

PART A

These terms shall apply unless other terms are expressly agreed in writing by a duly authorised officer of the Supplier.

Terms and Conditions of Trade

1. APPLICATION

(a) The terms in this document ("Conditions") apply to all orders for products ("Products") distributed by Coty Australia Pty Limited ABN 83 000 303 391 ("the Supplier") placed by a retail reseller ("the Customer") and the sale of all Products by the Supplier to the Customer.

(b) If the terms of the Customer's order are inconsistent with these Conditions the Customer's terms shall not apply (and the Supplier's acceptance of the order shall not imply acceptance of the Customer's terms).

(c) To ensure the integrity of the Products, the Customer will ensure it only sources the Supplier's products from the Supplier.

(d) The Customer acknowledges that these Conditions may change from time to time and it must determine the current Conditions in force at the time of placement of an order.

2. TERRITORY

The Customer shall be entitled to promote and sell the Products in the Territory. The Customer shall not sell the Products outside the Territory. "Territory" means **Australia only** and excluding Duty Free and Travel Retail Channels.

Duty Free and Travel Retail Channels means any channel of trade in which Products are sold:

(a) at retail outlets located at an airport, a seaport, a transborder terminal or in a ferry, in each case where:

(i) the retail outlet is located in a departure or arrival area with restricted access;

(ii) access to the retail outlet is limited to travellers that present a valid boarding pass; and

(iii) the traveller must provide a copy of his or her boarding pass to the retail outlet to authorise the sale of the Product; or

(b) otherwise in any manner that implies that the sale is free of any national tariffs, duties or taxes (including arrival shops, border shops and tax free zones).

3. ACCEPTANCE OF ORDERS

The Supplier reserves the right to accept in whole or part any order, or decline any order, and any order or part order which is not accepted is deemed to be cancelled. Unless the Supplier notifies acceptance of the whole or any part of an order earlier, an order shall be deemed accepted when Products ordered by the Customer are dispatched by the Supplier to the Customer.

4. CANCELLATION OF ORDERS BY THE CUSTOMER

Once lodged with the Supplier an order may not be cancelled or delivery in respect thereof delayed by the Customer without the Supplier's prior written agreement,

which the Supplier may grant or withhold in its discretion.

5. TERMS OF PAYMENT

(a) The Customer must pay all amounts owing to the Supplier in full, without set-off, deduction or counterclaim, within thirty (30) days from the last day of the month in which the Supplier invoices the Products, unless otherwise agreed with the Supplier.

(b) Payments may be made by:

(i) Electronic funds transfer to the Supplier's nominated bank account (as notified to the Customer);

(ii) Direct debit from the Customer's nominated bank account (after having obtained the Customer's authority);

(iii) credit card;

(iv) cheque; or

(v) Any other method notified to the Customer.

(c) The Supplier will charge the Customer, and the Customer agrees to pay any applicable bank charges, credit card merchant fees or other applicable fees and charges relating to the payment of invoices as set out in the Supplier's Price list from time to time.

(d) Until surcharges are varied in the Supplier's Price List, from 1 Dec 2018

(i) payments via Visa or MasterCard will incur a 1% surcharge; and

(ii) payments via American Express will incur a 3% surcharge.

Surcharges may be varied from time to time and any variation will appear in the Supplier's Price List and will take effect for all orders subsequently placed. In order to avoid surcharges, Customers may provide an authority to pay invoices within seven days via credit card, or provide a direct debit authority by bank account. Any fee or surcharge incurred in paying an invoice will also be a taxable supply where the products or services on the invoice are subject to GST.

(e) The Customer must pay the invoice by the due date specified on the invoice. If any invoice is not paid in full by the due date, then, without limiting any other rights or remedies available to the Supplier:

(i) the Supplier may charge the Customer interest on the outstanding amount at the prevailing pre-judgment statutory interest rate and/or late payment fees. The Customer's liability to the Supplier will not be remedied until all outstanding amounts, together with any interest and/or late payment fees, have been paid in full);

(ii) the Customer will be liable for any and all costs, expenses and disbursements incurred by the Supplier in recovering, or attempting to recover, any outstanding amounts from the Customer, including debt collection fees and/or legal fees; and

(iii) The Supplier may cancel or suspend any further deliveries to the Customer or require cash payments in advance from the

Signature of Customer _____

Customer before making any further deliveries.

6. DELAYS

Any date for delivery given by the Supplier to the Customer is an estimated date of delivery only and the Supplier shall have no liability for any loss or damage howsoever arising if the Products are not delivered by that date. The Supplier shall have the right to vary the notified delivery date at any time.

7. DELIVERY & RISK

(a) The Supplier will use its reasonable endeavours to deliver the Products at the dates and times notified to the Customer. However, any delays will not confer on the Customer any rights to cancel the delivery, reject the Products or claim any damages, costs or other compensation from, or take any other action against, the Supplier.

(b) The Customer agrees that all risk in the Products passes to the Customer on and from the time of placement of the Products on the carrier's truck at the Supplier's warehouse.

(c) All risk of damage to Products in transit rests with the Customer. The Customer has responsibility to arrange appropriate transit insurance.

(d) Title in the Products supplied to the Customer by the Supplier will not pass to the Customer until such time as the Supplier has received payment in full for all Products supplied by the Supplier at any time.

(e) Until such time as the Supplier has received payment in full for all Products supplied by Supplier:

(i) The Customer shall store the Products in such a manner as to show clearly that the Products are the property of the Supplier;

(ii) Until the Supplier terminates the sale contract relating to the Products the Customer is at liberty to sell the Products in the ordinary course of its ordinary business, as agent for the Supplier;

(iii) The Customer shall hold the proceeds of sale of Products on trust for the Supplier in a separate account and the Customer shall account to the Supplier for the proceeds;

(iv) The Customer must keep the Products fully insured and the Supplier shall be solely entitled to receive the proceeds of insurance; and

(v) The Supplier may at any time terminate any sale contract relating to the Products without notice to the Customer and may thereupon take possession of the Products and the Customer authorises the Supplier, by its employees, contractors or agents to enter any premises owned, leased or otherwise occupied by the Customer for the purpose of taking possession of the Products.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 The Customer acknowledges and agrees that:

- a) The Supplier and its affiliates is either the owner or licensee of all intellectual property rights in the brands and the Products (the "Licensed IP"); and

- b) it shall not acquire, nor claim, any right, title or interest in or to any of the Licensed IP or the goodwill attaching to it, other than the rights specifically granted under this paragraph 8.

8.2 The Supplier grants to the Customer, until the termination of these Conditions, a non-exclusive, non sub-licensable licence to: (a) sell Products incorporating the Licensed IP; (b) develop and use advertising materials incorporating the Licensed IP.

8.3 The Customer shall:

- a) use the Licensed IP only in a manner that conforms to the reasonable directions and standards notified to the Customer by the Supplier from time to time;
- b) not use, register or attempt to register any trade marks, company, business or trading names, domain names or user accounts, profiles, pages or other presences on social media, that are identical or similar to (or that incorporate) any of the Licensed IP, or any aspect of them;
- c) not use the Licensed IP as part of a name under which the Customer conducts its business, or any connected business;
- d) not do anything that could, in the Supplier's reasonable opinion, bring the Licensed IP, the Supplier or the owners of Licensed IP brands into disrepute or that could otherwise damage the goodwill attaching to the Licensed IP; and
- e) not use the Licensed IP in a manner that could, in the Supplier's reasonable opinion, result in any of them becoming generic or in the Supplier's rights in them becoming diluted, or that could otherwise prejudice or invalidate a registration or application for registration of any of the Licensed IP.

8.4 As soon as reasonably practicable and in any event within thirty (30) days of receipt of notice from the Supplier of a variation of, or modification to, any of the Licensed IP, the Customer shall cease to use any previous or outdated versions of the relevant Licensed IP.

8.5 The Supplier makes no representation or warranty as to the validity or enforceability of the Licensed IP nor as to whether its use may infringe the rights of any third parties.

8.6 The Customer acknowledges and agrees that if the Supplier ceases, for whatever reason, to have the right to grant to the Customer the right to use any of the Licensed IP, then that grant and the Customer's rights to use that Licensed IP shall cease upon receipt of notice from the Supplier. The Customer acknowledges and agrees that it shall not be entitled to any compensation, either from the Supplier or from the owner of the affected Licensed IP, if that grant or its right to use Licensed IP ceases under this paragraph 8.

8.7 The Customer shall immediately notify the Supplier in writing (giving full particulars) if it becomes aware of: (i) any actual, potential or threatened infringement of the Licensed IP; (ii) any allegation or complaint made

Signature of Customer _____

by any third party that any of the Licensed IP is invalid, that use of the Licensed IP infringes any third party rights, or that use of the Licensed IP may cause deception or confusion to the public; or (iii) any other form of attack or claim to which any of the Licensed IP may be subject. The Customer shall not make any admissions in respect of these matters other than to the Supplier and shall, in each case, provide the Supplier with all relevant information in their possession.

- 8.8 The Supplier (or the owner of the relevant Licensed IP) shall decide in its absolute discretion whether or not to take action, and what action to take, in respect of any of the matters in (g) and shall have exclusive control over any resulting claims, actions and proceedings.
- 8.9 The Customer shall provide any assistance that the Supplier (or the owner of the relevant Licensed IP) requires (including bringing proceedings or lending its name to any proceedings brought by the Supplier (or the owner of the relevant Licensed IP)) in connection with any of the matters in (g). Any award of costs or damages or other compensation payment recovered in connection with any of those matters shall be for the account of the Supplier (or the owner of the relevant Licensed IP).

9. APPLICATION OF THE PPSA

- (a) In this paragraph 7, PPSA means the *Personal Property Securities Act 2009 (Cth)*. If a term used in this paragraph has a particular meaning in the PPSA, it has the same meaning in this paragraph.
- (b) The Customer grants to the Supplier a security interest under the PPSA in any Products supplied under these Conditions.
- (c) The Customer acknowledges and agrees that the Supplier may apply to register a security interest in the Products at any time before or after delivery of the Products. The Customer waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- (d) the Supplier can apply amounts it receives from the Customer towards amounts owing to it in such order as the Supplier chooses.
- (e) If the Customer defaults in the performance of any obligation owed to the Supplier under these Conditions or any other agreement with the Supplier to supply the Products to the Customer, the Supplier may enforce its security interest in any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, both parties agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Products: sections 95, 118, 121(4), 125, 130, 132 (3d), 132(4), 135, 142 and 143.
- (f) Both parties agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- (g) The Customer must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Products.
- (h) Nothing in this paragraph is limited by any other provision of these Conditions or any other

agreement between the parties.

10. NON DELIVERY

All Products in an invoice shall be deemed to have been delivered to the Customer unless written notification of non-delivery is received by the Supplier within two (2) days after dispatch to the Customer of the Supplier's first statement noting the invoice including the non-delivered Products. The onus of proof of non-delivery shall rest with the Customer. To the extent permitted by law, the Supplier's liability for Products proved by the Customer not to have been delivered shall be limited to replacement of the Products within a reasonable time. An acceptance or acknowledgment of receipt of Products signed by the Customer or a person who is ostensibly an officer, agent, employee or representative of the Customer shall be conclusive proof of delivery of the Products to the Customer.

11. RETURNING OF PRODUCTS

- (a) No Products shall be returned by the Customer without the prior written consent of the Supplier and the issuing of a Return Advise Number ("RAN") (which the Supplier may grant or withhold in its discretion). Where Products are returned without such consent, they may be returned to the Customer by the Supplier at the Customer's expense and the Customer shall pay the Supplier's non authorised return handling fee equal to 40% of the invoice value of Products returned without its consent. Requests to return Products must be notified in writing to the Supplier within two (2) days of delivery of the Products to the Customer. Any consent given by the Supplier for the return of Products is conditional on their return to the Supplier's warehouse in Sydney within one (1) month of date of dispatch of the Products to the Customer. The Supplier has the right to charge a handling fee equal to 20% of the invoice value of Products returned with its consent.

(b) Where the Supplier has consented to the return of Products in accordance with paragraph 9(a):

- (i) all returns must be made via the authorised the Supplier carrier who made the initial delivery; and
- (ii) all returned Products must be accompanied by an itemised credit claim signed by an officer of the Customer stating the reason for the return of Products and annexing a copy of the Supplier's written consent for the return.

12. PRICE

The price for all Products delivered by the Supplier to the Customer shall be disclosed in the Supplier's price list in force at the date of delivery. The Customer shall not be entitled to make any claim for compensation in the event that such prices change between the date of placement of the order and the date of delivery of the Products. All prices indicated on the Supplier's price lists are stated exclusive of GST. The Supplier will charge GST to the Customer at the rate prescribed at the time of invoicing.

Signature of Customer _____

13. MINIMUM ORDER VALUE

(a) the Supplier will pay the freight on the delivery to the Customer of each order with a value exceeding the minimum order value disclosed in the Supplier price list.

(b) The Customer must pay all freight on delivery of any order which does not exceed the minimum order value as well as the Supplier's packing fee.

The minimum order value and the Supplier's packing fee shall be set out in the Supplier's price list as the Supplier adopts from time to time.

14. LIMITATION OF LIABILITY

The following paragraph applies subject to paragraph 8 and to the extent permitted by law.

(a) the Supplier makes no warranty as to the quality, condition, suitability for purpose or compliance with sample or any other warranty whatsoever in relation to the Products and all excludable statutory warranties are hereby expressly excluded. The parties agree that the Supplier's liability for breach of any non-excludable statutory warranty shall be limited to the lower of:

- a) the cost of replacing the Products;
- b) the cost of obtaining equivalent Products; or
- c) the cost of having the Products repaired.

(b) the Supplier, its officers, employees, contractors and agents will not be liable to the Customer or to the Customer's officers, employees, contractors and agents for any direct, indirect, incidental or consequential damage or loss of any nature however caused (whether based on tort, contract or otherwise) including loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expenses and damage to equipment or property or any other claim however arising directly or indirectly or in any way attributable to the performance or non-performance of the Supplier's obligations under these Conditions.

15. DEFAULT

In the event that the Customer defaults in the observance of any of these Conditions, the Customer shall pay to the Supplier in addition to any other amounts to which the Supplier is or shall become entitled, all costs incurred by the Supplier in enforcing these Conditions and/or in recovering monies owed by the Customer to the Supplier including filing fees and search fees and any other administrative charges including but not limited to disbursements any fees payable to any mercantile agent engaged by the Supplier in conjunction with or ancillary to recovery of monies owing by the Customer to the Supplier.

16. GST

If any supply made by the Supplier to the Customer is subject to GST, the Customer must pay to the Supplier the amount payable for that supply plus an amount equal to the GST payable. The Supplier will give the Customer a GST tax invoice. If any supply made by the Customer to the Supplier is subject to GST then the Supplier must pay to the Customer an amount equal to the GST payable in addition to the amount payable for the supply but only after the Customer has given the Supplier a GST tax invoice which complies with the relevant law.

17. SET OFF

The Supplier shall be entitled to set off against any monies it may owe the Customer at any time monies which are owed to the Supplier by the Customer.

18. TERMINATION

18.1 Without limiting the Supplier's rights under paragraph 2 and paragraph 4, the Supplier or the Customer may terminate these Conditions and any other agreement or arrangement between the Supplier and the Customer for supply of the Supplier Products by not less than 30 days written notice served on the other party. The Customer shall not be entitled to claim any loss or damages arising from or compensation pursuant to such termination. Termination by the Customer does not negate or limit the Customer's obligation to pay for the Products delivered or Orders processed by the Supplier.

18.2 Either party may terminate these Conditions with immediate effect by notice to the other party if:

- a) the other party fails to pay any sum payable under these Conditions within thirty (30) days after it has become due;
- b) the other party commits a material breach of any obligation under these Conditions, including a breach of any representation or warranty, and, if the breach is capable of remedy, fails to remedy it within thirty (30) days after receiving written notice to do so;
- c) the other party becomes the subject of insolvency proceedings; or
- d) the other party ceases, or threatens to cease, to carry on the whole or any material part of its business.

18.3 The Supplier may terminate these Conditions with respect to all Products relating to a brand if the Supplier's right to distribute that brand in the Territory is subject to an underlying licence, and that underlying licence expires or is terminated.

18.4 The Supplier may terminate these Conditions with immediate effect by notice to the Customer if the Customer:

- a) purchases the Products from sources other than the Supplier;
- b) commits repeated breaches of the Conditions that, when taken together, constitute a material breach; or
- c) in the Supplier's reasonable opinion, brings the Supplier, the Products and/or the brands into disrepute and/or is responsible for causing harm or damage to the image or reputation of the Supplier, the Products or the brands.

18.5 The Supplier may terminate these Conditions with immediate effect by notice to the Customer if the Supplier is prevented from supplying the Products to the Customer due to applicable laws.

19. CONSEQUENCES OF TERMINATION

Signature of Customer _____

- 19.1 If any party gives the other parties notice to terminate these Conditions, the Supplier shall not be required to fulfil any orders made by the Customer: (a) before the date of the notice of termination that the Supplier has not at that time fulfilled; or (b) after the date of the notice of termination.
- 19.2 Once a party has served notice to terminate these Conditions, the parties may continue to enter into Orders for the Products until termination of these Conditions. The Supplier may require payment in advance of delivery in respect of any orders due for delivery after a notice to terminate these Conditions has been served.

20. BUY-BACK OF REMAINING STOCK

- 20.1 Within fifteen (15) days after the termination of these Conditions, the Customer shall provide the Supplier with a written inventory of its remaining stock of the Products (the "Remaining Stock"), on a per Product basis. The Supplier shall notify the Customer of any Remaining Stock that it wishes to purchase (the "Repurchased Stock") within ten (10) days of receiving the inventory of the Remaining Stock. Subject to all Products still being in their original packaging and in a saleable condition, the prices for the Repurchased Stock shall be:
- a) in respect of any Repurchased Stock that is no more than one (1) year old, the price paid by the Customer to the Supplier for that Repurchased Stock under these Conditions, plus the cost of freight to the Supplier and customs (if any) (the "Landed Cost"); and
 - b) in respect of any Repurchased Stock that is more than one (1) year old, seventy five percent (75%) of the Landed Cost.
- 20.2 The Customer shall deliver any Repurchased Stock within seven (7) days of receiving the Supplier's notice under paragraph 20.1. The Supplier shall pay for any Repurchased Stock in full within thirty (30) days of its delivery. The Supplier shall be responsible for the costs of packaging, insurance and carriage of the Repurchased Stock.
- 20.3 The Supplier shall notify the Customer whether it will permit the Customer to sell off, on a non-exclusive basis, any Remaining Stock not purchased by the Supplier under this paragraph 20 and, if so, the duration of the period during which it may sell off that Remaining Stock (the "Sell-Off Period").
- 20.4 If the Supplier permits the Customer to have a Sell-Off Period:
- a) the Customer shall not carry out new advertising and promotion activities;
 - b) the Customer shall sell the Remaining Stock on the terms of these Conditions; and
 - i) at the end of the Sell-Off Period, the Customer must at the Supplier's election, promptly return (to the Supplier) or destroy all Remaining Stock in the Customer's possession at its own cost and in accordance with the Supplier's destruction policy and/or instructions, as notified to the Customer from time to time; and
 - ii) provide the Supplier with a written report

on the Products sold during the Sell-Off Period, which shall contain the information set out in the Report Pro Forma.

- 20.5 If the Supplier does not permit the Customer to have a Sell-Off Period, the Customer shall, unless otherwise agreed between the parties, promptly destroy all Remaining Stock in the Customer's possession at its own cost and in accordance with the Supplier's destruction policy and/or instructions, as notified to the Customer from time to time.

21. LIMITATION ON CUSTOMER WARRANTIES

The Customer shall not make any warranty or representation in relation to the standard, quality, value, grade, composition, characteristics, uses or benefits of any Product, except as may be expressly stated on the Product packaging or the Supplier's promotional material for the Products, and except as required by law. The Customer indemnifies the Supplier against all claims, suits, actions, losses and damages which may be made against or suffered by the Supplier or the manufacturer of the Products as a result of breach by the Customer of this paragraph.

22. RECOMMENDED RETAIL PRICES

The Customer acknowledges that any retail prices quoted or indicated by the Supplier shall, notwithstanding the terms or circumstances in which such prices are quoted or indicated, be recommended retail prices only and the Customer shall be at liberty to sell or offer the Products for sale at another price.

23. RESALE

If the Customer sells or supplies Products to any wholesaler or other reseller (that is, not a retail consumer), the Customer must ensure that such sale or supply is effected in accordance with paragraphs 17, 21 and 22 of the Conditions.

24. NO AGENCY

The Customer shall under no circumstances be entitled to act or represent that it has authority to act as agent or representative for the Supplier.

25. PRODUCT LIABILITY

Subject to the Customer complying with its legal obligations, in the event of the Customer becoming aware of any claim or complaint that a Product is defective the Customer must not accept, agree to settle, or make any admission in respect of such claim and the Customer must immediately notify the Supplier of full details of the claim or complaint. The Supplier may, in its sole discretion, assume the conduct of a defence or take any other action in respect of such a claim.

26. E-COMMERCE

The Customer shall not without the Supplier's written consent (which the Supplier may withhold or grant conditionally or unconditionally in its discretion):

- (a) Sell or offer for sale or permit the sale or offering for sale of any Product by any means other than over the counter at a physical retail store; or

Signature of Customer _____

(b) Permit any reference to the Supplier or Products to appear in any way on any website.

The Customer must strictly comply with the terms of any consent given by the Supplier.

27. INDEMNITY

The Customer will indemnify the Supplier, its related and associated entities and its and their officers, employees, contractors and agents ("Indemnified Parties"), from and against any loss, costs (including legal fees and costs on a full indemnity basis), expense, damages or liability which an Indemnified Party suffers or incurs arising out of any breach or non-performance of any provisions of these Conditions, and any breach or non-performance of the Customer's obligations under these Conditions.

28. FORCE MAJEURE

The Supplier will not be liable for any failure to perform or delay in the performance of its obligations under the Terms where such failure or delay is due to any event beyond the Supplier's reasonable control, including natural disasters, adverse weather or terrain, strikes, lockouts and other industrial action, material shortages, failure of any of our suppliers to supply, accidents, power failure, breakdowns of plant or machinery or import or export regulations or embargoes or any epidemic, pandemic, quarantine or government imposed shutdown or closure ("Force Majeure").

The Supplier may terminate, without any liability or compensation to any person including the Customer, the performance of its obligations in respect of the particular order of Goods to which the Force Majeure relates

immediately by giving notice to the Customer, if the delay arising directly from the Force Majeure which precludes the Supplier from complying with its obligations under the Terms continues for more than five (5) consecutive Business Days.

29. PRIVACY AND CREDIT REPORTING

(a) The Customer agrees that the Supplier may collect, use and disclose personal and credit information in accordance with the Supplier's:

(i) Credit Reporting Policy as amended from time to time and available at <https://supplier.coty.com/terms-conditions>; and

(ii) Privacy Policy as amended from time to time and available at <https://www.coty.com/privacy-policy>

(b) The Customer acknowledges and consents to the terms of collection, use and disclosure of information contained in the Supplier's documents referred to in 26(a)(i) and 25(a)(ii).

30. CONFIDENTIALITY

The Customer acknowledges that these Terms are confidential and agrees not to disclose these Terms, as well as any other proprietary information, documents or materials relating to the Supplier, its property, products, services or activities, to any third party.

31. ASSIGNMENT

The Customer must not assign or purport to assign any

of its rights under the Terms, without the prior written consent of the Supplier. For the avoidance of doubt, the Supplier may assign its rights under the Terms without the prior written consent of the Customer.

32. GENERAL

(a) These Conditions and any contract or order incorporating these Conditions are governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of Courts of that State.

(b) These Conditions and any contract or order incorporating these Conditions are personal to the Customer and cannot be assigned.

(c) If any part of these Conditions is unenforceable, invalid or void, then that part of these Conditions is severed and the rights and obligations of the remaining parts of these Conditions continue to apply.

(d) Any failure or delay by the Supplier to insist on strict performance by the Customer of any part of these Conditions will not be taken to be a waiver of that part or of any rights of the Supplier under these Conditions.

Signature of Customer _____