



Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Industree Group" means Industree Group Pty Ltd and/or associated trading entities, its successors and assigns or any person acting on behalf of and with the authority of Industree Group Pty Ltd and/or associated trading entities.
 - 1.2 "Client" means the person or persons acting on behalf of and with the authority of the Client requesting Industree Group to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executor, administrator, successors and permitted assigns.
 - 1.3 "Goods" means all Goods or Services supplied by Industree Group to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
 - 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Industree Group and the Client in accordance with clause 6 below and shall be in Australian Dollars (AUD), unless otherwise stated.
 - 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 2. Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order or accepts delivery of the Goods.
 - 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and Industree Group.
 - 2.3 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with Industree Group and it has been approved with a credit limit established for the account. In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, Industree Group reserves the right to refuse delivery.
 - 2.4 The Client acknowledges and agrees where the Client does not elect to contract their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Client and/or any other third party acting on behalf of the Client which the Goods are charged to the Client's credit account, shall remain at all times payable by the Client. All said notices/notifications pertaining to purchases must be in writing and will remain in place until such time as the Client revokes.
 - 2.5 The Client agrees to notify Industree Group in writing immediately upon the departure of the Client employee if an authorised account user. Failure to advise Industree Group of such departures, then the Client acknowledges they will be bound by all orders placed by that account user.
 - 2.6 The Client accepts and acknowledges that Industree Group reserves the right to cease supply of Goods immediately to the Client in the event that Industree Group becomes aware that the Client is on-selling the Goods supplied in direct competition with Industree Group's prospective clientele (including but not limited to the Client on-selling from their website and/or any alternative online auction site).
 - 2.7 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Industree Group's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
 - 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations related to it.
 - 2.9 The Client acknowledges and accepts that all international sales contracts are subject to the current Incoterms as established and published by the International Chamber of Commerce (ICC).
- 3. Orders**
 - 3.1 Industree Group reserves the right to accept in whole or part any order to decline any order. Any order or part not accepted is deemed to be cancelled.
 - 3.2 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Industree Group reserves the right to vary the Price with alternative Goods as per clause 6.2.
 - 3.3 Notwithstanding clause 3.2, Industree Group also reserves the right at their discretion to introduce additional new Goods as part of the Goods to be supplied.
- 4. Errors and Omissions**
 - 4.1 The Client acknowledges and accepts that Industree Group shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by Industree Group in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Industree Group in respect of the Services.
 - 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or willful misconduct of Industree Group, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 5. Change in Control**
 - 5.1 The Client shall give Industree Group not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address and contact phone or fax numbers, change of trustee or business practice). The Client shall be liable for any loss incurred by Industree Group as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
 - 6.1 At Industree Group's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by Industree Group to the Client; or
 - (b) the Price as at the date of delivery of the Goods to Industree Group's current price list; or
 - (c) Industree Group's quoted price (subject to clause 6.2) which will valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 6.2 Industree Group reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if during the course of the supply of the Goods cease to be available from Industree Group's third party suppliers, then Industree Group reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (c) in the event of increases to Industree Group in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Industree Group's control.
 - 6.3 Variations will be charged for on the basis of Industree Group's quotation, and will be detailed in writing, and shown as variations on Industree Group's invoice. The Client shall be required to respond to any variation submitted by Industree Group within ten (10) working days. Failure to do so will entitle Industree Group to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 6.4 At Industree Group's sole discretion, a deposit of up to fifty percent (50%) may be required for orders that are personalised, printed and/or special orders of non-stock items.
 - 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Industree Group, which may be:
 - (a) on or before delivery of the Goods;
 - (b) by way of instalment payments in accordance with Industree Group's payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) falling any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Industree Group.
 - 6.6 Payment may be made by cheque, bank cheque, electronic-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Industree Group.
 - 6.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Industree Group nor to withhold payment of any invoice because part of that invoice is in dispute. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Industree Group an amount equal to any GST Industree Group must pay for any supply by Industree Group under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Delivery of Goods**
 - 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
 - (a) the Client or the Client's nominated carrier takes possession of the Goods at Industree Group's address; or
 - (b) Industree Group (or Industree Group's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
 - 7.2 At Industree Group's sole discretion, the cost of delivery is included in the Price.
 - 7.3 The type of delivery contract applicable to international sales shall be specified in writing on Industree Group's quotation as defined in accordance with the Incoterms.
 - 7.4 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
 - (a) such discrepancy in quantity of Goods for imports or manufactured does not exceed ten percent (+/-) and;
 - (b) the Price shall be adjusted pro rata to the discrepancy.
 - 7.5 Any loss specified by Industree Group for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Industree Group will not be liable for any loss of damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then Industree Group shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. On-Line Ordering**
 - 8.1 The Client acknowledges and agrees that:
 - (a) Industree Group does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Industree Group;
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such Industree Group cannot warrant against delays or errors in transmitting data between the Client and Industree Group including orders, and you agree that to the maximum extent permitted by law, Industree Group will not be liable for any losses which the Client suffers as a result of on-line-ordering not being available for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Client's information cannot be read by or altered by outside influences;
- 9. Risk**
 - 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
 - 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Industree Group is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Industree Group is sufficient evidence of Industree Group's rights to receive the insurance proceeds without the need for any person dealing with Industree Group to make further enquiries.
 - 9.3 Industree Group is under no obligation to provide samples with Goods ordered other than by virtual (computerised) sample. Should a physical sample be required this will be provided on request by the Client and will be charged for as an extra including return freight, the charge will be contra against final invoice.
 - 9.4 The Client acknowledges that variations in colour and shade are inherent in dye lots. While every effort will be taken by Industree Group to match colour and shade of the Goods, Industree Group shall not be liable for any damage or costs, however arising resulting from any variation in colour and shading between batches of the Goods or sale samples and the final Goods supplied.
- 10. Access**
 - 10.1 The Client shall ensure that Industree Group has clear and free access to effect delivery of the Goods. Industree Group shall not be liable for any loss or damage to the delivery site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of Industree Group.
- 11. Compliance with Laws**
 - 11.1 Industree Group warrants that Goods supplied to all Clients shall meet all safety regulations and standards (including but not limited to, for food products, as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and thereby compliant with the Australian New Zealand Food Standards Code.
 - 11.2 Title
 - 11.3 Industree Group and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid Industree Group all amounts owing to Industree Group; and
 - (b) the Client has met all of its other obligations to Industree Group.
 - 11.4 Industree Group of any form of payment other than cash shall not be deemed to be payment until the form of payment has been honoured, cleared or received.
 - 11.5 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
 - (a) the Client shall remain responsible for the payment of the Goods to Industree Group on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Industree Group and must pay to Industree Group the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business (which includes the Client selling, disposing or parts with possession of the Goods then the Client must hold the proceeds of any such act or trust for Industree Group and must pay or deliver the proceeds to Industree Group on demand;
 - (d) the Client shall not convert or process the Goods or mix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Industree Group and must sell, dispose of or return the resulting product to Industree Group as if it were direct;
 - (e) the Client irrevocably authorises Industree Group to enter any premises where Industree Group believes the Goods are kept and recover possession of the Goods;
 - (f) Industree Group may receive possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant otherwise give away any interest in the Goods or retain the proceeds of the sale of the Goods to Industree Group;
 - (h) Industree Group may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 13. Personal Property Securities Act 2009 ("PPSA")**
 - 13.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
 - 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to Industree Group for Services – that have previously been supplied and that will be supplied in the future by Industree Group to the Client.
 - 13.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Industree Group may reasonably require to:
 - (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Industree Group for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) register a financing charge statement in respect of a security interest without the prior written consent of Industree Group;
 - (d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Industree Group;
 - (e) immediately advise Industree Group of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
 - 13.4 Industree Group and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
 - 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
 - 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
 - 13.7 Unless otherwise agreed to in writing by Industree Group, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
 - 13.8 The Client must unconditionally ratify any actions taken by Industree Group under clauses 13.3 to 13.5. Subject to any express provisions to the contrary, including those contained in this clause 13, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
 - 14.1 In consideration of Industree Group agreeing to supply the Goods, the Client charges, all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
 - 14.2 The Client indemnifies Industree Group from and against all Industree Group's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Industree Group's rights under this clause.
 - 14.3 The Client irrevocably appoints Industree Group and each director of Industree Group as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
 - 14.4 The Client irrevocably appoints Industree Group and each director of Industree Group as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
 - 14.5 The Client irrevocably appoints Industree Group and each director of Industree Group as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
 - 14.6 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Industree Group makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Industree Group's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 14.7 If the Client is a consumer within the meaning of the CCA, Industree Group's liability is limited to the extent permitted by section 64A of Schedule 2.
 - 14.8 Industree Group is required to replace the Goods under this clause or the CCA, but is unable to do so, Industree Group may return or, in the future, to secure the payment by the Client as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Industree Group to inspect the Goods.
 - 14.9 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
 - 14.10 The Client acknowledges and agrees that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - 14.11 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Industree Group makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Industree Group's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 14.12 If the Client is a consumer within the meaning of the CCA, Industree Group's liability is limited to the extent permitted by section 64A of Schedule 2.
 - 14.13 Industree Group is required to replace the Goods under this clause or the CCA, but is unable to do so, Industree Group may return or, in the future, to secure the payment by the Client as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Industree Group to inspect the Goods.
 - 14.14 The Client acknowledges and agrees that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
 - 14.15 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Industree Group makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Industree Group's liability in respect of these warranties is limited to the fullest extent permitted by law.
 - 14.16 If the Client is a consumer within the meaning of the CCA, Industree Group's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by Industree Group at Industree Group's sole discretion;
 - (b) limited to any warranty to which Industree Group is entitled, if Industree Group did not manufacture the Goods;
 - (c) otherwise negotiated absolutely.
 - 14.17 Notwithstanding clause 15, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 15.1; and
 - (b) the Client has returned the Goods in the condition in which they were delivered; and
 - (c) the Goods are returned within a reasonable time of the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
 - 14.18 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Industree Group shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Industree Group;
 - (e) fair wear and tear, any accident or fire, or any other cause.
 - 14.19 Industree Group may in its absolute discretion accept non-defective Goods for return in which case Industree Group may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
 - 14.20 Notwithstanding anything contained in this clause if Industree Group is required by a law to accept a return then Industree Group will only accept a return on the conditions imposed by that law.
- 16. Default and Consequences of Default**
 - 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Industree Group's sole discretion