

## Zummo Juicers Pty Ltd ACN 168 014 891 - Terms & Conditions of Sale

### 1.0 DEFINITIONS

The following definitions apply in this document and the Application:

- 1.1 "ACL" means the Australian Consumer Law contained in Schedule 2 of the CCA as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.2 "CCA" means the *Competition and Consumer Act 2010* (Cth) as amended, re-enacted or replaced, and includes any subordinate legislation.
- 1.3 "Contract" means a contract of sale by ZUMMO JUICERS to the Customer of the Goods incorporating these terms and conditions.
- 1.4 "Credit Application" means an application submitted by the Customer to ZUMMO JUICERS for credit in relation to the supply of Goods, incorporating these terms and conditions.
- 1.5 "Customer" means the person or entity that is purchasing the Goods from ZUMMO JUICERS or any employee, agent or representative of that person or entity.
- 1.6 "FTA" means the *Fair Trading Act 1989* (Qld) as amended, re-enacted or replaced and includes any related or subordinate legislation.
- 1.7 "Goods" means the goods sold by ZUMMO JUICERS to the Customer, pursuant to these terms and conditions.
- 1.8 "GST" means the goods and services tax as determined in accordance with the *A New Tax System (Goods and Services) Act 1999* (Cth).
- 1.9 "Invoice" means the invoice delivered by ZUMMO JUICERS to the Customer for the provision of Goods.
- 1.10 "Manufacturer" means a person or entity that produces, processes, assembles or provides the Goods for the benefit of, or under the direction of, ZUMMO JUICERS.
- 1.11 "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- 1.12 "Price" means the price payable by the Customer for the Goods, as displayed on the Invoice.
- 1.13 "Website" means ZUMMO JUICERS' website <https://www.zummoaustralia.com.au/>.
- 1.14 "ZUMMO JUICERS" means Zummo Juicers Pty Ltd ACN 168 014 891.

### 2.0 FORMATION OF CONTRACT

- 2.1 An order submitted by a Customer to ZUMMO JUICERS is binding on the Customer and ZUMMO JUICERS, if:
- (a) an Invoice is issued by ZUMMO JUICERS; and
- (b) The Customer makes payment of any or all of the Invoice issued by ZUMMO JUICERS.
- 2.2 No order given by a Customer to ZUMMO JUICERS is binding on ZUMMO JUICERS until ZUMMO JUICERS accepts the order in accordance with clause 2.1.
- 2.3 By submitting an order the Customer is deemed to accept these terms and conditions.
- 2.4 Unless otherwise agreed in writing between the Customer and ZUMMO JUICERS, the Customer and ZUMMO JUICERS agree that these terms and conditions take precedence over any terms and conditions contained within, or contemplated by the Customer's order, any terms and conditions of the Customer which the Customer purports to apply to the provision of Goods or any other document.
- 2.5 The failure by ZUMMO JUICERS to object to any contrary or inconsistent provisions contained in any request for proposal, purchase order or other written communication from the Customer shall not be deemed to be a waiver or modification of these terms and conditions or acceptance by ZUMMO JUICERS of any such contrary or inconsistent provisions.
- 2.6 Any act or omission by ZUMMO JUICERS which constitutes, or could be construed as, a waiver of any of these terms and conditions shall be deemed as non-continuing in nature and not deemed a waiver of future application of the terms and conditions.

### 3.0 PRICING

- 3.1 Unless otherwise agreed in writing, the price charged by ZUMMO JUICERS is the price listed on ZUMMO JUICERS' Invoice.
- 3.2 All prices listed are in Australian dollars and exclusive of GST. All taxes, duties and shipping expenses are in addition to prices shown.
- 3.3 Prices and specifications are subject to change without notice. ZUMMO JUICERS will use its best endeavours to notify Customers of price variations 30 days prior to any changes.

### 4.0 PAYMENT TERMS

- 4.1 All payments are due prior to delivery, unless a Credit Application has been completed and accepted by ZUMMO JUICERS prior to delivery.

- 4.2 If a credit account has been approved in writing by ZUMMO JUICERS, payment is due on the 14<sup>th</sup> day of the month following the month in which the Invoice is issued unless otherwise agreed in writing between the parties.
- 4.3 Payment must be made free of any setoff, deduction, counterclaim or withholding whatsoever.
- 4.4 ZUMMO JUICERS reserves the right to charge the Customer a fee on any payment by the Customer that attracts any transaction fee for ZUMMO JUICERS.
- 4.5 Payment shall be deemed to be made when it has been received by ZUMMO JUICERS as clear funds.
- 4.6 ZUMMO JUICERS may terminate or suspend further deliveries should the Customer fail to comply strictly with payment terms and ZUMMO JUICERS may charge interest at the rate of the ANZ Banking Group overdraft base rate plus 2% on any amount which remains unpaid from the due date for payment until the date of payment of all arrears and interest.
- 4.7 Invoices must be paid by cash, cheque, bank cheque, depositing cleared funds into ZUMMO JUICERS' nominated bank account, credit card or any other method agreed between ZUMMO JUICERS and the Customer in writing.
- 4.8 The Customer charges all of its present and after acquired property in favour of ZUMMO JUICERS to secure the payment of all monies by the Customer owing to ZUMMO JUICERS and the performance by the Customer of all of its obligations under these terms and conditions or any other arrangement between ZUMMO JUICERS and the Customer.
- 4.9 The Customer shall be liable for all costs incurred by ZUMMO JUICERS in recovering amounts owing by the Customer (including legal costs on an indemnity basis).

### 5.0 PASSING OF RISK

- 5.1 Unless otherwise agreed in writing, if:
- (a) Goods are held by ZUMMO JUICERS – risk in the Goods passes to the Customer immediately upon the Goods leaving ZUMMO JUICERS' premises; or
- (b) Goods are held by the Manufacturer and supplied directly to the Customer – risk in the Goods passes to the Customer immediately upon the Goods leaving the Manufacturer's premises.
- 5.2 The Customer must take out and maintain a suitable insurance policy or insurance policies to cover any damage or loss that may occur to the Goods after they leave the premises under clause 5.1.

### 6.0 RETENTION OF TITLE

- 6.1 The title to all Goods supplied by ZUMMO JUICERS to the Customer remains with ZUMMO JUICERS until payment for the Goods is received in full.
- 6.2 Any monies received by the Customer for the sale of the Goods must be held for the benefit of ZUMMO JUICERS and paid to ZUMMO JUICERS until the Goods are paid for in full.
- 6.3 If the Customer fails to make payment for the Goods when due, then ZUMMO JUICERS or its authorised agent may enter the premises where the Goods are located and seize those Goods and, at ZUMMO JUICERS' discretion, sell the Goods to recover the amount of the debt owing by the Customer.
- 6.4 The retention of title arrangement described in this clause 6.0 constitutes the grant of a purchase money security interest by the Customer in ZUMMO JUICERS' favour in respect of all present Goods supplied by ZUMMO JUICERS to the Customer.

### 7.0 PERSONAL PROPERTY SECURITIES

- 7.1 Terms in this clause have the same meaning as in the PPSA.
- 7.2 The Customer acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) where ZUMMO JUICERS sells Goods to the Customer, a security interest arises in all Goods supplied (whether already supplied or to be supplied) by ZUMMO JUICERS to the Customer, the proceeds of the sale of all Goods (whether already supplied or to be supplied) by the Customer and all of the Customer's present and after acquired property.
- 7.3 The Customer acknowledges that ZUMMO JUICERS may:
- (a) register its security interest as a purchase money security interest to the extent that it secures payment of all or part of the Price; and/or
- (b) register its security interest as a general security interest to the extent that it secures payment of all or part of the Price or performance of obligations.

- 7.4 The Customer undertakes to:
- (a) promptly execute any further document and/or do such further acts and things and provide such further information (such information to be completed, accurate and up-to-date in all respects) which ZUMMO JUICERS may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest and otherwise do all things necessary and required by ZUMMO JUICERS to ensure that any security interest registered by ZUMMO JUICERS is a perfected security interest under the PPSA;
    - (ii) register any document on any register reasonably necessary to secure ZUMMO JUICERS' security interests arising under, or in connection with, these terms and conditions;
    - (iii) register any other document required to be registered under the PPSA; or
    - (iv) correct a defect in a statement referred to in sub-clauses (i), (ii) or (iii);
  - (b) indemnify, and upon demand reimburse, ZUMMO JUICERS for all expenses incurred in registering a financing statement or financing change statement or releasing any Goods that are the subject of a security interest;
  - (c) not make any amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without ZUMMO JUICERS' prior written consent; and
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without ZUMMO JUICERS' prior written consent.
- 7.5 The Customer and ZUMMO JUICERS agree that section 96, 116, 125 and the second sentence only of 126(2) of the PPSA do not apply to the security interest created by these terms and conditions.
- 7.6 The Customer hereby waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 120, 121(4), 123(2), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA and the Customer's rights as a grantor and/or a customer under section 142 and 143 of the PPSA.
- 7.7 Unless otherwise agreed in writing by the Customer and ZUMMO JUICERS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 7.8 The Customer acknowledges that ZUMMO JUICERS has a caveatable interest in any real property of the Customer under this clause and ZUMMO JUICERS may lodge a caveat over the Customer's real property.
- 7.9 The provisions of this clause 7.0 survive termination of these terms and conditions or any other agreement between the Customer and ZUMMO JUICERS for the supply of Goods.
- 8.0 PURCHASE ORDERS AND DELIVERY**
- 8.1 The submission of a purchase order by the Customer to ZUMMO JUICERS shall constitute agreement by the Customer to complete the purchase of the Goods in accordance with these terms and conditions and if available for delivery, the Goods will be delivered in accordance with these terms and conditions.
- 8.2 Delivery may occur:
- (a) in respect of Goods collected by the Customer or its carrier or agent - at ZUMMO JUICERS' premises if the Goods are to be collected by the Customer or the Customer, with ZUMMO JUICERS' consent, has made its own arrangements for a carrier or agent organised by the Customer to collect the Goods;
  - (b) in respect of Goods delivered by ZUMMO JUICERS (or its carrier or agent) or the Manufacturer (or its carrier or agent) - at the address nominated by the Customer at the time of the order if ZUMMO JUICERS agreed to deliver the Goods at that address at the time of the order.
- 8.3 Goods may be delivered in instalments, at different times and each delivery shall be deemed to be for a separate purchase order and paid for in accordance with these terms and conditions.
- 8.4 ZUMMO JUICERS provides no guarantee as to time for delivery and the Customer may not reject Goods or claim damages for late delivery due to any cause beyond the control of ZUMMO JUICERS. ZUMMO JUICERS is not responsible for any loss suffered by the Customer caused by the delay of delivery of the Goods.

- 8.5 Deliveries are subject to the availability of the Customer's personnel to receive the Goods, suitable access, firm standing, storage, unloading and manoeuvring spaces, as determined by ZUMMO JUICERS and ZUMMO JUICERS is not liable for, and the Customer will indemnify ZUMMO JUICERS against, any claims for damages to access ways, storage areas, plant, equipment or works during delivery.
- 8.6 The Customer agrees that if the Goods are delivered and a member of the Customer's personnel is not present to receive the delivery, ZUMMO JUICERS will attempt to re-deliver at a later date to be agreed upon between the parties. The Customer will be responsible for ZUMMO JUICERS' costs of re-delivery, including any storage and associated costs for the period between the date on which delivery was initially to occur and the eventual delivery date.
- 8.7 Any non-delivery of an instalment of Goods in accordance with clause 8.0 does not repudiate or invalidate the Contract and does not give the Customer the right to reject the Goods.
- 9.0 RETURNS**
- 9.1 This clause 9.0 does not apply to Goods purchased by Customers who are consumers within the meaning of the ACL and where the return is made because the Goods do not comply with the consumer guarantees under the ACL.
- 9.2 Any request from a Customer for return and credit for Goods supplied must be made to ZUMMO JUICERS within seven days of delivery to the Customer or its agent. Acceptance of a request for return and credit and issue of a credit authorisation shall be, subject to the requirements of the ACL, at the sole discretion of ZUMMO JUICERS.
- 9.3 Goods will not be accepted back without prior authorisation by ZUMMO JUICERS and the Customer must return the Goods, freight paid and in original condition and packaging including documentation and Invoices to ZUMMO JUICERS' warehouse.
- 9.4 Where ZUMMO JUICERS accepts the return of Goods in accordance with this clause 9, and the reason for the return of those Goods is 'change of mind' or equivalent, the Customer agrees that, if required by ZUMMO JUICERS, it must pay up to 15% of the Price to ZUMMO JUICERS for ZUMMO JUICERS' costs associated with completion of the order, including but not limited to, the costs of delivery and order administration.
- 10.0 CONSUMER GUARANTEES AND WARRANTIES**
- 10.1 ZUMMO JUICERS does not make or provide any warranty or other representation, other than those expressly provided to the Customer in writing, to the fullest extent permitted by law including but not limited to warranties or representations regarding the quality or suitability of the Goods.
- 10.2 Except as set out in these in these terms and conditions or otherwise expressly agreed in writing between the parties, all conditions, representations, warranties, terms and undertakings (whether express or implied), are excluded to the fullest extent permitted by law.
- 10.3 Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the CCA (including the ACL) or the FTA, except to the extent permitted by those Acts.
- 10.4 The Manufacturer may offer its own warranty for Goods. ZUMMO JUICERS has no liability to the Customer in respect of such warranties and shall not be required to seek to enforce the terms of the Manufacturer's warranty for the benefit of the Customer.
- 11.0 DISCLAIMER**
- 11.1 As ZUMMO JUICERS is not the Manufacturer of the Goods, ZUMMO JUICERS, to the fullest extent permitted by law, is not liable for any damaged or defective Goods distributed directly by the Manufacturer to the Customer.
- 12.0 AMENDMENT**
- 12.1 ZUMMO JUICERS reserves the right to review these terms and conditions at any time from time to time, if, following any such review, there is a change to these terms and conditions, that change will take effect from the date on which ZUMMO JUICERS makes such change and publishes the same on its website (<https://www.zummoaustralia.com.au/>) or provides a copy to the Customer.

**13.0 ATTORNEY**

- 13.1 The Customer appoints ZUMMO JUICERS to act as its duly constituted attorney from time to time to:
- (a) do such acts which in ZUMMO JUICERS' opinion (acting reasonably) are necessary to give effect to any right, power or remedy conferred on ZUMMO JUICERS by these terms and conditions or the PPSA;
  - (b) execute in the Customer's name such documents which in ZUMMO JUICERS' opinion (acting reasonably) are necessary to give effect to any right, power or remedy conferred on ZUMMO JUICERS by these terms and conditions or the PPSA;
  - (c) register any security arising in ZUMMO JUICERS' favour under these terms and conditions or granted by the Customer to ZUMMO JUICERS under these terms and conditions; and
  - (d) to give effect to the matter contemplated by these terms and conditions, even though the Customer may not have defaulted in carrying out the Customer's obligation under these terms and conditions.

**14.0 TIME IS OF THE ESSENCE**

- 14.1 Time for payment of an Invoice is of the essence in accordance with these terms and conditions.

**15.0 GOVERNING LAW**

- 15.1 These terms and conditions are governed by and construed in accordance with the laws of Queensland, Australia and, where applicable, the Commonwealth of Australia. ZUMMO JUICERS and the Customer submit to the non-exclusive jurisdiction of the courts of Queensland.

**16.0 ASSIGNMENT**

- 16.1 The Customer may only assign its rights and obligations under a Contract with the prior written consent of ZUMMO JUICERS.

**17.0 SEVERABILITY**

- 17.1 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity of enforceability of any other provision of these terms and conditions, which shall remain in full force and effect.

**18.0 FORCE MAJEURE**

- 18.1 ZUMMO JUICERS shall not be liable for any failure or delay to supply Goods due to a cause beyond ZUMMO JUICERS' control including, but not limited to, acts of God, strikes, lock-outs or other industrial disturbances, fire, flood, explosion, civil riot and government interference.

**19.0 PRIVACY**

- 19.1 The Customer authorises ZUMMO JUICERS to obtain a credit report from a credit-reporting agency or insurer containing credit information about the Customer in relation to credit provided by ZUMMO JUICERS.
- 19.2 To the maximum extent permitted by law, the Customer authorises ZUMMO JUICERS to exchange information about the Customer with credit providers, insurers or other third parties for the following purposes:
- (a) to assess any Credit Application by the Customer;
  - (b) to notify other credit providers of a default by the Customer;
  - (c) to exchange information with other credit providers as to the status of the Customer's account, where the Customer in default with other credit providers;
  - (d) to assess the Customer's credit worthiness; and
  - (e) to assess the level of insurance that ZUMMO JUICERS may require to adequately protect it from any insurable risks associated with the Customer and the supply of Goods to the Customer.
- 19.3 The Customer authorises ZUMMO JUICERS to give personal or commercial information about the Customer to a credit reporting agency, insurer or third party for the following purpose:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information file containing information about the Customer; and/or
  - (c) taking out and maintaining credit or similar insurance in respect of insurable risks associated with the Customer and the supply of Goods to the Customer.

**20.0 CONFIDENTIAL INFORMATION**

- 20.1 If at any time ZUMMO JUICERS discloses to the Customer or the Customer becomes aware of confidential information of ZUMMO JUICERS relating to the Goods, material, procedures, tests

or equipment, the Customer must not use the information for any purpose not approved by ZUMMO JUICERS and not disclose that confidential information to any other person unless expressly agreed in writing by ZUMMO JUICERS.