



**basfordbrands**

BASFORD BRANDS PTY LTD (ACN 006 946 452)  
BASFORD BRANDS LIMITED (NZ Company No. 1838741)

# TERMS AND CONDITIONS OF SALE

## 1. CONTRACT

- 1.1 An Order for the purchase of Goods from the Company made by the Customer will be taken to be an offer to the Company incorporating these terms and conditions of sale.
- 1.2 The contract for the sale and purchase of the Goods will arise upon the acceptance of the offer of the Customer by the Company.
- 1.3 The items contained in these terms and conditions of sale will be the terms and conditions of the contract, notwithstanding anything that may be stated to the contrary on the Customer's Orders or in the Customer's enquiries.

## 2. AVAILABILITY OF GOODS

- 2.1 All sales are subject to availability of Goods.

## 3. RESERVES

- 3.1 Any Goods placed on reserve by the Customer will be held by the Company for a maximum period of five working days.

## 4. PRICE

- 4.1 All prices are based upon the Company's rates and conditions prevailing at the date of the Customer's Order.
- 4.2 Any difference between such rates and conditions and those of the Company prevailing at the time of delivery will be to the Customer's account.
- 4.3 All prices quoted by the Company are exclusive of GST unless specifically stated to include GST.
- 4.4 In addition to the price, the Customer must pay to the Company all GST incurred or payable with respect to the supply of the Goods.

## 5. PAYMENT

- 5.1 Unless the Company otherwise agrees all sales will be on a cash-before-delivery basis.
- 5.2 Should the Company agree to grant credit to the Customer such credit will, in the absence of the written agreement of the Company to the contrary, be upon the basis that payment will be made in full without deduction of any kind whatsoever on or before the 20<sup>th</sup> day of the month following invoice to the Customer.
- 5.3 The Company reserves the right to treat each separate delivery as a separate contract for the purpose of payment.
- 5.4 All payments due to the Company are to be made in full on the due date without deduction of any nature whatsoever whether by way of set-off counterclaim or other equitable or lawful claim or otherwise howsoever.
- 5.5 Receipt of a cheque, bill of exchange or other negotiable instrument by the Company shall not constitute payment and the Customer shall remain liable for the full purchase price until such cheque, bill of exchange, or other negotiable instrument is paid in full.
- 5.6 The Company may, without notice, apply money received from the Customer in such order as the Company may determine.
- 5.7 Should payment in full not be paid to the Company by the due date then:
  - 5.7.1 the Customer shall pay interest on the outstanding monies at a rate four per centum (4%) per annum above the indicator lending rate charged by
    - 5.7.1.1 the Bank of New Zealand (in the case of any supply of Goods by Basford Brands (NZ) or
    - 5.7.1.2 the Australia and New Zealand Banking Group Limited (in the case of any supply of Goods by Basford Brands (Aus))at the time when the payment was due, which interest shall accrue on a daily basis and shall accrue after as well as before judgment;
  - 5.7.2 the Customer shall also be liable to pay all expenses and legal costs of the Company (calculated between solicitor and own client) in relation to obtaining or seeking to obtain remedy of any default in payment by the Customer;
  - 5.7.3 the Company shall have the option of suspending delivery to the Customer until the Customer has effected payment in full; and
  - 5.7.4 the Company may also terminate the contract on giving the Customer notice in writing.
- 5.8 If any payment for Goods is made by credit card the Company shall be entitled to receive and the Customer agrees to pay in addition to the purchase price a credit card surcharge fee equivalent to two (2%) per cent of the purchase price of the Goods.

## 6. FREIGHT

- 6.1 All freight will be arranged by the Company.
- 6.2 The cost of such freight will be to the Customer's account, unless otherwise specified.

## 7. ORDERS AND DELIVERY

- 7.1 Any Order for Goods must be placed in accord with the prevailing Ordering Procedure of the Company as specified from time to time (and the requirements of such Ordering Procedure are incorporated into these terms and conditions as if set out in full).
- 7.2 The Customer shall on or before the acceptance of its Order give the Company reasonable notice of the date(s) on and the place(s) to which delivery of the Goods is required.
- 7.3 Delivery shall be complete on arrival of the Goods at such place(s) as notified by the Customer.
- 7.4 The Customer shall accept delivery of the Goods on or before the date(s) notified by the Customer or if the Company is unable to make delivery on such date(s) on such later (dates) on which the Company is able to make delivery.
- 7.5 If the Customer does not accept delivery of the Goods or should the Company withhold delivery pending payment or adequate arrangement as to payment, delivery shall be deemed to have been made when the Company is or was willing to deliver the Goods and:
  - 7.5.1 the Company shall be entitled to charge as an accretion to the purchase price of the Goods reasonable storage and transportation charges; and
  - 7.5.2 the Customer shall nevertheless make any payments provided herein upon the basis that such delivery has been effected.
- 7.6 The Company reserves the right to deliver by instalments and each instalment shall be deemed to be a separate contract subject to these terms and conditions of sale.
- 7.7 Failure to make any delivery and/or defective delivery shall not prejudice the right of the Company to make subsequent deliveries nor shall that entitle the Customer to refuse to accept the same or to terminate the contract either as a whole or in part or to any right or claim for damages whether for delay or non-delivery or otherwise howsoever.
- 7.8 All claims for errors or short delivery must be made in writing quoting invoice numbers (if an invoice has been issued) within fourteen days of receipt of the Goods by the Customer provided however that no claims will be accepted by the Company after the fabric is cut.
- 7.9 The Company shall not be liable to the Customer or any other person claiming through or under the Customer for any errors or omissions in the execution or performance of the contract arising partly or wholly from any ambiguity in the Customer's Order.

8. **RETURNS**

- 8.1 The Company reserves the right to accept or refuse the return of any Goods from the Customer.
- 8.2 Subject to clause 8.1, returns will only be accepted where the Goods are returned strictly in accord with the prevailing Returns Policy of the Company as specified from time to time (which Policy is incorporated into these terms and conditions as if set out in full) and without limiting the terms of that Policy only where:
- 8.2.1 freight has been pre-paid and return delivery is effected by a courier service approved by the Company;
  - 8.2.2 the Goods are returned within fourteen days of delivery;
  - 8.2.3 the Goods are properly packaged and such packaging clearly identifies and is marked with the original invoice number and the Return Number Authority (RNA) issued by the Company; and
  - 8.2.4 the Goods are in the condition in which they were originally delivered.
- 8.3
- 8.4 In consideration of the Company accepting the return of any Goods in accord with these terms and conditions the Customer acknowledges and agrees that the Company is entitled to receive and may at its sole discretion withhold a service fee equivalent to an amount not exceeding twenty per cent (20%) of the purchase price of the returned Goods.

9. **RISK AND INSURANCE**

- 9.1 Risk shall pass to the Customer on delivery of the Goods.
- 9.2 Freight and transit insurance are to the Customer's account unless specified to the contrary.
- 9.3 The Customer will insure the Goods for the full insurable value from the time of delivery to the Customer until payment in full in the name of the Company.

10. **RETENTION OF TITLE**

- 10.1 The Customer agrees that the legal and equitable title to the Goods is retained by the Company until the Company receives payment in full from the Customer for the Goods, the Services and all other goods and services supplied to the Customer by the Company at any time. Prior to title in the Goods passing to the Customer, the Customer:
- 10.1.1 holds the Goods as bailee and fiduciary agent of the Company
  - 10.1.2 where the Customer processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, holds such part of the new goods (**Processed Goods**) on trust for the Company as bailee and fiduciary agent of the Company.
  - 10.1.3 must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party in such a way as to clearly indicate at all times that the Goods and such part of the Processed Goods are owned by the Company; and
  - 10.1.4 must ensure that, at all times, the Goods and such part of the Processed Goods are properly stored, protected, readily identifiable and insured.
- 10.2 The Customer hereby agrees to accept this appointment as bailee and fiduciary agent of the Company.
- 10.3 The Customer may sell or deal in the ordinary course of business with the Goods and such part of the Processed Goods provided that –
- 10.3.1 any such sale or dealing is at arms' length and on market terms; and
  - 10.3.2 The Customer holds the proceeds of any sale of or dealing in the Goods and such part of the proceeds of any sale of or dealing in the Processed Goods on trust for the Company in a separate identifiable account as the beneficial property of the Company and the Customer must pay such amount to the Company on demand.
- 10.4 For the purpose of this clause 10, "such part" means an amount equal in dollar terms to the amount owing by the Customer to the Company at the time the Goods are used in the manufacture of or incorporated into the Processed Goods.
- 10.5 Notwithstanding any other provision to the contrary, the Company reserves the following rights in relation to the Goods until all amounts owed by the Customer to the Company in respect of the Goods and all other goods and services supplied to the Customer by the Company at any time are fully paid:
- 10.5.1 legal and equitable ownership of the Goods;
  - 10.5.2 to retake possession of the Goods; and
  - 10.5.3 to keep or resell any of the Goods repossessed.
- 10.6 In the event of a breach of this contract by the Customer including, without limitation, failure by the Customer to make payment for the Goods by the date specified by the Company to the Customer, the Customer must return the Goods to the Company immediately on demand. If the Customer does not return the Goods to the Company on demand the Supplier shall be entitled (without further notice) to enter upon the Customer's premises at any time to do all things necessary to recover the Goods.
- 10.7 The Customer hereby grants full leave and irrevocable licence to the Company and any person authorised by the Company to enter upon any premises where the Goods may for the time being be placed or stored for the purpose of retaking possession of the Goods.
- 10.8 The Purchaser agrees that:
- 10.8.1 it shall be liable for all costs, losses, damages, expenses or any other sums of money incurred or suffered by the Company (including consequential losses and damages) as a result of the Company exercising its rights under this clause; and
  - 10.8.2 it shall indemnify the Supplier for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as result of any and all prosecution, actions, demands, claims or proceedings brought by or against the Company in connection with the retaking possession of the Goods or the exercise by the Company of its rights under this clause, and the Customer shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 10.9 10.9.1 The parties agree that this clause is not intended to create a charge or any other form of security interest and that if and to the extent that, as a matter of law, this clause creates a charge or any other form of security interest, the offending words shall be deleted.
- 10.9.2 For the avoidance of doubt, where the Customer is an Australian Customer the Company's interest constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009*.

- 11. PERSONAL PROPERTY SECURITIES ACT 2009 (Australian Customers Only)**
- 11.1 The Customer acknowledges and agrees that:
- 11.1.1 it grants a Security Interest in all present and after-acquired Goods as security for all the Customer's obligations to the Company;
- 11.1.2 it will do all things and execute or arrange for execution of all such documents as in the Company's opinion are necessary or desirable to register the security granted by the Customer under the PPSA;
- 11.1.3 until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA:
- 11.1.3.1 under section 95 to receive notice of intention to remove an accession;
- 11.1.3.2 under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
- 11.1.3.3 under section 121(4) to receive a notice of enforcement action against liquid assets;
- 11.1.3.4 under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
- 11.1.3.5 under section 130 to receive a notice to dispose of goods;
- 11.1.3.6 under section 132(2) to receive a statement of account following disposal of goods;
- 11.1.3.7 under section 132(4) to receive a statement of account if no disposal of goods for each 6 month period;
- 11.1.3.8 under section 135 to receive notice of any proposal of the Supplier to retain goods;
- 11.1.3.9 under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
- 11.1.3.10 under section 142 to redeem the goods;
- 11.1.3.11 under section 143 to reinstate the security agreement; and
- 11.1.3.12 under section 157(1) and 157(3) to receive a notice of any verification statement;
- where the Company has rights in addition to those in Part 4 of the PPSA, those rights shall continue to apply;
- 11.1.4 it will reimburse the Company for any cost it incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these terms and conditions of sale; and
- 11.1.5 it will immediately notify the Company of any change in the Customer's name.
- 11.2 The Customer hereby consents to the Company recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Company to effect such registration.
- 11.3 The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- 12. PERSONAL PROPERTY SECURITIES ACT 1999 (New Zealand Customers Only)**
- 12.1 The Customer acknowledges and agrees that:
- 12.1.1 it grants a Security Interest in all present and after-acquired Goods as security for all the Customer's obligations to the Company;
- 12.1.2 it will do all things and execute or arrange for execution of all such documents as in the Company's opinion are necessary or desirable to ensure that the Company has a perfected first ranking Security Interest in the Goods;
- 12.1.3 it waives its right to receive a copy of the verification statement under the PPSA;
- 12.1.4 it will have none of the rights under sections 114(1)(a), 116, 117(1)(c), 119, 129(2), 121, 125, 129, 131, 132, 133, and 134 of the PPSA;
- 12.1.5 where the Company has rights in addition to those in Part 9 of the PPSA, those rights shall continue to apply and, in particular, will not be limited by section 109 of the PPSA;
- 12.1.6 it will reimburse the Company for any cost it incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these terms and conditions of sale; and
- 12.1.7 it will immediately notify the Company of any change in the Customer's name.
- 13. EXCLUSION OF WARRANTIES**
- 13.1 The provisions of clauses 13.2 and 13.3 of these terms and conditions of sale shall apply only in New Zealand when the Goods have been supplied for the Customer's business purposes (as that term as defined in the Consumer Guarantees Act 1993) or if the Customer has acquired the Goods for such purposes.
- 13.2 To the fullest extent permitted by law, all warranties, descriptions, representations and conditions as to fitness, suitability for any purpose, tolerance to any conditions or otherwise whether of a like nature or not and whether expressed or implied by law trade custom or otherwise are expressly excluded.
- 13.3 No agent or representative of the Company is authorised to make any representations, statements, warranties, conditions or agreements not expressly set forth in these terms and conditions of sale and the Company is not in any way bound by any such unauthorised statements nor can any statement be taken to form part of any contract with the Company collateral to this contract.
- 14. LIABILITY**
- 14.1 The provisions of clauses 14.2 and 14.3 of these terms and conditions of sale shall apply in respect of any supply of Goods by Basford Brands (Aus) and, in the case of any supply of Goods by Basford Brands (NZ), shall apply only to the extent that the Goods have been supplied for the Customer's business purposes (as that term defined in the Consumer Guarantees Act 1993) or if the Customer has acquired the Goods for such purposes.
- 14.2 To the extent permitted by law, the liability of the Company whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance in respect of the Goods or from any other breach of the Company's obligations hereunder shall not in any event exceed an amount equivalent to the purchase price of the Goods.
- 14.3 The Company shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever nor shall the Company be liable for any damage or loss caused by the Customer's servants, agents, Customers or other persons whatsoever (whether similar or not to the foregoing).
- 15. FORCE MAJEURE**
- 15.1 The Company shall not be liable for failure in supply or delivery to the Customer occasioned by strike, combination of workmen lockout, Act of God, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, legislative, governmental or other prohibitions or restrictions, fire, flood, hostilities, commotions or other causes whatsoever (whether similar or not to the foregoing) beyond the Company's reasonable control.
- 16. PATENTS, TRADEMARKS ETC.**
- 16.1 Where the Company has followed any design or instructions furnished or given by the Customer, the Customer shall hold the Company harmless from and indemnify the Company against all damages, penalties, costs and expenses which the Company may incur for or which it may become liable through any work required to be done in accordance with those instructions or designs which involve an infringement or alleged infringement of any patent, trademark, design or common law right.
- 16.2 The Customer warrants that any design or instructions furnished or given by it shall not be such as will cause the Company in the execution of the contract to infringe any patent, design, trademark or common law right.

17. **CONFIDENTIALITY**

17.1 All reports, correspondence, drawings, plans, computations, specifications, etc. prepared or made by the Company for any purpose in connection with the contract or any tender or quotation shall remain the property of the Company and confidential between the Company and the Customer and must not be disclosed, copied or used without the Company's prior written consent and shall be returned to the Company immediately upon the Company's request.

18. **WAIVER AND FORBEARANCE**

18.1 All the original rights, powers, exemptions and remedies of the Company shall remain in force notwithstanding any neglect, forbearance or delay in the enforcements thereof.

18.2 The Company shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of a director of the Company and any such waiver unless the contrary shall be expressly stated shall apply to and operate only in the particular transaction dealing or matter in respect of which it was given.

19. **JURISDICTION**

19.1 The law of the State or Territory in which the Company delivers Goods to the Customer is the proper law for those terms and conditions. The parties irrevocably submit to the non exclusive jurisdiction of the courts in the State or Territory in which the Goods are delivered.

20. **DEFINITIONS**

20.1 **Basford Brands (Aus)** means Basford Brands Pty Ltd ACN 006 946 452 of 148-150 Victoria Street, Geelong North, Victoria;

20.2 **Basford Brands (NZ)** means Basford Brands Limited (NZ Company No. 1838741) of 20 Ascot Road, Airport Oaks, Manukau;

20.3 **Company** means either Basford Brands (Aus) or Basford Brands (NZ) (as applicable) being that party identified as the Company in the attached Application for Trading Account (if any) or otherwise being the party which accepts an Order for the purchase of Goods in accordance with clause 7;

20.4 **Customer** means the party identified as such in the attached Application for Trading Account (if any) or otherwise the party which places an Order in accordance with clause 7;

20.5 **Goods** means the goods the subject of an Order;

20.6 **GST** means the tax payable on Taxable Supplies within the GST Act;

20.7 **GST Act** means the A New Tax System (Goods and Services Tax) Act and its New Zealand equivalent;

20.8 **Order** means an order for Goods made by the Customer in accordance with these Terms and Conditions of Sale.