

## Terms and Conditions of Trade for Euro Chill Pty Ltd

### Part A – Terms and Conditions of Trade

#### 1. Agreement

1.1 Our supply of Products to you is governed by the following which, to the extent of any inconsistency, are listed in the order of precedence:

- (a) any quotation or proposal we provide to you (Quote);
- (b) Part C – Guarantee and Indemnity;
- (c) Part B – Credit Application Form and Credit Terms;
- (d) Part A – Terms and Conditions of Trade;
- (e) any other document specified in the above,

(together, Agreement).

1.2 This Agreement applies to the exclusion of any other terms, including those in your purchase orders or invoices, unless we agree otherwise in writing.

1.3 We may update the terms of the Agreement from time to time. Any updated terms will be uploaded to our website at <https://eurochill.com.au/> and apply to orders issued after the time of upload.

#### 2. Orders

2.1 To purchase Products, you must issue orders in the manner and form notified or required by us.

2.2 You must ensure the details in your order are accurate and the order includes all instructions and information necessary for us to provide the Products.

2.3 We will notify you in writing if we accept or decline your order. We may accept or decline an order at our absolute discretion.

2.4 Each accepted order will be a separate contract incorporating this Agreement.

#### 3. Price and payment

3.1 Prices are set out in the Quote and exclude duties and GST. We may change our price list from time to time, and any change will take effect 30 days after we notify you of the change.

3.2 You must pay for the Products at the time of issuing an order, unless we have granted you credit.

3.3 Available payment methods are EFT (using the bank details on our invoice), or VISA and Mastercard credit card over the phone or in person (a 2% surcharge applies to the total transaction value, inclusive of GST and delivery costs).

3.4 You must pay any applicable GST and delivery costs in addition to, and at the same time as, payment for the Products.

3.5 We will provide a tax invoice as required by law.

3.6 We will not dispatch any Products until they have been fully paid for (including any delivery costs) and we have received cleared funds in our nominated bank account.

3.7 You must not withhold payment or make any deduction or set-off from the invoiced price or any other amount you owe us. We may set-off any amount we owe you against any amount you owe us.

3.8 We may charge interest on any overdue invoices at a rate 2% higher than the rate prescribed under the Penalty Interest Rates Act 1983 (Vic), calculated from the due date for payment of the outstanding amount until we receive payment from you. Any payments you make will be credited first against any interest that has accrued. We may recover from you all legal and other costs we incur arising from your payment default and the collection of any overdue money.

3.9 For the purpose of this clause, GST has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

#### 4. Delivery

4.1 Any delivery dates provided are estimates only. We do not control delivery and transport for the Products, and will not be liable for any loss you suffer that arises in connection with not delivering the Products (in whole or in part) by the delivery date or in the requested quantities.

4.2 You are responsible for the costs of delivery of the Products.

4.3 Once we have received payment in accordance with clause 3.6, we will dispatch the Products on the following day or, for interstate delivery locations, on the next available dispatch date.

4.4 Delivery timeframes depend on location and vary from time to time. Currently, delivery is estimated to be 3 days for delivery locations in Victoria, South Australia and New South Wales.

4.5 Delivery does not include installation or removal of old equipment. We can arrange for removal at your cost if it is arranged prior to delivery.

4.6 You must:

(a) provide all access, and obtain all consents, permits and authorisations, necessary for us to deliver the Products (if applicable); and

(b) ensure the delivery location is safe, secure and compliant with all health and safety laws.

4.7 We may refuse to deliver the Products if we reasonably believe that you have not complied with clause 4.6.

4.8 If the Products are not accepted on delivery at the arranged time, we will attempt to deliver again at your cost. You will need to pay the additional delivery costs prior to another delivery attempt.

4.9 You must pay any costs we incur as a result of a failure to deliver that is due to your act or omission, including storage charges for the Products.

#### 5. Damage and defects

5.1 To the extent permitted by law (including the Australian Consumer Law), if any Product is damaged on arrival to your delivery location, you must notify the delivery driver immediately, and us in writing within 24 hours of delivery.

5.2 You must notify us in writing of any defect in a Product or non-compliance of a Product with the Australian Consumer Law, providing full details.

5.3 We do not provide a refund for a change of mind.

## 6. Title and risk

6.1 We retain title to all Products until the later of payment in full for the Products or delivery of the Products.

6.2 Risk of loss or damage to the Products passes to you on delivery.

## 7. Security interest

7.1 This Agreement constitutes a security agreement.

7.2 You grant us a security interest in the following as security for payment of amounts you owe us (including for Products supplied) and your performance of the obligations under this Agreement:

- (a) all Products we have supplied to you and may supply to you in future;
- (b) all goods into which the Products are incorporated, processed or comingled; and
- (c) the proceeds of sale of any of the above,

(together, Collateral).

7.3 You must promptly do all things (including signing all documents and providing assistance and information) necessary to ensure that we have a perfected first ranking security interest in the Collateral.

7.4 We may register a financing statement or financing change statement at your cost and do anything else required to perfect our security interest in the Collateral.

7.5 You must not create, or permit to be created, any security interest in the Collateral, other than as expressly permitted under this Agreement.

7.6 At our request, you must, at your own cost, promptly do all things necessary (including obtaining consents) to allow us to enter any premises where the Collateral is located in order to enforce our security interest.

7.7 To the extent permitted by law:

- (a) sections 95, 118(1)(b)(i), 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA do not apply to the security interest granted under this clause 7; and
- (b) you waive your rights to receive notice from us of a registration event under s 157(1) of the PPSA.

7.8 Words and phrases in this clause 7 that are defined in the PPSA and its regulations have the same meaning.

## 8. Intellectual Property

8.1 We own or license all Intellectual Property subsisting in the Products and other documentation we provide to you under this Agreement.

8.2 You own or license all Intellectual Property subsisting in your Materials.

8.3 You grant us a non-exclusive, royalty-free licence to use your Materials for the purpose of supplying the Products to you. To the extent you do not own the Intellectual Property in your Materials, you warrant that you have obtained all consents and authorisations required to grant us this licence.

8.4 To the extent there are moral rights in your Materials, you must procure the irrevocable consents of the moral rights holders not to enforce any of their moral rights in your Materials.

8.5 All Developed IP will vest in, and be assigned to, us automatically on creation, unless we agree otherwise in writing. You must, at your own expense, promptly execute all documents and do all things necessary to give effect to this clause, including obtaining and providing legally effective releases or assignments to us from your relevant employees or contractors;

8.6 You must not infringe any Intellectual Property rights of us or a third party.

## 9. Confidentiality

9.1 You must keep the Confidential Information confidential and only use it to perform your obligations under this Agreement.

9.2 You must not disclose or reproduce the Confidential Information except:

- (a) to your employees and contractors, to the extent necessary to perform your obligations under this Agreement;
- (b) as expressly permitted by us;
- (c) to your professional advisers, to the extent necessary to obtain legal, accounting or taxation advice in relation to this Agreement; and
- (d) as required by law, provided you promptly notify us of the legal requirement and give us an opportunity to prevent disclosure.

9.3 You acknowledge that we may seek injunctive relief for a breach of this clause 9 as it may cause irreparable harm to us for which monetary damages may not be an adequate remedy.

## 10. Privacy

Our Privacy Policy applies to our collection, use, disclosure and storage of your personal information.

## 11. Acknowledgements and warranties

11.1 You acknowledge that:

- (a) you have not relied on any advice, recommendation, information, skill or judgement provided by us in relation to the Products or their use;
- (b) we will supply Products that meet the specifications you provide, but do not warrant or guarantee that they are suitable for your intended purposes or uses; and
- (c) you are solely responsible for determining that the Products are suitable for your intended purposes or uses.

11.2 You warrant and represent that:

- (a) all information, representations, warranties and undertakings you have given to us are true, complete and accurate;
- (b) our use of the information you have provided (including your Materials) will not infringe any third party rights, including Intellectual Property rights; and
- (c) you have full corporate power to enter into and give effect to this Agreement and the transactions contemplated by it.

12. Liability and indemnity

12.1 Nothing in this Agreement excludes, restricts or modifies any statutory guarantee, warranty or condition implied by law that cannot be excluded, restricted or modified, including under the Australian Consumer Law.

12.2 To the extent permitted by law:

- (a) our liability under, or in connection with, the supply of any Products is limited to, at our election, the supply of the Products again or the payment of the cost of having the Products supplied again; and
- (b) we are not liable for any Consequential Loss you suffer in connection with this Agreement or the Products.

12.3 You indemnify us, and hold us harmless, against any loss or damage (including Consequential Loss) we suffer in connection with:

- (a) your breach of this Agreement; or
- (b) your wilful default, negligence, fraud or other unlawful conduct,

except to the extent we caused such loss, damage or cost.

13. Force Majeure Event

13.1 Neither party is liable for any delay or failure in performing its obligations under this Agreement (except an obligation to pay) due to a Force Majeure Event.

13.2 The party that is prevented from performing must notify the other party of a Force Majeure Event as soon as reasonably practicable.

14. Cancellation

14.1 You may not cancel an accepted order unless we otherwise agree in writing.

14.2 We may cancel an order immediately by written notice to you if:

- (a) you commit a material breach of the Agreement and, if it is capable of remedy, fail to remedy the breach within 30 days of a notice requiring you to do so;
- (b) you become bankrupt, insolvent, enter administration, convene a meeting with your creditors or propose or enter into an arrangement with your creditors, or make an assignment for the benefit of your creditors, or a receiver, manager, liquidator or similar person is appointed in respect of you or your assets; or

(c) we reasonably consider that you will be unable pay your debts as they become due.

15. General

15.1 Words such as including or such as are not intended to limit the preceding words.

15.2 Grammatical forms of a defined term have a corresponding meaning to the defined term.

15.3 A reference to person means a company, individual or any other legal entity.

15.4 A reference to \$ means the currency in Australia.

15.5 This Agreement will not be construed to the disadvantage of a party on the basis that it prepared this Agreement.

15.6 A notice given under this Agreement must be in writing and delivered to the recipient's address for notice specified in this Agreement or notified by the recipient:

(a) personally, which will be deemed to be received immediately;

(b) by email, which will be deemed to be received immediately unless the sender receives an automated failed delivery message; or

(c) by prepaid mail, which will be deemed to be received 3 business days after posting.

15.7 This Agreement constitutes the entire agreement between the parties in respect of the supply of the Products and supersedes all prior agreements.

15.8 If you are a corporation or a corporate trustee of a trust, we may request, and you must procure, that the directors or principals of that entity enter into the guarantee in Part C for the performance of the obligations under this Agreement.

15.9 We may sub-contract or engage a third party to perform all or part of our obligations under this Agreement.

15.10 A party's failure or delay to exercise a right or power does not operate as a waiver of the right or power. A waiver is not effective unless it is in writing and signed by the party giving it.

15.11 A variation to this Agreement is not effective unless it is in writing and signed by the parties.

15.12 Any clause in this Agreement that is invalid, void, illegal or unenforceable in a jurisdiction will be severed in that jurisdiction and not affect the validity, existence, legality and enforceability of that clause in any other jurisdiction or the remaining clauses.

15.13 We may assign or novate our rights and obligations under this Agreement without your written consent. You agree to execute any documents we reasonably require to formalise such assignment or novation.

15.14 You may not assign or novate your rights or obligations under this Agreement without our prior written consent.

15.15 The United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement.

15.16 This Agreement is governed by the laws in force in Victoria, Australia.

15.17 The parties irrevocably consent to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia.

## 16. Definitions

Agreement has the meaning given in clause 1.1.

Collateral has the meaning given in clause 7.2.

Confidential Information means any information which we provide to you, or you otherwise obtain, in connection with us, the Products or this Agreement, including information about our business, our Intellectual Property, but excluding any information which is or becomes public or was known to you at the time of disclosure other than through a breach of an obligation owed to us, or which you can prove you independently developed without breaching this Agreement.

Consequential Loss means indirect, special or consequential loss or damage, including loss of profit, revenue, reputation and goodwill.

Developed IP means Intellectual Property that is discovered, developed or has otherwise come into existence as a result of, for the purposes of, or in connection with, the supply of the Products or this Agreement.

Force Majeure Event means events beyond its reasonable control, including industrial disputes, strikes, lockouts, accident, breakdown of equipment, import or export restrictions, acts of god, acts or threats of terrorism or war, pandemics or epidemics.

Intellectual Property means all present and future rights conferred under statute, common law or equity, title and interests in and to the inventions, know-how, patents, patent applications, registered and unregistered trademarks, services marks, registered and unregistered designs, look and feel, copyrights, circuit layouts, domain names, internet addresses, computer programs, confidential information, trade secrets, trade or business names, brand names and all other rights resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields.

Materials means any designs, drawings, specifications, plans or other material you provide to us.

Products means all products we offer for sale.

PPSA means the Personal Property Securities Act 2009 (Cth).

Quote has the meaning given in clause 1.1(a).

We, us or our means Euro Chill Pty Ltd as trustee for PCH Unit Trust (ABN 39 115 747 650) of 1/13-15 Kevlar Cl, Braeside VIC 3195.

You or your means the customer purchasing the Products.