

**1. DEFINITIONS & INTERPRETATIONS**

The following definition apply to these Terms and Conditions

- 1.1. **Commencement Date** means the date specified in Schedule A;
- 1.2. **Insolvency Event**, in relation to a Party, means any of the following events:
  - (a) the Party ceases to (or is unable to) pay its creditors (or any class) in the ordinary course of business, or announces its intention to do so;
  - (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to that Party or any of its assets;
  - (c) such Party enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;
  - (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that Party; or
  - (e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- 1.3. **Immij** means Immij Pty Ltd, ABN 37 128 750 247 and/or Immij (NSW) Pty Ltd, ABN 46 136 867 751;
- 1.4. **Intellectual Property** means the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, knowhow or confidential information throughout the world for the full period of the rights and all renewals and extensions;
- 1.5. **Goods** means the final goods produced by Immij by completing an order;
- 1.6. **Parties** means Immij and the Customer and Party means either of them;
- 1.7. **Royalties** are set out in Schedule A and are exclusive of GST; and
- 1.8. **Terms of Trade** means Immij's General Terms and Conditions of Trade.

**2. INTERPRETATION**

In these terms and conditions, unless the context otherwise requires:

- 2.1. headings do not affect interpretation;
- 2.2. singular includes plural and plural includes singular;
- 2.3. words of one gender include any gender;
- 2.4. reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 2.5. reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- 2.6. reference to a party includes party's personal representatives, successors and permitted assigns; reference to a thing (incl. a right) includes a part of it;
- 2.7. if a party comprises two or more persons:
  - (a) reference to a party means each of the persons individually and any two or more of them jointly;
  - (b) a promise by that party binds each of them individually and all of them jointly;
  - (c) a right given to that party is given to each of them individually;
  - (d) a representation, warranty or undertaking by that party is made by each of them individually;
- 2.8. a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;
- 2.9. if a thing is to be done on a day which is not a business day, it must be done on the business day before that day; and
- 2.10. an expression defined in the *Corporations Act 2001* has the meaning given by the act at the date of these terms and conditions.

**3. USE OF INTELLECTUAL PROPERTY**

- 3.1. The Customer authorises Immij to use its Intellectual Property to manufacture and supply Goods and indemnifies Immij against any infringement associated with the use by Immij of the Intellectual Property.

**4. IMMIJ'S OBLIGATIONS**

- 4.1. Immij will manufacture, hold and supply these Goods in accordance with the Schedule on behalf of the Customer.

**5. CUSTOMER'S OBLIGATIONS**

- 5.1. The Customer must provide an estimate of anticipated sales and recommend print quantities and minimum stock holdings to Immij.
- 5.2. The Customer has an obligation to provide accurate estimates of minimum sales, quantities and stock holdings to Immij in order to avoid over-stocking by Immij, on the one hand, or the need for back orders, on the other hand.

**6. ORDERS**

- 6.1. All Goods sold by Immij are sold and supplied on these terms and conditions and Terms of Trade. At the least, an order for the sale of Goods must identify the Goods ordered, the quantity required and refer to any current written quotation issued by Immij to the Customer pursuant to which the order is made.
- 6.2. Immij may supply Goods that vary from those ordered by Customer, and the Customer agrees to accept the Goods so supplied, provided that such variations are not material.
- 6.3. The Customer may not make a change to, or cancel, an order it has placed with Immij without Immij's prior consent. If the Customer cancels an order or refuses to accept all or any of the Goods subject to an order other than in circumstances permitted by these terms and conditions, the Customer will be liable for any resulting damage or loss suffered by Immij. If the Goods have been or are in the process of being manufactured or produced specifically for the Customer, the Customer will pay to Immij as liquidated damages being the full price of the Goods ordered and any costs incurred by Immij (including any GST) less the current scrap value of the Goods as determined by Immij.

**7. DELIVERY OF EXCESS STOCK**

- 7.1. If the Goods have not been used over a 6 month period from when the Goods are available, then Immij has the right to deliver and invoice the Customer for the stock of these remaining Goods.
- 7.2. If this excess stock is invoiced, then this stock must be paid for within normal trading terms and the amount invoiced will exclude any royalty.

**8. ROYALTY COLLECTIONS AND DISTRIBUTION**

- 8.1. Immij will collect royalties on the Goods on behalf of the Customer, if applicable, and will pay the Customer as at intervals specified in the order for the royalties from Goods sold. The royalty amount to be collected and recipient details for payments are provided in Schedule A.
- 8.2. Royalty payments will be made by EFT to the parties advised in Schedule A.
- 8.3. Royalty only becomes due and payable upon Immij receiving full payments for the Goods.
- 8.4. For overpaid royalties due to returns in a subsequent period, the Customer authorises Immij to deduct this amount from the next royalty payment.

**9. DEFAULT**

- 9.1. The default and termination provisions of Immij's General Trading Terms and Conditions apply to these terms and conditions.

**10. INDEMNITY**

- 10.1. The Customer indemnifies Immij in respect of any claims or actions against, and costs, expenses and other liabilities incurred by Immij in relation to the removal, repossession and sale of Goods pursuant to these terms and conditions and/or Terms of Trade, including without limitation, any claims brought by third parties.
- 10.2. If:
  - (a) Immij retains possession or control of the Goods;
  - (b) payment of the price of those Goods is due by the Customer to Immij; and
  - (c) Immij have made demand in writing to the Customer for payment of the price of those Goods and Immij have not received price of those Goods,

then (without limiting any provision of these terms and conditions), regardless whether the title in such Goods has passed to the Customer, Immij may dispose of those Goods and claim from the Customer for any loss incurred by Immij on such disposal. If the arrangements provided under this clause constitute a credit contract as defined in the National Credit Code, the time for payment of any overdue account is limited to a total period of not more than 62 days from the date of Immij's invoice. Nothing in this clause imposes an obligation on Immij to extend its payment terms to the Customer.

**11. CONFIDENTIALITY**

- 11.1. Each Party must keep confidential the terms of these terms and conditions and all royalty information and must not disclose it at all unless otherwise required to be disclosed by law.

**12. NOTICE OF RESTRICTIONS ON GOODS**

- 12.1. If any Good has restrictions on its use, then the Customer must advise Immij of the nurseries permitted to purchase these Goods in Schedule A.

**13. WITHHOLDING OF SUPPLY**

- 13.1. Immij reserves the right to withhold supply of the Goods to a Customer, if the Customer's account with Immij has not been paid within its trading terms, or their credit worthiness is unacceptable in Immij's opinion.

**14. IMMIJ NOT LIABLE FOR LOSS**

- 14.1. Immij is not liable for any loss caused to the Customer by short-fall of stock, or by any delay in production caused by an order for additional Goods due to the Customer not sufficiently fulfilling its obligations pursuant to these terms and conditions.

**15. DURATION AND TERMINATION**

- 15.1. These terms and conditions continues until Immij gives the Customer notice of termination in writing after expiration of 5 days from the date of the notice of termination or as per quote provided at the same time as these terms and conditions.
- 15.2. Notification can be given by either Party for the following reasons:
  - (a) by either Party breaching its obligations under these terms and conditions and the breach not being rectified within 30 days of written notice provided by the other Party;
  - (b) by either Party undergoing an Insolvency Event; or
  - (c) by mutual agreement.

**16. FOLLOWING TERMINATION**

- 16.1. Following termination, all Goods remaining with Immij will be delivered to the Customer and invoiced (without a royalty component) within 30 days of termination and are to be paid within Immij's trading Terms and Conditions. Any outstanding royalties owing to the Customer from Immij will continue to be paid in accordance with these terms and conditions.

**17. TERMS OF TRADE**

- 17.1. Terms of Trade form part of these terms and conditions. In the event of any inconsistency between these terms and conditions and the Terms of Trade, these terms and conditions prevail to the extent of inconsistency.

**18. COUNTERPARTS**

- 18.1. These terms and conditions may be executed in any number of counterparts, including by a facsimile. Together all counterparts make up one document.

**19. GOVERNING LAW**

- 19.1. These terms and conditions is governed by the law of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them.