

1. General

- 1.1 The whole of the Agreement between Tesselaar Flowers Pty Ltd ABN 27-103-409-767 (trading as Tesselaar Flowers) ("Supplier") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time by the Supplier and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery of all or a portion of the Goods, the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others. All Goods and packaging are charged at the price ruling at the date of invoice which is at all times subject to fluctuations, availability, weather conditions and other influences outside the Supplier's control and any Goods and Services Tax or other government impost will be charged separately all of which shall be payable by the Customer.
- 1.2 No credit will be allowed for any alleged defective Goods unless:
- (a) The Supplier is notified of the alleged defective Goods within 24 hours of delivery, by email or fax and a photo of the defective goods to be attached/included.
 - (b) The alleged defective Goods are returned to the Supplier for inspection by the Supplier and;
 - (c) If the Supplier concludes that the alleged defective Goods are in fact defective, then the Supplier shall pass a credit for the original invoiced value of those defective Goods only.
- 1.3 The Customer agrees to pay all freight, agent and boxing costs incurred by the Supplier in delivery or attempted delivery unless otherwise specifically agreed to by the Supplier. Where delivery is made other than by the Supplier, the Customer appoints the Supplier as its agent to arrange delivery and the risk in the Goods supplied shall pass to the Customer upon any such delivery.
- 1.4 The Customer requests and irrevocably authorises the Supplier (or any delivery service arranged by the Supplier) to enter upon the Customer's premises and the Customer accepts full responsibility from the moment of delivery. A signed statutory declaration by the supplier or its servants and agents as to delivery having been effected to unattended premises shall be accepted by the Customer as conclusive proof of delivery. The Customer indemnifies and holds harmless the Supplier in relation to any claim whatsoever or howsoever arising or in any way associated with delivery to or into the Customer's premises when unattended including any claim arising from personal injury, loss or theft or otherwise however arising and wherever suffered.

2. Credit Terms

In this clause a "Weekly Account" shall mean the period commencing on a Monday and concluding on the following Sunday whilst a "Monthly Account" shall mean the period commencing on the first day of a calendar month and concluding on the last day of the same month.

- 2.1 The Supplier may, but shall not be obliged, to provide the customer with invoices at the conclusion of each trading period, regardless of whether the particular trading period is a Weekly Account or a Monthly Account.
- 2.2 Payment for a Weekly Account is due on or prior to fourteen (14) days from the end of the relevant Weekly Account unless otherwise agreed by the Supplier in writing. Payment for a Monthly Account is due on or prior to twenty one (21) days from the end of the relevant Monthly Account unless otherwise agreed by the Supplier in writing. The Supplier may charge liquidated damages at the rate equivalent to two and a half percent (2.5%) per month calculated daily if payment is not made by the due date.
- 2.3 The Customer is liable for all out-of-pocket expenses and all other reasonable expenses including debt collection commission) and legal costs on a solicitor/own client basis incurred by the Supplier for enforcement of obligations and recovery of monies due from the Customer to the Supplier.
- 2.4 The Supplier reserves the right to suspend credit and stop supply at any time if the Customer fails to comply with the Terms.
- 2.5 The Customer is liable for all goods ordered via any communication method whether ordered by its nominated authorised person as per the account opening form or by the legal owner of the business.

3. Delivery & Supply

Any times quoted for delivery are estimates only and the Supplier shall not be liable for failure to deliver, or for any delay in delivery. The Customer shall not be relieved of any obligation to accept or pay for Goods due to reasonable delay in delivery or dispatch.

4. Property

Until full payment has been made for all goods supplied by the Supplier under these Terms ("Goods"), and any other sums in any way outstanding from the Customer to the Supplier from time to time:-

- 4.1 All sums outstanding become immediately due and payable by the Customer to the Supplier, if the Customer makes default in paying any other sums due to the Supplier, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 4.2 The Customer is only authorised to sell the Goods to third parties on behalf of the Supplier. All payments received from third parties by the Customer for the Goods shall be held on trust for the Supplier.

5. Cancellations

Cancellation will not be accepted on Goods that are not regular stock or which has been altered or adapted to meet the Customer's specific requirements.

6. Privacy Act 1988 ("Privacy Act")

To enable the Supplier to assess the Customer's application for credit, the Customer authorises the Supplier:-

- 6.1 To obtain from a credit reporting agency a credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1)(b) of the *Privacy Act*;
- 6.2 To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities.

AND in accordance with Section 18N(1)(b) of the *Privacy Act* the Customer authorises the Supplier to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act*.

The Customer understands the information can be used for the purposes of assessing its application for credit (Section 18L(4) *Privacy Act*), assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its credit worthiness.

7. Notification

The Customer must notify the Supplier in writing within seven (7) days of:-

- 7.1 Any alteration of the name or ownership of the Customer.
- 7.2 The issue of any legal proceedings against the Customer.
- 7.3 The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 7.4 Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to the Supplier for all Goods supplied to the new owner by the Supplier until notice of any such change is received.

8. Warranties

No warranties except those implied and which cannot be excluded by law are given by the Supplier in respect of goods or services supplied. Where it is lawful to do so, the liability of the Supplier for a breach of a condition or warranty is limited to the replacement of the Goods, the supply of equivalent goods, the payment of the cost of replacing the Goods or acquiring equivalent goods.

9. Legal Construction

These Terms shall be governed and interpreted according to the laws of Victoria and the Supplier and the Customer consent and submit to the jurisdiction of the Courts of Victoria. Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.