



TRADING TERMS AND CONDITIONS OF WHOLESALE MERCHANDISE AUSTRALIA PTY LTD (WMA)

1. MINIMUM ORDER (OVERALL):

AUD \$150.00 excluding GST

2. MINIMUM ORDER (ITEMS):

Each item requires a minimum purchase. Any exception must be agreed.

3. ASSORTED CARTONS:

Assorted cartons are accepted within each product range, however the Master Carton quantity should remain the same. (This minimises possible damage during transportation).

4. AUTHORISED BUYER:

It is agreed that the individual is an authorised buyer and represents the purchasing business/company. All Purchase Orders, Orders, Phone, Email or Online Orders received by Wholesale Merchandise Australia (and or its sales representative or agent) are firm and binding.

5. INITIAL TRANSACTION PRO FORMA INVOICE (NETT) :

Pro-forma agreement between the Supplier and the client must be completed upon order.

A reversal of Purchase Orders/Pro-Forma Invoices is NOT accepted and will be honoured and paid in full under the Pro-Forma Agreement. Orders placed on this basis are firm and binding.

Non account holders; payment must be made on receipt of goods or prior to dispatch.

6. APPLICATION FOR CREDIT :

A standard Australian Gift and Homewares Association "New Account/ Credit Application Forms" must be completed in full by any new customer wishing to apply for Credit terms with Wholesale Merchandise Australia Pty Ltd. Failure to return this form will mean that your account remains on a "Pro Forma" basis until such time your form is returned and a credit approval granted. We reserve the right to refuse credit terms to a customer.

7. GST:

All unit prices listed are the nett price and will incur an additional 10% GST.

8. CREDIT CARD PAYMENTS:

Payments may be made by Credit Card (Visa, Mastercard and American Express) over the phone. Eftpos is available for pick up only. Credit Card Payments will incur an additional 2% fee for purchases over \$1,000.

9. COLLECTING AND RECEIVING PAYMENTS

Payment method: Credit Card, Company Cheque, Direct Deposit or Cash.

New customers, payment must be received prior to the goods being dispatched.

10. RETURNS AND CREDITS:

Returns are only accepted by us the supplier, or our agent, if stock is damaged upon receipt. Any Goods purchased by the Customer from the Supplier may only be returned where notification of the proposed return of the Goods is Received within **(48 hours)** days of the date of the delivery of Goods to the Customer and the Supplier has agreed in writing to accept the return of the Goods and the Goods are returned in good condition at the expense of the Customer. No returns accepted without our consent and shipping instruction. Our nominated carriers only to be used. If goods are returned in an alternate manner, customers will be billed for freight charges. Should the Customer wish to return the Goods via their own carrier the Goods must be returned to the Supplier within **(7) days** of agreement.

11. CANCELLATIONS OF OFFICIAL PURCHASE ORDERS:

Official Purchase Order is firm and binding however we reserve the Applicant a grace period of 7 days for cancellation from the date of issue. Should production and manufacture of goods for the relevant purchase be cancelled following this grace period the Applicant will be liable from the date of notice of cancellation for a cancellation fee equivalent to 50% of the total Purchase Order value and any international shipping charges, if applicable. Where a deposit was paid upon ordering this amount will be deducted from the cancellation fee.

12. DELIVERY DATE:

We endeavour to deliver as close to the agreed date as possible however availability of incoming stock from overseas can result in delay due to shipping, customs clearances etc. Order will be honoured and not cancelled. Goods not supplied from current order will go on back order and will follow as soon as stock is available, unless previously advised in writing by the customer, in accordance with the Terms and Conditions of the Credit application and Pro Forma Agreement.

13. PROPERTY AND DELIVERY OF GOODS:

The vendor and the purchaser agree that all goods are delivered Ex-warehouse. Delivery of the goods to the purchaser's agent, carrier or representative shall constitute delivery to the purchaser. Property in the goods passes to the purchaser when the price of the goods has been paid in full. Risk passes to the purchasers upon delivery of the goods to the purchaser. Freight cost and in-transit insurance are the responsibility of the purchaser and are excluded from the price of the goods sold. The vendor will, at the purchasers request but not for reward, arrange freight and in-transit insurance on the purchaser's behalf.

14. LOCAL AND NATIONAL DISTRIBUTION:

Charges and fuel surcharges apply based on our nominated carriers. The customer may select their own carrier and arrange pick up Ex warehouse however this must be noted upon ordering to the sales representative or the agent.

15. PRICING:

Prices quoted by WMA online or in any other means are deemed correct. We reserve the right to make necessary changes should there be errors, fluctuating currencies or other factors beyond our control such as fuel surcharges. Prices are subject to annual increase.

Any negotiation between Wholesale Merchandise Australia Pty Ltd, the representing agent and the customer with regard to the terms and conditions, must be requested and agreed in writing between all parties.

16. LIMITED / RUNOUT STOCK:

Re-orders are subject to approval and minimum order quantity.

17. OVERDUE ACCOUNTS:

Goods will not be supplied to overdue accounts until such time as the account is brought up to date. We reserve the right to charge administration costs for overdue accounts. We reserve the right to charge interest per month at a rate of 8% for overdue accounts where long standing Purchase Order have not been paid by the agreed Trading Terms. This will commence the month following the due date of payment.

18. PRODUCT DESIGN

Development of products will incur a fee for design and sampling. Wholesale Merchandise Australia will offer a quotation.

19. BAR CODING:

Not all items are bar coded, however arrangements will be to suit your companies requirements. GS1/EAN Bar code verification.

20. PAYMENT OF ORDERS/ACCOUNTS:

All orders which are endorsed or described as 'Pro Forma Orders' are firm, irrevocable and non-cancellable by the Applicant and must be paid for in full within 14 days of the date of invoice. Where payment for a Pro Forma Order is not received within 14 days of the date of invoice, the order may be cancelled by and at the sole discretion of the Supplier and in such event the Applicant will be liable from the date of notice of cancellation for a cancellation fee equivalent to 50% of the total invoiced cost or \$50.00, whichever is greater.

All other orders made to the Supplier must be paid for within the agreed Terms of the date of the Supplier's Invoice ("the Payment Period or Trading Terms") and where payment in full is not received by the Supplier prior to the expiry of the Payment period then the Applicant shall be liable to pay interest on the amount outstanding as at the expiry of the Payment Period at the rate of bank interest rates per month until payment in full is received by the Supplier. The Supplier is hereby irrevocably authorised to allocate the payment of any monies received from the time to time from the Applicants towards any outstanding account incurred with the Suppliers by the Applicant. All prices quoted shall be exclusive of Goods and Services Tax ("GST") and GST will be payable on the sale price on payment of the invoice.

21. PROPERTY IN AND DELIVERY OF GOODS

- a) The Goods supplied by the Supplier to the Applicant shall be at the Applicants risk immediately on delivery to the Applicant or immediately on delivery as directed by the Applicant or immediately on collection by the Applicants transport contractor as the case may be.
- b) Notwithstanding that the risk of loss or damage to the Goods passes to the Applicant in accordance with the previous sub-paragraph (a), property in and ownership of the Goods shall not pass to the Applicant until payment in full for the Goods shall have been received by the Supplier.
- c) Until payment in full of the invoiced cost of the Goods shall have been received by the Supplier, the Applicant shall hold the Goods on a fiduciary basis as a bailee only for the Supplier and the Applicant shall (at its own expense) keep the Goods properly and safely stored separately from any other goods and stock of the Applicant and any other third party and in such a way as the Goods shall be readily identified as the Goods of the Supplier and the Applicant shall not, subject to sub-clause d(i), pledge, mortgage, charge or part with the Goods or attempt to do so without the prior written consent of the Supplier.
- d) (i) Notwithstanding that the property in the Goods has not passed to the Applicant, the Applicant may resell the Goods or any part thereof in the name of the Applicant but only as agent for the Supplier and may deliver any such Goods to the buyer of them but only on terms which will not prejudice the Supplier's ability to obtain the sale proceeds thereof.
 - (ii) Any amount paid by the buyer of such Goods from time to time to the Applicant (hereinafter referred to as "the sale proceeds") shall be held by the Applicant in trust for the Vendor, banked in a separate bank account relating only to the sale proceeds of the Goods of the Supplier under this and / or other contracts between the Supplier and Applicant and shall be forwarded as soon as possible after receipt to the Supplier.
 - (iii) If and when the full amount of the price of the Goods has been received by the Supplier, any further part of the price received by the Applicant upon any resale by it of the Goods may be retained by the Applicant as its commission for effecting such sale as agent for the Supplier.
- e) An act of default of this contract shall be deemed to occur in the event of any of the following (and any of the acts described in sub-paragraphs (e) (i) to (iv) below are herein collectively referred to as an "Act of Default").
 - (i) the Applicant failing to make payment in full of the invoiced cost of the Goods within 30 days from the date of invoice,
 - (ii) the Applicant, if required herein, failing to insure the Goods from the date of delivery thereof by the Supplier and to provide evidence of such insurance to the Supplier,
 - (iii) any distress or execution being levied upon the Applicants Goods or property,
 - (iv) the Applicant, being a company, becoming unable to pay its debts as they fall due, offering to enter into any scheme of arrangement with its creditors, the passing by the Board of Directors of the Applicant of any resolution to wind up the Applicant, the filing of any petition to wind up the Applicant or the appointment of an administrator or receiver / manager in respect of the Applicants affairs, the Applicant, in the case of a natural person, being declared bankrupt,
 - (v) immediately upon the Applicant committing any Act of Default any right to sell the Goods in which the title to property remains vested in the Supplier shall cease forthwith and the Applicant shall upon the happening of any Act of Default immediately place all of the Goods then remaining in its possession or under its control at the disposal of the Supplier and the Supplier is hereby irrevocably authorised by the Applicant to nominate a person to enter the Applicants premises during normal business hours for the purpose of repossessing such of the Goods still in the possession or under the control of the Applicant and where necessary to use no more than reasonable force to liberate and take possession of the Goods. Where the Goods are stored in a warehouse conducted by a person other than the Applicant immediately upon committing any Act of Default the Applicant shall be deemed to have irrevocably appointed the Supplier the

attorney of the Applicant with the authority in the name of the Applicant to direct the warehouseman to release any of the Supplier's Goods in the possession or under the control of the warehouseman whether or not the Payment Period has expired and the Supplier shall be at liberty to resell the Goods after repossession of the same pursuant to this clause.



- f) Until the full amount of the price of the Goods due to the Supplier is received by the Supplier the Applicant
 - (i) shall maintain and keep full and up to date records of the Goods supplied by the Supplier including those Goods on-sold by the Applicant,
 - (ii) hereby irrevocably authorises the Supplier to enter its premises during normal business hours from time to time to inspect the residue of the Goods remaining unsold by the Applicant, the Applicants records relating to the Goods and also to inspect the accounts including bank accounts into which the proceeds of sale of that part of the Goods already sold are by this clause required to be deposited pending payment to the Supplier.

22. MISCELLANEOUS PROVISIONS

- a) It is expressly agreed that any action, suit, dispute or proceedings arising from or in connection with the sale of goods pursuant to this Agreement or any matter between the parties hereto may be instituted, heard and determined in a court of competent Jurisdiction in the State of Victoria or of such Other State of Australia nominated in writing by the Supplier and each party irrevocably submits to the jurisdiction of such court for the purpose of any such dispute, action, suit or proceedings.
- b) The Applicant hereby irrevocably authorises the Supplier from time to time, in order to assess any application for credit, to obtain any information about the Applicant from any credit provider named in this application and also Gift & Homewares Australia to obtain a credit report in respect of the Applicant from any credit agency and to provide any information contained on this credit application form and also details of the performance of the Applicant in compliance with the trading terms and conditions herein to other credit providers, credit agencies and to Gift & Homewares Australia.
- c) The Applicant further authorises the latter company to make such information available to other credit providers.
- d) Freight and transport costs from the Supplier's nominated warehouse and in-transit insurance incurred in respect of the Goods are at the cost and liability of the Applicant and are not included in the invoiced price of the Goods, unless otherwise specified in writing.
- e) The word "Goods" shall be deemed to refer to any goods obtained by the Applicant from the Supplier from time to time pursuant to this Agreement.
- f) The Applicant shall be liable for and shall promptly pay to the Supplier;
 - (i) any legal costs incurred by the Supplier on a solicitor/client basis
 - (ii) any court, bailiff costs and services fees incurred by the Supplier
 - (iii) any fees paid to a debt collector in respect of any action or court proceedings taken by or on behalf of the Supplier for the recovery of any monies due by the Applicant to the Supplier pursuant to this Agreement.
- g) Service of any notice or document pursuant to this Agreement may be effected in any manner prescribed by Section 170 Conveyancing Act 1919 as amended (New South Wales) or any section or provision in substitution therefore.
- h) The Supplier reserves the right to terminate this Credit Agreement at any time immediately upon service upon the Applicant of written notice of termination without providing any reason therefore.

23. AGREEANCE OF TRADING TERMS AND CONDITIONS

- a) Online customers are not required to sign and return this Trading Terms and Conditions form. By simply ticking the box at Checkout and processing with the order, you are in Agreeance.
- b) Offline customers are required to sign and return this form via fax or mail.

Business name:.....

Accepted by:.....

Signed:.....

Dated:.....

E&OE.

May 2011