

The Agreement

1. Accurate Information

The customer hereby warrants that the information comprised in the First Schedule hereto is accurate and correct and is supplied for the purpose of obtaining credit.

2. **Privacy Act. Acknowledgement that credit information may be given to a credit reporting agency**, the Customer understands that section 18E(8)(c) of the Act allows the Supplier to give credit reporting agency certain personal information about the Customer. The information which may be given to an agency is covered by section 18E (1) of the Act and includes: Particulars to identify the Customer, The fact that the Customer has applied for credit and the amount, The fact that the Supplier is a credit provider to the Customer, Payments which become overdue more than 60 days, Advice that payments are no longer overdue, Cheques of \$100 or more drawn by the Customer which a Bank has dishonoured more than once, in specified circumstances, that in the opinion of the Supplier the Customer has committed a serious credit infringement, That the credit provided to the Customer by the Supplier has been discharged.

3. Definitions

'**Book debts**' means money due to a Customer by any third party on account of the sale of goods or the provision of services to such third party on credit.

'**Credit Customer**' means a Customer who has completed an application for a commercial credit account with Hardy Spicer or a Hardy Spicer Franchisee and such application has been accepted by Hardy Spicer or the Hardy Spicer Franchisee.

'**Customer**' means any person who has placed an order with Hardy Spicer or any Hardy Spicer Franchisee or requests a quotation from Hardy Spicer or any Hardy Spicer Franchisee.

'**Hardy Spicer**' means HS Company Pty Ltd trading as Hardy Spicer.

'**Hardy Spicer Franchisee**' means a franchisee appointed under the terms of the Hardy Spicer Mobile Hydraulic Service Van Franchise Agreement and any other franchisee of Hardy Spicer.

4. Conditions to Prevail

- 4.1 These terms and conditions constitute the terms and conditions upon which Hardy Spicer or any Hardy Spicer Franchisee will supply goods or services to the Customer and take precedence over any terms and conditions that may be contained in any order, quotation or other document.
- 4.2 Neither Hardy Spicer's employees or agents nor the employee's or agents of a Hardy Spicer Franchisee are authorised to make any representations concerning goods or services to any Customer unless authorised by Hardy Spicer or the Hardy Spicer Franchisee, in writing. The Customer acknowledges that it does not rely on, and waives any claim for breach of, any unconfirmed representations, whether made before or after services are performed or goods are delivered.

5. Quotations

- 5.1 Neither Hardy Spicer nor a Hardy Spicer Franchisee shall be liable to the Customer for any loss or damage arising from a failure by Hardy Spicer or the Hardy Spicer Franchisee to deliver goods or perform services on or before a quoted date or at a particular price specified in the quotation or other document and the Customer must accept and pay for goods and/or services if and when tendered by Hardy Spicer or the Hardy Spicer Franchisee irrespective of any failure by Hardy Spicer or the Hardy Spicer Franchisee to deliver goods or perform services on a date or at a price specified in the quotation or other document.
- 5.2 The Customer is responsible for ensuring the accuracy of the description of goods or services specified in the quotation.

6. Acceptance of Order

- 6.1 No order for the supply of goods or the performance of services by Hardy Spicer or a Hardy Spicer Franchisee placed by a Customer shall bind Hardy Spicer or the Hardy Spicer Franchisee, unless and until accepted by Hardy Spicer or the Hardy Spicer Franchisee, and the order is always subject to these Terms and Conditions.
- 6.2 Upon acceptance of an order by Hardy Spicer or a Hardy Spicer Franchisee, the Customer is responsible for the cost of delivery of the goods to and/or from Hardy Spicer's premises or the Hardy Spicer Franchisee.
- 6.3 Subject to Section 75A of the *Trade Practices Act 1974*, a Customer may only cancel, vary or suspend an order with the consent of Hardy Spicer or the Hardy Spicer Franchisee and the Customer shall be liable to indemnify Hardy Spicer or the Hardy Spicer Franchisee for any additional costs incurred by them in preparation for an execution of the cancelled varied or suspended order.

7. Price

- 7.1 Upon an order being placed by a Customer and accepted by Hardy Spicer or a Hardy Spicer Franchisee, the price of the goods or services shall (unless otherwise specified by Hardy Spicer or the Hardy Spicer Franchisee) be the price specified or quoted by Hardy Spicer or the Hardy Spicer Franchisee. Hardy Spicer or the Hardy Spicer Franchisee may increase the quoted price of any goods or services to take account of:
- any amount of excise, sales tax, goods & services tax or any other tax or charge levied by any government authority;
 - any transportation and delivery costs;
 - any amount which reflects any relevant increase in exchange rates, transportation costs or the increased cost of labour and materials;
 - any increase in cost due to any factor beyond the control of Hardy Spicer or the Hardy Spicer Franchisee, including any delay caused by the Customer.

8. Payment & Collection

- 8.1 Where a Customer is a Credit Customer, the Customer must make payment of the price payable for the goods supplied and/or services provided within 30 days from the end of the month in which the goods or services were supplied.
- 8.2 Where the Customer is not a Credit Customer, and unless otherwise agreed, the price becomes payable by the Customer upon completion of the services by Hardy Spicer or the Hardy Spicer Franchisee (as determined by Hardy Spicer or the Hardy Spicer Franchisee) or physical delivery to or, subject to clause 6.3, collection of the goods by the Customer.
- 8.3 The Customer must collect goods from Hardy Spicer's premises within 7 days of notification that the goods are ready for collection. If the goods are not collected within this period, the Customer must pay the price of the goods and all storage and other additional costs incurred by Hardy Spicer as a result of the failure to collect the goods.
- 8.4 Hardy Spicer reserves the right to deliver goods by instalments.

9. Property and Risk

- 9.1 Risk in any new goods shall pass to the Customer upon notification that the goods are ready for collection in accordance with Clause 6.1 or otherwise upon delivery to the Customer. Risk in the Customer's own goods shall remain with the Customer at all times, notwithstanding delivery of the Customer's own goods to Hardy Spicer or a Hardy Spicer Franchisee.
- 9.2 Title to goods shall not pass to the Customer until payment in full for the goods has been received by Hardy Spicer or the Hardy Spicer Franchisee.
- 9.3 Until title passes to the Customer in accordance with Clause 8.1 & 8.2, the Customer holds the goods as bailee and fiduciary agent of Hardy Spicer and the Customer must store the goods separately, clearly identifying the goods as the property of Hardy Spicer.
- 9.4 If goods are sold by the Customer before title passes, the Customer shall hold so much of the proceeds of sale as equals the unpaid price payable to Hardy Spicer or the Hardy Spicer Franchisee, in a separate account, on trust for Hardy Spicer or the Hardy Spicer Franchisee. If the goods are sold by the Customer on credit, then the Customer must hold so much of its Book Debts as equals the unpaid price to Hardy Spicer or the Hardy Spicer Franchisee, in a separate account, on trust for Hardy Spicer or the Hardy Spicer Franchisee. The Customer must not sell any goods if it has become insolvent or is otherwise unable to pay its debt to Hardy Spicer or the Hardy Spicer Franchisee.

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9.5 If goods are incorporated into a new product before title passes ('mixed goods'), the Customer holds on trust for Hardy Spicer or the Hardy Spicer Franchisee that portion of the price of the mixed goods as equals the unpaid price payable to Hardy Spicer or the Hardy Spicer Franchisee, in a separate account, on trust for Hardy Spicer or the Hardy Spicer Franchisee.

9.6 The Customer is liable for and must effect appropriate insurance to ensure full cover for any damage or loss to goods whilst in the custody of Hardy Spicer or the Hardy Spicer Franchisee.

9.7 Hardy Spicer or the Hardy Spicer Franchisee shall have a lien over any goods of the Customer in the custody or possession of Hardy Spicer or the Hardy Spicer Franchisee in respect of payment for any goods or services provided or rendered by Hardy Spicer or the Hardy Spicer Franchisee.

10. Provision of Services at the Customer's Premises

10.1 The Customer shall indemnify Hardy Spicer and the Hardy Spicer Franchisee from and against all actions, suits, claims, proceedings, costs and expenses (including legal costs and expenses) and liability whatsoever which Hardy Spicer or the Hardy Spicer Franchisee may suffer or incur in relation to any damage to property or death or injury to any persons occurring in connection with the performance of services by Hardy Spicer or a Hardy Spicer Franchisee at the Customer's premises or other premises specified by the Customer.

11. Description and Specifications

11.1 Any description, illustrations or other written or photographic material contained in any catalogue, price list brochure or other material provided by Hardy Spicer or a Hardy Spicer Franchisee shall not form part of these conditions and shall not amount to any representation or warranty and shall not constitute a contract of sale by description.

11.2 If a Customer requires Hardy Spicer or a Hardy Spicer Franchisee to supply goods or perform services to any specifications, then the Customer shall indemnify Hardy Spicer or the Hardy Spicer Franchisee against any liability (including infringement of intellectual property rights or claim that the goods or services were unsuitable or unfit for purpose) arising as a result of the specifications or requirements of the Customer.

12. Warranty/Liability

12.1 Subject to the conditions set out below Hardy Spicer and Hardy Spicer Franchisee's ('we') warrant that goods or services will correspond with their specifications at the time of delivery. This warranty is given subject to the following conditions:

(a) Components & Assemblies:

For detailed information on warranty for specific components and assemblies, please refer to our website www.hardyspicer.com.au/terms.asp.

(b) we are under no liability in respect of any defect in goods or services arising from any drawings, designs or specifications supplied by you;

(c) we are under no liability to you in respect of any defect in goods arising for whatever reason other than as a result of wilful damage to it by us;

(d) we are under no liability:

(i) in respect of any defect arising after delivery to you from wilful damage, negligence, abnormal working conditions, failure to follow our instructions, misuse or alteration or repair of goods without our approval;

(ii) for any defect caused during transportation;

(iii) under the above warranty (or any other warranty, condition or guarantee) if the total price for goods or services has not been paid by the due date for payment.

12.2 Other than as expressly provided, and to the extent permitted by law, all terms, conditions, warranties, undertakings, inducements and representations, whether expressed or implied, statutory or otherwise, relating in any way to any goods or services supplied by Hardy Spicer or a Hardy Spicer Franchisee and which are not contained herein are excluded.

12.3 Neither Hardy Spicer nor a Hardy Spicer Franchisee is liable to the Customer by reason of any representation, implied warranty, condition, duty at common law, or under any express term of these Terms and Conditions, for any consequential loss or damage (including loss of profits) made in connections with the supply of goods or services by Hardy Spicer or the Hardy Spicer Franchisee.

12.4 To the extent permitted by law, the liability of Hardy Spicer and any Hardy Spicer Franchisee for breach of any term, condition or warranty (express or implied) shall be limited to:

(a) in respect of goods, the cost of replacement or repair of those goods;

(b) in relation to services, the cost of supplying those services again or having someone else supply those services;

13. Default

13.1 In the event that the Customer fails to make payment when due, interest shall accrue at a rate equal to the interest rate payable for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, from the date payment became due.

13.2 If any of the following events apply to a Customer, Hardy Spicer and the Hardy Spicer Franchisee shall have the right to withhold further deliveries to that Customer and to cancel any outstanding orders placed by the Customer and retain any payments already made by the Customer (in addition to any right of action or remedy otherwise available to Hardy Spicer or the Hardy Spicer Franchisee):

(a) the Customer is in default of payment due for more than 7 days; or

(b) the Customer becomes insolvent or has an external administrator or controller appointed or otherwise ceases or threatens to cease carrying on its business.

14. Assignment, Variation and Waiver

14.1 Without the written consent of both Hardy Spicer and the Customer or the Hardy Spicer Franchisee and the Customer, these terms cannot be assigned, varied or waived by the Customer.

15. Severance

15.1 If any of the above conditions is held to be void or unenforceable then such condition shall be deemed not to form part of these conditions and the remaining provisions of these conditions shall not be affected.

16. Choice of Law

16.1 These conditions shall be construed in accordance with and governed by the laws in force in Victoria. The Customer agrees that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.