

BOUTIQUE HAIR & BEAUTY LIMITED TERMS AND CONDITIONS OF TRADING

1. DEFINITIONS

- 1.1 In these terms and conditions unless the context otherwise requires:
- (a) "Buyer" means the person buying goods and/or Services from **BOUTIQUE HAIR & BEAUTY LIMITED**
 - (b) "Business Day" means any day that registered banks are open for business in Christchurch excluding Saturdays, Sundays and statutory holidays.
 - (c) "Company" means **BOUTIQUE HAIR & BEAUTY LIMITED** and includes its successors and assigns.
 - (d) "Event of Default" means the happening of any of the following events, namely:
 - (i) the Buyer fails to pay for the Goods or Services on the due date for payment;
 - (ii) the Buyer defaults in performance of any one or more of its other obligations to the Company under the Contract;
 - (iii) the Buyer commits an act of bankruptcy or enters into a composition or arrangement with creditors or (being a company) commences to be liquidated or has a receiver or manager or statutory manager appointed in respect of any of its assets.
 - (e) "Goods" means professional hair products being purchased by the Buyer from the Company.
 - (f) "Contract" has the meaning given that term in clause 2.1.
 - (g) "Price" means the services being purchased by the Buyer from the Company and includes any services relating to the supply of goods.
 - (i) "Person" includes a corporation, association, firm, company, partnership or individual.

2. CONTRACT

- 2.1 These terms and conditions together with the Company's confirmation of order (if any) and the provisions of a quotation (if any) shall constitute the contract between the Company and the Buyer for the sale and purchase of Goods and/or Services.
- 2.2 No agent or representative of the Company is authorised to make any representation, warranties, conditions or agreements not expressly confirmed by the Company in writing and the Company is not in any way bound by any such unauthorised statements nor can any such statements be taken to form part of the Contract or part of a contract with the Company collateral to the Contract.

3. PRICE

- 3.1 If between the date a Contract is entered into, and the date of delivery of Goods or performance of Services pursuant to that Contract any item involved in the supply production and/or delivery of those Goods or the carrying out of those Services is increased in price due to circumstances beyond the Company's control the Price shall be increased to reflect those additional costs.
- 3.2 All prices are subject to change without notice and prices in any price list or catalogue published by the Company should be confirmed prior to ordering.
- 3.3 If the Buyer requests any variation to a Contract for the supply of Goods and/or Services, the Company is entitled to adjust and if necessary, increase the Price to reflect the cost of that variation.

4. TAXES AND DUTIES

- 4.1 Unless expressly included in any quotation given by the Company, GST and any other taxes and duties relating to the supply of Goods or Services to the Buyer are not included in the Price and shall be payable by the Buyer in addition to the Price of the Goods or Services at the rate(s) prevailing at the date of delivery of the Goods or performance of the Services (as the case may be).

5. PAYMENT

- 5.1 Where Goods or Services are supplied on credit, invoices are payable strictly on the 20th of the month following date of invoice.
- 5.2 Failure to pay any invoice by due date shall be a breach of the Buyer's obligations under these terms and conditions and the Company may in respect of such invoice, without prejudice to any other rights or remedies it may have, charge as liquidated damages interest thereon plus GST (if GST is applicable), at a rate of 1.5%, such interest to accrue and be chargeable on a daily basis from the date payment was due until payment is made in full.
- 5.3 The Buyer shall not be entitled to withhold payment or to make any deduction from or set off any amount against any moneys payable to the Company without the prior written consent of the Company.
- 5.4 Receipt by the Company of any cheque or other bill of exchange or any promissory note, shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect the Company's rights, powers or remedies against the Buyer and/or the Goods.
- 5.5 The Buyer has the option to set up a weekly automatic payment for their salon, the amount to be sufficient to ensure the Salon Account with the Company remains current at all times.

6. DELIVERY OF GOODS

- 6.1 Delivery of Goods shall be made at the place indicated in the Contract, or, if no place is indicated delivery shall be deemed complete when the Company has advised the Buyer that the Goods are available for collection.
- 6.2 Where the cost of freight has not been included in the Price, and the Company undertakes the delivery of Goods, the price shall be increased by the cost of freight and handling incurred in delivery of those Goods.
- 6.3 Without prejudice to any other right or remedy, the Company may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to the Company that it will fail to do so.
- 6.4 The Buyer must inspect the Goods forthwith after delivery and advise the Company immediately in writing of any shortages or damage. Return of defective or damaged Goods will only be accepted within seven days of delivery and will be subject to inspection.
- 6.5 The Company may at its discretion make delivery by installments. Failure by the Company to deliver or defective delivery by the Company of any installment shall not entitle the Buyer to repudiate the Contract.
- 6.6 Delivery of 10% more or less than the quantity of Goods ordered by the Buyer shall constitute performance of the Company's obligations to deliver the Goods under the Contract and the quantity of Goods under or over supplied shall be added to or deducted from the Price accordingly.

7. DELAY

- 7.1 The Company shall not be liable under any circumstances for any loss or damage (including any consequential loss) for late or non-delivery of the Goods or performance of Services.
- 7.2 If a time for delivery of the Goods or performance of Services is quoted by the Company the time shall be an approximate time only and shall not be deemed to be of the essence of the Contract.

8. RISK AND OWNERSHIP

- 8.1 Risk of any loss, damage or deterioration of the Goods passes to the Buyer on delivery.
- 8.2 Property and ownership in the Goods remains with the Company and does not pass to the Buyer until the Buyer pays the amount owing for the Goods under each Contract in full.
- 8.3 Until property in and ownership of the Goods passes to the Buyer:
 - (a) the Buyer shall hold the Goods as Bailee for and agent on behalf of the Company and shall store them separately and clearly identify them as belonging to the Company;
 - (b) subject to clause 8.4 below the Company authorises the Buyer to sell the Goods in the ordinary course of the Buyer's business.
- 8.4 The Buyer's authority to sell the Goods is cancelled if:
 - (a) the Buyer commits an Event of Default;
 - (b) the Company notifies the Buyer in writing (whether or not an Event of Default has occurred) that the Buyer's authority to sell the Goods is cancelled.
- 8.5 Where the Buyer sells the Goods in accordance with the authority contained in clause 8.3(b) above before ownership of the Goods has passed to the Buyer the Buyer shall hold the proceeds of such sale upon trust for the Company in a separate account not mixed with any other funds of the Buyer.
- 8.6 The Company has the right to allocate purchase moneys paid by the Buyer to the Company under each Contract for the sale and purchase of Goods against any invoice that is outstanding for the supply of Goods to the Buyer or to allocate any payment between several outstanding invoices.
- 8.7 The Company may bring an action for the price of the Goods whether or not ownership has passed to the Buyer.
- 8.8 Upon cancellation of the Buyer's authority to sell the goods the Company may, without notice and at any time of the day or night enter the premises where the Goods are stored and remove them without being responsible for any damage in so doing.

9. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

- 9.1 As security for payment of the purchase money due by the Buyer to the Company under each Contract for the sale and purchase of Goods, the Buyer, for value received, grants the Company a security interest in those Goods.
- 9.2 The Buyer waives the Buyer's right to receive a verification statement under the PPSA.

10. CONSUMER GUARANTEES ACT 1993

- 10.1 If Goods are purchased from the Company for business purposes the Buyer acknowledges the Consumer Guarantees Act 1993 does not apply.
- 10.2 Where the Buyer supplies the Goods to a person acquiring them for business purposes, it must be a term of the Buyer's contract with that person that the Consumer Guarantees Act 1993 does not apply in respect of the Goods.
- 10.3 The Buyer agrees to indemnify the Company against any liability or cost incurred by the Company under the Consumer Guarantees Act 1993 as a result of a breach by the Buyer of its obligation under clause 10.2.

11. PRODUCT RETURNS

- 11.1 Claims for credits or exchange will only be actioned provided the Company is notified within seven days of receipt of goods.
- 11.2 Claims for credits or exchange will be actioned only by the relevant Area Business Manager if the appropriate paperwork is completed. Request for credit or exchange in any other form will be considered if prior approval in writing from the Company is obtained.
- 11.3 The Company will not pay freight on any returns unless it is authorised.
- 11.4 Shop soiled Goods, discounted Goods or Goods that can not be re-sold will not be accepted for credit or exchange.
- 11.5 Exchanges or credits will be valued at the relevant prices/deal prevailing when the product was purchased.

12. LIABILITY

- 12.1 The Company will replace Goods supplied in a defective state but shall have no other liability in respect of defective Goods.
- 12.2 The Company shall not be liable for any loss of profits or any consequential, indirect or special loss, damage or injury of any kind suffered by the Buyer arising directly or indirectly from any:
 - (a) breach of any of the Company's obligations under or cancellation on the Contract;
 - (b) negligence, misrepresentation or other act or omission on the part of the Company or its employees or agent.
- 12.3 Notwithstanding any other provision contained in the Contract the liability of the Company whether in Contract or pursuant to any cancellation of the Contract or in tort or otherwise in respect of all claims for loss, damage or injury, however arising shall not in aggregate exceed the Price.

13. DEFAULT

- 13.1 The Company may, in addition to any other right of termination or remedy conferred on the Company under the Contract or by law, terminate the Contract at any time and with immediate effect by written notice given by the Company to the Buyer if:
 - (a) the Buyer commits an Event of Default;
 - (b) the Buyer (if the Buyer is an individual) dies;
 - (c) the Buyer suspends, for ten Business days, or longer, or ceases, its principal business activity;
 - (d) the Buyer has committed a material breach of the Contract which is not reasonable capable of being remedied by the Buyer within five business days, provided that the Company may not at any time give such a notice terminating this Contract if, at that time, the Company is in default under this Contract.
- 13.2 If any of the events referred to in clause 13.1 occur the Company may then:
 - (a) enter upon the premises where any Goods for which the Company has not been paid are situated and take possession of and remove those Goods without being responsible for any damage caused in so doing and resell those Goods; and
 - (b) apply the proceeds towards the payment of all moneys owing to the Company by the Buyer; and all costs incurred by the Company as a result of any such action shall be immediately payable by the Buyer upon written demand from the Company.
- 13.3 Upon termination of this Contract for whatever reason:
 - (a) such termination shall be without prejudice to the rights and remedies of either party in respect of any antecedent breach of this Contract by the other party;
 - (b) the provisions of clauses 3.1 to 3.3, 5.2, 8.1 to 8.6, 9.1 and 9.2, 11.1 and 12.2 and those other provisions of this Contract which are incidental to and required in order to give effect to those clauses shall remain in full force and effect;
 - (c) notwithstanding a contrary provision in this Contract any amount payable by the Buyer to the Company under this Contract shall be deemed to have fallen due and become payable immediately prior to such termination occurring.

14. GENERAL

- 14.1 The Buyer shall be responsible for all costs and/or expenses incurred by the Company in instructing a solicitor and/or debt collecting agency to recover any amount overdue for payment and such costs and expenses shall bear interest at the default penalty rate then being charged by the Company pursuant to clause 5.2 above from the date upon which they are paid or incurred by the Company to and including the date upon which the Buyer shall pay or reimburse the Company.
- 14.2 No waiver of any breach or failure to enforce any provision of these terms and conditions by the Company shall in any way affect, limit or waive the Company's rights subsequently to enforce these terms and conditions of sale.
- 14.3 The Buyer may not assign any of his rights or obligations under these terms and conditions without the prior written consent of the Company, which consent may be withheld at the Company's sole discretion.
- 14.4 Should any of these terms and conditions become void or inoperative by operation of law, the remaining terms and conditions shall remain unaffected and valid.
- 14.5 If there is any inconsistency between these terms and conditions and any order submitted by the Buyer (whether in writing, verbally or by electronic data interchange) or any other arrangement between the parties, these terms and conditions prevail unless otherwise agreed in writing by the parties.
- 14.6 If, due to any circumstances beyond its reasonable control the Company is unable, either wholly or partly, to carry out any obligations under these terms and conditions, that obligation shall be suspended so far as it is affected by and during the continuance of that circumstance.

15. SALON ONLY MARKETING POLICY

- 15.1 It is the Company's fundamental marketing policy to reserve the use and sale of its professional hair products exclusively for suitably qualified hairdressing salons.
- 15.2 All Boutique Hair & Beauty Limited's hair products are marketed as salon only products and are identifiable by their packaging and labeling as salon only, hairdresser exclusive or for professional use.
- 15.3 The Company regards a suitably qualified hairdressing salon as one which is:
 - (a) Conducting what is traditionally understood and perceived by the industry to be a hairdressing business
 - (b) Currently licensed by the local authority to conduct a hairdressing business and which complies with all applicable hairdressing licensing regulations
 - (c) Sufficiently qualified according to the Company's standards to ensure the Company's products are used correctly and to ensure that proper advice is given to purchasers of the Company's salon only products in an environment which suits the image the Company has created for such products.
- 15.4 The Buyer agrees that they will only sell salon only retail products directly to the public and that the Buyer will not, directly or indirectly, supply or sell salon only products to any person for the purpose of resale.
- 15.5 The Buyer is not permitted to sell the Goods over the internet.
- 15.6 The Buyer acknowledges that compliance with the requirements of this clause is essential to the Agreement.

16. PERSONAL GUARANTEE

- In consideration of the company agreeing to provide the Buyer with credit, either by the supply of goods on credit or by the provision of further time to pay an existing debt now due or after it becomes due, or credit in any other form whatsoever, the applicant(s) hereby agree that they and each of them jointly and severally personally guarantee due payment of all monies now or at any time hereafter owing to the company and each of the applicant(s) undertake jointly and severally to indemnify the company and keep the company indemnified against all costs, expenses and losses incurred or suffered in connection with or in relation to the supply of credit. The applicant(s) acknowledge that as between the company and themselves the applicant(s) are liable as principal debtors and their liability shall not be lost or removed by the giving of time or any other act that would release the guarantor from liability as a surety.

Signature(s): _____