

## **TERMS AND CONDITIONS OF SALE**

### **1. Interpretation**

These terms and conditions will apply to all goods ordered from Centurion Trading Pty Ltd trading as Kikass Trading ABN 12 050 058 618 (“Kikass Trading” or “the Seller”) by the retailer placing an order (“the Purchaser”) for the purchase of the goods from this pricelist (“Goods”) on the Kikass Trading Order Form. The contract will only come into existence upon acceptance by Kikass Trading of the offer to purchase the Goods.

### **2. Quotations and orders**

- a. This Price List or any quotation given by Kikass Trading to the Purchaser is not an offer or obligation to sell but an invitation to treat only. The Seller reserves the right to accept or reject any order it receives.
- b. Any quotation given by Kikass Trading is valid for the period stated in the quotation or within 30 days if no period is stated.
- c. Kikass Trading may provide on delivery of an order one pair of sample socks in each size S, M, L and XL to be used by the Purchaser for in store promotion.
- d. If the Purchaser defaults under these terms and conditions, Kikass Trading may cancel, suspend or vary the terms and conditions of any incomplete order that has been accepted by Kikass Trading without notice to the Purchaser and without being liable to the Purchaser.
- e. Kikass Trading is not responsible to the Purchaser for a breach of its obligation to supply the Goods pursuant to an order Kikass Trading has accepted, or for any delay in delivery, if the failure to supply or the delay in delivery, is due to unavailability of the Goods or is caused by matters beyond the reasonable control of Kikass Trading (including, without limitation, acts of God, acts of government, war or other hostility, terrorism, national or international disaster, fire, explosion, power failure, equipment failure, strike or lockout, inability to obtain necessary supplies and any other force majeure occurrence).

### **3. Prices**

- a. All prices quoted or listed on price lists do not include GST which will be added to the invoiced prices.
- b. Prices quoted in any quotation or order apply to that quotation or order only and do not apply in any other circumstances.

### **4. Payment terms**

- a. All orders are payable in full 5 working days before the nominated delivery date unless the Purchaser has arranged credit facilities acceptable to Kikass Trading when payment for the Goods is to be made as follows:
  - i. 20% to accompany the order;
  - ii. balance within 30 days of invoice.
- b. A discount of 5% of the value of the order may be claimed by the Purchaser if the whole of the order is paid with the order or within 5 days of the nominated delivery date.
- c. Kikass Trading reserves the right to charge interest on overdue accounts at 13% per annum and any expenses including legal expenses incurred in collecting any outstanding debt due by the Purchaser to Kikass Trading.
- d. Payment is to be made in full without deduction on the due date. In the event of a dispute, Kikass Trading will advise its response within 5 working days of advice of the dispute and credit any amount which is found in favour of the Purchaser.
- e. Time is of the essence for all of the Purchaser's obligations.

### **5. Title of Goods**

- a. The Purchaser shall arrange collection of the Goods at the agreed dispatch address on the despatch date, unless otherwise agreed. Each party acknowledges that risk of loss or damage to the Goods passes to the Purchaser on dispatch from Kikass Trading's premises.

- b. The Goods remain the absolute property of Kikass Trading as legal and equitable owner until the Purchaser has paid Kikass Trading in full for the Goods.
- c. The Purchaser hereby gives Kikass Trading and its agents an irrevocable licence and right to enter any of the Purchaser's premises to inspect, search for and remove the Goods owned by Kikass Trading.

#### **6. Delivery**

- a. Prices for the Goods are ex Kikass Trading's premises unless otherwise agreed. Kikass Trading will normally charge for delivery.
- b. If the whole price of an order amounting to a minimum of \$400 is paid with the order or within 5 days of the nominated delivery date, then the delivery freight on that order will be paid by Kikass Trading.
- c. If an order is paid prior to delivery, and delivery is delayed for more than 30 days, the Purchaser may request repayment of the pre-paid amount of the order.
- d. The Purchaser agrees that by the signing of a delivery docket, it agrees that all the Goods have been delivered in good condition as per the delivery docket. If an item is missing or damaged, this is to be advised to Kikass Trading and noted on the delivery docket at the time of delivery so that a satisfactory time can be allowed for the replacement / supply of the item(s) in question.

#### **7. Return of Goods**

- a. Any Goods despatched from the Kikass Trading warehouse to the Purchaser in a damaged or defective condition or which are not otherwise in accordance with the Purchaser's order, may be returned if Kikass Trading is advised in writing within 7 days of dispatch of the details of the requested return to Kikass Trading's Premises.
- b. Other Goods ordered from this pricelist may be returned to Kikass Trading at the Purchaser's expense for full credit only if:
  - i. the request for returns are made within 12 months of despatch from Kikass Trading's premises;
  - ii. the Goods are in their original packaging, unopened and in an undamaged saleable condition;
  - iii. prior to return, a return authorisation is obtained from Kikass Trading setting out the details of the Goods authorised to be returned;
  - iv. delivery is made to the premises nominated by Kikass Trading by the date advised by Kikass Trading; and
  - v. Risk in the Goods remains with the Purchaser until signed for and receipted into the premises nominated Kikass Trading.

#### **8. Liability of Kikass Trading.**

- a. The total liability of Kikass Trading, its employees, servants and agents is, at the option of Kikass Trading and to the extent allowed by law, limited to one or more of the following:
  - i. replacement of the Goods supplied or supply of equivalent Goods;
  - ii. payment of the cost of replacing the Goods or of acquiring equivalent Goods;
  - iii. payment of the cost of having the Goods repaired;
- b. Under no circumstances is Kikass Trading liable for any consequential loss or damage resulting from any breach of contract or warranty, including breach of an essential term.,

#### **9. Warranty**

- a. Kikass Trading warrants that all goods sold by it will be free from defects in manufacturing and material under normal use for a period of 1 year after delivery and if it is defective and returned with a proof of sale to the customer document, it will be replaced.
- b. Goods authorised by Kikass Trading to be returned will be repaired or replaced, and delivered to the Purchaser at the "normal" or agreed place of delivery.
- c. The warranties set out in this clause 9 a exclude, to the extent allowed by law, the following:

- i. Special Purchaser finishes or sizes,
  - ii. where in Kikass Trading's opinion, a defect has been caused by careless or improper use, abuse or handling, by non adherence to operating instructions or by fair wear & tear;
  - iii. The return of Goods made to Purchaser's specifications; and
  - iv. Goods that were ordered incorrectly by the Purchaser.
- d. The return of faulty product to Kikass Trading is required for QA & recycling.
- e. For the purpose of making any claim in accordance with this clause the Purchaser must:
- i. immediately upon becoming aware of circumstances giving rise to a claim under this clause, notify Kikass Trading in writing setting out full particulars of the claim;
  - ii. allow Kikass Trading, its employees and agents full and free access to the Goods in relation to which the claim is made for the purpose of conducting such tests as Kikass Trading may in its absolute discretion consider necessary to determine whether the claim is justified.

#### **10. Order acceptance**

- a. After Kikass Trading notifies the Purchaser that it has accepted the Purchaser's offer to purchase the Goods, no variation to these terms and conditions is permitted unless expressly accepted in writing by Kikass Trading.
- b. Where Kikass Trading makes a part delivery of any order, such a delivery shall constitute a separate delivery for invoice and payment purposes.

#### **11. Proper law jurisdiction**

The contract for the sale of the Goods is governed by the laws of the State of Victoria notwithstanding the place in which the Goods or any of them are to be used or delivered. The Purchaser and Kikass Trading irrevocably submit to the exclusive jurisdiction of the Courts in the State of Victoria, Australia.

#### **12. Waiver**

No waiver by Kikass Trading of any breach of these terms and conditions operates as a waiver of any other breach, and the doing and/or omission of any act, matter or thing whatsoever by Kikass Trading, its employees or agents (which but for this clause ought or might amount to a waiver of Kikass Trading's rights in respect of any such breach or default) does not operate as a waiver in any way of Kikass Trading's rights and powers in respect of such breach or default.

#### **13. Notices**

Any notice required under this agreement must be in writing and given by post, facsimile or hand to Kikass Trading or the Purchaser at the address set out in the schedule or at such other address or facsimile number as is notified in writing by one party to the other.

#### **14. Whole agreement**

These terms and conditions and any warranties implied by law which are not capable of being excluded or modified embody the whole agreement between the parties and, subject to the express terms contained in any written order and written acceptance thereof (which will only apply to that particular order), all previous negotiations, representations, warranties, arrangements and statements (if any), whether expressed or implied, including any collateral agreement or warranty, regarding the subject matter or the intentions of either of the parties are merged in these terms and conditions and otherwise are hereby excluded and cancelled. The Purchaser acknowledges that it has not been induced to enter into this agreement by any representation, advice or information given or made by or on behalf of Kikass Trading.

#### **15. Privacy Act authority**

For the purposes of assessing the credit-worthiness of the Purchaser from time to time and the collection of payments, the Purchaser authorises Kikass Trading, its employees and agents to make such enquiries as they deem necessary including, without limitation, making enquiries of and obtaining reports (as may be allowed by law) from persons nominated by

the Purchaser as trade referees, the Purchaser's creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies ('the information sources'). The Purchaser consents to the information sources providing to Kikass Trading such information as is requested by Kikass Trading and permitted to be given by law. The Purchaser also consents to Kikass Trading disclosing personal information or the contents of any credit report to a credit reporting agency for the purpose of that credit reporting agency creating or adding to any credit information file in relation to the Purchaser.