

## TERMS AND CONDITIONS OF SALE

### 1 INTERPRETATION

- 1.1 In these terms and conditions of sale:
- (a) "we" or "us" or "our" or "the Company" means ASKO Appliances (Aust) Pty Ltd (ACN 007 007 329) ("ASKO") and any Related Body Corporate as defined in Section 9 of the Corporations Act.
  - (b) "you" or "your" means the Customer stated in the application and any other person offering to contract with us on these terms and conditions or, where such person is acting in the course of employment, such person's employer.
  - (c) "Goods" means goods supplied by us to you from time to time.
  - (d) "Agreement" means the agreement set out in Section A for purchasing Goods on credit and incorporates these terms and conditions as amended from time to time.
  - (e) Apart from previously defined terms, all capitalized terms in clause 10 have the same meaning prescribed to them in the Personal Property Securities Act 2009 ("PPSA").

### 2 SUPPLY

- 2.1 You agree to purchase and we will supply Goods to you on the following terms and conditions. However we are not obliged to supply Goods to you when requested to do so.
- 2.2 All additions and amendments to the terms and conditions must be notified in writing signed by us. All Goods supplied after that notification will be on such amended terms and conditions.
- 2.3 The Goods are supplied only on the terms and conditions stated herein and to the exclusion of any terms and conditions contained in any document submitted by you.

### 3 QUOTATIONS AND ORDERS

- 3.1 Any quotation or price list given by us to you does not constitute an offer to sell Goods to you. We reserve the right to alter the quote or price list without notice to you.
- 3.2 By ordering Goods, you are making a binding offer to purchase those Goods. We will notify you of our acceptance of your order in writing. Alternatively, our manufacture of Goods or delivery of Goods pursuant to your order shall be deemed acceptance of your offer to purchase.
- 3.3 We reserve the right to modify the design of Goods, and cease to manufacture or supply Goods without notice.

### 4 PRICES, GST, FREIGHT AND INSURANCE

- 4.1 Unless otherwise expressly agreed in writing, the price of the Goods shall be the price specified in our invoice plus the amount which we are required to pay on account of any charges which may be levied by any government (domestic or foreign) plus any amount that reflects any increase in exchange rates, costs of labour, materials and overheads.
- 4.2 You are responsible for all freight costs. If you nominate a carrier this must be advised to us in writing in the absence of which we will choose a carrier.
- 4.3 You agree to, at your own cost, insure the Goods for their full insurable value against loss or damage by fire, theft, accident and other usual risks and to keep them insured until we have received payment in full for the Goods.

### 5 PAYMENT

- 5.1 You agree that until we confirm that credit terms have been granted to you, all Goods are supplied on a cash on delivery basis.
- 5.2 Unless otherwise agreed, all amounts owing to the Company on account of Goods supplied to you on credit are due and payable by the last working day of the month following dispatch of invoices to you.
- 5.3 You may pay by Visa, MasterCard or Eft pos. However, we reserve the right to charge a credit card handling fee for effecting payment by this method at the rate advised by us from time to time.
- 5.4 You agree that if you fail to pay in accordance with this clause 5.2, we may:
  - (a) charge a late payment fee of 2% on all amounts paid by credit card.
  - (b) charge interest on debts at 4% above the rate prescribed pursuant to the Penalty Interest Rates Act (Vic) from time to time.
  - (c) charge a dishonour handling fee at the rate advised by us from time to time, where we are unable to obtain payment from your credit card provider or a cheque is not paid by your bank.
  - (d) recover all collection costs and expenses incurred in collecting overdue accounts.
  - (e) withhold supply.
- 5.5 Any forbearance by us in charging any of the fees set out in clause 5 does not constitute a waiver of our right to do so in the future.

### 6 RISK IN THE GOODS

Subject to clause 7.2, the risk of loss or damage to the Goods passes to you on the date and at the time that the Goods are removed from the warehouse of the Company for the purpose of delivery to you.

### 7 DELIVERY

- 7.1 We reserve the right to deliver Goods by instalments. Any delivery times notified to you are estimates only. If you request us to postpone delivery of the Goods beyond the delivery date or dates specified in your order, we may agree to do so if you agree to pay an additional fee for such postponement.
- 7.2 If we do not receive delivery instructions sufficient to enable us to dispatch the Goods within fourteen days of you being notified that the Goods are ready for delivery, you shall from the fifteenth day after notification:
  - (a) be deemed to have taken delivery of the Goods;
  - (b) be liable for storage charges, payable monthly on demand;
  - (c) assume risk in the Goods.
- 7.3 Containers (includes but not be limited to, stillages, formers and palletes) in or on which Goods are delivered and for which a deposit charge is made, remain our property. On the containers return in good order the deposit will be returned to you. We reserve the right to deduct monies from your deposit to compensate us for any damage to the container(s).

### 8 CLAIMS AND LIABILITIES

- 8.1 Any claim by you as to breach of these terms and conditions must be made to us in writing within 14 days of delivery, for which time is of the essence.
- 8.2 You have the benefit of conditions and warranties implied by Division 1, Part 3-2 of Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010 (Cth)* ("the Act") and nothing in these terms and conditions is intended to exclude, restrict or modify any statutory obligation we have if that cannot lawfully be effected. References to specific provisions of and circumstances

- arising under the Act are intended to include reference to equivalent or similar provisions of and circumstances arising under any State or Territory enactment.
- 8.3 Should we be liable for breach of a condition or warranty implied by Division 1, Part 3-2 of Schedule 2 of the Act our liability for the breach will, subject to Section 64A of the Act, be limited to one of the following as determined by us:-
    - (a) the replacement or repair of the Goods or the supply of equivalent Goods; or
    - (b) the payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods.
  - 8.4 Subject to any legislation to the contrary:-
    - (a) to the full extent permitted by law, all express and implied terms, other than the ones set out in these terms and conditions are excluded; to the full extent permitted by law, we are not liable for any injury to or death of any person or loss (including loss of profits or consequential loss) or damage to property arising from any act or omission of you or any other person (including any loss or damage arising from our negligence);
    - (c) you indemnify us against:-
      - (i) any claims made against us by any third party in respect of any loss, damage, death or injury as is set out in 8.4(b); and
      - (ii) all losses and expenses which we may suffer or incur due to your failure to observe fully your obligations under the Agreement incorporating the terms of the application; and
    - (d) we make no representation, warranty or undertaking about the compliance of the Goods with any statutory requirements relating to the marketing of Goods. You acknowledge that you alone are responsible for compliance of the Goods with this legislation.
  - 8.5 We will not be responsible for non-delivery or delay in delivery of any Goods due to any cause beyond our reasonable control, notwithstanding that the cause may be operative at the time of entering the contract of sale. Where such non-delivery or delay occurs, we may deliver the Goods not delivered or delayed at any subsequent time and you must accept and pay for them.
  - 8.6 Where we give a date of intended delivery, this will be subject to the Goods ordered being available and our being able to make the delivery on that date.

### 9 RETURNED GOODS

Where Goods are returned to us, credit will only be issued under the following conditions:

- 9.1 **Return Authorisation:**
  - (a) a Return Authority ("RA") number must be obtained from the supply point prior to the return of any Goods. We may refuse to give a RA or accept the return of any Goods;
  - (b) you must provide the invoice number and date of purchase before a RA will be issued;
  - (c) the RA authority number must be clearly marked on the packaging of Goods returned to us. Failure to comply with this requirement could result in our refusing to accept delivery of the returned Goods.
- 9.2 **Credit:**  
All claims for credit must be supported by:
  - (a) carriers consignment note or similar receipt of delivery;
  - (b) our relevant invoice number; and
  - (c) the RA number issued by us.
- 9.3 **Unacceptable Returns:**  
Without in any way limiting our discretion to refuse to accept the return of any Goods, the following Goods will not be returnable:
  - (a) any Goods that have been held by you for more than 14 days; or
  - (b) any Goods which are not in original condition.
  - (c) any Goods manufactured, modified or altered by or at your request.
- 9.4 **Faulty Goods:**  
We will only recognise claims for faulty Goods that are made within seven days of you receiving the Goods.
- 9.5 **Carrier:**  
Goods must be returned by the carrier specified by us.
- 9.6 **Restocking Fee:**  
You agree to pay us a restocking fee at the rate advised by us from time to time.

### 10 RETENTION OF TITLE

- 10.1 It is expressly agreed and declared by both parties that in relation to Goods supplied to you:-
  - (a) The sole and absolute property in those Goods shall remain with us as legal and equitable owner until the later of:-
    - (i) receipt of payment in full for the Goods; and
    - (ii) receipt of payment in full of all other monies owing or unpaid by you to us including monies in respect of Goods previously or subsequently supplied to you by us;
  - (b) the relationship between you and us shall be fiduciary;
  - (c) you will hold those Goods as bailee for us;
  - (d) where you sell those Goods, you have no power to commit us to any contract or liability, but as between you and us, you will sell as fiduciary agent;
  - (e) we will be given full ownership of any new goods or objects formed if you transform our Goods into other products or affix those Goods to other objects;
  - (f) where those Goods are disposed of, the monies resulting from the disposal and all other proceeds, (tangible or intangible) received in respect of the Goods, including insurance proceeds will be kept in a separate identifiable account on trust for us and which will be immediately paid to us upon our request;
  - (g) where those Goods are disposed of, you may only dispose of the Goods in the ordinary course of your business on commercially reasonable terms;
  - (h) your right to possess the Goods ceases immediately if you do or fail to do anything which would entitle a receiver, a receiver and manager, an administrator or a trustee to be appointed in respect of you, your undertaking or property or any part thereof, or entitle a person to present a creditor's petition for winding up.
  - (i) you will keep records of those Goods.
- 10.2 You undertake that until you deliver the Goods to a third party, you will store the Goods on your premises separately from your own Goods, or those of any other person, and in a manner which makes the Goods readily identifiable as our Goods.
- 10.3 You agree that our employees or agents may enter upon any of your premises (doing all that is necessary to gain access) where it is reasonably thought Goods supplied under this Agreement might be stored for the purpose of examining or recovering the Goods.

## TERMS AND CONDITIONS OF SALE

- 10.4 You acknowledge and expressly agree that this clause 10 constitutes a Security Agreement which creates a Security Interest in favour of us in all Goods, including any Commingled Goods, supplied by us to you. You acknowledge and agree that:
- we may, without providing notice to you, apply to register our Security Interest pursuant to the PPSA and it is the intention of both parties that upon registration of our Security Interest on the personal property securities register ("PPSR"), a Purchase Money Security Interest will result;
  - you agree that we are not required to disclose to an interested person information regarding our Security Interest unless required to do so by law and that this clause constitutes a Confidentiality Agreement for the purposes of section 275(6) of the PPSA;
  - upon our request, you will promptly sign any documents, provide any further information and do anything else reasonably required by us to enable perfection of our Security Interest or registration of a Financing Statement or Financing Change Statement under the PPSA;
  - you will not register a Financing Statement of Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods without our prior written consent;
  - you will not grant any other Security Interest or any lien over the Goods; you will give us not less than 14 days written notice of any proposed change in your name or contact details; and
  - you waive any rights you may have to receive any notices required under sections 95, 118, 121, 130, 132, 135 and 157 of the PPSA.
- 11 CHARGE**
- 11.1 You hereby charge in favour of us:
- any land that you own (or acquire after the date hereof) as security for any and all monies owing to us and hereby authorise us to register a caveat over the Land if you default in making payment of any amount due to us;
  - all your personal property including, without limitation, all the stock, motor vehicles, plant, equipment and debtors that you own (or acquire after the date hereof) as security for any and all monies owing to us and hereby authorise us to register, with any competent authority, the charge over the property if you default in making payment of any amount due to us.
- 12 SET OFF**
- You agree that:
- we may set-off any credit amount that we owe to you against any debit due by you to us;
  - you are not entitled to withhold payment of any money in respect of any set-off or claim you might have against us.
- 13 ACTS OF DEFAULT**
- If you:
- fail to pay for any Goods on the due date; or
  - otherwise breach this Agreement and fail to rectify such breach within 7 days notice; or
  - you cancel delivery of the Goods; or
  - commit an act of bankruptcy; or
  - allow a trustee in bankruptcy or receiver and manager to be appointed to you or any of your property; or
  - allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property; or
  - are a company and:-
    - proceedings are commenced to wind you up or any of your subsidiaries; or
    - a controller, receiver, administrator, liquidator or similar officer is appointed to you or in respect of any part of your property;
  - then we and our agents may enter upon your premises (doing all that is necessary to gain access) where Goods supplied under this agreement are situated at anytime and retake possession of any or all of the Goods we have supplied to you; and
  - we reserve the right to resell the Goods concerned; and
  - terminate the Agreement.
- 14 If we conduct a re-sale pursuant to clause 14:-
- we may do so at our premises or place; and
  - the re-sale may, at our discretion, be by public or private sale; and
  - we may recover from you as liquidated damages for our loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach). (If applicable Goods cannot be sold within 3 months of the first attempted sale, those Goods will be deemed to have a re-sale price of nil).
- 15 GOVERNING LAW**
- This contract is governed by the laws of the respective states that the sale takes place. You and the Company irrevocably submit to the exclusive jurisdiction of the State Courts and Federal Court sitting in the respective states.
- 16 WHOLE AGREEMENT**
- These terms and conditions embody the whole agreement between the parties and exclude any terms and conditions contained in any document or internet transmission from you relevant to the supply of Goods. All previous dealings, representations and arrangements are hereby excluded and cancelled.
- 17 CESSATION OF SUPPLY**
- Our agreement to continue to deliver or sell Goods to you is always conditional upon our being satisfied of your ability to pay and comply with these terms and conditions. If we ceased to be so satisfied we may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost suffered by you.
- 18 SEVERANCE**
- Should any part of these terms and conditions be held to be void or unlawful, these terms and conditions will be read and enforced as if the void or unlawful provisions have been deleted.
- 19 PRIVACY POLICY**
- 19.1 The Company is bound by the *Privacy Act 1988* and must comply with the Australian Privacy Principles. More information about the Privacy Act and the Australian Privacy Principles can be found at the Office of the Australian Information Commissioner's website at: [www.oaic.gov.au](http://www.oaic.gov.au).
- 19.2 We understand that people value their privacy and wish to have their personal information kept secure. For these reasons, we place a high priority on the security of the personal information we hold. We have developed a Privacy Policy to inform individuals of how we manage their personal information and maintain its integrity and security.
- 19.3 Our Privacy Policy is available to view on our website (<http://www.asko.com.au>).
- 19.4 Our Privacy Policy contains information about how individuals may access the personal information we hold about them, and seek the correction of such information, if they believe it is incorrect.
- 19.5 Our Privacy Policy also contains information about how people may complain about a breach of the Australian Privacy Principles (APPs) and how we will deal with such a complaint.
- 20 PRIVACY COLLECTION NOTICE**
- 20.1 The Company collects personal information about individuals primarily to provide them with the product and services requested by them, including the sale of goods and related after-sales services (which includes processing payments, the delivery of goods, the provision of warranties and managing warranty claims), or if it is reasonable to expect that we would use or disclose their personal information for purposes which are related to the above purposes. The personal information collected is used to help us provide the individual with the best service possible, and to assist in interacting with them. If an individual does not provide the necessary personal information we may not be able to provide them with the product or service (including warranty services) they have requested from us.
- 20.2 Unless it is unreasonable and impracticable to do so, we collect personal information from individuals directly. In many cases, this information is collected by us through our online interface system which is operated by retail stores that act as our sales agents. In some cases however, we may collect personal information about individuals and third parties associated with them or their advisers from a third party (such as Asko Authorized Agents, Asko Aftersales Service Providers and extended warranty insurance companies).
- 20.3 In some cases we will be required or authorised by Australian law, or the order of a court or tribunal to collect personal information about an individual. We will take reasonable steps to let them know that we have collected their personal information, unless it is obvious from the circumstances that they would know or would expect us to have the information.
- 20.4 We may disclose your personal information to the following third parties:
- retail stores, acting as our sales agents, from whom our products are purchased by an individual;
  - our Related Bodies Corporate as defined in section 9 of the *Corporations Act 2001 (Cth)*, including members of the Gorenje Group;
  - third party insurers if the individual has purchased an extended warranty in relation to one of our goods (Asko Aftersales Service providers);
  - third parties engaged by us to assist in providing services, information and products (Asko Aftersales Service providers);
  - IT technicians who may need access when providing on-site support; and
  - file storage service providers.
- 20.5 We may disclose personal information to recipients in Slovenia which is where our parent company is located.
- 20.6 **CONTACT US**
- Our contact details in respect of any issues in relation to privacy are:
- |                  |   |
|------------------|---|
| <b>Telephone</b> | (03) 8551 2200  |
| <b>Email</b>     | privacy.officer@asko.com.au   |
| <b>Post</b>      | ASKO Appliances (Aust.) Pty Ltd<br>35 Sunmore Close<br>MOORABBIN VIC 3189 |