

TERMS AND CONDITIONS OF SALE IN AUSTRALIA

La Brosse De Luxe (ABN 256 963 59 675)

TERMS AND CONDITIONS OF SALE

Definitions:

'Buyer' means the purchaser of any goods specified on a purchaser order to the Business.

'Business' means La Brosse De Luxe (ABN 256 963 59 675)

'Customer' means a business or individual who buys products

'Goods' means the products and, if any, services (postage) specified on a purchase order from the Buyer to the Business.

'GST' means Goods and Services Tax in Australia as determined in accordance with the GST Act.

'GST Act' means the A New Tax System (Goods and Services) Act 1999.

'PPSA' means the Personal Properties Securities Act 2009.

'PMSI' means a purchase money security interest as defined by the PPSA.

'Security Interest' and 'purchase money security interest', 'attached', 'attachment', 'perfected', 'accession', 'commingled' and all related terms have the meanings given them by the PPSA.

- **General**
 - 1.1 These Terms and Conditions of trade (**Terms and Conditions**) apply to all sales of goods by the Business to the Buyer (including any sale to which a quotation relates) and supersede any previous terms of trade applying between the Business and the Buyer (however communicated). These Terms and Conditions prevail over any Buyer's terms of trade so that any sale by the Business is on these Terms and Conditions only.
 - 1.2 Notwithstanding clause 1.1, the Business may change these Terms and Conditions at its own discretion and such amended Terms and Conditions will be either posted on the Business's website or provided in writing to the Buyer and will apply to all Goods ordered by the Buyer from the date of such notice.
- **Pricing and Delivery**
 - 2.1 The price of the Goods is to be calculated by reference to the Business's current price list.
 - 2.2 The prices and product specifications contained in the Business's price list are subject to change at the absolute discretion of the Business and without notice to the Buyer.
 - 2.3 The Buyer agrees that the delivery docket signed, whether by any employee of the Buyer or any other person signing for or on behalf of the Buyer, shall be conclusive evidence of delivery.
 - 2.4 The Business will deliver FIS (free into store) for orders over the value of \$300.00 (excl. GST) unless agreed different in writing.
- **Orders**
 - 3.1 An order for Goods constitutes an offer to purchase the Goods by the Buyer subject to these Terms and Conditions.
 - 3.2 Orders accepted by the Business may not be cancelled or altered in whole or in part without the Business's written consent.
 - 3.3 The Business may at its absolute discretion decline any order either in whole or in part.
 - 3.4 The Business reserves the right to specify the minimum order value that will be accepted from time to time. The Business may at the Business's absolute discretion, supply orders below the specified minimum order value and charge a handling fee, as determined by the Business, on all such orders.
 - 3.5 In placing any order the Buyer expressly represents that the Buyer:
 - 3.5(a) Is solvent; and
 - 3.5(b) Has not committed an act of bankruptcy; and
 - 3.5(c) Knows of no circumstances which would entitle any creditor or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Business or exercise any other rights over or against the Buyers' assets.
- **Terms of Payment**
 - 4.1 All invoices are due and payable in full within 30 days of invoice date (14 days for salons/professionals) unless specified differently in writing.
 - 4.2 Should the Buyer fail to pay the Business's invoices by the due date then:
 - 4.2(a) The Business may charge interest on any overdue invoice at the penalty rate fixed under the Queensland Interest Rate Act calculated and payable daily, compounded from the due date until the invoice is paid in full, and;
 - 4.2(b) The Buyer shall pay all of the Business's costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees), which may be incurred in the recovery or attempted recovery of the overdue amounts from the Buyer.
 - 4.3 The Business may set off any amount owed by the Business to the Buyer from any amount due by the Buyer to the Business.
 - 4.4 The Business offers a 2.5% cash discount (on invoice amount) for payments received within 7 days from the date of its invoice and unless specified differently in writing.
- **Goods and Services Tax (GST)**
 - 5.1 All prices will be quoted exclusive of GST. However, all goods will be sold on a 'plus GST (if any)' basis. Invoices will be issued in the prescribed form as set out by Section 195-1 of the GST Act and the related imposition Acts of the Commonwealth (the GST Law).
 - 5.2 Any discounts or other terms agreed between the Buyer and the Business will be calculated on and applied to the Purchase/Item Price exclusive of GST (except for the 2.5% cash discount).
 - 5.3 Payment for GST
 - 5.3(a) If GST is imposed on any supply made by the Business to the Buyer pursuant to these Terms and Conditions (the GST Amount), the Buyer must pay the GST Amount to the Business, in addition to any amount payable, and any non-cash consideration provided, for that supply (without any deduction or set-off) by the Buyer under any other clause in these Terms and Conditions). Any GST Amount payable is payable upon demand by the Business whether such demand is by means of any invoice or otherwise.
 - 5.3(b) If any part of the Purchase Price is referable to both a Taxable Supply (as defined in the GST Law) and anything that is not a Taxable Supply, the apportionment of the purchase price between those supplies shall be determined by the Business, and GST applied accordingly.
 - 5.3(c) If the Business determines on reasonable grounds that an adjustment is required to the purchase price, it will promptly issue any 'Adjustment Notes' that are prescribed by the GST Law.
- **Warranty**
 - 6.1 This clause is to be read together with any benefits that the Business may provide under Australian statute.
 - 6.2 The Business warrants that it has the right to provide the Goods but otherwise the Goods are provided on an "as-is" basis without warranty of any kind, express or implied, oral or written.
 - 6.3 The Business warrants that the Goods will be supplied using reasonable care and skill and that all Goods are free of any defects and fit for purpose.
 - 6.4 It is the customer's responsibility to check the Goods thoroughly upon delivery and report any damage or defects immediately.
 - 6.5 Returns will only be accepted if the Goods are faulty, and these faults have been reported within three days of successful delivery.
 - 6.6 The Business will replace any faulty or damaged Goods under circumstances explained in clause 6.5.
 - 6.7 The Goods are guaranteed against defects in material or workmanship subject to fair and proper usage.
 - 6.8 The Buyer is not authorised to issue replacements to their customers for the Business's products without prior written approval from the Business.
 - 6.9 The Buyer shall immediately (within three days of successful delivery) notify the Business in writing of any defect in the Goods supplied.
 - 6.10 Nothing in these Terms and Conditions purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other Australian laws which cannot be modified or excluded. Except as expressly set out in these Terms and Conditions and as required by the Australian Consumer Law, the Business makes no warranties or other representations to the Buyer. The Business's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law. Any warranties made by the Business to the ultimate Customer of the Goods is solely for the benefit of the Customer, and no Buyer purchasing goods for resale shall be entitled to bring claims under any such warranties.
 - 6.11 Without limiting the above clauses:
 - 6.11(a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. A Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. A Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
 - 6.11(b) To the extent permitted by statute, the liability, if any, of the Business arising from the breach of any implied conditions or warranties, or failure to comply with a statutory guarantee under the Australian Consumer Law, in relation to the supply of Goods, shall at the Business's option be limited to the replacement of the Goods or resupply of the Goods, or the cost of replacement or resupply of the Goods.
 - 6.12 Subject to clauses 6.11(a) and 6.11(b), the Business shall not in any circumstances be liable to the Buyer under or in connection with these Terms and Conditions, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of these Terms and Conditions, for or in respect of any excluded loss.
 - 6.13 Unless otherwise specified, this warranty does not cover:
 - 6.13(a) Modified, abused, neglected, accidentally damaged or excessively worn Goods, or Goods that have become damaged or defective as a result of improper use;
 - 6.13(b) Repairs attempted or made by the Buyer, a Customer or a third party;
 - 6.13(c) Conditions or malfunctions caused by the reasonable effects of fair wear and tear or the malfunction of normally wearing parts;
 - 6.13(d) Products that are not distributed by the Business through an authorised distributor or reseller.
 - 6.14 Unless otherwise specified, the process for making a warranty claim as a Customer is as follows:
 - 6.14(a) Any Good subject to a warranty claim should be returned to the place of purchase for assessment by the Business. The Customer is responsible for returning the Good to the place of purchase unless the cost of returning, removing or transporting the product is significant, in which case the Customer should contact the Business to make alternative arrangements.
 - 6.14(b) The Customer must present proof of purchase when making a warranty claim.
 - 6.14(c) The claim under a warranty (the Customer may have additional rights under the Australian Consumer Law) will be assessed by the Business on the basis of their product knowledge and reasonable judgment (subject to clause 6.13(d)) and will be accepted if:
 - (i) A relevant defect is found; and
 - (ii) the warranty claim is made during the relevant warranty period.
 - 6.14(d) Upon acceptance of a claim under a warranty, the Business will arrange a replacement product.
 - 6.14(e) Any warranty related enquiries or claims should be directed to:

La Brosse De Luxe
30/53 Darrambal Street
Chevron Island QLD 4217
Australia
Customer Service: 07 5539 9128
Email: sales@labrossedeluxe.com.au
- **Other Claims**
 - 7.1 Any claims by the Buyer for short or wrongful delivery of the Goods must be notified to the Business in writing within three days after delivery of the Goods to the Buyer and any claim, which the Buyer does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
 - 7.2 Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within the prescribed time periods provided by law.
- **Return of Goods**
 - 8.1 The Business will not accept returns for replacement, other than defective Goods where a claim has been made (in writing) within three days of successful delivery, and/or the Goods are not fit for their designed purpose and show a major defect, subject to fair and proper use.
 - 8.2 The Business will not accept return of non-defective goods under any circumstances.
 - 8.3 The Business will not accept any returns for credit/refund (the Customer may have additional rights under the Australian Consumer Law).
 - 8.4 If the Business authorises the return of Goods a Return Authority (RA) will be raised and the RA number must be quoted by the Buyer on or with any claim documentation sent with the Goods, which must be sent freight pre-paid or otherwise, if approved by the Business, carried by the Business's nominated carrier.

- **Implied Terms**
 - 9.1 It is hereby acknowledged by the Buyer that, under the Australian Consumer Law, certain conditions and warranties may be implied in the contract between the Business and the Buyer and rights and remedies conferred upon the Buyer and other parties in relation to Goods or services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The Limitations below are subject to these Non-excludable Rights.
 - 9.2 Subject to the clause 9.1, the Business disclaims all conditions and warranties expressed or implied, and rights and remedies conferred on the Buyer or other parties, by statute the common law, equity, trade, custom or usage or otherwise howsoever and all such conditions and warranties and such rights and remedies are hereby expressly excluded other than any Non-excludable Rights.
 - 9.3 The Business's liability under s74 of the Competition and Customer Act 2010 (CCA) is expressly limited to a liability to pay or credit to the purchaser an amount equal to:
 - 9.3(a) The cost of replacing the Goods;
 - 9.3(b) The cost of obtaining equivalent Goods; or
 - 9.3(c) the cost of having the Goods repaired, whichever is the lowest amount.
 - 9.4 Where so permitted the liability of the Business for a breach of a Non-excludable Right is limited, at the Business's option, in the case of Goods, to the replacement or repair of the Goods or the supply of equivalent Goods or the cost of replacing or repairing the Goods or of acquiring equivalent Goods and, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.
 - 9.5 Accordingly, subject to clause 9.1, in no event shall the Business be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the Buyer howsoever arising including any loss or damage arising from or caused or contributed to by negligence of the Business, its servants or agents, nor shall the Business be liable for special, incidental, indirect or consequential loss or damage suffered by the Buyer as a result of a breach by the Business of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.
- **Indemnity**
 - 10 Subject to Clause 9, the Buyer shall indemnify and keep indemnified and hold the Business harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Business, and from and against all actions, proceedings, claims or demands made against the Business, arising from one or more of the following:
 - 10(a) As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the Goods or the use of the Goods;
 - 10(b) As a result of any other negligence or other breach of duty by the Buyer; or
 - 10(c) As a result of any compliance or adherence by the Business with any instructions of the Buyer in relation to the Goods or their manner of fabrication.
- **Rights in relation to the Goods**
 - 11.1 In connection with the Goods while they remain the property of the Business, the Buyer agrees with the Business that:
 - 11.1(a) The Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Business owes to the Buyer;
 - 11.1(b) The Buyer cannot claim any lien over the Goods;
 - 11.1(c) The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Business;
 - 11.1(d) Where the Buyer is in actual or constructive possession of the Goods:
 - (i) The Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Business; and
 - (ii) It is in possession of the Goods as a bailee of those Goods and owes the Business the duties and liabilities of a bailee.
 - 11.2 In connection with the Goods, the Business states to the Buyer that:
 - 11.2(a) The Business has the right to supply the Goods to the Buyer; and
 - 11.2(b) If the Goods are not owned by the Business, that the Business is authorised to supply the Goods to the Buyer.
 - 11.3 The Business and the Buyer agree that:
 - 11.3(a) All risk of loss in respect of the Goods transfers to the Buyer upon completion of the Business's delivery obligations;
 - 11.3(b) The property of the Business in the Goods remains with the Business until the Business has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Business and the Buyer;
 - 11.3(c) The Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full;
 - 11.3(d) Pending payment in full for the Goods, the Buyer:
 - (i) Must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - (ii) Must not allow any person to have or acquire any security interest in the Goods;
 - (iii) Must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business and;
 - (iv) Must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
 - 11.4 Despite clause 11.3, if the Buyer supplies any of the Goods to any person before all monies payable by the Buyer have been paid to the Business (and have not been claimed or clawed-back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
 - 11.4(a) It holds the proceeds of re-supply of all the Goods on trust for and as agent for the Business immediately when they are receivable or are received;
 - 11.4(b) It must either pay the amount of the proceeds or re-supply to the Business immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Business;
 - 11.4(c) Any accessory or item which accedes to any of the Goods by an act of the Buyer or any person at the direction or request of the Buyer becomes and remains the property of the Business until the Business is paid in accordance with clause 11.4(a) when the property in the Goods (including the accessory) passes to the Buyer and;
 - 11.4(d) If the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Business to the Buyer, the Business may recover possession of all the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Business has an irrevocable licence to do so.
 - 11.4(e) Notwithstanding clauses 11.4(a) - 11.4(d), the Buyer acknowledges that the Business has a security interest in the Goods and in addition, in the proceeds of the Goods, that constitute both a 'security interest' in the original Goods and a 'purchase money security interest' in the proceeds of the Goods within the meaning of the Personal Property Securities Act 2009 (the Act)
 - 11.4(f) The Buyer warrants that in the event that it grants a 'non-purchase money security interest' in the account, within the meaning of the Act, to a Third Party as original collateral for new value, the Buyer will:
 - (i) On the direction of the Business, purchase new inventory from the Business with the proceeds of sale, within 7 days of any notice pursuant to the Act, delivered to the Business by the Third Party; or
 - (ii) On the direction of the Business, pay the Business all outstanding amounts in the account to satisfy the Customer's primary obligation to the Business; within 7 days of any notice pursuant to the Act, delivered to the Business by the Third Party; whichever of 11.4(f)(i) or 11.4(f)(ii) the Business so directs.
 - 11.4(g) The Buyer acknowledges and agrees that a failure to comply with a direction by the Business in accordance with the above will constitute a default and breach of the security agreement between the Business and the Buyer which will allow the Business to enforce the Buyer's obligations to the Business.
- **Withholding Supply**
 - 12 The Business reserves the right, irrespective of whether or not an order has been accepted and without notice to the Buyer, to withhold supply to the Buyer and the Business will not be liable for loss or damage resulting directly or indirectly from such action where:
 - 12(a) The Business has insufficient Goods to fill the order;
 - 12(b) The Goods ordered have been discontinued; or
 - 12(c) The Business has determined in the Business's absolute discretion that credit should no longer be extended to the Buyer.
- **Modifications of labels**
 - 13 The Buyer shall not, without the Business's written consent, alter, remove, or obliterate any labels, which the Business attaches to the Goods.
- **Performance and Representations**
 - 14 The Buyer acknowledges that neither the Business nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Goods for any particular purpose or any other matter.
- **Default in Payment**
 - 15 The Business will treat any default by the Buyer in payment of any monies due to the Business as a breach of these Terms and Conditions. The Business reserves the right thereupon to cease work on the relevant order and all other orders placed by the Buyer and hold all the Buyer's work until the due payment or payments on all monies owed are made. Recurring payments default may, at the Business's discretion, lead to the Buyer's account with the Business being closed and any further order placed by the Buyer and accepted by the Business will only be processed when prepaid at the Business's absolute discretion.
- **Waiver**
 - 16 Failure by the Business to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed as a waiver thereof or of any rights the Business may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty or condition.
- **Intellectual Property Rights**
 - 17 The Buyer warrants that any design or instruction furnished to the Business shall not be such as will cause the Business to infringe any intellectual property rights (including patents, registered designs, trademarks, copyright, confidential information and the like) in the execution of the Buyer's order and the Buyer agrees to indemnify the Business against any infringement or unauthorised use of the intellectual property rights arising out of the manufacture or use of the Goods and it is especially agreed that the sale and purchase of Goods does not confer on the Buyer any licence or rights under any intellectual property rights which is the property of the Business and its affiliates/suppliers. Buyer acknowledges and agrees that Business and/or its affiliates/suppliers are the sole and exclusive owners of all trademarks, trade dress and trade names used by the Business and its affiliates in connection with the Goods and any local language variants thereof (the "Trademarks"). Any use of the Trademarks by Buyer shall be made only with the Business's prior written approval and solely in connection with the advertising, promoting or selling of the Goods and any such use shall inure to the benefit of Business and/or its affiliates/suppliers. In no event shall Buyer or its affiliates file an application to register a trademark or a domain name or use any trademark, domain name, business name or trade style that incorporates or is confusingly similar to any of the Trademarks. If Buyer files any application of any kind that incorporates or is confusingly similar to any Trademark, it shall immediately transfer such application or any rights derived therefrom to Business or an affiliate/supplier as designated by Business. The business acts solely as the authorized reseller of Roger Para in Australia. Roger Para is a registered trademark and property of La Brosse Et Dupont
10 Allee des Cascades - BP67092
95973 Roissy CDG Cedex
France
- **Notices**
 - 19.1 Any notice to be given by the Buyer to the Business must be in writing and shall be sent to the Business's address, which is, until notified otherwise, as follows:
 - La Brosse De Luxe
30/53 Darrambal Street
Chevron Island QLD 4217
Australia
 - 19.2 No notice shall be deemed to have been given until it is actually received at such address.
- **Severance**
 - 20 It is agreed that if any provision of these Terms and Conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.
- **Governing Law**
 - 21 These Terms and Conditions shall be governed by and construed in accordance with the laws of Queensland. The Buyer and the Business agree to submit to the non-exclusive jurisdiction of Queensland and the Federal Court of Australia.
- **Entire Agreement**
 - 22 These Terms and Conditions contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements. In the event that there is any conflict between the provisions of these Terms and Conditions and the provisions of a Purchase Order or any record of any other agreement that the Business may have with the Buyer, then the provisions of these Terms and Conditions shall prevail. The only exception to the foregoing will be a signed Trading Terms agreement (if applicable) that will prevail in relation to specific clauses relating to Pricing, Minimum Order Values and Delivery Terms.
- **Clerical Errors**
 - 23 The Business reserves the right to correct clerical errors without notification.
- **Personal Properties Securities Act 2009**
 - 24.1 The Buyer hereby acknowledges that these Terms and Conditions constitute a security agreement which creates a security interest in favour of the Business in all Goods

- previously supplied by the Business to the Buyer (if any) and all after acquired Goods supplied by the Business to the Buyer (or for the Buyer's account) to secure the Buyer's payment obligations to the Business from time to time and at any time, including future advances. The Buyer agrees to grant a "Purchase Money Security Interest" to the Business.
- 24.2 The Buyer acknowledges and agrees that by assenting to these terms the Buyer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions) to the Business and all Goods previously supplied by the Business to the Buyer (or for the Buyer's account) and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's purchase order.
 - 24.3 The Buyer undertakes to:
 - 24.3(a) sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Business may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");
 - 24.3(b) not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Business;
 - 24.3(c) give the Business not less than 14 days' written notice of any proposed change in the Buyer's name and/or any other changes in the Buyer's details (including by not limited to changes in the Buyer's address, facsimile number, email address, trading name or business practice);
 - 24.3(d) pay all costs incurred by the Business in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements;
 - 24.3(e) be responsible for the full costs incurred by the Business (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA;
 - 24.3(f) give the Business free and immediate access to its premises or places within its control to enable the Business to enforce its Security Interests; and
 - 24.3(g) procure, immediately upon request by the Business from any persons considered by the Business to be relevant to its security position, such agreement and waivers as the Business may at any time require; and
 - 24.3(h) the Buyer waives any rights it may have under sections 115 of the PPSA upon enforcement.
 - 24.4 Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Business, the Buyer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
 - 24.5 The Buyer agrees that immediately on request by the Business the Buyer will procure from any persons considered by the Business to be relevant to its security position such agreement and waivers as the Business may at any time require.
- **Security Interest**
 - 25 The Buyer gives the Business a Security Interest in all of the Buyer's present and after-acquired property in which Goods or materials supplied or financed by the Business have been attached or incorporated.