

Supply Agreement

Details

Supplier

- name
- ABN
- address

[insert]

[insert]

[insert]

Contact

- name
- phone
- email

[insert]

[insert]

[insert]

Retailer

- name
- ABN
- address

[insert]

[insert]

[insert]

Contact

- name
- phone
- email

[insert]

[insert]

[insert]

Agreement Date

[Insert date Agreement is intended to commence]

Consigned Goods

Any Goods delivered by the Supplier to the Retailer on consignment (as indicated in a Delivery Schedule).

Default Interest

[insert]

Delivery Date

For any Goods, the date specified in the Delivery Schedule relating to those Goods.

Goods

Any goods, including the Consigned Goods, delivered by the Supplier to the Retailer under this agreement, as specified in a Delivery Schedule.

Price

Is the amount payable by the Retailer to the Supplier for each item of Goods as specified in the relevant Delivery Schedule.

Title to Goods

Remains with the Supplier until the Goods are paid for in full or returned in accordance with this Agreement (see clause 4).

Personal Property Securities Register

Important Supplier Information

The supply of Goods under this Agreement creates a registerable security interest under the Personal Properties Securities Act 2009 (*Cth*) (**PPSA**).

Before delivering the Goods to the Retailer, the Supplier must ensure that it has registered its security interest on the PPS Register as a purchase money security interest. The one registration will cover all future Goods delivered under a Delivery Schedule issued pursuant to this Supply Agreement.

IMPORTANT:

- This Agreement is made up of the Details, Defined Terms, General Terms and any schedules or annexures to those documents. All capitalised terms in this Agreement have the meaning set out next to the relevant term in the Details, Defined Terms or General Terms.
- The provisions of this Agreement apply to all Goods delivered to the Retailer by the Supplier whether at the Date of Agreement or any subsequent date and whether or not those Goods are delivered along with a Delivery Schedule.

- By signing this Agreement you acknowledge that you have carefully read and understood the Agreement and agree to be bound by its terms.
- By signing this Agreement you warrant you have full authority to sign on behalf of the Retailer.

SIGNED for and on behalf of *[insert full name and ABN of Supplier]* by:

.....

Signature

Name *[Insert name of authorised representative]*

Position.....

Date:

SIGNED for and on behalf of *[insert full name and ABN of Retailer]* by:

.....

Signature

Name *[Insert name of authorised representative]*

Position.....

Date:

#[JAA note: This is a sample document only, see the disclaimer on the back page (Disclaimer). This agreement is drafted in favour of the Supplier. Each commercial arrangement between a Supplier and a Retailer is different. Not every clause in this agreement will be relevant to all Supplier / Retailer relationships. Some clauses may be resisted by Retailers, in particular clause 15 (indemnity) and some aspects of clause 5 (PPSA). As pointed out in the Disclaimer you should seek legal or other professional advice to consider your individual circumstances when negotiating a Supply Agreement with a Retailer.]#

SAMPLE

FOK

Defined Terms

Agreement	means this agreement which consists of the Details, Defined Terms and General Terms and any schedule or annexure to those documents.
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Agreement Date	has the meaning given in the Details.
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Associates	means a party's officers, employees, agents, contractors and subcontractors.
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Business Day	means a day on which banks are open for retail banking business other than a Saturday or Sunday in the capital city of the State or Territory noted as the Governing Law.
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Consignment Goods	has the meaning given in the Details.
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Consignment Period	means the period specified in the relevant Delivery Schedule for Consigned Goods.
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Default Interest	means [insert agreed rate].
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Delivery Date	means the date upon which the Goods are delivered to the Retailer as specified in a Delivery Schedule.
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Delivery Schedule	<p>means an invoice, consignment note or any other similar document which, by way of example, specifies details of:</p> <ul style="list-style-type: none">(a) the Goods;(b) the Consignment Period in respect of Consigned Goods (if applicable);(c) the Price for the Goods;(d) the Delivery Date in respect of the Goods;(e) the Location of the Goods. <p>A sample Delivery Schedule is attached as Annexure A.</p>
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Goods	has the meaning given in the Details.
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GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
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Insolvent	means bankrupt or insolvent or otherwise unable to pay debts when due for payment, in receivership or receivership and management, under administration, in liquidation, under official management or any other form of administration, wound up, dissolved, subject to any arrangement, assignment or composition, or protected from creditors under statute and 'insolvency' has a corresponding meaning.
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Intellectual Property	means Trade Marks, domain names, get-up, patents, inventions, design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where those rights are obtained or enhanced by registration, any registration of those rights and applications and rights to apply for those registrations.
Location	means that specific section of the Retailer's premises where the Goods are held in storage by the Retailer on behalf of the Supplier.
Price	has the meaning given in the Details.
Related Body Corporate	has the meaning set out in the <i>Corporations Act 2001</i> (Cth).
Special Conditions	means those terms (if any) set out in the section headed "Special Conditions" in Annexure B.
Trade Marks	means a mark, letter, word, name, signature, numeral, device, brand, heading, label, ticket, logo, slogan, aspect of packaging, shape, colour, sound or scent and any other tradename, insignia, logo or proprietary mark of the Supplier or third party used in relation to the Goods.

SAMPLE ONLY - NO

Supply Agreement – General Terms

- 1 Scope**
- 1.1 These General Terms apply to all goods supplied by the Supplier to the Retailer on or after the Agreement Date.
- 1.2 Any order by the Retailer for the supply of Goods which includes terms not expressly included in these General Terms is of no effect and the order is deemed to be requested and will be supplied exclusively on the basis of these General Terms.
- 2 Supply of Goods**
- 2.1 Any Goods supplied to the Retailer by the Supplier must be accompanied by a Delivery Schedule completed in accordance with Annexure A in respect of the Goods.
- 2.2 The Retailer must sign and return a copy of the Delivery Schedule to the Supplier by hand, post, email or fax as proof of receipt of the Goods.
- 2.3 Upon delivery the Retailer must inspect the Goods for defects. The Retailer must return any Goods which are defective to the Supplier within 7 days of the Delivery Date.
- 2.4 Any Goods not returned within 7 days of the Delivery Date will be deemed to be in good and marketable condition and free from defects.
- 3 Price and Payment**
- Consigned Goods
- 3.1 On the first Business Day of each [month], the Retailer must provide the Supplier by fax or other electronic communication, a written notice identifying the Consigned Goods sold in the previous [month].
- 3.2 Following receipt of the notice from the Retailer in clause 3.1, the Supplier will provide a tax invoice to the Retailer in respect of the previous [month's] sales of Consigned Goods.
- 3.3 Consigned Goods are deemed to be sold by the Retailer on the date the Retailer delivers the Consigned Goods to the Retailer's customer, irrespective of when payment for the sale actually occurs.
- Payment Terms
- 3.4 The Retailer must pay the Supplier's tax invoice within [30] days of receipt of the tax invoice.
- 3.5 Where any, or part of any, tax invoice remains outstanding on or before its due date for payment, Default Interest will be payable on the outstanding amount. Default Interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. It will be computed on a daily basis for actual days elapsed and will be compounded on the last day of each month.
- 4 Title and Risk**
- 4.1 Title to the Goods does not pass to the Retailer until the Retailer has paid the Price in respect of those Goods in full to the Supplier. Until title to the Goods passes the Retailer will hold the Goods as the fiduciary agent and bailee of the Supplier.
- 4.2 The Retailer may resell but only as a fiduciary agent of the Supplier. Any right to bind the Supplier to any liability to any third party by contract or otherwise is expressly excluded.
- 4.3 The Retailer receives all proceeds whether tangible or intangible, direct or indirect of any dealing with the Goods in trust for the Supplier until the Price has been paid in full.
- 4.4 The Supplier is to have power to appropriate payments to such goods and accounts as it thinks fit notwithstanding any appropriation by the Retailer to the contrary.
- 4.5 If the Retailer uses the Goods in some manufacturing, assembly or construction process of its own or some third party, then the Retailer must hold such part of the proceeds of sale of any such manufactured, processed, assembled or commingled goods in trust for the Supplier. Such part shall be deemed to equal in dollar terms the amount owing by the Retailer to the Supplier at the time of the receipt of such proceeds.

4.6 Risk in the Goods is with the Retailer from the time the Goods leave the Supplier's premises on the Delivery Date.

5 Personal Property Securities Act 2009 ("PPSA")

5.1 In this clause:

- (a) 'Financing Statement' has the meaning given to it in the PPSA;
- (b) 'Financing Change Statement' has the meaning given to it in the PPSA;
- (c) 'PPS Register' means the Personal Properties Securities Register established under section 147 of the PPSA;
- (d) 'Security Agreement' has the meaning given to it in the PPSA; and
- (e) 'Security Interest' has the meaning given to it in the PPSA.

5.2 Upon execution of this Agreement by the Retailer, the Retailer acknowledges and agrees that this Agreement:

- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in:
 - (1) the Goods; and
 - (2) all proceeds received by the Retailer in relation to the sale of Goods supplied by the Supplier.

5.3 The Retailer undertakes to:

- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the Supplier may reasonably require to:
 - (1) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a

Security Interest over the Goods;

- (2) register any other document on the PPS Register which is necessary to perfect the Supplier's Security Interest over the Goods; or

- (3) correct a defect in any document referred to in clause 5.3(a)(1) and 5.3(a)(2);

- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;

- (c) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the prior written consent of the Supplier;

- (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;

- (e) keep full and complete records of the Goods; and

- (f) without limiting any other right the Supplier may have, immediately return the Goods if requested to do so by the Supplier following non-repayment of any amount owing by the Retailer to the Supplier or following the breach of any other obligation of the Retailer.

5.4 The Supplier and the Retailer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.

5.5 The Supplier is not required to give any notice or statement under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

5.6 The Retailer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

5.7 Unless otherwise agreed to in writing by the Supplier, the Retailer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.

6 Delivery

6.1 The Supplier will deliver the Goods to the address specified in the Delivery Schedule unless otherwise agreed between the parties.

6.2 All delivery times are approximate only and while the Supplier will use its best endeavours to deliver Goods on the delivery times specified in the Delivery Schedule, the Supplier is not liable for any loss, damage or delay whether consequential or direct arising from late delivery or non-delivery of Goods.

6.3 The Supplier may at its discretion deliver the Goods to the Retailer in any number of instalments. If any of the Goods delivered by instalment are defective for any reason, the defective instalment shall be a severable breach and shall not be deemed a repudiation of this Agreement.

6.4 The Retailer waives any claim for shortage of any Goods delivered if a claim in respect of shortage has not been lodged with the Supplier within [7] days from the date of receipt of Goods by the Retailer.

7 Storage and Identification

7.1 Upon receipt of the Goods the Retailer must keep the Goods at the Location.

7.2 While in the possession of the Retailer, unless agreed with the Supplier, the Retailer must take such steps as are necessary to ensure that the Goods are not commingled with any other goods.

7.3 The Retailer may remove the Goods from the Location for the purpose of displaying the Goods for sale in the Retailer's premises.

7.4 At all times, whether on display or stored in the Location, the Retailer must ensure that the Goods are readily identifiable from all other goods in the Retailer's premises.

8 Insurance

8.1 The Retailer must maintain all adequate and proper insurance coverage against loss, damage, theft or destruction of any Goods held by the Retailer at any time.

8.2 The Retailer must supply the Supplier on written request such evidence of currency of relevant insurance and premium payment receipts as may reasonably be requested by the Supplier.

8.3 The Retailer must notify the Supplier in writing of any matter that may give rise to a claim under any insurance policy in respect of the Goods within 2 Business Days of the event occurring.

8.4 Upon receipt of notification of a claim under clause 8.3 in respect of any Goods, any outstanding Price becomes immediately due and payable by the Retailer to the Supplier, regardless of whatever claim the Retailer may have against any other party.

9 Inspection

9.1 Whenever the Retailer is in possession of any Goods, the Supplier has the right, at its own expense, to inspect any Goods and all written records relating to the Goods stored at the Retailer's premises.

9.2 The Supplier must give the Retailer at least 2 Business Days advance written notice of its intention to inspect the Goods at the Retailer's premises.

9.3 During the inspection referred to in this clause 9 the Supplier must comply with all reasonable directions of the Retailer.

10 Intellectual Property

10.1 The parties acknowledge and agree that the Supplier owns or is the authorised user of all Intellectual Property in the Goods (if any) .

10.2 Nothing in this Agreement transfers any rights in the Intellectual Property to the Retailer.

10.3 Except where the Goods are by their nature intended to be modified, incorporated into or transformed into other products the Retailer is not permitted to use any Intellectual Property

in the Goods without the prior written consent of the Supplier.

10.4 Where the Goods or packaging for the Goods is marked with any Trade Mark or other information is on the Goods (**Branding Marks**), the Retailer must not, unless otherwise permitted in writing by the Supplier:

- (a) remove any Branding Marks from the Goods;
- (b) tamper with, alter or obscure any Branding Marks in any way; or
- (c) place any other marks on the Goods.

10.5 Except where the Supplier provides marketing materials to the Retailer, the Retailer, at its sole cost and expense, shall be responsible for its own advertising, promotional and sales literature in relation to the Goods.

10.6 The Retailer must submit to the Supplier a sample of the advertising, sales and promotional literature referred to in clause 10.5 and the Retailer shall not publish or distribute such advertising without the Supplier's written approval, which will not be unreasonably withheld or delayed. **#[JAA note: this clause may not be relevant for all suppliers]#**

10.7 The Retailer must notify the Supplier promptly and in writing if it becomes aware of any infringement of any Trade Marks or other Intellectual Property in the Goods and shall fully cooperate with the Supplier in any infringement action.

11 Return of Consigned Goods

11.1 The Retailer may return any Consigned Goods to the Supplier at any time prior to the end of the Consignment Period.

11.2 Any item of Consigned Goods not sold by the Retailer before the end of the Consignment Period must be returned to the Supplier within **[2]** Business Days after the end of the Consignment Period.

11.3 Any Consigned Goods returned under this clause must be returned in its original

condition, free of defects and at the cost of the Retailer.

11.4 Any Consigned Goods returned under this clause which is defective must be paid for in full at the Price by the Retailer.

12 Term and Termination

12.1 This Agreement commences on the Agreement Date and remains in force until terminated under this clause 12.

12.2 If the Retailer becomes Insolvent, this Agreement terminates automatically on the date of the Insolvency.

12.3 Either party may terminate this Agreement by giving the other party 30 days written notice of its intention to terminate and the Agreement will terminate on the 30th day after notice is given.

12.4 On the date of termination of this Agreement for any reason (**Termination Date**) all outstanding amounts owed by the Retailer to the Supplier must be immediately paid.

12.5 As soon as reasonably practicable after the Termination Date (but in any event no later than 7 days after the Termination Date) the Retailer must return all the Consigned Goods held by it to the Supplier in its original condition and at its own cost.

12.6 The Retailer authorises the Supplier to enter the Retailer's premises at any time after 7 days after the Termination Date (and to use such reasonable force as may be required to enter) and remove any Goods which has not been returned.

13 GST

13.1 In this clause 13, a word or expression defined in the GST Act has the meaning given to it in that Act.

13.2 Any prices quoted for goods supplied under this Agreement are quoted exclusive of GST unless expressly provided otherwise.

13.3 If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this

clause 13.2 (**GST Exclusive Consideration**) is increased by an amount equal to the GST Exclusive Consideration multiplied by the rate of GST prevailing at the time the supply is made.

13.4 A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

14 Exclusion of liability

14.1 Except as otherwise provided in this Agreement all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the supply of Goods are excluded to the fullest extent permitted by law.

14.2 Despite any other provision in this Agreement, the Supplier is not be liable for any consequential, indirect or special loss, or loss of profits or revenue, loss of business opportunity, loss of production or loss of goodwill, suffered by the Retailer whether arising from or in connection with the supply of the Goods or anything incidental to the supply of the Goods or any other breach of this Agreement.

15 Indemnities

Goods used at Retailer's risk

15.1 The Retailer agrees to use and possess the Goods at the Retailer's risk. The Retailer agrees that the Supplier will have no responsibility or liability for any loss or damage to any property of the Retailer. To the full extent permitted by law the Retailer releases and discharges the Supplier and its agents and employees from:

- (a) all claims and demands on the Supplier; and
- (b) any loss or damage whatsoever and whenever caused to the Retailer or its agents or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise,

- (c) arising directly or indirectly from or incidental to a breakdown of, or defect in, the Goods or any accident to or involving the Goods or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of the Supplier or otherwise) or which may otherwise be suffered or sustained in, upon or near the Goods.

Indemnity against other costs and liabilities

15.2 The Retailer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless the Supplier and its agents and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):

- (a) arising out of or alleged to arise out of the delivery, selection, purchase, acceptance or rejection, ownership, possession, use, repair, maintenance, storage, or operation of the Goods, and by whomsoever used or operated (except where used by the Supplier or any person on behalf of the Supplier);
- (b) incurred by the Supplier in respect of any loss of the Goods by seizure, distress, execution or other legal process, confiscation or forfeiture of the Goods;
- (c) incurred by the Supplier in respect of the use by the Retailer of its own advertising, promotional or sales literature in relation to the Goods; or
- (d) arising out of a breach of this agreement by the Retailer.

Survival of indemnities

15.3 The indemnities and assumptions of liability contained in this Agreement will continue in full force and effect notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

16 Variations

16.1 This Agreement can be varied in writing by a later document executed by all parties.

17 Special Conditions

17.1 In the event of any inconsistency between the Special Conditions and these General Terms then the provisions in the Special Conditions will prevail to the extent of any inconsistency.

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ANNEXURE A

SAMPLE DELIVERY SCHEDULE

[Note – a separate Delivery Schedule should be prepared for each separate supply of goods.]

Important Supplier Information

The supply of Goods under this Agreement creates a registerable security interest under the Personal Properties Securities Act 2009 (*Cth*) (**PPSA**).

Before delivering the Goods to the Retailer, the Supplier must ensure that it has registered its security interest on the PPS Register as a purchase money security interest. The one registration will cover all future Goods delivered under a Delivery Schedule issued pursuant to this Supply Agreement.

The following goods are delivered pursuant to the Supply Agreement between [insert name] (**Supplier**) and [insert name] (**Retailer**).

1. Goods

Description of Goods (include item numbers if available)	Unit Price	Delivery Date

2. Location

[Insert description of location at which Goods is to be kept.]

3. Consignment Period

[Insert date at which Consigned Goods must be returned to supplier if not sold]

4. Acknowledgement of receipt

The Retailer acknowledges receipt of the stock listed above.

.....
Authorised Signatory for Retailer

.....
Date

ANNEXURE B

SPECIAL CONDITIONS

#[JAA note: If the parties agree to add to or vary the General Terms of this Agreement then those additions/amendments should be inserted here. These Special Conditions will take precedence over the General Terms by virtue of clause 17]#

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