



CONDITIONS OF SALE

Disclosure Notice

The terms summarised below may substantially prejudice the interests of a Customer and BSH wishes to draw the attention of the Customer to these terms.

- **Clause 5(h)** provides that BSH may charge interest, storage fees, cancellation fees and other costs incurred by BSH if a Customer fails to pay the Security Deposit or balance owing on time, and BSH may also terminate the Agreement.
- **Clause 6(c)** provides that BSH may charge storage fees, cancellation fees or other costs incurred by BSH if a Customer delays delivery of a product, and BSH may also terminate the Agreement.
- **Clause 6(d)** and (e) provides that the delivery date is an estimate only and BSH is not liable to the Customer if it does not deliver the Product on that date (provided it delivers within a reasonable time).
- **Clause 6(k)** requires the Customer to notify BSH prior to delivery if a Non-standard Delivery (eg., difficult access points or stairs) is required otherwise additional fees and charges apply.
- **Clause 7(a)** provides that BSH may charge a cancellation fee if a Customer cancels an order prior to delivery and the cancellation is not related to their rights under the Australian Consumer Law or BSH's Manufacturer's Warranty.
- **Clause 9(c)** provides that BSH will not be liable for indirect losses, loss of profit and other types of liability (except if BSH is liable under the Australian Consumer Law).
- **Clause 18** provides that BSH may disclose a Customer's personal information to third parties for business purposes such as warranty registration, product development, surveys and marketing, some of which may be overseas.

1. Definitions and Interpretation

In these Conditions any capitalised terms used that are defined in the Customer Order have the same meaning as in the Customer Order (unless specified otherwise in these Conditions).

Agent means an entity described as such in the Customer Order.

Agent Finance means a credit facility provided directly by the Agent, or facilitated by the Agent and provided by a third party, for the Customer to purchase Products.

Agreement means a contract between BSH and the Customer for the sale and purchase of the Products on the terms and conditions set out in these Conditions, in the Quotation, Customer Order and Sales Invoice.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth), as amended or replaced from time to time.

BSH means BSH Home Appliances Pty Ltd (ACN 109 198 405).

BSH Home Appliances Group means BSH Hausgeräte GmbH and its Related Bodies Corporate and Subsidiaries.

BSH Manufacturer's Warranty means the warranties provided for Products by BSH as specified in the warranty card applicable to, or accompanying, the Products and is in addition to the consumer guarantees that are included in the Australian Consumer Law.

Business Day means any day that is not a Saturday, Sunday or gazetted public holiday in the State or Territory in which the Product is being delivered.

Business Hours means 8am to 5pm on a weekday, excluding public holidays, in the State or Territory in which the Product is being delivered.

Conditions means these Conditions of Sale.

Consumer means a consumer within the meaning of section 3 of the Australian Consumer Law.

Consumer Right means a right that a Customer has under the Australian Consumer Law or under the BSH Manufacturer's Warranty, in relation to the Product.

Customer means the purchaser of the Products who is named on the Customer Order.

Customer Order means the form that sets out the details of the Products ordered by, or on behalf of, the Customer that have been confirmed by the Customer, price of the Products, Delivery Address and other information.

Delivery Address means the delivery address specified in the Customer Order.

Delivery Area means the metropolitan area of capital cities in Australian States and Territories and certain regional areas of Australian States and Territories as determined by BSH.

Delivery Date has the meaning given in clause 6(a).

Display Products means appliances provided by BSH to the Agent on a consignment basis only.

Non-standard Delivery means a delivery of the Products that requires two or more people to make the delivery, a split delivery (at the Customer's election), a delivery that requires cranes or other specialised lifting or moving equipment, a delivery that includes difficult access points or staircases (e.g. remote sites or outhouses, narrow, spiral, bends or a number of flights due to no elevator being in place or available), a delivery outside Business Hours or outside the Delivery Area, or a delivery that requires a second site visit to the Delivery Address for any reason not caused by BSH.

Order means a Customer Order that has been accepted by BSH.

Payment has the meaning given in clause 5(b).

Price has the meaning given in clause 3(a).

Products means the products described in the Customer Order, as amended in accordance with these Conditions.

PPSA means the Personal Property Securities Act 2009 (Cth).

Quotation means the form, tender or quotation issued by BSH to the Customer regarding the Products (if any).

Related Bodies Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Sales Invoice means a tax invoice issued by BSH to the Customer after BSH processes Payment for the Products as proof of purchase of the Products.

Security Deposit means the deposit required to be paid by a prospective Customer ordering the Products or Display Products (as the case may be) being:

(a) in the case of all Products to be sold other than Display Products, 30% of the total Price of the Products ordered or such other amount as required by BSH (e.g. some specialised or internationally manufactured Products may attract a higher security deposit); and

(b) in the case of Display Products, 100% of the total Price of the Display Products ordered.

Standard Delivery means any delivery other than a Non-standard Delivery.

Subsidiaries has the same meaning as in the Corporations Act 2001 (Cth).

2. Amendments

The Agreement can only be amended, altered or waived by prior written agreement between BSH and the Customer.

3. Price

(a) The total price payable by the Customer will be the amount(s) specified in the Customer Order, payable in AU\$, which includes GST and charges for Standard Delivery and Non-standard Delivery (as applicable) (Price).

(b) Unless otherwise stated by BSH in writing, the Price quoted in a Quotation or Customer Order or set out in a Sales Invoice excludes, where applicable, charges payable to BSH under these Conditions (including for re-delivery) or costs incurred by the Customer in relation to the Product such as installation.

4. Special conditions

Any special conditions specified in a Quotation, Customer Order or Sales Invoice will take precedence over these Conditions to the extent that they are inconsistent with these Conditions.

5. Payment

(a) If the Customer wishes to purchase the Products, they must pay:

(1) the Security Deposit to BSH within five Business Days of the date that the Products or Display Products were ordered; and

(2) the balance of the Price within the timeframe specified in clause 5(g) i.e. within 90 days of payment of the Security Deposit.

(b) The Customer authorises BSH to charge the Customer's credit card the Price for purchasing the Products (**Payment**).

(c) For all Customer Orders, full Payment is required before BSH will deliver the Products.

(d) BSH accepts Payment by Visa, Mastercard, Amex, EFT, cheque and Agent Finance and any other payment method accepted by BSH from time to time. Any payments made by credit card may incur a surcharge.

(e) Where Payment is made by Agent Finance, the Customer consents to the Agent providing BSH with a copy of finance approval provided by the Agent, or to the Agent from the third party finance provider. The Customer acknowledges and agrees that BSH takes no responsibility for the Agent Finance arrangements, that the Agent is not acting as BSH's agent in arranging the Agent Finance and that BSH is in no way associated or affiliated with any third party finance provider.

(f) Customers are required to retain proof of purchase and Payment to facilitate transactions, claims, returns and after sales support.

(g) If BSH is unable to process the Payment using the credit card information provided by the Customer or Payment is not made for any other reason, BSH will notify the Customer and the Customer must pay the full Price for the Product within 30 days of being notified by BSH. The Price for the Products is fixed provided that the balance of the Price is paid within 90 days of payment of the Security Deposit.

(h) Time for Payment for the Product is of the essence. If the Customer fails to pay the Security Deposit and/or balance of the Price within the time period specified in these Conditions, BSH may, without prejudice to BSH's other rights:

(1) terminate the Agreement with immediate effect, refund the Security Deposit (and any other moneys paid towards the Price by the Customer), deduct the cancellation fee specified in clause 8(a) and any additional costs reasonably incurred by BSH arising from the Customer's failure to pay for the Product, and release the Product for re-sale; or

(2) extend the date for Payment for a period agreed to by BSH in writing if the Customer agrees to pay storage fees for the Products AU\$20.00 per Product per month from the date the Payment was due until the date the Payment is made; or

(3) charge interest, calculated daily, on the outstanding amount at a rate of 2% per annum plus the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 (Vic) from the date Payment was due under clause 5(g).

(i) In consideration for the Payment for the Products, BSH agrees to supply the Products to the Customer.

(j) If a Customer has a claim against BSH in relation to an Order, the Customer cannot withhold payment of the whole or part of the Price payable in respect of any other Order.

6. Delivery

(a) On acceptance of a Customer Order, BSH will notify the Customer of an estimated date of delivery and of any variations from that date (**Delivery Date**).

(b) The Customer must accept delivery on the Delivery Date during Business Hours or on any other date or times agreed by the parties in writing.

(c) If a Customer has made Payment for the Products but delays delivery of the Products for any reason for a period of more than 275 days following the date of Payment (**Final Delivery Date**), BSH may:

(1) deliver the Products at its absolute discretion to the Delivery Address and charge the Customer storage fees of AU\$20.00 per appliance per month from the Final Delivery Date to the date of actual delivery and any other costs reasonably incurred by BSH arising from the delayed delivery; or

(2) terminate the Agreement with immediate effect and charge the applicable cancellation fee specified in clause 8(a).

(d) Any Delivery Date confirmed by BSH is an estimate only. If BSH is unable to deliver the Products on the Delivery Date BSH must deliver the Products within a reasonable time after the Delivery Date.

(e) To the extent permitted by the Australian Consumer Law, BSH will not be liable for any loss suffered by the Customer arising out of any delay or failure to deliver the Products (or any part of them) on the Delivery Date unless BSH fails to deliver the Products within a reasonable time after the Delivery Date.

(f) BSH will not deliver part of an Order.

(g) BSH will deliver the Products to the Delivery Address provided the Delivery Address is at all times within the Delivery Area.

(h) Delivery will be deemed to be made when the Products are delivered to the Delivery Address.

(i) If the Products are not available for delivery on the Delivery Date due to a reason that arose after a Customer Order was accepted by BSH and that is beyond BSH's reasonable control, BSH may, by providing notice to the Customer prior to the Delivery Date:

(1) offer the Customer a model of equivalent or superior standard. BSH will not charge the Customer any additional amount for the difference in price between the original Product and the alternative model but may refund the Customer the difference in price if the new model costs less than the original Product; or

(2) if no appropriate alternative model is available, terminate the Agreement with immediate effect and refund to the Customer all money paid towards the Price of the Product.

(j) If the Customer accepts BSH's offer of the alternative model pursuant to clause 6(i)(1), the Price will be varied accordingly. If the Customer rejects BSH's offer then the Agreement is terminated immediately and all money paid by the Customer towards the Price of the Product will be refunded.

(k) Unless otherwise expressly agreed by BSH in writing, a delivery will be presumed to be a Standard Delivery. If the Customer requires a Non-standard Delivery, they are required to notify BSH as soon as possible prior to BSH's dispatch of the Products. Fees and charges will be applicable for Non-standard Deliveries, details of which can be obtained prior to purchasing the Products (noting that at times only an estimate may be able to be provided prior to purchase) and will be provided by BSH and agreed with the Customer prior to dispatch of the Products.

(l) The Customer must ensure that there is someone over the age of 18 available at the Delivery Address to sign for the Products upon delivery and they must be able provide identification if requested to do so.

(m) Prior to delivery of the Products the Customer must prepare for delivery by ensuring that there is clear access for the delivery vehicles, ensuring that there is clear access for the Products and any trolleys, covering floors that the Customer does not wish to get wet, soiled, scratched by boxes and/or trolley wheels, checking the width of doorways and walkways, and preparing in any other necessary way for the delivery of the Products. To the extent permitted by law, including under the Australian Consumer Law, BSH will not be liable for any loss or damage suffered by the Customer arising out of any damage caused during delivery of the Products as a result of the Customer's acts or omissions.

(n) Where the Customer is not present or ready to accept delivery of the Products at the nominated delivery time on the Delivery Date, the Customer has not given BSH prior notice that a Non-standard Delivery of the Products is required, or the delivery is redirected to another location after dispatch from the warehouse, BSH is entitled in its absolute discretion to:

(1) not deliver the Products and charge the Customer a fee to have the Products re-delivered at a new delivery time/date;

(2) deliver the Products as a Non-standard Delivery and charge the ordinary fee for that Non-standard Delivery; or

(3) deliver the Products to an alternate location agreed with the Customer provided that location is within the Delivery Area and charge the ordinary fee for that Non-standard Delivery,

as arranged by BSH and the Customer. Any fee payable by the Customer under this clause 6(n) must be paid by the Customer prior to BSH effecting delivery of the Products.

7. Obligation to Inspect

(a) The Customer must inspect all Products upon delivery.

(b) The Customer must notify BSH if the Products are not in accordance with the Quotation, Customer Order or Sales Invoice within 21 days of delivery.

8. Cancellations, Returns and Exchange Requests

(a) If a Customer cancels the Order for the Product prior to delivery for a reason not related to their Consumer Rights (or for no reason), the Customer must pay a cancellation fee of \$150.00. BSH will refund to the Customer the Price for the Product after deduction of the cancellation fee.

(b) Subject to BSH's prior written approval, which it may provide or withhold at its absolute discretion, a Customer may return a Product for a reason not related to their Consumer Rights (or for no reason) within 21 days of the date of delivery of the Product provided that the:

(1) Customer contacts BSH before taking any steps to return the Product;

(2) Customer allows BSH to collect the Product during Business Hours at the Customer's cost;

(3) Product is returned with all items and manuals, and is undamaged as determined by BSH acting reasonably;

(4) Customer pays a restocking fee of:

A. Products still packed and unopened (in a sellable, unused condition)

15% of the Price

B. Products that have been unpacked or opened (in a sellable, unused condition)

20% of the Price plus \$150.00 (plus GST) to repack/seal

C. Products that have been installed but not used or if installation is not required, then not used (in a sellable, unused condition)

50% of the Price

D. Products that have been installed and used or if installation is not required, then used (BSH is unable to sell these)

100% of the Price,

to be confirmed by BSH following its assessment of the Product's condition, in which case BSH will refund to the Customer the Price of the Product after deduction for the applicable restocking fee and any costs (including freight costs) incurred by BSH.

Note, if after assessing the Product BSH determines that it is not re-sellable by BSH, then the Customer will have the opportunity to collect the Product as an alternative to receiving no refund at all and BSH disposing of the Product.

(5) BSH may at its own discretion consider requests to exchange a Product for a reason not related to their Consumer Rights. Any exchange will be subject to BSH's prior written approval and the Customer paying the restocking fee (as outlined in clause 7(b)(4) above), transport costs and other reasonable charges specified by BSH prior to the exchange.

9. Title and Risk

(a) BSH will retain title and risk in the Products until the Products are delivered to the Delivery Address at which time title and risk passes to the Customer.

(b) BSH reserve the right to register any retention of title security interest in Products pursuant to the PPSA and the Customer agrees to provide all such assistance to BSH to enable BSH to make any such registrations.

(c) Where the Customer is in possession of Products that will be replaced by BSH then the Customer must keep such Products in its possession, safe from damage and/or theft and must not dispose of or otherwise part with possession of such Products until collection by a BSH representative or agent.

10. Indemnity and Exclusion of Liability

(a) The Customer has certain rights and remedies (including, without limitation, consumer guarantee rights) under the Australian Consumer Law that cannot be excluded, restricted or modified by contract. Nothing in these Conditions operate to exclude, restrict or modify the application of any provision, condition or warranty, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute where to do so would contravene that statute or cause any part of these Conditions to be void (**Non-Excludable Consumer Guarantees**).

(b) Except in relation to the Non-Excludable Consumer Guarantees, and otherwise to the extent permitted by law including the Australian Consumer Law, all other conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on BSH are expressly excluded from these Conditions.

(c) Except in relation to the Non-Excludable Consumer Guarantees and otherwise to the extent permitted by law including the Australian Consumer Law, BSH will have no liability to the Customer for any:

(1) special, indirect, consequential, exemplary or punitive loss or damage; and

(2) economic loss, loss of contract, profit, revenue, opportunity, production, production stoppage, goodwill, reputation, overhead costs, anticipated savings or data.

11. BSH Manufacturer's Warranty

(a) To make a claim under the BSH Manufacturer's Warranty in relation to a Product, the Customer is required to provide proof of purchase.

(b) The Products are supplied subject to the relevant Product's specifications as specified in the accompanying or applicable manuals and are covered by BSH's Manufacturer's Warranty, the details of which are specified in the accompanying or applicable warranty card.

(c) The BSH Manufacturer's Warranty will only be provided to and apply to the Customer and not to any subsequent owners of the Products.

(d) Unless otherwise agreed by BSH in writing the BSH Manufacturer's Warranty will commence seven days after dispatch by BSH for delivery to the Delivery Address

(e) Any Products subject to accident, misuse, abuse, negligence, defacement of serial plate or alteration that is not caused by BSH will have their BSH Manufacturer's Warranty voided. If installation and/or servicing of Products are not carried out by the Customer in accordance with the accompanying or applicable manuals, BSH's Manufacturer's Warranty will also be voided.

(f) The BSH Manufacturer's Warranty covers use of the product for domestic purposes only.

(g) BSH will not be liable for any fault or damage to the Products which has made it of unacceptable quality if it has been caused by the Customer or if the Customer failed to take reasonable steps to prevent the product from becoming of unacceptable quality, or if the Products have been damaged by the Customer from abnormal use.

(h) Any faulty or damaged Products that the Customer returns to BSH must be complete and include any accessories provided with the Products.

(i) Where the Customer seeks inspection and/or servicing of Products where there is no legitimate claim under the BSH's Manufacturer's Warranty or a Non-Excludable Consumer Guarantee then, to the extent permitted by law, including the Australian Consumer Law, the Customer agrees to bear the costs of such servicing and/or inspection.

(j) Any rights or remedies that a Customer has under the BSH Manufacturer Warranty is in addition to, and does not limit, their rights and remedies under the Non-Excludable Consumer Guarantees.

12. Customer Default

(a) If the Customer defaults by non-payment or non-performance of any obligation under this Agreement or if any proceedings under any bankruptcy, liquidation or insolvency laws are started by or against the Customer, BSH will have the right to exercise any one of the following remedies:

(1) declare all unpaid amounts to be immediately due and payable;

(2) terminate the Agreement in whole or in part; and/or

(3) pursue any other remedies under the Agreement or existing at law or in equity.

13. Governing Law

The Agreement is governed by the laws of the State of Victoria, Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.

14. Force Majeure

BSH will use its best endeavours to affect delivery on the Delivery Date but if BSH fails to do so by reason of:

(a) inability to obtain supplies of materials or parts from approved sources due to a reason outside the reasonable control of BSH;

(b) pandemic, epidemic, outbreaks of infectious disease or any other public health crisis or any governmental measures imposed to address such public health crisis, including quarantine or any other social restrictions;