

## TERMS OF TRADE

All goods are sold and supplied by Tomkin Australia Pty Ltd ABN 59 001 317 862 (“Tomkin”) to you (“the Customer”) on the following terms and conditions:

### 1. Terms

- (a) The Customer acknowledges having received and read a copy of Tomkin’s current terms and conditions of trade (“the Terms of Trade”).
- (b) Tomkin may vary the Terms of Trade at any time by publication of new terms of trade on its web site or by notice in writing to the Customer.
- (c) The Customer upon ordering any goods from Tomkin is deemed to have accepted and is bound by the Terms of Trade current at the time the order is made.

### 2. Prices

- (a) The prices charged for goods shall be the prices determined by Tomkin at the date of despatch.
- (b) Prices are subject to change without prior notice to the Customer.
- (c) The prices quoted for goods do not include any goods and services tax, delivery and handling charges, which are payable by the Customer.

### 3. Payment

- (a) The Customer must pay Tomkin for all goods in full within 30 days from the date of Tomkin’s invoice to the Customer.
- (b) The Customer is entitled to a discount of 2.5% if payment in full is received by Tomkin within 10 days from the date on Tomkin’s invoice to the Customer. However the Customer is not entitled to this discount if any amount is owing to Tomkin in relation to other goods invoiced and not fully paid for by the Customer within the 30 day period.
- (c) Tomkin may accept payment of any invoice by credit card but only where no amount is owing on the Customer’s account for more than 30 days. Tomkin reserves the right to pass onto the Customer the fee charged to it by the credit card company.
- (d) The Customer shall not set off against the payment due to Tomkin any amount(s) the Customer claims for the return of goods or for short deliveries, incorrect goods or defective goods.

### 4. Default

If payment in full is not received by Tomkin within the time stipulated in clause 3(a) then the Customer agrees:

- (a) to pay Tomkin interest at 2% above the current Westpac Bank indicator lending rate from time to time on any unpaid amount until payment in full is made;
- (b) Tomkin may immediately and without further notice, refer the matter to a debt collection agency. In this event, it is further agreed that the Customer will be liable to pay Tomkin the outstanding amount together with interest as referred to above and all legal costs and expenses incurred in attempting to recover the debt, including any commissions or other amounts payable to a debt collection agency.

### 5. Customers

- (a) Goods will only be supplied to a Customer on credit at the discretion of Tomkin.
- (b) Tomkin may at any time in its discretion disallow a Customer credit, decline an order or stop delivery.
- (c) New Customers must pay Tomkin for goods in full prior to despatch.
- (d) New Customers are subject to minimum order requirements as set out in clause 7(a).
- (e) New Customers will remain on a prepaid basis until Tomkin determines in its discretion that the Customer may be allowed credit terms.
- (f) A Customer with an account which has been inactive for 6 months or a Customer who does not comply with the terms of payment in clause 3 will be deemed a new Customer.

### 6. Credit Checks

The Customer acknowledges and agrees that, upon submission of a completed Account Application Form, Tomkin is authorised to perform any credit checks on the Customer or any director or guarantor of the Customer with third parties as it requires.

### 7. Minimum Orders

- (a) The minimum order for all new Customers is \$1000.00 (GST exclusive).
- (b) For delivery within Australia, orders must exceed \$250.00 (GST exclusive).
- (c) The minimum order for “pick up” from Tomkin’s warehouse in Alexandria is \$100.00 (GST exclusive) and is subject to a handling fee set out in clause 11.
- (d) All goods are subject to minimum pack quantities (referred to as ‘sales multiples’) set by Tomkin from time to time.

### 8. Special Orders

Special orders of goods or goods made to the Customer’s specifications:

- (a) must be paid for in full at the time of order;
- (b) will not be accepted by Tomkin for exchange, return or cancellation, unless defective.

### 9. Back or Forward Orders

- (a) Goods temporarily out of stock will be placed on back order. When available these goods will be included in the Customer’s next delivery.
- (b) Back orders and forward orders will be supplied at the prices determined by Tomkin at the date of despatch (not the date of the order).
- (c) The Customer may, but only with the prior written permission of Tomkin, cancel goods on back order or forward order. However, Tomkin shall be entitled absolutely to refuse to cancel goods on back order or forward order and the Customer shall be obliged to pay for them.

### 10. GST

If a goods and services tax or other value added tax (“GST”) applies in respect of any supply made to the Customer under or in connection with these Terms of Trade, the amount payable for that supply will be increased by the rate of GST applicable at that time and is payable by the Customer.

### 11. Delivery & Handling Charges

- (a) The Customer shall pay the delivery and handling charges for goods as follows:  
within Australia:
  - (i) Orders over \$1000.00 (GST exclusive) will be delivered without charge but only to the Customer’s usual place of business
  - (ii) Orders between \$250.00- \$1000.00 (GST exclusive) will be subject to a delivery charge to be invoiced to the Customer in the

amount Tomkin shall determine subject to changes in the rates charged by its contract carriers;

(iii) Orders less than \$250 (GST exclusive) picked up by the Customer from Tomkin's warehouse will be subject to a handling fee of \$25.

(iv) All orders for delivery other than to the Customer's usual place of business will be subject to a delivery charge as specified in sub-clause 11(ii).

outside Australia:

All orders will be delivered on an ex works basis. (Freight, insurance and all other charges to be paid by the Customer)

(b) The Customer shall pay the GST on the delivery and handling charges.

## **12. Returns**

Tomkin may in its discretion accept a return of goods from a Customer and issue a credit note for them but only under the terms of this clause 12:

(a) No return of goods will be accepted without Tomkin's prior consent and due authorisation as set out in paragraph (b).

(b) If authorisation for a return of goods is granted, the Customer will be advised of a Return Authorisation Number ("RAN") and the RAN must be included on all paperwork relevant to the return of the goods including the consignment note.

(c) A RAN is issued by Tomkin in good faith and in reliance on the Customer's information. However, the processing of the claim and issue of any credit note is subject to the goods being returned in their original form and original packaging.

(d) Any credit note issued will be subject to and after deduction of a 20% re-stocking fee and after deduction of the original delivery and any return delivery charge (if applicable).

(e) The Customer is not entitled to cash refund for the goods.

## **13. Claims for Short Deliveries, Incorrect Goods or Defective Goods**

(a) The Customer must notify Tomkin in writing (including the invoice/picking slip number) of all claims for short deliveries, incorrect goods or defective goods within 5 working days of receipt by the Customer.

(b) The Customer agrees that Tomkin is entitled to reject any claims received outside this period.

(c) Subject to the above, Tomkin will, in its discretion, make good the short delivery, replace the goods or issue a credit note.

## **14. Claims for Breakages of Crockery and Glassware**

(a) Tomkin will not accept breakage claims for crockery and/or glassware unless these goods were purchased in full cartons.

(b) The goods must be retained by the Customer for physical inspection in person by Tomkin's authorised agent or representative.

(c) Tomkin is entitled to reject any claim for broken goods where the Customer has not kept or made the goods available for its inspection.

(d) Subject to the above, Tomkin will, in its discretion, replace the broken goods or issue a credit note.

## **15. Promotional Material**

(a) Tomkin may provide the Customer with product display stands and other point of sale material ("the Promotional Material") to assist the Customer in the sale of goods purchased from Tomkin.

(b) The Customer acknowledges and agrees that the Promotional Material belongs to Tomkin and may only be used in the promotion of goods purchased from Tomkin.

(c) If the Customer, in breach of paragraph (b) misuses the Promotional Material or otherwise loses or damages it then the Customer shall be liable to and agrees to pay Tomkin the value of the Promotional Material as indicated on Tomkin's invoice.

## **16. Intellectual Property**

(a) Tomkin is the registered owner of various trade marks and has copyright in the various images and names associated with its goods ("the Intellectual Property").

(b) The Customer acknowledges and agrees that it may not use the Intellectual Property otherwise than in the promotion of goods purchased from Tomkin.

## **17. Warranty**

(a) All warranties, conditions and representations, whether express or implied, other than an express warranty in writing by Tomkin, are expressly excluded except to the extent Tomkin is by law unable to exclude, limit or modify its liability.

(b) To the extent permitted by law, Tomkin shall not be liable to the Customer for loss of profit or other economic loss or any damages in relation to any goods supplied to the Customer by Tomkin or for any negligence by Tomkin, its employees agents.

(c) The liability of Tomkin in relation to the supply of goods is limited, where permitted by law, to the replacement of the goods or a credit note for the value of the goods.

## **18. General**

(a) Whilst all care has been taken, Tomkin, will not be bound by any errors or omissions which may appear in any of its invoices and statements or its price lists, catalogues or other promotional material.

(b) No variation of the Terms of Trade except as provided for in clause 1(b) shall be binding unless approved in writing by Tomkin.

(c) No time of other indulgence that Tomkin may give to a Customer shall affect or limit the rights of Tomkin under the Terms of Trade except to the extent that Tomkin expressly waives the same in writing.

(d) Any terms contained in the Customer's Order or other document issued by either Tomkin or the Customer which are inconsistent with the Terms of Trade shall, to the extent of the inconsistency, have no legal effect.

(e) If any term or part of the Terms of Trade is illegal or unenforceable it shall be construed as being severed from the Terms of Trade and the remaining terms shall continue in full force and effect.

## **19. Jurisdiction**

The parties agree to submit to and be bound by the laws and courts in the State of New South Wales.

## **20. Privacy**

(a) Tomkin complies with the Privacy Act, 1988 as amended and is bound by the National Privacy Principles dealing with the collection, use and storage of personal information.

(b) The Customer authorises Tomkin to collect, retain, record, use and disclose personal information about the Customer (or any director or guarantor of the Customer) to other persons or entities for the purposes of processing an Account Application Form submitted by the Customer, or for assessing the creditworthiness of the Customer (or any director or guarantor of the Customer), or for notifying and instructing a debt collection or credit reference agency or a solicitor or other professional consultant and for the marketing of goods provided by Tomkin.

*effective as at December 2009*