

# MOD–STYLE Terms and Conditions

In these Terms and Conditions, Company means MOD–STYLE ABN 24 603 467 024 a social enterprise of the Brotherhood of St Laurence, its successor and assigns or any person acting on behalf of and with the authority of MOD-STYLE and the Purchaser whose order for the purchase of goods is accepted by MOD-STYLE.

## 1. QUOTATION

Any quotation made by MOD-STYLE is not an offer to sell or to provide services and no order given in pursuance of any quotation shall bind MOD-STYLE until accepted by it in writing or by the commencement of the supply goods or the provision of services.

## 2. ACCEPTANCE OF BUYERS ORDER

Unless otherwise agreed in writing all orders are subject to acceptance by MOD-STYLE within 30days of receipt by MOD-STYLE of the Purchaser's order and these terms and conditions will be deemed to be incorporated in any agreement between MOD-STYLE and the Purchaser. Any terms and conditions contained in the order offer acceptance or other document of the Purchaser and, subject to the provisions of the Trade Practices Act, all representations statements terms conditions and warranties (whether implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law. Notwithstanding that MOD-STYLE may have agreed to supply goods on credit to a Purchaser such arrangements shall, without prejudice to MOD-STYLE'S other rights, be terminable on the giving by MOD-STYLE to the Purchaser of fourteen (14) days notice which notice may be given at MOD-STYLE'S sole discretion and at any time.

Credit arrangements shall be subject to limits set from time to time by MOD-STYLE, and the Purchaser acknowledges that MOD-STYLE may without any notice period reduce the amount of or terminate any credit account or limit, given to an Purchaser. MOD-STYLE shall use reasonable endeavors to fill orders accepted by it but shall in no event be liable or responsible to the Purchaser or any of its Purchasers for any failure or inability to supply Goods ordered by the Purchaser. Mod-Style reserves the right to withdraw any Goods or any ranges of Goods from sale from time to time notwithstanding that such Goods may be displayed in lists of Goods available for purchase.

## 3. CANCELLATION OF ORDERS

Once placed, no order may be cancelled by the Purchaser except in writing and the only with the prior consent of MOD-STYLE.

## 4. SUBSTITUTION

While descriptions of the goods or services and brochures accompanying any quotations are as accurate as possible, we reserve the right to supply the goods and services with such modifications and altered specification as may be available at the time.

## 5. PRICES

The prices of goods shall be Ex Warehouse and shall be as specified in MOD-STYLE'S price list current at the time of invoice by MOD-STYLE which prices and list may be varied by MOD-STYLE at any time without notice. Unless we state in writing to the contrary the price does not include GST, sales tax, or other tax or duty. All references to retail prices are recommendations only and there is no obligation to comply with the recommendation.

MOD-STYLE reserves the right to charge freight and handling fee on all orders to be determined at MOD-STYLE'S discretion. Unless a price is stated in writing to include GST, MOD-STYLE will in

addition to the price for a supply, charge the Purchaser any GST which may be payable in respect of that supply.

## **6. SERVICE FEE FOR CREDIT CARD PAYMENTS**

An additional service fee of 2.5% will be added to the net invoice price where payment is made by way of a certain credit cards such as American Express/Diners/JCB cards. MOD-STYLE may, at its sole discretion add or delete various credit cards to the list that attracts the service fee.

## **7. PAYMENT TERMS**

Payment Terms are Net 30 days from the end of the month in which the goods are purchased, to approved Purchasers only unless varied and agreed in writing by MOD-STYLE.. All other sales are Cash before Order, unless agreed in writing by MOD-STYLE.

If any payment is not made by the Purchaser to MOD-STYLE on the due date thereof:

- a) the Purchaser shall, without prejudice to MOD-STYLE'S other rights, pay MOD-STYLE a default charge at the rate as approved by law per month or part thereof from the due date for payment until the date payment is made;
- b) MOD-STYLE reserves the right, and without prejudice to its other rights hereunder and at law, to cancel orders or to suspend deliveries of other Goods until such payment has been made; and
- c) All monies owing to MOD-STYLE including all monies owing for Goods sold shall become immediately due and payable and the Purchaser shall indemnify MOD-STYLE against all costs (including Solicitor and own clients costs, commercial agents, commissions, freight, surcharges, fees, insurances, accounting costs, loss of profit and all interest) incurred by MOD-STYLE as a result of such default and the action taken by MOD-STYLE in respect of the same.

## **8. DELIVERY OF GOODS**

MOD-STYLE may deliver the goods by installments or partial shipments and the Purchaser will accept each delivery. Requirements of the Purchaser shall not be a condition or the essence of the contract. MOD-STYLE shall not be under any liability for direct or consequential loss or damage to the Purchaser arising from delay or postponement of delivery.

MOD-STYLE shall have the sole and absolute discretion as to the choice and method of carriage of the Goods. Should the Purchaser nominate their own carrier, then all risks and associated costs of delivery including insurance will be borne by the Purchaser.

MOD-STYLE reserves the right to make deliveries of orders of the Goods by installments and the Purchaser shall pay for each installment. A delay in the delivery of an installment shall not relieve the Purchaser of its obligation to accept remaining deliveries.

In the event that the Purchaser alleges that any of the Goods have not been delivered as ordered it shall give written notification of such alleged non delivery to MOD-STYLE at its address specified on the 1<sup>st</sup> page of this application hereof:

- a) within ten (10) working days of the date of receipt of those Goods;
- b) with a full description in writing of the alleged non-delivery; and

MOD-STYLE reserves the right to invoice goods prior to their delivery in the event that such delivery has been delayed at the direction, request or by virtue of circumstances occasioned by the Purchaser, and storage and insurance costs resulting from such delayed dispatch may also be invoiced by MOD-STYLE to the Purchaser as part of monies due under such invoice for Goods supplied.

## **9. FREIGHT & HANDLING CHARGES**

MOD-STYLE reserves the right to charge a freight and handling fee on all orders at rates

dependent on distance and volume of products supplied The rates are subject to change at any time without prior notice

#### **10. DISCOUNT & REBATES**

Any discount or rebate will only apply if the Customer and MOD-STYLE agree in writing.

Any trade discounts will be indicated on invoices provided by MOD-STYLE to the Customer for Products supplied.

Any settlement discounts will be credited to the Customer account when the associated payment is received.

#### **11. WARRANTY**

MOD-STYLE warrant that for the warranty period is 2 years for ophthalmic frames and 1 year for sunglasses, from the date of purchase. It will replace or repair, at its sole discretion, any of its products that are defective in materials or workmanship, as follows:

- a) MOD-STYLE endeavours to keep spare parts and replacement frames for a number of years. However, due to the fashion nature of many of its Products, MOD-STYLE reserve the right to replace any faulty frame or sunglasses with what it fairly judges to be a similar style as available, should this be necessary;
- b) This warranty does not apply to Products that have been altered, broken or damaged by misuse, tampered with in any way or where the fault arises from a failure to follow the recommended glazing, product care or maintenance instructions provided with the Products;
- c) MOD-STYLE does not warrant against normal wear and tear, accidental frame damage or scratched or broken lenses that were not defective when shipped for delivery;
- d) Note that MOD-STYLE provides a replacement parts service where goods are not covered by warranty;
- e) In no event shall the liability of MOD-STYLE for defective goods exceed the invoiced price of the Products concerned.
- f) Goods supplied by MOD-STYLE to the Purchaser shall have the benefit of Warranty subject to the Trade Practices Act; MOD-STYLE shall not be liable for any damage direct, or consequential arising out of defects. All other Conditions and Warranties implied by law or under Statute are hereby expressly negated as far as they lawfully can be.

#### **12. CLAIM AND RETURN POLICY**

- a) The Purchaser shall be responsible for inspecting the goods immediately upon delivery to ensure that the goods are those ordered by the Purchaser. The Purchaser's responsibility shall not in any way be diminished or extinguished in the case of Goods which are delivered to a third party at the direction of the Purchaser. All claims must be submitted in writing within 10 working days of receipt of invoice.
- b) Goods cannot be returned for credit except with prior issuance of Goods Return Authorization Number (GRA) by MOD-STYLE. Goods received by MOD-STYLE without a GRA may be returned to the Purchaser at the Purchasers cost at MOD-STYLE's sole discretion.
- c) Goods will not be accepted by MOD-STYLE unless the GRA number is clearly marked on documents accompanying returned goods.
- d) All returned goods will be subject to count & inspection before credit is issued.
- e) Where goods are returned for reasons other than faulty, damaged, incorrectly delivered goods or returned without a GRA, MOD-STYLE reserves the right to charge a re-stocking fee of 15% of the sales value of the returned goods should they decide to accept them.
- f) Products sought on Customer approval must be clearly so requested in the Order. MOD-STYLE at its sole discretion can accept or reject the order. Products sent and invoiced on

Customer approval must be returned within 21 days of delivery to be eligible for return. The Customer may not return Products that are not in a saleable condition and must include each original packaging (including case) of the Products with any returns.

g) MOD-STYLE will accept returned stock in exchange for new stock strictly on a two for one basis. That is, two new stock items must be ordered by the Purchaser in exchange for return of one Purchaser's stock item. The two replacement items must be of the same or greater value per item than the item returned.

### **13. TITLE AND RISK**

The Purchaser acknowledges and warrants to MOD-STYLE that the Purchaser is not insolvent and being a natural person has not committed an act of bankruptcy or made an arrangement with his creditors or being a company knows of no circumstances which would entitle and debenture holder or secured creditor, or any other party, to appoint a receiver, to petition for winding up of the Purchaser or apply for the appointment of a manager or administrator or exercise any other rights over or against the Purchaser's assets. The Purchaser will immediately notify MOD-STYLE in writing if it becomes aware of any such circumstances. The Purchaser acknowledges that these Terms and Conditions constitute an agreement to supply Goods to the Purchaser upon the Terms and Conditions herein set out and are not an unconditional sale of Goods to the Purchaser or until the Purchaser sells the goods to a third party or until the Goods are incorporated into end products and are not severable there from. The Purchaser acknowledges and agrees that no title to the Goods shall pass to the Purchaser by reason of the delivery of the Goods or the acceptance by MOD-STYLE of the Purchaser's request to supply the Goods, although risk shall pass to the Purchaser on the delivery of the Goods.

It is a condition of these Terms and Conditions that MOD-STYLE shall remain the sole and absolute owner of the Goods until such time as the agreed price of the Goods supplied by MOD-STYLE to the Purchaser and all debts owing by the Purchaser to MOD-STYLE have been paid in full to MOD-STYLE by the Purchaser. Until such time as payment in full has been made for the Goods and all debts, the Purchaser shall be the bailee of all of the Goods for MOD-STYLE and shall store them upon its premises separately from its own Goods or those of any other person in a manner which makes them readily identifiable as the Goods of MOD-STYLE.

The Purchaser's right to possession of the Goods in which MOD-STYLE retains title shall cease at whichever is the earliest of the following dates:

- a) upon the expiration of time given by MOD-STYLE for payment in full of the Goods;
- b) if the Purchaser being a natural person commits an act of bankruptcy or compounds or makes an arrangement with his creditors, or if any execution or distress is levied upon the Goods of the Purchaser.
- c) if the Purchaser being a company is wound up, either compulsory or voluntary or a receiver and manager is appointed over the whole or a material part of its assets, or an administrator is appointed or the Purchaser reaches any composition or arrangement with its creditors.

Upon the cessation of the Purchaser's right to possession of the Goods in which MOD-STYLE retains title, the Purchaser hereby irrevocably allows and grants its consent to allow MOD-STYLE or its agents for the purpose of recovery of the Goods enter upon any premises where the goods are stored or where they are reasonably thought to be stored and may repossess the same and the Purchaser shall assist and indemnify MOD-STYLE in relation to such recovery.

At any time prior to payment in full for all Goods supplied if the Purchaser sells on his or its own account, the Purchaser shall sell as agent and bailee of MOD-STYLE in law and in equity and shall hold the proceeds thereof in trust for MOD-STYLE and shall not mingle the proceeds with other monies and shall not pay the cheque or cash therefore into an overdrawn bank account.

In the case where a receiver, liquidator, manager or administrator is appointed to the Purchaser and at the time thereof the Purchaser shall not have received the proceeds of sale, the Purchaser or the receiver, liquidator, manager or administrator as agent for the Purchaser shall at the election of MOD-STYLE assign to MOD-STYLE within seven (7) days all rights against obliged to pay proceeds of sale.

#### **14. FORCE MAJEURE**

Mod-Style shall not be liable for any delay or failure to perform its obligations if such failure was caused by any event for which MOD-STYLE could not reasonably have exercised control.

#### **15. CREDIT ASSESSMENT**

- a) If any products are supplied to Purchaser on credit, MOD-STYLE may need to disclose to a credit reporting agency certain information referred to in clause 12(c) about the Purchaser when assessing Purchaser's application for and credit and managing Purchaser's account with MOD-STYLE. Purchaser authorizes MOD-STYLE to disclose such information to a credit reporting agency for these purposes.
- b) Subject to MOD-STYLE'S obligations under the Privacy Act 1988 and other applicable laws, MOD-STYLE may give the information referred to in clause 12(c) to a credit reporting agency to obtain a consumer credit report about Purchaser or to allow the credit reporting agency to create or maintain a credit information file about Purchaser. Purchaser agrees that MOD-STYLE may disclose a credit report about it to any credit provider, debt collecting agency or MOD-STYLE insurers for the purpose of assessing Purchaser's credit-worthiness or to collect any overdue payments (as the case may be).
- c) MOD-STYLE may disclose the following information relating to Purchaser in accordance with clauses 12 (a) and (b);
  - i. Purchaser's name and address;
  - ii. Credit limits on Purchaser's accounts;
  - iii. The amount of any payments which are overdue for at least 60 days;
  - iv. Where an overdue payment has been previously reported, advice that the payment is no longer overdue;
  - v. Cheques or credit card payments which have been dishonored;
  - vi. Information that in the opinion of MOD-STYLE, Purchaser has committed a serious credit infringement; and
  - vii. Information that MOD-STYLE has ceased to supply the Products and services to Purchaser.
- d) Purchaser agrees that MOD-STYLE may obtain information about Purchaser from any business which provides information about the commercial credit-worthiness of persons for the purposes of assessing Purchaser's application to purchase the Products on credit and collecting any overdue amounts.
- e) MOD-STYLE may refuse to supply the products to Purchaser on credit on the basis of MOD-STYLE'S credit assessment of Purchaser.

#### **16. PRIVACY**

- a) Purchaser agrees to MOD-STYLE collecting, using and disclosing information about the Purchaser of the kind referred to in clause 12(c) for various purposes, including to:
  - i. assess credit worthiness as outlined in clause 12;
  - ii. supply the products and services to Purchaser and the management of Purchaser's account;
  - iii. communicate with Purchaser about the products and services which MOD-STYLE or its partners or affiliates may provide to the Purchaser;
  - iv. implement these Terms and any Sales Contract; and
  - v. comply with relevant laws.
- b) MOD-STYLE, at the written request of the Purchaser, will:

- i. provide the Purchaser with access to any personal information relating to the Purchaser held by MOD-STYLE; and
- ii. correct or amend any personal information relating to the Purchaser held by MOD-STYLE which is inaccurate or out of date.
- iii. MOD-STYLE will handle the Purchaser's personal information in accordance with relevant laws.

#### **17. AMENDMENTS**

MOD-STYLE may amend these terms at any time by giving notice by mail, e-mail or by posting a notice on MOD-STYLE'S public website. By continuing to place orders for products, the Purchaser will be deemed to have accepted the revised Terms.

#### **18. INSURANCE**

Where MOD-STYLE agrees to store or hold on consignment goods on behalf of the Purchaser, all risk remains with the Purchaser. Any Goods so held are to be insured for full purchase value by the Purchaser.

#### **19. JURISDICTION & APPLICABLE LAW**

The Terms and Conditions shall be governed and constructed in accordance with the laws of the state of Victoria. The parties agree that the Courts of Victoria shall have exclusive jurisdiction to hear and determine any dispute arising hereunder.

#### **20. ASSIGNMENT**

This agreement shall not be assigned by the Purchaser whether voluntarily or by operation of law without the prior consent of MOD-STYLE. No such assignment by the Purchaser howsoever occurring shall relieve the assignor of its obligations hereunder.

#### **21. SEVERABILITY**

In the event that any or part of these terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such terms, conditions or provisions shall be severed from the remaining Terms and Conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.