

Geelong Dental Laboratory

Terms and Conditions for Supply of Products and Services

1. Definitions

The following definitions apply to these Terms and Conditions:

- (a) **“Agreement”** has the meaning given to that term in clause 3(a) of these Terms and Conditions.
 - (b) **“Business Day”** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the State of Victoria.
 - (c) **“Confidential Information”** means information or documents provided to, received by or produced by a Party in respect of the supply of the Goods and/or Services but excluding information that is generally available to the public or is known to a Party before the date of this Agreement.
 - (d) **“Consumer Guarantees”** means the guarantees relating to the supply of goods and services contained in the Consumer Law.
 - (e) **“Consumer Law”** means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
 - (f) **“Customer”** means the party as outlined in the Purchase Order, and, signatory to the Agreement.
 - (g) **“Date for Delivery”** means the date on which the Supplier must deliver the Goods to the Customer in accordance with this Agreement.
 - (h) **“Date for Provision”** means the date on which the Supplier must provide the Services to the Customer following approval by the Supplier as outlined in the Purchase Order.
 - (i) **“Delivery Location”** means the address as outlined, in the Purchase Order, or as otherwise agreed between the parties.
 - (j) **“Force Majeure Event”** means any of the following events:
 - (i) act of God including lightning, storm, natural flood, landslide or earthquake;
 - (ii) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, or a global pandemic;
 - (iii) embargo, power shortage or water shortage;
 - (iv) any state-wide or nationwide industrial action affecting the construction or the delivery of the Goods which is not caused or contributed to by the Supplier;
 - (v) any measures imposed by a government in response to a global pandemic, or any shortages in materials or delays to the provision of such materials resulting from such a pandemic, affecting the construction or delivery of the Goods and / or the provision of the Services; or
 - (vi) a change in law;
- the consequences of which:
- (vii) are beyond the control of the Supplier; and
 - (viii) could not have been prevented, overcome or remedied by the exercise by the Supplier of a standard of care and diligence consistent with that of a prudent and competent person under

the circumstances (including the expenditure of reasonable sums of money).

- (k) **“Goods”** means the goods, items or products (as the case may be) to be provided to the Customer (following the Supplier’s approval) as outlined in the Purchase Order.
- (l) **“Party”** means a party to this Agreement and includes all assignees, employees, agents or sub-contractors.
- (m) **“Price”** means the sum of the amount(s) specified in the Purchase Order, referenced in accordance with the current “Price List” at the time of issue, as made available by the Supplier to the Customer.
- (n) **“Price List”** means the list outlining the Goods, the Services, the Price and the estimated days for Date for Delivery / Date for Provision, as made available to the Customer by the Supplier.
- (o) **“Purchase Order”** means the online request completed via the Supplier’s website, or document (if otherwise agreed), provided by the Customer to the Supplier which includes details of the Goods, the Services, the Price and the requested Date for Delivery / Date for Provision.
- (p) **“Services”** means the services to be provided to the Customer (following the Supplier’s approval) as outlined in the Purchase Order.
- (q) **“Specifications”** means the dental impression or other specification provided by the Customer to the Supplier for the manufacture of the Goods.
- (r) **“Supplier”** means Geelong Dental Laboratory (ACN 007 274 124).
- (s) **“Supply of the Goods”** occurs when the Goods are delivered in accordance with this Agreement or the time at which the Goods are collected from the Supplier’s premises, whichever applies.
- (t) **“Supply of the Services”** occurs when the Services are provided in accordance with this Agreement.
- (u) **“Tax Invoice”** means a fully itemised validly issued tax invoice for the Price.
- (v) **“Terms and Conditions”** means these Purchase Order Terms and Conditions.
- (w) **“Third Party”** means any other party who is not a party to this Agreement.

2. Interpretation

Interpretations in this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (c) the words “in writing” include any communication sent by letter or email;
- (d) nothing in these Terms and Conditions is to be read or implied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified;
- (e) the Customer acknowledges that this Agreement consists of these Terms and Conditions, and any documentation expressly incorporated as part of the Agreement; and

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- (f) the Customer agrees that it has read and understood the Terms and Conditions before executing the Agreement.

3. Supply of Goods and/or Services

- (a) These Terms and Conditions, whether signed or not, set out the terms of the supply agreement (“**Agreement**”) between the Customer and the Supplier. Any terms contained in any document supplied by the Customer, including any terms in the Customer’s purchase order, will not form part of the Agreement.
- (b) The Supplier agrees to sell and the Customer agrees to buy the Goods and / or Services in accordance with the Agreement.
- (c) The Parties acknowledge and agree that this Agreement constitutes the entire agreement and supersedes any other agreement or understanding between the Parties.

4. Payment

- (a) The Supplier will issue the Tax Invoice to the Customer.
- (b) At or around the end of each calendar month, the Supplier will provide to the Customer a statement (“**Debt Statement**”) setting out the balance of the Price and all other amounts that remain unpaid by the Customer in respect of the Goods and / or Services supplied to the Customer as at the date of the statement (“**Statement Amount**”).
- (c) The Customer must pay the Statement Amount to the Supplier within fifteen (15) days of the date of a Debt Statement.
- (d) All amounts due under this Agreement, including the Price and the Statement Amount, must be paid in full to the Supplier without any set-off, withholding or deduction.
- (e) If the Customer does not make any payment under this Agreement in full by the due date, the Supplier may charge:
- (i) interest of three percent (3%) per annum more than the rate from time to time fixed by the *Penalty Interest Rates Act 1983 (Vic)* on the amount outstanding from the due date until the date of payment; and
 - (ii) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by the Supplier in recovering any unpaid amounts under this Agreement.

5. Production and Delivery of Goods

- (a) The Supplier will manufacture and supply the Goods in accordance with the Specifications.
- (b) Unless otherwise agreed by the Parties in writing, subject to clause 5(c), the Supplier will deliver the Goods to the Delivery Location on the Date for Delivery, and the Customer must ensure that a representative of the Customer will be available on such date to take possession of the Goods.
- (c) The Customer irrevocably and unconditionally acknowledges and agrees that:
- (i) whilst the Supplier will use all reasonable endeavours to ensure that the Goods and / or the Services are supplied by the Date for

Delivery / Date for Provision, due to booking capacity, staffing requirements, technical issues or other matters, the Supplier may not be able to supply the Goods and / or the Services on the Date for Delivery / Date for Provision;

- (ii) where the Supplier becomes aware of any circumstance that is likely to result in the Supplier not being able to supply the Products and/or the Services by the Date for Delivery / Date for Provision, the Supplier must as soon as reasonably practicable after becoming aware of such a circumstance, give notice to the Customer specifying a new Date for Delivery / Date for Provision.
- (iii) subject to the Supplier’s compliance with clause 5(c)(ii), the Customer releases the Supplier from all claims, losses, expenses and liabilities that the Customer may incur in connection with the Supplier’s failure to supply the Goods and / or the Services on the Date for Delivery / Date for Provision or the variation to the Date for Delivery / Date for Provision.

6. Risk in the Goods

- (a) Risk in relation to the Goods passes to the Customer at the time of the Supply of the Goods.
- (b) If the Customer collects or receives the Goods (whichever is applicable) and discovers that they are broken, damaged and / or defective, the Customer must notify the Supplier within twenty-four (24) hours of the Supply of the Goods. If the Customer does not notify the Supplier within that time period, the Goods will be deemed to have been supplied in good order and condition in accordance with this Agreement.
- (c) The Customer irrevocably and unconditionally acknowledges and agrees that any complaint by a customer of the Customer relating to the fit and / or comfort of the Goods does not constitute a defect or deficiency for the purposes of this Agreement, provided that the Supplier has supplied the Goods in accordance with the Specifications.

7. Provision of Services

The Supplier must provide the Services:

- (a) unless otherwise agreed by the Parties in writing, subject to clause 5(c), on the Date for Provision;
- (b) in a proper, timely and efficient manner using the standard of care and skill that would reasonably be expected from a contractor with the same experience as the Supplier; and
- (c) in compliance with all applicable Laws.

8. Variations

The Customer acknowledges and agrees that the Price is based on the number, nature and characteristics of the Goods, and the nature and characteristics of the Services, set out in the Purchase Order. If the Customer requires a variation to the Goods and / or the Services to be supplied under this Agreement, the Supplier may amend the Price by providing notice to the Customer, and may require the Customer to pay an additional amount towards the variation to the Goods and / or Services.

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9. Limitation of Liability

- (a) Subject to clause 9(c), and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.
- (c) Where the Supplier is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Agreement, ("**Non-Excludable Provision**"), and the Supplier is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then the Supplier's liability for breach of the Non-Excludable Provision is limited to (at the Supplier's election):
 - (i) in the case of the Goods, the repair or replacement of the Goods or the supply of substitute goods (or the cost of doing so); or
 - (i) in the case of the Services, the supplying of the Services again, or the payment of the cost of having the Services supplied again.
- (d) Subject to the Supplier's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the Supplier's maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the Price paid by the Customer under this Agreement.
- (e) Subject to clauses 9(c) and 9(d), the Supplier will not be liable to the Customer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Customer has incurred, or amounts that the Customer is liable to pay its customers.

10. GST

The Price is exclusive of GST, unless stated otherwise. Any applicable GST will be added to the Price in the Tax Invoice and must be paid by the Customer. This is outlined in the Price List made available to the Customer by the Supplier.

11. Termination

- (a) Either Party may terminate the Agreement immediately by written notice to the other Party if:
 - (ii) the other party breaches any material obligations in this Agreement and does not remedy the breach within fourteen (14) Business Days of being notified in writing of the breach.
- (b) The Supplier may terminate this Agreement for any other reason by giving no less than seven (7) days' written notice to the Customer.
- (c) From the date of termination of the Agreement, the Customer shall be required to make all payments

which are due to the Supplier under this Agreement prior to the date of termination.

- (d) Termination under this clause 9 will be without prejudice to any other rights which have accrued to a Party before the date of termination or remedies to which either Party may be entitled.

12. Confidentiality

The Parties, and any employees, agents or sub-contractors of the Parties, must not disclose Confidential Information belonging to the other Party without the other's prior written consent unless the disclosure is to:

- (a) a Third Party, where such disclosure is necessary for the supply of the Goods and / or the Services;
- (b) the insurers or legal advisors of a Party; and
- (c) required by law or a regulatory authority.

This clause 12 shall survive termination of the Agreement.

13. Privacy

- (a) The Customer acknowledges that the Supplier is required and permitted to collect Personal Information (as defined in the *Privacy Act 1988* (Cth)) from the Customer in connection with the supply of the Goods and / or the Services.
- (b) To the extent applicable, the Supplier will comply with the legal requirements of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles.

14. Force Majeure

The Supplier will not be responsible for any delays in the Supply of the Goods and / or the Services due to a Force Majeure Event.

15. General Matters

- (a) Variation
These terms and conditions may only be varied by written agreement, as mutually agreed by the Parties.
- (b) Assignment
To the maximum extent permitted by law, the Supplier may assign its interest in this Agreement to any third party without the consent of the Customer.
The Customer may not assign any interest in this Agreement without the written consent of the other Supplier (which may be withheld or given in the Supplier's absolute discretion).
- (c) Severance

If a provision of these Terms and Conditions is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these Terms and Conditions.

- (d) Governing Law and Jurisdiction

This Agreement is governed by the law in force in the State of Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings in connection with this Agreement.

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EXECUTION AND ACKNOWLEDGMENT BY CUSTOMER

By executing this document, the Customer irrevocably and unconditionally acknowledges and agrees that:

- (a) the Purchase Order Terms and Conditions for Supply of Products and Services that constitute the Agreement between Geelong Dental Laboratory Pty Ltd (the Supplier) and the Customer;
- (b) the Customer is bound by the Terms and Conditions contained in the Agreement, and will comply with the same.

Signed

Name of Signatory

Company (the Customer)

Date