

Healthy Habits Trading Terms



Parties

Healthy Habits Franchising Pty Ltd ATF Healthy Habits Franchising Trust ABN 89 667 580 210 of Level 6, 428 George Street, Sydney NSW 2000 (**Healthy Habits**) Any person, corporation, partnership or other legal entity that provides a good and/or service to Healthy Habits (**Supplier**) in accordance with the provisions of these Trading Terms.

1 Purchase Orders

- 1.1 Healthy Habits may at any time, by notice in writing, place an order (**Order Request**) for products or services to be provided or supplied by the Supplier (**Job**).
- 1.2 An Order Request is accepted by the Supplier only when the Supplier:
 - (1) gives written notice of acceptance to Healthy Habits; or
 - (2) commences fulfilment of the order set out in the Order Request.
- 1.3 A "**Purchase Order**" consisting of the Order Request and any variations to that document agreed by the Supplier and Healthy Habits is deemed to come into existence upon acceptance of the Order Request in accordance with clause 1.2.
- 1.4 Any order for a Job set out in an Order Request only becomes binding on the Supplier when a Purchase Order comes into existence.
- 1.5 Healthy Habits may cancel and Order Request at any time prior to a Purchase Order coming into existence.

2 Application of Agreement

- 2.1 This Agreement applies to any order placed by Healthy Habits for a Job.
- 2.2 The terms on which the Supplier provides the Job are the terms of this Agreement and the terms of any Purchase Order. In the event of any inconsistency between the terms of this Agreement and any Purchase Order, the terms of the Purchase Order prevail, but only to the extent of the inconsistency.
- 2.3 Despite clause 2.2, if the Supplier submits its own terms and conditions with a Purchase Order, those terms and conditions have no application and the terms of this Agreement apply.

3 Performance of the Job

The Supplier must fulfil the Job in accordance with the terms of this Agreement and any applicable Purchase Order.

4 Payment of the Price

- 4.1 The price payable by Healthy Habits for the Job is the amount set out in the Purchase Order (**Price**).
- 4.2 Unless stated otherwise in the Purchase Order:
 - (1) all amounts are payable in Australian dollars 30 days from the date of invoice; and
 - (2) the Price is inclusive of all taxes, duties, imposts, fees, levies or other charges imposed by any governmental, semi-governmental or regulatory authority.

5 Delivery

- 5.1 It is a condition of this Agreement that any delivery time specified in the Purchase Order is complied with. Time is of the essence in respect of any delivery time.
- 5.2 The Supplier will deliver the Products to or perform the Job at the location nominated by Healthy Habits in a Purchase Order (**Delivery Location**). The Price is inclusive of all costs of travel, freight and insurance in respect of providing products (**Products**) to or performing the Job at the Delivery Location.
- 5.3 Risk in the Products passes to Healthy Habits at the later of the delivery of the Products to the Delivery Location and completion of the Job.
- 5.4 Healthy Habits must notify the Supplier of defect in the Job (which may include short supply, defects in works or damage to property) within 90 days of completion of the Job. If Healthy Habits does not notify the Supplier of any defect within the 90 day period then the Job is deemed to have been performed in accordance with the terms of this Agreement and Purchase Order.

6 Title to the Products

- 6.1 Title to the Products only passes to Healthy Habits when the Price is paid in full.
- 6.2 Healthy Habits has the right to sell the Products by way of bona fide sale in the ordinary course of its business despite not having title to the Products.
- 6.3 Until title to the Products passes to Healthy Habits:
 - (1) Healthy Habits must keep the Products free from any security interest (as defined in the *Personal Property Securities Act 2009 (Cth)*); and
 - (2) Healthy Habits holds the Products as bailee only; and
 - (3) if the Products are subsequently sold, disposed of or assigned Healthy Habits holds the proceeds received from such sale, disposition or assignment on trust for the Supplier. Healthy Habits agrees that it will account and distribute to the Supplier the funds received by it on trust for the Supplier.

7 Quality Assurance

- 7.1 The Supplier covenants that:
 - (1) the Job will be performed:
 - (a) with due care and skill, in a competent, proper and effective manner and in accordance with industry best practice; and
 - (b) to a standard that would be expected from a supplier supplying products or services the same or similar to the Job; and
 - (c) in accordance with all legal requirements and in accordance with all relevant industry codes (whether voluntary or otherwise) applicable in the Commonwealth of Australia and its states and territories; and

(2) any Products provided will be:

- (a) safe and fit for their purpose; and
- (b) manufactured in accordance with all legal requirements of the Commonwealth of Australia and its states and territories.

8 Insurance

- 8.1 During the term of this document the Supplier must have in effect, and keep in effect, such policies of insurance as are reasonably required by Healthy Habits including (without limitation):
 - (1) workers compensation insurance as required by the laws of any jurisdiction in which the Supplier conducts its business; and
 - (2) product liability insurance; and
 - (3) product recall insurance; and
 - (4) malicious tampering, extortion and accidental contamination insurance.
- 8.2 Any insurance effected by the Supplier must be effected with a reputable insurer licensed to do business in Australia and approved by Healthy Habits (acting reasonably). The insurance must note Healthy Habits as an interested party.
- 8.3 The Supplier must, within 5 business days of request from Healthy Habits, provide evidences of all insurances which it is required to effect in accordance with the terms of this Agreement.

9 Confidentiality

- 9.1 The Terms of this Agreement and any Purchase Order are confidential and must not be disclosed by the Supplier without the prior consent of Healthy Habits.
- 9.2 The Supplier may disclose the terms of this Agreement and any Purchase Order:
 - (1) to its employees and advisers who have a need to know and who are subject to a duty of confidentiality; or
 - (2) where required by law.

10 Intellectual Property Rights

- 10.1 The Supplier acknowledges that all intellectual property rights in the Job and any Products specifically created at the request of Healthy Habits or to fulfil the Job will vest in Healthy Habits. All other intellectual property rights used by the Supplier in the performance of the Job will remain vested in the Supplier.
- 10.2 The Supplier warrants that it owns or otherwise has the right to use or licence any intellectual property rights that are utilised in the performance of the Job or otherwise incorporated in the Products. The Supplier indemnifies Healthy Habits from and against any Claims arising in respect of a breach of the warranty contained in this clause. In this Agreement the term '**Claims**' means any claim, action, demand, proceeding, judgment, damage, loss, cost, expense or liability howsoever incurred or suffered by or brought or made or recovered against that person and howsoever arising (whether or not presently ascertained, immediate, future or contingent).

11 Default

- 11.1 The following events constitute a breach of this Agreement by the Supplier:
 - (1) the Supplier fails to comply with the terms of this Agreement; or
 - (2) the Supplier dies, is dissolved or becomes subject to external administration (as defined in the *Corporations Act 2001 (Cth)*).
- 11.2 Where a breach of this Agreement occurs (as defined in clause 11.1) Healthy Habits may, at its absolute discretion and without limitation to any other rights that it might enjoy at law, do any one or more of the following:
 - (1) terminate this Agreement and any Purchase Order; and
 - (2) recover from the Supplier any other costs and expenses incurred as a consequence of the Supplier's breach (including legal costs on a full indemnity basis).
- 11.3 The Supplier indemnifies Healthy Habits from and against all Claims arising from a breach of this Agreement by the Supplier.

12 Miscellaneous

- 12.1 This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the Courts of New South Wales.
- 12.2 The rights contained in this Agreement are personal to the Supplier and may not be assigned or transferred without the prior written consent of Healthy Habits.
- 12.3 The non-exercise or delay in performance of a right under this Agreement does not constitute a waiver. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- 12.4 This Agreement and any Purchase Order are the entire agreement of the parties in respect of each Job. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement and any relevant Purchase Order.
- 12.5 This Agreement may only be amended or varied by agreement in writing signed by both parties.
- 12.6 Any notice required or permitted to be given under this Agreement must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. Notices sent by post will be deemed to be received 3 clear business days after posting and notices sent by facsimile or electronic mail will be deemed to be received immediately except where the sender receives notification that the transmission did not complete (whether in whole or part). Where a notice sent by facsimile or e-mail after 5 PM (in the place of transmission) it will be deemed to be received on the next business day following transmission.