale to a consumer unless the Retailer has:

- (a) possession or control of sufficient stock to supply such sale at such time; and
- (b) the Product was directly supplied to the Purchaser by Cambur.

4.4 The Reseller warrants that it has sole and direct management and control of the Trading Website.

4.5 If the Reseller sells products online, the Reseller must only market and sell such Products at the Trading Website.

4.6 The Reseller must not sell any Product to any business whose primary activity is the online sale of product the same as or similar to the Products.

5 Orders and payment

5.1 The Reseller must serve all Orders on Cambur at such address and in such manner as Cambur directs from time to time.

5.2 Cambur may reject an Order in its absolute discretion.

5.3 The Reseller must ensure that each Order contains all such information as Cambur requires from time to time.

5.4 Subject to Clause 5.2 Cambur must supply all properly constituted Orders as soon as reasonable after receiving the Order.

5.5 Unless otherwise agreed in writing, all amounts due and

payable by the Reseller to Cambur under this Agreement must be paid:

- (a) into the bank account nominated by Cambur from time to time;
- (b) in such other currency as nominated by Cambur from time to time; and
- (c) on or before the Payment Due Date.

5.6 Cambur must pay all Delivery Costs for delivery to Australia state capital cities except Hobart and Darwin which costs will be wholly paid by the Reseller.

5.7 The Reseller must promptly pay all Delivery Costs for delivery to other than state capital cities.

5.8 Cambur does not represent or warrant that it is able to supply any particular quantity of any Product at any time.

6 Passing of title and risk and delivery

6.1 Cambur retains title to Products supplied to the Reseller until the Reseller has paid to Cambur the relevant Balance Payment for such Products.

6.2 Risk in the Products passes to the Reseller when the Products leave Cambur's warehouse.

6.3 Any representations made by Cambur in relation to time of delivery of Products are estimates only and Cambur is not liable for failure to deliver the Products on such date.

6.4 The Reseller's obligation to accept or pay for Products, is not effected by:

- (a) any delay in delivery of such Products; or
- (b) any impositions or alterations of customs duties or by decisions of the customs authorities.

7 Forbidden conduct

7.1 The Reseller must not:

- (a) modify or use any Products between Supply and delivery to a consumer;
- (b) alter, obscure, remove, conceal or otherwise interfere with any markings or other indication of the source of origin of the goods placed on the Products at the time of supply;
- (c) sell any Product to any person that:
 - (i) the Reseller knows or should reasonably know that such person intends to market or sell the Products to a third party; or
 - (ii) is connected with any business the primary activity of which is the retail sale of products

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similar to the Products; and

(d) make any misrepresentations in the marketing of the Products.

8 Pricing

8.1 Cambur may charge the price for an Order in accordance with:

(a) a quotation for those Products given to the Reseller within 7 days before such Order was given by the Reseller to Cambur; or

(b) Cambur's standard prices in effect at the date of delivery (whether notified to the Reseller or not and regardless of any prices contained in the order).

8.2 Cambur in not obliged to notify the Reseller of Product price changes.

8.3 The Reseller acknowledges that Cambur may provide to the Reseller, by way of recommendation only, a list of prices at which the Products may be resold.

8.4 The Reseller is liable for any variations in price of an Order as a consequence of currency fluctuations.

8.5 If the Reseller pays for an Order:

(a) in full;

(b) in cleared funds;

(c) in accordance with clause 5.5

(d) within seven days of the relevant invoice date, Cambur must, in Cambur's discretion, pay to, allow discount or credit to the Reseller no less than 2.5% of the total invoiced value of such Order.

9 Returns, cancellations and claims

9.1 If a Product contains a defect or was faulty at the time of delivery to the Reseller, Cambur accept the return of a Product if notified within seven days of such delivery or such other period as required by law and, in Cambur's discretion, either:

(a) refund to the Reseller any monies paid in relation to that Product; or

(b) replace the Product with a non-defective unit of the same Product.

9.2 The Reseller must not return and Cambur is not obliged to accept any returned Product unless and until:

(a) The Reseller has given prior notice to Cambur of the proposed return;

(b) Cambur has given notice to the Reseller authorising

such return;

(c) a copy of the relevant invoice is enclosed with the returned Products; and

(d) the Reseller includes with the returned Product product descriptions, quantity, date of return and the Reseller's name and address.

9.3 Subject to clause 9.4, the Reseller must pay all delivery charges on any returned Product.

9.4 Cambur must pay delivery charges on returned Product if the return is organised through Cambur using Cambur's approved carrier.

9.5 The Reseller must ensure that all returned Products are in the original packaging.

9.6 The Reseller is liable for all damage incurred during returned delivery.

9.7 The Reseller must not deduct the amount of any anticipated credit on returned Products from any payment due by the Reseller to Cambur but must await receipt of a credit note.

9.8 If Cambur reasonably concludes that the Products contain a fault or defect, Cambur must issue a credit to the Reseller.

9.9 Cambur may accept or reject a cancellation, in whole or in part, of an Order.

9.10 If Cambur accepts a cancellation of an Order, Cambur may charge the Reseller a handling fee as reasonably determined by Cambur in its discretion.

9.11 Cambur may refuse to accept any claim in relation to lost Products, incomplete or erroneous Orders, unless the Reseller gives notice o Cambur within seven business days after the Shipment Date.

9.12 Unless the Reseller gives the notice in clause 9.11:

(a) the Reseller is deemed to have accepted the Products; and

(b) the Products are deemed to be in compliance with the Order except for Product defect or fault.

10 Intellectual property

10.1 The IP Rights are and will remain at all times the sole property of Cambur, and the Reseller must not, at any time, claim or attempt to claim ownership or moral rights in respect of the IP Rights.

10.2 Cambur grants to the Reseller a non-exclusive licence to

use the Product Trade Marks in the Territory during the operation of this Agreement on the following terms and conditions:

(a) the Reseller must only use the Product Trade Marks in connection with sale or marketing of the Products;

(b) the Reseller must comply with all directions given by Cambur as to the use of the Product Trade Marks; and

(c) the Reseller must not use the Product Trade Marks without also applying the symbol "®" next to the relevant trade mark.

11 Confidentiality

11.1 The Reseller must:

(a) ensure that the Confidential Information is not disclosed to any third party;

(b) use best endeavours to keep the Confidential Information secure; and

(c) return to Cambur all Confidential Information in the Reseller's possession or control as soon as practicable after the end of this agreement.

12 Termination

12.1 Either party may terminate this agreement immediately and without notice if:

(a) the other party does not rectify a breach of these terms within 14 days after receipt by the other party of a written notice reasonably specifying the breach;

(b) the other party commits a breach of this agreement which cannot be remedied;

(c) the other party is the subject of an Insolvency Event; or

(d) a party commits act or omission which the other party reasonably considers may have the potential to adversely affect the non-other party's reputation.

12.2 If this agreement is terminated:

(a) Cambur may request the Reseller return any or all unsold Product to Cambur; and

(b) The Reseller must promptly comply with any request received under clause 12.2(a).

12.3 If the Reseller returns Product to Cambur under clause 12.2(b), Cambur must refund the value of the returned

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Products at the per-unit price that the Products were sold to the Reseller.

13 Indemnity and damages

13.1 Each party ("Indemnifying Party") indemnifies each other party against any and all claims arising from a breach of any of this agreement (including any warranties) by such Indemnifying Party or such party's employees, agents, sub-resellers or representatives.

13.2 If the Reseller fails to comply with clause 5.5, the Reseller must pay to Cambur liquidated damages at a rate of 2% in excess of the rate of interest for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* on the amount outstanding.

14 PSA and security interests

14.1 In this clause 14:

- (a) "Collateral" means all Personal Property supplied by the Secured Party to the Grantor (or for the Grantor's account);
- (i) prior to this agreement; and
- (ii) by or after this agreement;
- (b) the definition of "Insolvency Event" in clause 29.1 also includes:
 - (i) the actual, imminent or attempt to breach clause 14.3;
 - (ii) a person doing any thing which may result in taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this document;
 - (iii) distress being levied over any Collateral; and
 - (iv) judgment, order or security being enforced over any Collateral;

(c) "Grantor means Reseller;

(d) "PPSA" means *Personal Properties Securities Act 2009 (Cth)*;

(e) "Revolving Assets" means, subject to clause 14.5, Collateral that comprises inventory in the Grantor's usual course of business; and

(f) "Secured Party" means Cambur; and

(g) unless otherwise stated, terms have the same meaning as in the PPSA.

14.2 By virtue of the retention of title clause in this Agreement, the Grantor grants a security interest in the

Collateral to the Secured Party to secure payment from time to time and at a time, including future advances.

14.3 The Grantor must not and must not attempt or agree to:

- (a) create or allow another interest in; or
- (b) dispose, or part with possession of, any non-Revolving Asset Collateral

14.4 Unless it is prohibited from doing so by another provision in this Agreement, the Grantor may create or allow another interest in, or dispose or part with possession of a Revolving Asset.

14.5 If the Grantor or the Collateral is subject to an Insolvency Event then automatically and without notice:

(a) all Collateral ceases to be a Revolving Asset; and

(b) Any inventory which is not a Revolving Asset:

- (a) is specifically appropriated to a security interest under this Agreement; and
- (b) may not be removed or permitted to be removed by the Grantor without obtaining the prior written consent of the Secured Party.

14.7 To the extent the law permits and for the purposes of section 115(1) and 115(7) of the PPSA (if applicable):

(a) the Secured Party is not obliged to give and the Grantor waives its rights to receive any notice or statement (including a verification statement) that is required by:

- (i) any provision of the PPSA; and
 - (ii) any other law before a Secured Party or Receiver exercises a right, power or remedy;
- (b) the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132, 132(3)(d), 132(4), 137(3), 142 and 143;
- (c) the Grantor waives any time period that must otherwise lapse under any law before a Secured Party or Receiver exercises a right, power or remedy; and

14.8 If the Secured Party exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise.

14.9 Clause 14.8 does not apply to a right, power or remedy which can only be exercised under the PPSA.

14.10 The Grantor must:

- (a) sign any further documents and/or provide any further information which the Secured Party reasonably required to enable registration of a financing statement or financing change statement on the Personal Property Securities Register;
- (b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Collateral without the prior written consent of the Secured Party;
- (c) give the Secured Party not less than 14 days written notice of any proposed change in the Grantor's name and/or any other changes in the Grantor's details (including by not limited to changes in the Grantor's address, facsimile number, email address, trading name or business practice);

14.11 Any security agreement arising under this Agreement:

- (a) survives the end of this Agreement
- (b) does not merge on the completion of any transaction contemplated by this Agreement; and
- (c) otherwise inures for the benefit of the Secured Party as a Secured Party.

15 Force Majeure

15.1 A party is not liable for failure to perform, or delay in performing, an obligation (except an obligation to pay money) if such non-performance or delay was caused by a Force Majeure Event.

16 Warranties

16.1 Cambur gives no warranties in respect of goods or services supplied except those implied and which cannot be excluded under the Law.

16.2 Where it is lawful to do so, Cambur's liability for breach of a condition or warranty is limited to the repair or replacement of the goods, the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or acquiring equivalent goods.

17 Guarantee

17.1 In consideration of Cambur entering into this agreement, the Guarantors jointly and severally agree to guarantee to Cambur the prompt performance and observance by

the Reseller of all its obligations under this agreement.

17.2 Cambur may recover amounts due under this guarantee from the Guarantors without having instituted legal proceedings against the Reseller and without first exhausting Cambur's remedies against the Reseller.

17.3 This is a continuing guarantee and binds the Purchaser's Guarantors notwithstanding:

- (a) the subsequent death, bankruptcy or liquidation or any one or more of the Reseller and Guarantors;
- (b) any indulgence, waiver or extension of time granted by Cambur to the Reseller or the Guarantors; and
- (c) the end of this agreement for any reason.

18 No waiver

18.1 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this agreement does not affect or impair that provision in any way or the rights of such party to avail itself of the remedies it may have in respect of any breach of any such provision.

19 No partnership, employment or agency created

19.1 Nothing in this Agreement creates a partnership, agency or employment relationship between the parties.

20 GST

20.1 Definitions for the purpose of this clause:

- (a) GST means GST within the meaning of the GST Act;
- (b) GST Act means A New Tax System (Goods and Services Tax) Act 1999 (as amended); and
- (c) expressions set out in this clause bear the same meaning as those expressions in the GST Act.

20.2 To the extent that a party makes a taxable supply in connection with this Agreement, except where express provision is made to the contrary, and subject to this clause, the consideration payable by a party under this agreement represents the value of the taxable supply for which payment is to be made.

20.3 If a party makes a taxable supply in connection with this agreement for a consideration which, under clause 20.2, 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 GST payable in respect of the taxable supply.

20.4 A party's right to payment under clause 20.3 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

21 Notices

21.1 Any notice given by one party to the other must be in writing and served on the other party by email at the other party's usual email address.

21.2 Subject to clause 21.2(a):

- (a) a notice served personally or by e-mail is deemed to be served on the date it is received by the other party; and
- (b) a notice served by mail is deemed to be served on the date that is two Business Days after the date such Notice is posted.

21.3 If the date a notice is served is not a Business Day, such Notice is deemed served on the next Business Day after the date it is served.

22 Entire agreement

22.1 This document contains everything the parties have agreed in relation to the subject matter it deals with.

23 Variation

23.1 This agreement must not be changed in any way except in writing signed by the parties.

24 Severance

24.1 If any provision of this agreement is invalid, unlawful, void or unenforceable it will be taken to have been severed without affecting any other of the obligations of the parties under this agreement.

25 Assignments and transfers

25.1 A party must not assign or transfer any of its rights or obligations under this document without the prior written consent of each of the other parties.

26 Duration of Provisions

26.1 The covenants, rights, entitlements, duties and obligations contained in this agreement do not merge upon termination of this agreement but to the extent that they are capable of having effect after termination of this agreement remain in full force and effect.

27 Governing Law

27.1 This agreement is governed by the laws of the State of Victoria, except to the extent to which they are overridden by Commonwealth laws.

27.2 The parties submit to the jurisdiction of the courts of the State of Victoria.

28 Interpretation

28.1 In this document including except where the context otherwise requires:

- (a) another grammatical form of a defined word or expression has a corresponding meaning;
- (b) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (c) the singular includes the plural and vice versa, and a gender includes other genders;
- (d) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (e) a reference to time is to time in Melbourne, Victoria;
- (f) if a day on or by which an obligation (except making a payment) must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (g) a reference to any thing includes any part of that thing and a reference to a group of things includes each thing in that group;
- (h) any discretion (including where a party "may" do any thing) is sole, unfettered and absolute unless otherwise stated; and
- (i) headings are for ease of reference only and do not affect interpretation.

29 Defined terms

29.1 In this document including except where the context otherwise requires:

Cambur means the party specified in Item 1 and its successors and assignees.

Claim means any claim, demand, proceeding or cause of action of any nature whatsoever (including for damages), whether for money or otherwise.

Commencement Date means the date this agreement has been signed by all parties.

Confidential Information means Information, in any form, which is confidential to a party including, but not limited to, information which a party becomes aware

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before of after the date of this agreement:

- (a) that has been specifically designated as confidential by the other party;
- (b) that relates to the commercial and financial activities of the other party and/or its customers;
- (c) the unauthorised disclosure of which could embarrass, harm or prejudice the other party.
- Delivery Costs** means all costs associated with the supplying of an Order and delivery of the Products ordered to the Reseller including, but not limited to, freight, storage, permits, taxes and duties and insurance.
- End Date** means the earlier of:
- (a) the date being the end of the Term after the Commencement Date; and
- (b) the date this agreement is terminated in accordance with this agreement.
- Force Majeure Event** means any event beyond the reasonable control of the non-performing party including:
- (a) external telecommunications failures;
- (b) fire, flood, earthquake or act of God and any other natural disaster;
- (c) riot, act of terrorism, war, civil disorder, rebellion or revolution;
- (d) strikes, lockouts and labour disputes (but excluding a facility specific strike of any other type of industrial action by the Personnel of a party claiming force majeure); and
- (e) epidemics, quarantine restrictions, outbreak of disease or any travel restrictions or bans (including bans on non-essential travel) issued by the World Health Organisation or any governmental authority.
- Initial Order Minimum** the amount stated in item 9.
- Insolvency Event** means any of the following under the Corporations Act 2001 or its equivalent:
- (a) becomes insolvent under section 95a;
- (b) is presumed to be insolvent under section 459c(2);
- (c) is taken to have failed to comply with a statutory demand under section 459ff(1);
- (d) is the subject of a circumstance specified in section 461;
- (e) is taken to be unable to pay its debts under section 585;
- (f) is the subject of a liquidation, or an order or an application is made for its liquidation (and in the case of an application, it is not withdrawn or dismissed within 10 business days);
- (g) it stops or suspends payment to creditors generally;
- (h) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of winding up a corporation; or
- (i) an analogous or equivalent event to any of the above.
- IP Rights** means all rights including, but, not limited to the whole copyright and other industrial and intellectual property rights of any nature whatsoever both past and future relating to Cambur or the Products.
- Item** means an Item in the table on the signing page of this agreement.
- Law** means all applicable laws from time to time including common law, statutes, ordinances, codes, regulations and other instruments under any of them.
- Ongoing Order Minimum** the amount stated in item 10.
- Order** means an order for the purchase of Products by the Reseller from Cambur.
- Payment Due Date** means the date specified in item 8.
- Product** means a product that Cambur has the right to sell from time to time.
- Reseller** means the party specified in Item 2 and its successors and assigns.
- Retail** means retail including via the internet.
- Term** means the period of time between the Commencement Date and the end of the period specified in item 6.
- Territory** means:
- (a) in respect of internet sales, Australia; and
- (b) in respect of non-internet sales, the area described in item 7.
- Trading Website** means the website specified in item 11.