

# TERMS AND CONDITIONS OF SALE

## Credit Accounts and Quotation Orders

These are the terms and conditions of sale (“**Trading Terms**”) that apply to all sales of goods (“**Goods**”) and or services (“**Services**”) by PRIESTLEY’S GOURMET DELIGHTS PTY LTD ACN 072 155 849 (ABN 96 072 155 849) and any of its subsidiaries or business divisions (all of which are referred to as and included under the term “**PGD**”) to any person, firm or company placing an order with PGD for the purchase of any Goods or Services (“**Customer**”) pursuant to a Credit Account or Quotation (as defined below).

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 “**Agreement**” means the agreement for the supply of Goods and Services by PGD to the Customer that comes into being:
  - 1.1.1 for Customers who hold a Credit Account with PGD, when the Customer’s Application for Trade Credit Account is accepted by PGD; or
  - 1.1.2 for any other Customers, when an Order for Goods or Services by the Customer is accepted by PGD.
- 1.2 “**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed, a notice is to be received, or a payment is to be made.
- 1.3 “**Credit Account**” means a facility for the Order of Goods or Services on credit established on PGD’s approval of an Application for Trade Credit Account by the Customer.
- 1.4 “**Customer**” as defined above includes any person, firm or company placing an order with PGD for the purchase of any Goods and Services and or to whom a Quotation is addressed and/or any person who accepts the Quotation, and includes, for Credit Accounts, the Customer named in the Application for Trade Credit Account. If the Customer is comprised of more than one person then “Customer” means those persons collectively and each of them individually and the obligations and liabilities on the part of the Customer in these Trading Terms binds all of them jointly and each of them severally.
- 1.5 “**Goods**” as defined above includes goods supplied or to be supplied to the Customer including goods manufactured or modified at the Customer’s request.
- 1.6 “**MOQ**” means ‘minimum order quantity’ and refers to the minimum purchase requirements for Goods.
- 1.7 “**Order**” means any order by the Customer for supply of Goods and or Services by PGD and includes the Customer’s acceptances of a Quotation or an agreement for standing or regular supply including a Pricing Schedule containing MOQ agreed between the Customer and PGD.
- 1.8 “**PPSA**” means the *Personal Property Securities Act 2009* (Cth).
- 1.9 “**Pricing Schedule**” means a document issued or approved by PGD containing the Customer’s account terms including pricing and MOQ, for purchases of Goods and or Services identified by the Customer.
- 1.10 “**Quotation**” means any proposal to supply Goods and or Services issued by PGD outlining a proposed price and or other conditions of supply for specific Goods and or Services.
- 1.11 “**Services**” means any services to be rendered by PGD to the Customer, whether as a stand alone purchase of services or in connection with the supply of Goods.
- 1.12 “**Website**” means the website of PGD found at: <https://www.priestleys-gourmet.com.au/> and any other website of any business division of PGD on which information relating to the Goods or Services by PGD may be found, but does not include the website of any independent distributor or reseller.
- 1.13 Headings are for convenience only and do not form part of these terms and conditions of sale.
- 1.14 Reference to the singular includes the plural and the plural includes the singular.
- 1.15 Reference to one gender includes the others.
- 1.16 A person denotes an individual or corporation or other legal entity as applicable.

### 2. PRICING SCHEDULES, ORDERS AND VARIATIONS

- 2.1 PGD will enter into a Pricing Schedule with the Customer for those Goods and or Services identified by the Customer. Alternatively, or from time to time, including for Goods or Services that are not the subject of a Pricing Schedule or where otherwise deemed appropriate by the parties, PGD may provide a Quotation to the Customer.
- 2.2 These Trading Terms apply to all Pricing Schedules and Quotations provided that:
  - 2.2.1 any terms in the Pricing Schedule or Quotation will override these Trading Terms to the extent of any inconsistency;
  - 2.2.2 Quotations and Pricing Schedules may specify the period in which it will remain valid for acceptance by the Customer, and if not specified that period shall be thirty (30) days;
  - 2.2.3 PGD may withdraw a Quotation or Pricing Schedule at any time before it is accepted;
  - 2.2.4 Quotation and Pricing Schedules are an invitation to treat and do not constitute an offer by PGD;
  - 2.2.5 the Customer’s acceptance in writing of a Quotation or Pricing Schedule constitutes an Order of any MOQ stipulated in the Quotation or Pricing Schedule; and
  - 2.2.6 the making of an Order constitutes acceptance of the Quotation or Pricing Schedule when not otherwise accepted in writing.
- 2.3 Whenever the Customer makes an Order for Goods, whether pursuant to a Pricing Schedule or Quotation:

- 2.3.1 the Order is subject to acceptance by PGD and whilst PGD will endeavour to accept all Orders that it reasonably can, PGD reserves the right to decline any Order for any reason or, in its discretion, request a variation in the terms, such as quantity or lead time;
  - 2.3.2 the credit limit of Credit Accounts or any other outstanding Orders by the Customer is at PGD's discretion, and PGD reserves the right to reject orders which cause the Customer's Credit Account or outstanding balance to PGD to exceed the sum acceptable to PGD in its absolute discretion;
  - 2.3.3 no additional terms stipulated in the Customer's Order or any other direct or public communication by the Customer will be binding upon PGD unless expressly agreed in writing by PGD, and PGD may in its absolute discretion refuse any Orders which do not conform to the Customer's Pricing Schedule, a valid Quotation, these Trading Terms or any other agreed terms between PGD and the Customer; and
  - 2.3.4 for Orders that require an upfront payment, PGD's acceptance of the Order is also conditional upon receipt of the upfront payment by PGD.
- 2.4 Where PGD stipulates a manner for the Customer to make Orders, the Customer must submit Orders in the manner specified, and PGD reserves the right to reject Orders which are not made in such manner or charge an administration fee for the processing of special Orders.
- 2.5 Orders may be subject to additional terms to these Trading Terms, for example:
- 2.5.1 Orders made through a Website will be subject to the terms of use of the Website; and
  - 2.5.2 Orders made through an agent, distributor, reseller or other sales partner may be subject to such further terms as advised by the agent, distributor, reseller or other sales partner;
- provided that where there is any inconsistency between the terms of any Website or other service and these Trading Terms, these Trading Terms prevail except as otherwise agreed in writing by PGD.
- 2.6 After PGD's acceptance of an Order:
- 2.6.1 no change in the specifications of the Order shall bind PGD, unless PGD expressly agrees to the change in writing, which agreement may be the subject of a variation in the terms of supply including the price and lead time, as advised by PGD;
  - 2.6.2 cancellations are at PGD's discretion; and
  - 2.6.3 if the Customer cancels the Order after acceptance, the Customer will reimburse PGD for any loss, damage or expenses incurred by PGD in relation to the supply or proposed supply of the Goods and or Services.
- 2.7 For the avoidance of doubt, where the Customer's Pricing Schedule lists minimum MOQ for a specified period, the Customer is liable to purchase the specified quota of Goods or Services and any alternative arrangement shall be at PGD's absolute discretion.
- 3. PRICES**
- 3.1 Prices listed in the Customer's Pricing Schedule may be reviewed by the Supplier at any time on no less than thirty (30) days notice.
  - 3.2 Prices listed in a Quotation shall remain current for the period stipulated in the Quotation, or if no period is stipulated, thirty (30) days.
  - 3.3 PGD may vary pricing by issue of a replacement Pricing Schedule or Quotation or other writing. The updated pricing applies to all Orders made after the date the new pricing becomes effective.
  - 3.4 For the avoidance of doubt, PGD is not required to accept pricing reviews requested by the Customer.
  - 3.5 Except as otherwise stated in a Pricing Schedule or Quotation, prices are quoted exclusive of Goods and Services Tax (GST) and any other duties, imposts, taxes (including any other sales taxes) and similar amounts payable in relation to the sale or supply of any Goods and or Services by PGD to the Customer, and the Customer must pay such imposts as shown on the invoice issued by PGD.
  - 3.6 Except as otherwise stated in a Pricing Schedule or Quotation, prices of Goods are quoted exclusive of any Services, including training, associated with the acquisition of the Goods. Such Services may be from time to time available for purchase separately in connection with the purchase of any Goods.
  - 3.7 Except as otherwise stated in a Pricing Schedule or Quotation, prices of Goods are quoted inclusive of delivery to the Customer's nominated delivery address in the Pricing Schedule or Quotation. Any change of address may necessitate a variation in price.
- 4. TERMS OF PAYMENT**
- 4.1 Payment for Goods and Services must be made in accordance with the payment terms outlined in the Customer's Pricing Schedule or the relevant Quotation. Where not stated, invoicing will be made on Goods dispatch or when Services are rendered, and payment terms are thirty (30) days from the date of invoice unless otherwise specified in the invoice.
  - 4.2 PGD may, at its absolute discretion, charge interest on all overdue amounts at the interest rate of two percent (2%) per month calculated daily on the outstanding balance and compounded monthly from the due date until full payment is received.
  - 4.3 Certain forms of payment may be the subject of an administration percentage fee published by PGD or advised to the Customer from time to time.
  - 4.4 All payments by the Customer must be made without any deduction, set-off or counterclaim, except as otherwise agreed in writing by PGD.
  - 4.5 All invoices and statements will be issued by email, to the email address nominated by the Customer.

## **5. DELIVERY**

- 5.1 PGD will deliver the Goods and or Services to the Customer at the Customer's nominated address in the Customer's Pricing Schedule or Quotation. Change of address may necessitate a change in price on account of any change in delivery costs.
- 5.2 PGD will use all reasonable endeavours to deliver Goods and or Services to the Customer as soon as possible having regard to PGD's ordinary dispatch procedures and time frames.
- 5.3 The Customer agrees that, except as otherwise agreed in writing by PGD, delivery dates shall be considered estimates only and PGD does not guarantee its ability to supply Goods and or Services by any specified time or at all. Whilst PGD will endeavour to fulfil all Orders accepted, any obligation of PGD to supply Goods and or Services is subject to its ability to secure labour, materials and other services for the manufacture and supply of the Goods and or Services and, except as otherwise agreed in writing with the Customer, PGD will not be liable to the Customer for failure to supply by a specified delivery date or if PGD must cancel an Order or part of an Order if supply is no longer reasonably capable of being made by PGD.
- 5.4 Without limiting the foregoing, PGD shall not be liable for any failure to supply or deliver the Goods and or Services due to strikes, fires, explosions, flood, riot, lock-out, injunction, and interruption of transportation, accidents, war, governmental action or other circumstances beyond PGD's control.
- 5.5 Delivery of the Goods shall be deemed to have occurred:
- 5.5.1 for delivery arranged by PGD, when the Goods arrive at the Customer's nominated address for delivery; or
- 5.5.2 for Goods made available for collection or delivery arranged by the Customer through the Customer's own carrier, when the Goods are collected from PGD's nominated collection place;
- and the Goods shall thereafter be at the Customer's risk.
- 5.6 The Customer must ensure that an agent of the Customer is available to accept delivery and or make collection of the Goods (as applicable) when notified by PGD. Orders that are overdue for collection or for which delivery was unable to be effected due to any act or omission of the Customer may be the subject of an additional holding or re-delivery fee as advised by PGD.
- 5.7 PGD may, where it is convenient for PGD to do so, deliver Goods in instalments and in respect of which PGD may separately invoice the Customer for payment for each delivery instalment (each of which shall be taken to be the subject of a separate and distinct contract between the parties).

## **6. TITLE TO GOODS AND PERSONAL PROPERTY SECURITY**

- 6.1 For the purposes of the PPSA (as amended from time to time) "Goods" in this clause means any and all present and after acquired Goods supplied by PGD to the Customer.
- 6.2 Notwithstanding risk in the Goods passing to the Customer at delivery or collection of the Goods, PGD retains full title to the Goods until PGD receives payment in full for the Goods and all other amounts owed by the Customer to PGD.
- 6.3 Until all monies owing to PGD by the Customer have been paid:
- 6.3.1 PGD has the right to call for or recover possession of the Goods (for which purpose PGD's employees or agents may enter onto the Customer's premises and/or sites controlled by the Customer) and the Customer must deliver up the Goods if so directed by PGD; and
- 6.3.2 the Customer:
- (A) agrees that the relationship between the Customer and PGD shall be fiduciary and the Customer shall keep the Goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to PGD;
- (B) has the right to resell the Goods in the ordinary course of the Customer's business as PGD's fiduciary agent but must not otherwise dispose of or encumber the Goods;
- (C) until sale, shall store the Goods in accordance with the storage procedures (including temperature controls) advised by PGD and warrants that the Goods will have been stored accordingly;
- (D) shall not mix the Goods with or attach them to other materials or otherwise make them unable to be returned to PGD in their original state; and
- (E) will hold any proceeds (as that term is defined in the PPSA) of any sale, disposal or other dealing with the Goods or any product incorporating the Goods (including sale or supply to a party other than the Customer) in trust for PGD and agrees that PGD will have first priority to such proceeds or an alternative amount in any account of the Customer in which monies of the Customer are held.
- 6.4 To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 6 that there is created for the benefit of PGD a Purchase Money Security Interest in the Goods which extends to all proceeds of any dealing in the Goods.
- 6.5 The Customer agrees that PGD may register any personal property security interest created by these Trading Terms on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing change statement (as those terms are defined in the PPSA) registered by PGD in respect of any personal property of the Customer.

- 6.6 The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on PGD, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that PGD otherwise agrees in writing and, for the avoidance of any doubt:
- 6.6.1 they agree that they contract out of and that nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will apply to these Trading Terms or the securities granted under these Trading Terms;
  - 6.6.2 they agree to waive any rights under Sections 95, 123, 129, 130, 130(4); 132(3) (d), 135, and 143 of the PPSA; and
  - 6.6.3 the Customer hereby consents and appoints PGD to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.
- 7. DEFECTS AND OTHER RETURNS**
- 7.1 The Customer has the right to return Goods that are defective, or which are the subject of incorrect delivery by PGD, for example mis-shipment or mis-pick.
- 7.2 For the purpose of quality defects in the Goods:
- 7.2.1 PGD warrants that all perishable Goods will be within their use by date on delivery;
  - 7.2.2 PGD warrants that all Goods will meet all regulatory standards for the relevant Goods; and
  - 7.2.3 Defects in Goods do not extend to any defects in the outer packaging of the Goods, but only to the packaging that immediately encloses the Goods and is required for resale, or which may have caused the Goods to have become damaged, contaminated or have perished.
- 7.3 Return of Goods due to change of mind including excessive or incorrect Order by the Customer is at PGD's absolute discretion. For the avoidance of doubt, the Customer acknowledges PGD may refuse return of perishable non-defective Goods in its absolute discretion, including where the Goods are close to expiry or the Customer's storage procedures (including temperature controls) cannot be reasonably verified.
- 7.4 For the purpose of defect, quality concerns or other return requests:
- 7.4.1 The Customer must submit its request to PGD via email at [orders@pgdelights.com.au](mailto:orders@pgdelights.com.au). The Customer must not return Goods to any distributor or warehouse facility of PGD without first obtaining instructions to do so from PGD.
  - 7.4.2 The request must be submitted:
    - 7.4.2.1 for defects identifiable through a careful inspection of the Goods on delivery, within two (2) Business Days of delivery; or
    - 7.4.2.2 for all other defects, including warranty claims, within two (2) Business Days of discovery of the defect;and the Customer acknowledges that acceptance of claims outside these time frames shall be in PGD's absolute discretion.
  - 7.4.3 Reported defects are subject to verification. The Customer must provide such evidence, including video footage, as reasonably requested by PGD and must permit a representative of PGD to attend the Customer's premises to inspect the Goods if needed.
  - 7.4.4 Except for returns due to defect or error by PGD, return of Goods (if accepted) will be at the Customer's cost and may be subject of a restocking fee, as advised by PGD.
  - 7.4.5 All returns are the subject of verification that the Goods have been held according to the quality standards (including temperature controls) required under these Trading Terms.
  - 7.4.6 PGD may at all times in its discretion elect to refund the price of Goods rather than accept a return.
- 7.5 Notwithstanding the foregoing, if the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the *Competition and Consumer Act 2010* (Cth)), the Goods and or Services offered by PGD also come with warranties and guarantees that cannot be excluded under the Australian Consumer Law. The Customer (if a Consumer) is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage and the Customer is also entitled to have the Goods repaired or replaced or the Services rendered a second time, if the Goods and or Services fail to be of acceptable quality and the failure does not amount to a major failure. Where the Customer is not a "Consumer" within the meaning defined in Section 3 of the *Competition and Consumer Act 2010* (Cth), the guarantees referred to in this clause do not apply.
- 8. LIABILITY**
- 8.1 By acquiring Goods and or Services the Customer warrants that the Customer has checked the specifications of the Goods and or Services and is satisfied that the Goods and or Services meet all of the Customer's requirements.
- 8.2 Without limiting the foregoing, where Goods are manufactured according to the Customer's specifications, the Customer accepts all liability associated with any defect in the instructions or specifications provided by the Customer.
- 8.3 PGD takes its obligations to produce quality products very seriously, and undertakes to respond urgently to any quality defects and provide prompt notification of product recalls or other product concerns regarding Goods sold to the Customer, provided that, subject to clause 7 and except as otherwise agreed in writing by PGD, the only conditions, guarantees and warranties which are binding on PGD in respect of the state, quality or condition of the Goods or specification of the Services are those imposed and required to be binding by statute (including the Australian Consumer Law) and which cannot be excluded.



- 8.4 To the extent permitted by law, the liability, if any, of PGD arising from the breach of such conditions, guarantees or warranties shall, at PGD's option, be limited to and completely discharged in the case of the Goods, either the replacement or the refund by PGD of the Goods, and in the case of Services, by the supplying of the Services again. All other conditions, guarantees and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and or Services which may apart from this clause be binding on PGD are hereby expressly excluded.
- 8.5 Except to the extent prohibited by law, PGD shall have no liability to any person for any other loss or damage of any kind whatsoever including any indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, lost opportunity, loss of data or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise.
- 9. INTELLECTUAL PROPERTY**
- 9.1 The Customer acknowledges and agrees that, as between the Customer and PGD, PGD owns all intellectual property rights of any kind (whether or not registered or capable of registration) in the Goods and or Services, including recipes, methods and proprietary information, and the sale of the Goods and or Services to the Customer does not include the transfer of any intellectual property rights to the Customer. No right or licence is hereby granted to the Customer to use any intellectual property right of PGD.
- 9.2 The Customer must not deal in the intellectual property rights of PGD, including but not limited to reverse engineer the Goods and or Services and or attempt to replicate or reproduce the Goods and or Services (with or without alteration).
- 9.3 The Customer furthermore agrees to keep confidential any information regarding the Goods and or Services advised by PGD from time to time which is not already available in the public domain, the onus of proof of which rests with the Customer. This includes recipes, methods, special ingredient lists, marketing sales and distribution information, and other documentation produced for the Customer's use in connection with the Goods and or Services.
- 10. DEFAULT, INSOLVENCY AND TERMINATION**
- 10.1 If the Customer:
- 10.1.1 commits a material breach of these Trading Terms including unreasonably refusing to accept any Goods and or Services or failing to pay for any Goods and or Services in accordance with these Trading Terms;  
or
- 10.1.2 informs any person the Customer is insolvent, commits an act of bankruptcy, has a bankruptcy petition presented against it, becomes bankrupt, becomes subject to or bound by any arrangement, assignment, composition or moratorium of debts with its creditors, official management, receivership, liquidation, voluntary administration, winding up or other external administration;
- all monies owing by the Customer to PGD become immediately due and payable and PGD may, without affecting PGD's other rights:
- 10.1.3 immediately suspend or terminate supply of Goods and or Services;
- 10.1.4 refuse, suspend or withhold supply of any further Goods and or Services;
- 10.1.5 enter upon (personally or by its employees or agents) any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any Goods and or Services (title to which has not passed to the Customer), in which case the supply of those Goods and or Services by PGD to the Customer shall be taken to be terminated and PGD shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
- 10.1.6 terminate this Agreement or any other credit arrangement with the Customer including a Credit Account;
- 10.1.7 sue the Customer for payment of all monies owing to PGD by the Customer including damages on account of the Customer's breach and pursuant to any indemnity given by the Customer;
- 10.1.8 exercise any rights under any security interest or other security held by PGD; and
- 10.1.9 exercise any other right or power under these Trading Terms or at law.
- 10.2 PGD may also terminate the Customer's Agreement with PGD at any time by notice to the Customer if:
- 10.2.1 the Customer does not purchase any Goods or Services for a period exceeding six (6) months;
- 10.2.2 the Customer fails to meet agreed MOQ obligations under any Pricing Schedule or other agreement with the Customer;
- 10.2.3 the Customer is late, or consistently late, in the payment of any purchases, or is in default of any other Trading Terms;
- 10.2.4 there has been an adverse change, in the reasonable opinion of PGD, in the Customer's business, including a failure to notify a change of ownership; or
- 10.2.5 for any other reason if PGD reasonably determines that the Customer's Agreement should be terminated, including if PGD discontinues the supply of Goods and or Services the subject of the Customer's Agreement or its business in its entirety.
- 10.3 The Customer may terminate the Customer's Agreement with PGD at any time by no less than 30 days notice to PGD.
- 10.4 If the Customer's Agreement is terminated under clauses 10.2 or 10.3:
- 10.4.1 all unfulfilled Orders by the Customer accepted before the date of termination remain valid and binding except as otherwise agreed by PGD; and

- 10.4.2 the Customer remains liable to pay, by the date payment would otherwise be required or upon demand, all monies remaining due by the Customer to PGD on the Customer's account; and
- 10.4.3 PGD shall be entitled to require the Customer to purchase the balance agreed MOQ or in its absolute discretion require the Customer to pay an amount to PGD in reasonable compensation of the loss (including reasonable loss of profit) suffered by PGD due to the Customer's failure to meet agreed MOQ requirements.
- 10.5 For the avoidance of doubt, the Customer is liable to pay to PGD on demand, and PGD may recover in full from the Customer, all costs, expenses and disbursements incurred and/or payable by PGD (including all legal costs on a full indemnity basis) arising from or as a result of a breach by the Customer of any material term of these Trading Terms and or PGD's exercising or enforcing or seeking to exercise or enforce a right under these Trading Terms, including to recover payments owing to PGD. Such costs, expenses and disbursements may be recovered by PGD from the Customer as a liquidated debt.
- 11. GRANT OF SECURITY BY CUSTOMER**
- 11.1 In consideration of the supply of Goods and or Services by PGD, the Customer agrees to provide PGD with the security rights contained in this clause 11.
- 11.2 The Customer immediately on acceptance of a Pricing Schedule or Quotation, or the making of its first Order (whichever is the earlier to arise) grants a security interest over and charges its right, title and interest in, all of the Customer's real property to PGD to secure the due and punctual payment of all monies and the performance of all obligations by the Customer to PGD. The Customer shall execute and deliver to PGD a mortgage or mortgages of the Customer's real property on terms reasonably satisfactory to PGD within seven (7) days of request by PGD at any time when PGD reasonably requests it and the Customer consents to PGD registering a caveat or caveats against all such real property at any time until PGD shall have been able to register a mortgage of such real property.
- 11.3 Pursuant to and within the meaning of the *Personal Property Securities Act 2009*, the Customer, immediately upon receipt of notice by PGD that there has been a default in the payment of monies or the performance of all obligations by the Customer to PGD, grants a security interest over and charges its right, title and interest in, all of the Customer's personal property, to secure the payment of such monies and or the performance of such obligations and any further monies that may become payable or obligations that may arise. The Customer agrees to execute and deliver to PGD a general security deed of its personal property on terms reasonably satisfactory to PGD within seven (7) days of request by PGD after the security interest arises, and agrees that PGD may register a financing statement of PGD's security interest of the Customer's personal property on the PPS Register under this section at any time after the security interest arises whether or not a general security deed has been executed in favour of PGD.
- 11.4 For the purpose of this clause, the Customer irrevocably appoints the credit manager or a duly authorised officer of PGD to be the Customer's lawful attorney to execute any general security agreement, mortgage or other instrument that the Customer fails to execute within a reasonable time of such demand (which shall be no more than fourteen (14) days).
- 11.5 If the Customer is the trustee of any trust including without limitation the trust (if any) described in the Customer's Application for Trade Credit Account:
- 11.5.1 the reference to "personal property" and "real property" in this clause includes any such property of the trust in addition to the Customer's own property;
- 11.5.2 the Customer warrants and declares that it:
- 11.5.2.1 is the only trustee of the trust or is authorized by any other trustees to make this Application; and makes this Application for the purposes and the benefit of the trust;
- 11.5.2.2 has the power under the trust and is authorized to enter into and observe its obligations under this Agreement/Application;
- 11.5.2.3 has the right to be indemnified out of the assets of the trust in respect of its obligations under this Agreement/Application;
- 11.5.2.4 has not released and shall not release in the future and shall not cause or permit to be released, lost or diminished in any manner whatsoever any such rights of indemnity.
- 11.6 The Customer acknowledges and agrees to indemnify PGD for all costs and expenses (including legal costs) in respect of such security interests and any caveats as well as collection costs and any and all other costs PGD may incur in seeking to recover monies due and owing by the Customer to PGD.
- 12. CUSTOMER DETAILS AND CHANGES**
- 12.1 The Customer warrants that the Customer's details in any Application for Trade Credit Account or as otherwise provided to PGD for the preparation of a Quotation, Order or other billing practices are true and correct.
- 12.2 Except as otherwise stipulated in the Customer's Application for Trade Credit Account, or a Quotation, Order or other document issued by PGD, the Customer warrants that it does not enter into this Agreement as trustee of a trust.
- 12.3 Where the Customer is the trustee of a trust, including in breach of clause 12.2:
- 12.3.1 the Customer warrants that it is the trustee of the trust and has the authority to enter into the Agreement on behalf of the trust;

- 12.3.2 the Customer agrees to produce immediately to PGD a stamped copy of the trust deed (including all amendments) upon written notice from PGD demanding a copy of that trust deed;
  - 12.3.3 the Customer warrants that it shall be bound by the Agreement both personally and as trustee and any security of real or personal property provided by the Customer extends to any property held by the Customer as trustee;
  - 12.3.4 the foregoing warranties and agreements shall be deemed repeated on each occasion that the Customer makes and Order.
- 12.4 If the Customer is the holder of a Credit Account, if the Customer's business is sold or there is any other change in the controlling ownership of the Customer ("**Change of Control**"), the Customer must notify PGD and either obtain consent to transfer of the Customer's Credit Account or payout and close the Credit Account. The Customer (including all Guarantors listed in the Customer's Application for Trade Credit Account) will remain liable for the account, including any orders submitted by the Customer's new ownership, until written notification of change of ownership of the business has been received by PGD.
- 12.5 Whenever PGD is required to consent to a Change of Control of the Customer, PGD will not unreasonably refuse consent, but such consent may be subject to such reasonable conditions as PGD requires, including the execution of a new Application for Trade Credit Account by the Customer's new owners and guarantors.
- 12.6 For any other Customer, the Customer may not assign the benefit of its Agreement to any third party except with the consent of PGD and remains liable for all monies payable to PGD notwithstanding any purported assignment.
- 12.7 Whenever PGD is required to consent to a change of ownership or assignment by the Customer, PGD will not unreasonably refuse consent, but such consent may be subject to such reasonable conditions as PGD requires, including the execution of an Application for Trade Credit Account by the Customer's new owners and guarantors.
- 13. PRIVACY**
- 13.1 The Customer warrants to have read and consents to PGD's collection, storage, disclosure and destruction of any personal information provided by the Customer in accordance with PGD's privacy policy available on the Website.
- 13.2 The Customer confirms that any personal information provided by the Customer will be accurate and complete. Furthermore, the Customer agrees to provide updated information, as and when further information is requested by PGD for the purpose of reviewing the credit history of the Customer's Credit Account (if applicable), updating PGD's credit file on the Customer (if any) and/or attending to any other assessment or matter in connection with Orders by the Customer.
- 13.3 The Customer is responsible for the safe keeping of all user names, passwords and other account information provided by PGD and must ensure no unauthorised persons use the Customer's account with PGD. PGD reserves the right to accept Orders from any person who provides the credentials of the Customer and the Customer acknowledges that payment for such Orders shall be required whether or not such Orders were made in compliance with any internal procedures of the Customer.
- 14. NOTICES**
- 14.1 Notices to be given by the Customer to PGD must be in writing and delivered to PGD:
- 14.1.1 personally at the office address of PGD as publicly listed, in which case they will be taken to be received when delivered;
  - 14.1.2 by pre-paid post to the postal address of PGD as publicly listed, in which case they will be taken to be received, except for evidence to the contrary, only when confirmed as received by PGD; or
  - 14.1.3 by email to PGD at [orders@pgdelights.com.au](mailto:orders@pgdelights.com.au) unless another email address for correspondence is advised to be used by PGD from time to time, in which case they will be taken to be received at the time stated in a read receipt obtained by the Customer's server stating that the email has been read by PGD, or if no read receipt is created, when replied to or otherwise confirmed received by PGD.
- 14.2 Notices required to be given by PGD to the Customer must be in writing and delivered to the Customer:
- 14.2.1 personally at the office address of the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received when delivered;
  - 14.2.2 by pre-paid post to the postal address of the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received two (2) Business Days after postage by PGD;
  - 14.2.3 by email to the Customer at the email address for correspondence advised by the Customer as stated in the Customer's Application for Trade Credit Account, or otherwise notified by the Customer or publicly listed on any website of the Customer, in which case they will be taken to be received at the time stated in a read receipt obtained by the Customer's server stating that the email has been read by PGD, or if no read receipt is created, two (2) Business Days after transmission, unless PGD receives notification that the email communication has been delayed or impaired.
- 14.3 For the purpose of this clause, the Customer and PGD hereby agree and consent to communications and notices in relation to the Agreement being sent via electronic communication.
- 15. MISCELLANEOUS**

- 15.1 PGD may vary any of these Trading Terms from time to time by notice to the Customer and the new Trading Terms will apply from such notice, provided that the Customer's Pricing Schedule shall continue to override anything to the contrary in the new Trading Terms. If PGD issues a Trading Terms update and the Customer does not wish to accept it, the Customer may terminate its Agreement by notice in writing given to PGD within thirty (30) days of issue of the updated Trading Terms, failing which the Customer is taken to have accepted the updated Trading Terms. If the Customer terminates its Agreement with PGD, the prior Trading Terms will apply to any Orders by the Customer until the date the Agreement ends.
- 15.2 If anything in these Trading Terms or other parts of the Agreement is unenforceable, illegal or void then that thing is severed and the rest of the Agreement remains in full force and effect.
- 15.3 Any failure by PGD to exercise any right or to insist on strict performance of any obligation of the Customer under these Trading Terms or other parts of the Agreement does not operate as a waiver and a partial exercise of a right does not preclude any further or fuller exercise of that right.
- 15.4 These Trading Terms or any other part of the Agreement are not to be construed to the disadvantage of a party because that party was responsible for their preparation.
- 15.5 PGD may assign the benefit of the Agreement to any other third party who acquires PGD's business of supplying the Goods and or Services. Upon notice by PGD to the Customer of such an assignment, all obligations of the Customer shall then be in favour of the stated assignee.
- 15.6 The Customer agrees that these Trading Terms and the Agreement generally shall be construed according to the laws of the State of Queensland. Proceedings by either PGD or the Customer may be instituted and/or continued in any Court in such State.