

# OCCI Terms and Conditions – Delivery of Goods and/or Services

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## 1. Definitions and Interpretation

In these Conditions, singular words include the plural and vice versa. A mention of anything after “include”, “includes” or “including”, does not limit what else might be included or described.

**Participating Business** means any person or entity that supplies Goods and/or Services to fill a Customer Order, for the purposes of Delivery in accordance with these Conditions.

**Business Premises** means the nominated business premises of any Participating Business.

**Conditions** mean these Terms and Conditions.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Customer** means the party who has placed a Customer Order and purchased Goods and/or Services from a Participating Business or to whom a Participating Business has agreed to supply Goods and/or Services.

**Customer Nominated Premises** means the address nominated in a Customer’s Order for the delivery of the Goods.

**Customer Order** means an order for Goods and/or Services to be purchased by the Customer from a Participating Business, and supplied by a Participating Business to the Customer, placed by a Customer with OCCI and accepted by OCCI and that Participating Business.

**Delivery** means delivery of a Customer Order by OCCI in accordance with these Conditions.

**Delivery Service** means the service provided by and through the OCCI for collection of Customer Orders from a Participating Business, and Delivery of a Customer Orders to Customers, in accordance with this Conditions.

**Estimated Delivery Period** means the anticipated or expected period over which Delivery may occur (if any), notified by OCCI to the Customer from time to time (subject to variation);

**Goods** means any goods sold, supplied, bailed or supplied on consignment to the Customer by a Participating Business.

**Loss** means any expense, cost or damage of any kind and howsoever arising, and includes Consequential Loss, pure economic loss, and a fine or penalty imposed by a statutory or other authority.

**Party or Parties** means a party or parties to these Conditions.

**Prescribed Area** means an area, zone, suburb, town or geographical location nominated by OCCI and/or Participating Business from time to time.

**Related Bodies Corporate** has the same meaning as given to that term in the *Corporations Act 2001 (Cth)*.

**Restricted Goods** means sharp objects, tobacco products, alcohol, unlawful products, products that can only legally be supplied to certain ages, products that require identification of the Customer and any other products nominated as restricted goods by OCCI and/or Participating Business from time to time.

**Services** mean any services sold, supplied, bailed or supplied on consignment to the Customer by a Participating Business, which are capable of Delivery to the Customer in accordance with these Conditions.

**OCCI** means **Onslow Chamber of Commerce And Industry Inc. (Registration No. A1011739H)** (and includes where context permits any Related Body Corporate, employee, officer, officeholder or volunteer participating in the Delivery Service).

**Supplier Terms and Conditions** means any and all terms and conditions on which a Participating Business offers and agrees to supply Goods and/or Services the subject of a Customer Order to the Customer, however described, and notified by the Participating Business to the Customer (whether on an invoice, statement, tender, quote, instruction sheet, through the Participating Business’ website, docket or otherwise), or supply agreement (however described) in the Participating Business’ standard form, entered into in writing or verbally agreed between the Participating Business and the Customer, and includes without limitation payment terms for any Goods and/or Services.

## 2. Customer Order and Obligations

- (a) These Conditions shall apply to all Customer Orders. The Customer is deemed to have accepted and agreed to these Conditions where:
  - (i) the Customer places a Customer Order for Delivery of Goods and/or Services from a Participating Business via the Delivery Service; and
  - (ii) the Customer Order is accepted by OCCI and the Participating Business.
- (b) Each Customer Order is subject to and conditional upon that order being accepted and filled by the Participating Business. Neither OCCI nor any Participating Business represent or warrant that any Goods and/or Services the subject of a Customer Order:
  - (i) are or will be available or ‘in stock’ to fill a Customer Order, or can be supplied by the Participating Business;
  - (ii) will be accepted and filled by OCCI and any Participating Business.
- (c) The Customer acknowledges and agrees that the Supplier Terms and Conditions apply in respect of all Goods and/or Services supplied by a Participating Business, and that those Supplier Terms and Conditions are set solely by the Participating Business independently of OCCI and are a matter for agreement and contract directly between the Customer and the Participating Business.
- (d) The Customer agrees that neither OCCI nor the Participating Business is obliged to accept any Customers Order in whole or part, and that OCCI and/or the Participating Business may reject the Customer Order in whole or part at their sole discretion. If OCCI and/or the Participating Business do not accept or otherwise reject or cancel the Customer Order, OCCI and/or the Participating Business will use reasonable endeavours to notify the Customer of the non-acceptance or rejection of the Customer Order. For the avoidance of doubt, neither OCCI nor the Participating Business are required to notify the Customer of the non-acceptance or rejection of the Customer Order.
- (e) The Customer agrees that it must pay, without any deduction or set-off of any kind, the price charged by the Participating Business for the Goods and/or Services directly to the Business, as part of the Supplier Terms and Conditions, prior to and as a condition of the Delivery of the Goods and/or Services to the Customer. Without limitation to clause 2(d), failure by the Customer to pay the Participating Business for Goods and/or Services the subject of a

Customer Order, or otherwise comply with any Supplier Terms and Conditions, will entitle OCCI to cancel a Customer Order or refuse to accept a Customer Order.

- (f) Where the Customer cancels or modifies a Customer Order following acceptance of the Customer Order by OCCI and/or the Participating Business, the Customer may be liable for costs incurred by the Participating Business in respect of the cancelled or modified Customer Order. These costs will be payable by the Customer directly to the Participating Business, and the Participating Business may require payment of those costs prior to filling a modified Customer Order, or accepting any future or further Customer Orders from that Customer.

### 3. Retention of title

- (a) The Participating Business retains full legal and equitable title in any and all Goods and/or Services ordered by the Customer, until payment in full for or in connection with the supply of the relevant Goods and/or Services has been received by the Business.
- (b) This reservation of title and ownership is effective and fully enforceable, regardless of whether or not the Goods have been altered from their supplied form, or commingled with other goods.

### 4. Risk & Delivery

- (a) Risk in relation to any Goods and/or Services passes to the Customer on Delivery of the Goods and/or Services. Delivery of Goods and/or Services will be effected and complete upon physical delivery of the Goods to the Customer Nominated Premises in accordance with these Conditions. The receipt of Goods by the Customer shall automatically occur at the time of Delivery of the Goods to the Customer Nominated Premises.
- (b) The Customer agrees that:
  - (i) the Customer must advise OCCI of the Customer Nominated Premises when placing a Customer Order, which Customer Nominated Premises must be a property address located within the Prescribed Area and locatable by Google maps or such other suitable location service. The Customer bears sole responsibility for providing accurate details of the Customer Nominated Address;
  - (ii) the Customer agrees that OCCI may deliver the Goods and/or Services to the Customer Nominated Premises and Delivery of the Goods and/or Services to the Customer Nominated Premises shall constitute final and complete Delivery of the Goods and/or Services;
  - (iii) OCCI is not required to deliver Goods and/or Services beyond the front door or entrance to any Customer Nominated Premises, meaning the front door or a point beyond which entry into the interior of the building occurs, of the Customer Nominated Premises;
  - (iv) OCCI shall use reasonable endeavours to effect Delivery of Goods and/or Services within the Estimated Delivery Period – however, the Customer expressly acknowledges that the Estimated Delivery Period is approximate only and:
    - (A) neither OCCI nor any Participating Business will have any liability to the Customer for any failure by OCCI to deliver Goods and/or Services outside of the Estimated Deliver Period; and
    - (B) the Customer expressly waives and any claims for Loss by the Customer in respect of late Delivery, or Delivery outside of the Estimated Delivery Period.
- (c) The Customer agrees, represents and warrants that:
  - (i) that it is safe for the Goods and/or Services to be delivered to the Customer Nominated Premises, and that all foreseeable risks of and associated with the Customer Nominated Premises have been negated or other fully disclosed to OCCI at the time of placement of the Customer Order;
  - (ii) the Customer will ensure strict compliance with all and any Public Health Directives (including observation and enforcement of COVID19 isolation and quarantine requirements applicable to the Customer and/or any person residing at or on the Customer Nominate Premises), and the Customer shall be solely liable for any Loss incurred or suffered by OCCI (and/or and any person engaged in Delivery) in consequence of the Customer's breach of all and any such Public Health Directives;
  - (iii) OCCI (and any person engaged in Delivery) may strictly observe and enforce compliance with all and any Public Health Directives (including observation and enforcement of COVID19 isolation and quarantine requirements applicable to the Customer and/or any person residing at or on the Customer Nominate Premises), and the Customer shall be solely liable for any Loss incurred or suffered by OCCI (and/or and any person engaged in Delivery) in consequence of the Customer's breach of all and any such Public Health Directives;
  - (iv) OCCI shall have no obligation to deliver Goods and/or Services to a premises that is not the Customer Nominated Premises;
  - (v) the Customer will ensure that the Customer or other adult person is present at the Customer Nominated Premises during the Estimated Delivery Period to receive the Delivery;
  - (vi) anyone at the Customer Nominated Premises who receives the Goods and/or Services at the Customer Nominated Premises at the time of Delivery is authorised by the Customer to receive the Goods and/or Services;
  - (vii) where there is no person present at the Customer Nominated Premises at the time of Delivery, the Customer expressly agrees, authorises and directs OCCI to make the Delivery of Goods and/or Services at or near the front door or other entrance to the Customer Nominated Premises;
  - (viii) neither OCCI nor any Participating Business will be liable for any Loss or damages to the Goods and/or Services, the Customer Nominated Premises, any property of the Customer, or to the Customer or any person, caused by or in connection with the Delivery of the Goods to the Customer Nominated Premises, use by the Customer of the Delivery Services or in any way connected with or in relation to the quality or any characteristics of the Goods and/or Services and/or the Customer Order.
- (d) The Customer agrees that OCCI and/or any Participating Business may decide not to deliver Goods and/or Services to the Customer Nominated Premises at its discretion, including but not limited to where the Customer Nominated Premises is not located within the Prescribed Area or OCCI and/or the Participating Business reasonably believe that the Goods and/or Services are likely to be stolen or damaged, or deem the Customer Nominated Premises to be unsafe for Delivery for any reason. In this event, the Customer must make alternative arrangements to collect the Goods and/or Services from the Business Premises.

### 5. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the *Australian Consumer Law* ("Act") in respect of the Goods and/or Services. The Customer acknowledges and agrees that the Delivery Service does not constitute a consumer contract or 'trade or commerce' for the purposes of the Act; the OCCI is not the supplier of 'consumer goods' or 'services' within the meaning and for the purposes of the Act; and the Delivery Service does not constitute a 'supply' by OCCI for the purposes of the Act. As a result, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the delivery of any Goods and/or Services by OCCI under the Act, law or statute, or custom or international convention, are hereby fully and expressly excluded.

## 6. Limitation of liability

Neither OCCI nor any Participating Business shall be liable to the Customer (or any person) for any Loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Delivery Services, the supply of Goods and/or Services, these Conditions and the Supplier Terms and Conditions, except to the extent that such liability may not lawfully be limited or excluded. For the avoidance of doubt, this extends to any employees, contractors, agents, representatives, authorised representatives, invitees and household members of the Customer.

To the maximum extent permitted by law, the Customer agrees to release and indemnify OCCI and any Participating Business from and against all and any liability, howsoever and whenever arising.

Where OCCI and/or any Participating Business cannot by law exclude such liability, and subject to clauses 5 and 7, OCCI's and any Participating Business' total liability arising out of or in connection with the performance of their obligations pursuant to these Conditions, the Supplier Terms and Conditions, or arising out of or in connection with the supply of specific Goods and/or Services (including pursuant to or for breach of these Conditions, Supplier Terms and Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) OCCI and the Participating Business shall have no liability to the Customer for any Consequential Loss;
- (b) OCCI's and the Participating Business' total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Participating Business for the specific Goods and/or Services that gave rise to the Loss in question.

## 7. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods delivered by OCCI and/or supplied by the Participating Business are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the *Australian Consumer Law*, the Customer agrees that OCCI's and the Participating Business' liability for a failure to comply with a consumer guarantee that the Customer may have the benefit of, under the *Australian Consumer Law* (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities)), is limited, at the option of OCCI and/or the Participating Business, to one or more of the following:

- (a) replacement of the Goods or the re-supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.

To the extent that Services supplied by OCCI and/or by the Participating Business are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, OCCI's and the Participating Business' liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited, at the option of OCCI and/or the Participating Business to:

- (a) the supply of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

## 8. Privacy disclosure and consent

In carrying out its business OCCI collects personal information about Customers. This personal information may include a customer's name, street and postal address, email address and telephone and/or fax numbers. OCCI respects the privacy of Customers and is committed to protecting their personal information. OCCI collects personal information in order to provide and market the Delivery Services to Customers. The Customer has the right to access personal information collected about it and may request OCCI to access or change any personal information which OCCI holds.

## 9. Force Majeure

OCCI is not obliged to perform any obligation pursuant to these Conditions, included but not limited to the Delivery Services, to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond OCCI's reasonable control, OCCI is unable to perform, in whole or in part, that obligation or provide any Delivery Services.

## 10. Governing law

These Conditions are governed by and are to be interpreted according to the laws in force in Western Australia, and the Parties hereby irrevocably submit to the exclusive jurisdiction of those laws and the Courts enforcing them.

## 11. Joint and several liability

If the Customer comprises 2 or more persons or parties these Conditions bind each of them separately and any 2 or more of them jointly.

## 12. Variation

OCCI may vary these Conditions at any time, and publication of any varied Conditions on OCCI's website shall constitute sufficient notice to the Customer thereof. The Customer's continued use of the Delivery Services following a variation of these Conditions shall constitute evidence of the Customer's acceptance of those varied Conditions.

## 13. Termination

OCCI may withdraw, terminate, modify or suspend Delivery Services to any Customer at any time and for any reason at OCCI's sole discretion, and the Customer acknowledges and agrees that the Customer will have no claim against OCCI or any kind arising from or in relation to the withdrawal, modification, terminate or suspension of the Delivery Services or these Conditions.

## 14. Return of Goods

OCCI shall have no responsibility to the Customer for any error or incompleteness in the filling of any Customer Order by a Participating Business, and it is the Customer's responsibility to raise any issues with the Goods and/or Services with the Participating Business directly. OCCI accepts no responsibility in respect of the content of any Customer Order, or any defect with any Customer Order filled by a Participating Business.

## 15. Restricted Goods, Substitute Goods and/or Services

The Customer agrees that:

- (a) no Restricted Goods will be supplied by a Participating Business, or delivered by OCCI, to the Customer at any time;

- (b) the Customer will not order any Restricted Goods from OCCI and/or any Participating Business for Delivery;
- (c) where any Goods and/or Services ordered by a Customer are not in stock or otherwise available from any Participating Business, the Participating Business may automatically substitute any Goods and/or Services, without the Customer's consent and at the Participating Business' sole discretion, with any other similar or equivalent Goods and/or Services;
- (d) where any Goods and/or Services are substituted by a Participating Business, the Customer must pay any increase in price for any substituted Goods and/or Services; and
- (e) OCCI and/or any Participating Business retain the discretion to limit or restrict the quantity of any Goods and/or Services that can be ordered by the Customer at any time.

#### 16. Health and Safety

In respect of any Goods and/or Services supplied to the Customer by OCCI and/or any Participating Business, it is the Customer's responsibility to ensure that all applicable health and safety regulations are observed and appropriate steps are taken to minimise any risk associated with spoilage, refrigeration, storing, handling, consumption or use of those Goods and/or Services.

#### 17. Food Health and Safety

- (a) The Customer expressly acknowledges that:
  - (i) the Delivery Service is a free, community service provided by OCCI for the convenience of Customers who are unable to directly access Goods and/or Services as a result of COVID-19 quarantine and/or isolation health directives, and the sole scope and purpose of the Delivery Services is to collect Goods and/or Services chosen and purchased by the Customer, from the Participating Business, and Delivery those Goods and Services to the Customer Nominated Premises; and
  - (ii) OCCI is not, and does not warrant or represent itself to be, a professional or commercial delivery service and:
    - (A) OCCI does not have information or knowledge as to the qualities, nature, make-up, ingredients, manufacturing history, contents, make-up, storage history, effective lifespan, safety, health or well-being impacts, use or scope and composition of any Goods and/or Services which may be ordered by the Customer from the Participating Business; and
    - (B) OCCI does not have use of or access to refrigerated delivery vehicles, or use ice or other refrigeration devices, products, containers or packaging for storage of any Goods and/or Services in the process of Delivery; and
    - (C) the Goods and/or Services will not be delivered to the Customer Nominated Premises in refrigerated storage units, secure packaging or other packaging designed to protect or maintain or preserve the condition or quality of the Goods and/or Services.
- (b) The Customer agrees that it is an express condition for placing a Customer Order and using the Delivery Service that the Customer agrees that neither OCCI nor the Participating Business will be liable for any loss (including but not limited to personal injury, death, damage or loss of property or Consequential Loss) arising from use of the Delivery Services or consumption of any delivered Goods and/or Services by any person;
- (c) The Customer agrees that it is solely the Customer's responsibility to ensure that there is a person present at the Nominated Customer Premises during the Estimated Delivery Period to receive the Delivery.
- (d) The Customer further agrees that, where OCCI completes Delivery to a Customer Nominated Premises and there is no person identifiably present at the time at the Customer Nominated Premises to receive the Delivery:
  - (i) OCCI is expressly authorised and directed to leave the Goods and/or Services at the Customer Nominated Premises; and
  - (ii) neither OCCI nor any Participating Business will be liable for any loss, theft, spoilage, degradation, deterioration or reduction in utility, value or health safety of any Goods and/or Services so left at the Customer Nominated Premises;
- (e) The Customer agrees that upon Delivery of the Goods and/or Services, and prior to using or consuming the Goods and/or Services, the Customer will inspect the Goods and/or Services, including but not limited to any expiration or use by date on the Goods and the condition of and any spoilage of the Goods and/or Services, and will be solely responsible for determining whether any Goods and/or Services are suitable for consumption, meet all relevant health and safety requirements, and can be safely consumed or used by the Customer and/or any other person. In the event that any Goods and/or Services are damaged, spoiled or past the expiration or use by date, or are not otherwise suitable for consumption or do not meet with all relevant health and safety requirements or cannot be safely consumed or used, the Customer agrees that it will not use or consume those Goods and/or Services.
- (f) To the fullest extent permitted at law, the Customer agrees to and shall forever release, indemnify and hold harmless OCCI and any Participating Business from and against all and any claims, loss, costs, damages etc, of whatsoever nature and whensoever arising from, in connection with, arising from or in any way connected with any Delivery, the Delivery Services, the Goods and/or Services or condition, state and or consumption and use of the Goods and/or Services.

#### 18. Indemnity

The Customer shall indemnify OCCI and the Participating Business (including their respective officers, officeholders, employees, agents and volunteers) from and against any claims, liability, Loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the Customer, its officers, employees, authorised representatives, household members or agents.