

**CONDITIONS OF SALE
ENCORE BEAUTY PTY LTD**

Interpretation -

1. In these conditions:-
 - (1) "Buyer" means the purchaser of the Products specified in the Schedule.
 - (2) "Products" means the products and, if any, services specified in the Schedule.
 - (3) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

Terms of sale -

2. (1) All the Products sold by the Encore Beauty are sold on these terms and conditions.

Pricing Policy -

3. (1) all prices listed are inclusive of Goods and Services Tax (GST).
 - (2) All prices listed in the Product order form are subject to change without notice.
 - (3) All Products ordered will be invoiced at prices which are current at the date the Product is dispatched by Encore Beauty to the Buyer.
 - (4) This policy applies unless otherwise indicated in writing by Encore Beauty.

Quotations -

4. (1) Unless previously withdrawn and subject to 5(2), Encore Beauty's quotations are valid and capable of acceptance by returning an order within the period of time set out in the quotation and if no period is specified thirty (30) days from the date of the quotation.

Orders -

5. (1) Encore Beauty reserves the right to specify a minimum order that it will accept from the Buyer.
 - (2) Encore Beauty reserves the right to refuse any order based on a quotation within seven (7) days of Encore Beauty receiving the order.
 - (3) For non-credit account and/or payment plan account holders, no order shall be accepted and/or filled by Encore Beauty until Encore Beauty has received payment.
 - (4) Orders may not be cancelled less than thirty (30) days before the anticipated delivery date.

Payment -

6. (1) For non-account holders and orders that are accepted for less than Two hundred dollars (\$200.00), payment is required before delivery.
 - (2) Payment may be by:-
 - a) credit card – Master card, Visa or Amex (a 3% fee applies to all Amex transactions and is charged at the time of payment);
 - b) cheque – payable to Encore Beauty Pty Limited. A fee of \$35.00 will be charged for all dishonoured cheques.
 - c) direct credit – to Encore Beauty's account (details provided on request).

Accounts -

7. (1) Credit accounts and payment plan accounts are available to approved commercial customers (terms and conditions apply).
 - (2) Credit accounts are available to approved commercial customers. Application for approval is by completing Encore Beauty's Credit Application Form.
 - (3) Payment plan accounts are available to approved commercial customers. Application is by completing Encore Beauty's Credit Application Form.

Delivery -

8. (1) Delivery will be in the manner elected by the Buyer.
 - (2) Where the Buyer is not collecting the Products from Encore Beauty's showroom, then unless otherwise stated in writing by Encore Beauty, freight costs will apply and be payable by the Buyer.
 - (3) Notwithstanding clause 9, all Products to the Buyer are dispatched at the Buyers risk.
 - (4) Encore Beauty is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Products in transit caused by any event of any kind by any person (whether or not Encore Beauty is legally responsible for the person who caused or contributed to that loss or damage).
 - (5) The delivery times made known to the Buyer are estimates only and Encore Beauty is not liable for late delivery or non-delivery.
 - (6) Encore Beauty is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery of the Products.
 - (7) Delivery occurs on collection of the Products by the Buyer or the dispatch of the Products in the manner directed by the Buyer.

Rights in relation to Products -

9. (1) Encore Beauty reserves the following rights in relation to the Products until all accounts owed by the Buyer to Encore Beauty are fully paid:-
 - a) ownership of the products;
 - b) to enter the Buyer's premises (or the premises of any associated company or agent where the Products are located) without liability for trespass or any resulting damage and retake possession of the Products; and
 - c) to keep or resell any Products repossessed pursuant to b) above.
- (2) If the products are resold by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Products sold in a separate identifiable account as the beneficial property of Encore Beauty and shall pay such amount to Encore Beauty upon request.
- (3) Notwithstanding the provisions above Encore Beauty shall be entitled to maintain an action against the Buyer for the purchase price and the risk of the Products shall pass to the Buyer upon delivery.

Returned Products -

10. (1) Subject to clause 11, Encore Beauty is not under any duty to accept Products returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- (2) If Encore Beauty agrees to accept returned Products from the Buyer under paragraph (1) of this clause, the Buyer must return the Products with any Buyer pricing removed without damage at the Buyer's expense to Encore Beauty at Encore Beauty's place of business.

Guarantee -

11. (1) (a) Encore Beauty's liability for Products manufactured by it, is limited to making good any defects by repairing the defects or at Encore Beauty's option by replacement, within a period not exceeding three (3) calendar months after the Products have been dispatched so long as:-
- i) defects have arisen solely from faulty materials or workmanship;
 - ii) the Products have not received maltreatment, inattention or interference;
 - iii) accessories of any kind used by the Buyer are manufactured by or approved by Encore Beauty;
 - iv) the seals of any kind on the Products remain unbroken; and
 - v) the defective parts are promptly returned free of cost to Encore Beauty.
- (b) If the Products are not manufactured by Encore Beauty the guarantee of the manufacturer of those Products is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Products. Encore Beauty agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Products that the manufacturer has granted to Encore Beauty under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (c) Encore Beauty is not liable for and the Buyer releases Encore Beauty from any claims in respect of faulty or defective design of any Products supplied unless such design has been wholly prepared by Encore Beauty and the responsibility for any claim has been specifically accepted by Encore Beauty in writing. In any event, Encore Beauty's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph 11(a) of these conditions.
- (d) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the products for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. Encore Beauty is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Products or arising out of Encore Beauty's negligence or in any way whatsoever.
- (2) Encore Beauty's liability for a breach of a condition or warranty implied by Division 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is limited to in the case of Products, any one or more of the following:-
- a) the replacement of the Products or the supply of equivalent Products;
 - b) the repair of the Products; or
 - c) the payment of the cost of replacing the Products or of acquiring equivalent Products.
- (3) Encore Beauty's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Buyer an amount equal to:-
- (a) the cost of replacing the Products;
 - (b) the cost of obtaining equivalent Products; or
 - (c) the cost of having the Products repaired;
- whichever is the lowest amount.

Storage –

12. Encore Beauty reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Buyer within fourteen (14) days of a request by Encore Beauty for such instructions. The parties agree that Encore Beauty may charge for storage from the first day after Encore Beauty requests the Buyer to provide delivery instructions.

Severance –

13. Any provision in these terms that is found to be invalid, void or otherwise unenforceable may be severed and the balance of the terms continue to be enforceable by the parties.

Binding –

14. These terms bind the administrators, executors, heirs and assigns of the parties.

Waiver –

15. (1) The non-exercise, or delay in exercising, any of Encore Beauty's rights do not operate as a waiver of that power or right nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right.
- (2) A power or right may only be waived by Encore Beauty in writing and signed by it for Encore Beauty to be bound by the waiver.

Governing Law -

16. (1) This contract is made in New South Wales.
- (2) The Law of New South Wales applies to the interpretation of this contract.
- (3) Encore Beauty and the Buyer submit to the jurisdiction of the Courts of New South Wales.

SCHEDULE

1. Buyer –
2. Product – as set out in attached Product Order Form or insert it.
3. Quotation No. (if applicable).
4. Order – as set out in attached Product Order Form or insert it.
5. Anticipated Delivery Date -
6. Delivery Arrangements -
7. Minimum Order Requirements -