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## 1. HOW THESE TERMS APPLY

- 1.1 Terms defined in the body of these Terms of Sale of Goods shall have such meaning throughout these Terms of Sale of Goods.
- 1.2 These Terms of Sale of Goods (Terms) apply to the sale of goods (Goods) by D A Christie Pty Ltd trading as Christie Barbecues (ABN 31 004 637 138) (Christie) to the Purchaser named in a quote, purchase Order, invoice or other sales document provided by Christie (Purchaser). Where the Purchaser has lodged, and Christie has accepted, an application for the Purchaser to purchase the Goods on credit, Christie's credit terms will also apply (Credit Terms).
- 1.3 By ordering the Goods in a format that Christie makes available or accepts from time to time (Order), the Purchaser agrees to these Terms without requiring a signature unless indicated. Christie will provide these Terms on its website and where practical during the ordering process.
- 1.4 These Terms prevail over the terms in any document provided by the Purchaser, such as a request for a quote, Purchase Order or Order Confirmation, except to the extent Christie expressly agrees in writing.
- 1.5 Christie may vary, add to or substitute these Terms from time to time. The updated Terms apply to any Orders or purchases made after the updated Terms are provided to the Purchaser or published on Christie's website.
- 1.6 Other than as set out in these Terms, no promise, description, representation or undertaking by Christie forms part of the Terms.

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## 2. QUOTES

- 2.1 A quote or price list provided by Christie will not constitute an offer or invitation to sell or supply Goods.
- 2.2 The price of Goods in a quote issued by Christie is valid for 30 days, as otherwise specified on the quote or agreed in writing by Christie.
- 2.3 Christie reserves its right to vary, correct or withdraw a quote at any time prior to order acceptance.

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## 3. ORDERS

- 3.1 By placing an Order, the Purchaser commits to purchase the Goods, subject only to Christie's acceptance of the Order. The Order must reference an order number (or other means of identifying the Order); a quote number (where applicable); a description and quantity of Goods to be purchased; subject to clause 3.3 - the dispatch date; delivery contact; and the preferred delivery address.
- 3.2 Christie will notify the Purchaser in writing if it accepts an Order or offer by providing confirmation of such Order in writing (**Order Confirmation**).
- 3.3 The dispatch date nominated on an Order must be within 90 days from the date of the Order. Any Agreed Dispatch Date beyond 90 days of the date of the Order will incur a 3% surcharge unless otherwise agreed to in writing by Christie.
- 3.4 The Purchaser may extend the dispatch date, which may incur additional costs in line with Clause 3.3. Such requests must be made in writing to sales@dachristie.com at least ten working days before the Agreed Dispatch Date. If this request is received within ten working days of the Agreed Dispatch Date, further charges under Clause 3.3 will not apply. Instead, the Purchaser will be responsible for the following charges in addition to the price specified in the order:
  - (a) Temporary storage charges at a rate of \$5 per pallet per day, commencing from the Agreed Dispatch Date.
- 3.5 The Purchaser must settle any additional charges incurred under clauses 3.3 and 3.4 as per Credit Terms.
- 3.6 Christie may request that the Purchaser pay a deposit when the Order Confirmation is processed (**Deposit**). The Deposit will be refundable if Christie advises the Purchaser that it will not be able to dispatch the Goods.
- 3.7 Christie may, in its discretion:
  - (a) agree or decline any written requests of the Purchaser to vary, amend or cancel an Order; or
  - (b) cancel an Order after the Order Confirmation, where the Purchaser's financial position is adverse.

- 3.8 Christie shall be entitled to vary the price payable by the Purchaser for any Products and Services provided by Christie (including storage services) at any time before the provision of the invoice for the Products or completion of the Services if the cost to Christie of performing its obligations is increased or reduced, including without limitation by:
- (a) any new or amended legislation, regulation, Order, directive, by-law, license or approval;
  - (b) any rise or fall in the amounts payable for labour or amounts charged to Christie by its suppliers;
  - (c) any cause beyond the direct control of Christie; and
  - (d) any variation in quantity.
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## 4. PAYMENT TERMS

- 4.1 The Purchaser must pay for Goods:
- (a) in accordance with Christie's Credit Terms where applicable; or
  - (b) on the earlier of the payment date specified on the invoice or the day which is thirty (30) days from the date of the invoice.
- 4.2 The Credit Terms will only apply where the Purchaser has completed the credit application form and been approved in writing by Christie.
- 4.3 Unless otherwise specified, references to amounts owing to Christie for Goods are exclusive of all taxes and imposts authorised, charged or chargeable by any statute, federal, state or local government or regulatory authority in respect of such Goods levied from time to time, including but not limited to Goods and Services Tax (as that term is defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth), and includes any additional tax, penalty, fine, interest or other charge relating to GST) and must be paid by the Purchaser to Christie.
- 4.4 Without limiting Christie's rights, any monies owing under these Terms which are not paid when due may bear interest at the rate prescribed from time to time in the Penalty Interest Rates Act 1963 (Vic), calculated daily and compounded monthly on and from the date such monies first become due to Christie.
- 4.5 The Purchaser has 14 days from receiving an invoice to dispute any part of the invoice, after which time the Purchaser will be deemed to have accepted the invoice.
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## 5. DELIVERY OF GOODS

- 5.1 Any lead times or estimated delivery dates in respect of the delivery of Goods are estimates only and are subject to change by Christie. No delay shall relieve the Purchaser of its obligations to accept and pay for the Goods.
- 5.2 Christie will endeavour to complete all Orders in accordance with the Order Confirmation, including the requested delivery date. Christie will not be liable for any loss resulting from or in connection with incomplete Orders, late delivery, or non-delivery. Where Christie is unable to provide Goods ordered or equivalent Goods, in whole or in part. In that case, the Purchaser is not required to pay the charges for the Goods not provided unless such non-fulfilment is due to Purchaser's acts or omissions.
- 5.3 Delivery will be taken to have occurred when the Goods are
- (a) off-loaded at the Purchaser's nominated address for delivery, which must be staffed during normal business hours or
  - (b) loaded onto the Purchaser's vehicle upon collection at Christie's premises by the Purchaser or its agent.
- Any fees associated with the loading or unloading of the Goods (for example, a forklift) must be borne by the Purchaser.
- 5.4 If Christie is required to store the Goods, it will do so, at the sole risk and cost of the Purchaser.
- 5.5 Any attempted deliveries where a product is not delivered or accepted for any reason, will incur a charge for storage at a rate of \$5 per pallet per day. If re-delivery is required, then additional costs will be charged at a rate specified by Christie as obtained from an available courier). Any costs incurred by Christie due to any fault or conduct of the Purchaser which causes late or non-delivery, or the Purchaser's refusal to accept the Goods must be reimbursed to Christie.
- 5.6 Christie's obligation to deliver Goods to the Purchaser is suspended to the extent that it is unable to fulfil that obligation due to events beyond its reasonable control, including the failure of a third party to supply the Goods, transportation problems, industrial disputes and the acts of any government or authority. If such suspension lasts for at least 30 days, the Purchaser may choose to end or suspend these Terms. Christie will not be liable for any loss, damage or liability the Purchaser incurs in connection with such termination or suspension.
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## 6. TITLE AND RISK

- 6.1 Risk in the Goods shall pass at the time of delivery by Christie to the Purchaser's nominated address for delivery, or collection by the Purchaser or its agent unless otherwise agreed between the parties.
- 6.2 Title to all Goods supplied by Christie shall remain with Christie until payment in full of all monies owing by the Purchaser to Christie on any account (including any debts). Prior to such payment in full, the Purchaser shall hold all Goods supplied by Christie as bailee for Christie. If the Goods are sold or disposed of by the Purchaser prior to such payment in full, any amount received by the Purchaser shall be set aside and held in trust by the Purchaser for Christie pending payment in full.
- 6.3 Until title to the Goods passes, the Purchaser must not deface or obliterate any identifying plate, mark or number of any of the Goods or charge the Goods in any way nor grant nor otherwise give any interest in the Goods, including any security interest as defined by the Personal Property Securities Act 2009 (Cth) (**PPSA**).
- 6.4 The Purchaser authorises Christie to register a security interest in respect of the Goods. The Purchaser agrees to execute all documents necessary to create a security interest in the PPSA register and waives its rights under sections 95, 118, 121(4), 130 and 135 (right to receive notice) and sections 125, 132(3)(d), 132(4), 142, 143 and 157 (right to receive notice) of the PPSA.
- 6.5 If any payment by the Purchaser to Christie is overdue, in whole or in part, or the Purchaser is otherwise in default under any contract with Christie, or the Purchaser shall become insolvent or suffer some form of external administration appointment, all sums then owing by the Purchaser to Christie shall become immediately due and payable and Christie may (without prejudice to any of its other rights), if after 48 hours after demand of payment, recover and resell the Goods and may, for the purpose, enter upon the Purchaser's premises by its servants or agents. Christie is irrevocably authorised to affect such entry, and to use the name of the Purchaser and to act on behalf of the Purchaser, if necessary, to recover possession of the Goods. All associated costs will be borne by the Purchaser.
- 6.6 Any payment received from the Purchaser or in respect of selling the Purchaser's Goods may be offset by Christie against any debts or unpaid amounts owed by the Purchaser to Christie.
- 6.7 Christie shall insure the Goods until delivery. The Purchaser shall insure in a full and proper amount against loss or damage to the Goods between the time of delivery and passing of title.
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## 7. CLAIMS

- 7.1 Christie shall not be bound to accept Goods returned by the Purchaser, unless, due to Christie's own fault, the Goods are faulty, damaged or lost during delivery.
- 7.2 Where Christie is responsible for lost or damaged Goods which occurs during the delivery process, Christie will either replace the Goods, or offer a credit for the Goods, provided the Purchaser provides a written claim to Christie of the damage within 48 hours of delivery, or if the Goods have been lost, within 7 days from the date of delivery. Goods will only be replaced or issued credit upon inspection by Christie.
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## 8. BREACH

- 8.1 If the Purchaser breaches any clause of these Terms, makes default in any payment, commits any act of bankruptcy or enters into liquidation whether voluntary or involuntary, Christie may, notwithstanding any express rights granted to it in these Terms, and at its discretion terminate or suspend these Terms, or any part thereof, suspend deliveries of any Goods or cancel any Order Confirmation so far as it remains unperformed.
- 8.2 To the extent permitted by law, the Purchaser will indemnify Christie for, and hold it harmless from, any loss, damage or expense (including, without limitation, costs, whether or not the subject of a court order) incurred by it arising out of the Purchaser's breach any of these Terms, including an Order Confirmation or Credit Terms.

## 9. WARRANTY AND LIABILITY

- 9.1 Christie may provide a warranty for certain Goods, which will apply on the terms provided (refer to [www.dachristie.com/documents](http://www.dachristie.com/documents).) If the warranty is offered by a third-party manufacturer directly to the Purchaser, Christie will assist the Purchaser in dealing with the manufacturer. Nothing in a warranty or these Terms over-rides Christie's statutory obligations, which apply in full.
- 9.2 To the fullest extent permitted by law:
- (a) except as expressly agreed in writing by Christie, set out in a warranty provided by Christie, or set out in these terms, Christie excludes all conditions, warranties, representations, statutory guarantees and liability for defective Products manufactured and/or sold by Christie that arises from faulty design, materials, workmanship or from fair wear and tear except to the extent Christie has acted with gross negligence or willful misconduct; and
  - (b) Christie makes no representation as to the fitness of Goods supplied by it for any purpose, other than a purpose which has been notified to Christie in writing, prior to the date of any agreement, by the Purchaser, and confirmed in writing by Christie to be applicable.
- 9.3 Nothing in these Terms excludes any implied warranty or statutory guarantee that cannot be excluded at law, nor any remedies that the Purchaser has in relation to a "major failure", as that term is defined in the Competition and Consumer Act 2010 (Cth).
- 9.4 In relation to any condition, warranty, representation or statutory guarantee implied or provided by law that cannot be lawfully excluded, to the maximum extent permitted by law, the liability of Christie is limited, at Christie's option:
- (a) to the repair of the Goods; or
  - (b) to the supply of replacement Goods; or
  - (c) to the payment of the cost of replacing the Goods or of acquiring an equivalent good or payment of the cost of having the Goods repaired.
- 9.5 To the maximum extent permitted by law, Christie's total liability arising out of or in connection with the Goods or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by the Purchaser for the Goods under the relevant Order.
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## 10. GENERAL

- 10.1 The Purchaser must not assign any rights and obligations under these Terms whether in whole or in part without Christie's prior written consent.
- 10.2 If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
- 10.3 Any failure by a party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision.
- 10.4 These Terms are governed by the laws of Victoria, Australia. The parties each agree to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.