

**BARNEY'S GROUP PTY LTD ABN 22 823 984 298**  
**CLIENT TERMS AND CONDITIONS OF TRADE**

**DEFINITIONS**

1. In these Terms & Conditions of Trade:
- "Agreement" means any Agreement or Contract entered into for the provision of goods or services by Barney's Group Pty Ltd ("Barney's") to the Customer.
  - "Customer" means a person, firm or corporation, jointly and severally if there is more than one obtaining goods and services.
  - "Intellectual Property" means all copyright, trademarks, designs, patents, specifications, formulations and confidential information, whether registrable or not.
  - "GST" has the meaning given to that term in A New Tax System (Goods & Services Tax) Act 1999 as amended.
  - "Goods or Services" means the goods or services provided by Barney's to the Customer.
  - "Terms" means these Terms and Conditions of Trade.

**BASIS OF THE CONTRACT**

- 2.1 Unless otherwise agreed by Barney's in writing, the Terms apply exclusively to every Contract for the sale of goods or services by Barney's to the Customer and cannot be varied or supplanted by any other Terms and Conditions, including the Customer's Terms and Conditions of purchase (if any).
- 2.2 Any written quotation provided by Barney's to the Customer concerning the proposed supply of Goods or Services is :
- (a) Valid for 30 days.
  - (b) Subject to the Customer offering to enter into an agreement and accepting these Terms.
- 2.3 Barney's in its absolute discretion may refuse to accept any offer. It is the Customer's responsibility to provide Barney's with clear and accurate specifications and specific requirements in relation to the Goods or Services.
- 2.4 Barney's may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders made by the Customer after the date of notice.

**PRICING**

- 3.1 Prices quoted exclude GST and any other taxes or duties imposed on or in relation to the Goods or Services. In addition to the payment of the price of Goods or Services, the Customer must pay any GST and any other taxes or duties imposed on the Goods or Services.
- 3.2 If the Customer requests any variation to the Agreement, Barney's may increase the price to account for the variation.
- 3.3 Where there is any change in the costs incurred by Barney's in relation to the Goods or Services, Barney may vary its price for the Goods or Services in order to take account of any such change, by notifying the Customer.

**PAYMENT**

- 4.1 Subject to the following sub-clauses, payment for Goods or Services must be made within 30 days from date that the Goods or Services are invoiced.
- 4.2 Barney's reserves the right to require payment in full prior to or on delivery of the Goods or commencement of the Services.
- 4.3 Payment terms may be revoked or amended at the sole discretion of Barney's immediately upon giving written notice to the Customer.
- 4.4 The Customer must not, on the grounds of alleged non-compliance with quantity, standard or performance, or any other reason, withhold or deduct payment of any amount due whatsoever.

**PAYMENT DEFAULT**

5. If the Customer defaults in payment by the due date of any amount payable to Barney's then all monies which would become payable by the Customer to Barney's at a later date on any account, becomes immediately due and payable and Barney's may, without prejudice to any other remedy available to it:
- (a) Claim a general lien over all the Customer's goods and the Customer's goods in the possession of Barney's and subject to giving 14 days written notice to the Customer, sell the Goods in any manner as Barney's deems appropriate and allocate the proceeds to the repayment of any sum which is due and payable by the Customer to Barney's;
  - (b) Charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 plus 2% for the period from the due date until the date of payment in full;
  - (c) Charge the Customer for and the Customer must indemnify Barney's from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
  - (d) Cease or suspend for such period as Barney's thinks fit, supply of any further Goods or Services to the Customer;
  - (e) By notice in writing to the Customer, terminate any agreement with the Customer so far as unperformed by Barney's; without effect on the accrued rights of Barney's under this Agreement.

#### PASSING OF PROPERTY

6. Until full payment in cleared funds is received by Barney's for all Goods or Services supplied to the Customer as well as all other amounts owing to Barney's by the Customer:
- (a) Title and property in all Goods remains vested in Barney's and does not pass to the Customer.
  - (b) The Customer must hold the Goods as fiduciary bailee and agent for Barney's.
  - (c) The Customer must keep the Goods separate from its other goods and maintain the labelling and packaging of Barney's.
  - (d) The Customer is required to hold the proceeds of any sale of the Goods on trust for Barney's on a separate account, however failure to do so will not affect the Customer's obligations to deal with the proceeds as trustee.
  - (e) Barney's may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other goods which are not the property of Barney's, and for this purpose the Customer irrevocably licenses Barney's to enter such premises and also indemnifies Barney's from and against all costs, claims, demands or actions by any party arising from such action.

#### PERFORMANCE OF AGREEMENT

- 7.1.1 Any period or date for delivery of Goods or the provision of Services stated by Barney's is intended as an estimate only and is not a contractual commitment. If for any cause or reason beyond Barney's control delivery may be hindered, the Agreement shall be voidable at Barney's option with no right given to the Customer to claim for any damage, loss, cost or expense whatsoever.
- 7.1.2 Barney's will use its reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services by Barney's and Barney's shall not accept any liability whatsoever for any delays from any cause whatsoever.

#### SUPPLIER'S WARRANTIES

8. Unless otherwise agreed in writing by Barney's, the Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Customer to the point of delivery.

#### ACKNOWLEDGEMENTS

9. The Customer acknowledges that:
- (a) It has the sole responsibility of satisfying itself that the Goods or Services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by Barney's.
  - (b) Any description of the Goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.
  - (c) The Customer may not have revealed to Barney's the full contents or specifications of the Goods and as a consequence Barney's cannot be held responsible for the effect of the use to which the Customer puts the Goods.
  - (d) The Customer cannot make any claim or demand for any matters hereinbefore referred to in this clause.

#### CANCELLATION

- 10.1 If there are circumstances beyond the control of Barney's and Barney's is unable to effect delivery or provisions of the Goods or Services, then Barney's may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer and Barney's accepts no liability in relation thereto.
- 10.2 No purported cancellation or suspension of an order or any part thereof placed by the Customer is binding on Barney's after that order has been accepted.
- 10.3 If the Customer cancels, suspends or alters an order after acceptance by Barney's, then the Customer will be liable to pay all costs incurred by Barney's including but not limited to, labour, costs, material, administration costs for work carried out on the order prior to cancellation or suspension and the loss of profit that Barney's would have received had the order been processed.

#### RETURNS AND EXCHANGES

- 11.1 Barney's will not be liable for any defects, shortages, damage or non-compliance with the specifications in the Agreement unless the Customer notifies Barney's in writing with full details within 5 days of delivery of the Goods or provision of the Services.
- 11.2 If the Customer fails to give the aforesaid notice as required, it is deemed to have accepted the Goods or Services.
- 11.3 If any defects, shortages, claim for damages or non-compliance with the Agreement specifications are accepted by Barney's, Barney's may, at its option, replace the defective or missing Goods or re-provide Services, or refund the price of the defective or missing Goods or Services.
- 11.4 Barney's will not under any circumstances accept Goods for return:
- (a) That have been altered in any way;
  - (b) That have been used; or
  - (c) That are not in their original condition and packaging.
- 11.5 The Customer must obtain Barney's prior written approval for the return of Goods and pay all service, material and freight charges associated with the return of Goods unless Barney's accepts the reason stated for the return is due to its fault. The Customer is liable to pay Barney's for those Goods or Services that are retained by the Customer and which are not the subject of any defect, damage or non-compliance with the specifications in the Agreement.

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**INTELLECTUAL PROPERTY**

- 12.1 The Customer acknowledges that it has no priority right or interest in any intellectual property created or owned by Barney's in the design, creation or manufacture of the Goods or provision of the Services. The Customer must not at any time create, sell, manufacture or process any goods or services using or taking advantage of Barney's intellectual property without prior written consent.
- 12.2 The Customer warrants that, where it provides intellectual property for use by Barney's in relation to the Goods or Services, it is legally entitled to do so and the Customer will indemnify Barney's against all claims made against Barney's with regard to any intellectual property rights that a third party may claim to hold in regard to the Customer's Goods or Services.
- 12.3 Any intellectual property provided to the Customer by Barney's in connection with the Goods or Services remains the exclusive property of Barney's and must be returned to Barney's on demand and must not be copied, reverse engineered or communicated to any third party without the express written consent of Barney's.

**GRANT OF LICENCE**

- 13. Subject to this Agreement, Barney's hereby grants to the Customer a limited, non-exclusive, non-transferable licence to use the intellectual property relating to the Goods or Services for the Customer to use the Goods or benefit from the Services. The Customer must not in any way assign, transfer, modify or alter Barney's intellectual property in an unauthorised manner or for an unauthorised purpose.

**RISK AND INSURANCE**

- 14. The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods will pass to the Customer immediately on the Goods being despatched from Barney's premises and the Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Goods sold by Barney's.

**LIABILITY**

- 15.1 Except as specifically set out herein, or contained in any warranty statement provided with the Goods or Services any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the extent that the law permits. Barney's is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 15.2 Barney's will not be liable for any loss or damage suffered by the Customer where Barney's has failed to deliver Goods or Services or fails to meet any delivery date or cancels or suspends the supply of Goods or Services.

**ENFORCEABILITY**

- 16. If any part of the Terms is unenforceable, it shall be read down so as to be enforceable or, if it cannot be so read down, the part shall be severed from these Terms without affecting the enforceability of the remaining part of the Terms.

**CONFIDENTIALITY**

- 17. The Customer undertakes and agrees that it will not disclose any confidential information to any person or use any knowledge or information obtained by it from Barney's during the period of this Agreement or thereafter which is of a secret or confidential nature relating to the business, equipment, processes, services or product content offered or used by Barney's without prior written consent from Barney's

**ENTIRE AGREEMENT**

- 18. These Terms contain the entire agreement between Barney's and the Customer and no variation hereof shall be binding on Barney's unless such variation is in writing and signed by a duly authorised officer of Barney's.

We the Customer hereby acknowledges receipt of these Terms and Conditions of Trade and accepts that these Terms and Conditions relate to all dealings with Barney's.

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For & on behalf of (company name)

Date

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Signed

Print name