## Terms and Conditions

These terms and conditions (the **Terms**) apply to any goods or services supplied by The Good Guys Discount Warehouses (Australia) Pty Ltd ABN 48 004 880 657 (the **Company**) to the person, company, organisation, government department, instrumentality or other entity (the **Customer** or **You**) except to the extent (if any) varied pursuant to clause 11.3.

These Terms, in their present form or as varied in the way permitted by clause 11.3, together with any credit application or account application (if applicable) made by the Customer and all orders placed by the Customer to the Company under these Terms, form the agreement (the **Agreement**).

***1. The Customer's rights under the consumer guarantees provided by the Australian Consumer Law***

1.1 The Customer's purchase of goods may be subject to certain laws including, without limitation, the Australian Consumer Law. If the Customer is a Consumer, the Australian Consumer Law provides the Customer with certain rights that cannot be excluded, including that the goods must be of acceptable quality, reasonably fit for the purpose that the Company represents they will be fit for and that the goods will correspond with any description. Nothing in these Terms 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 Australian Consumer Law) which cannot by law be excluded, restricted or modified.

1.2 If the Customer is a Consumer, the Company's goods and services come with consumer guarantees that cannot be excluded under the Australian Consumer Law. The Customer may recover damages from the Company for any reasonably foreseeable loss or damage that the Customer suffers because of any failure of a service or goods to comply with these guarantees, and:

(a) if the failure to comply with these guarantees for goods is a major failure or cannot be remedied, the Customer is entitled to a replacement or refund. If a failure to comply with these guarantees for goods does not amount to a major failure the Customer is entitled to request the Company remedy the failure within a reasonable time and if the Company fails to do so (by repairing the goods, replacing the goods or providing the Customer with a refund);
- the Customer may recover all reasonable costs you incur in having the failure remedied;
- the Customer may (in certain circumstances) be entitled to reject the goods and claim a replacement or refund from the Company; or

(b) if the failure to comply with these guarantees for a service is a major failure or cannot be remedied, the Customer may terminate the agreement between the Customer and the Company for the supply of the service or recover from the Company compensation for any reduction in the value of the service below the price paid or payable by the Customer for the service. If a failure to comply with these guarantees for a service can be remedied and is not a major failure, the Customer may request the Company to remedy the failure within a reasonable time, and if it cannot be so remedied the Customer may recover from the Company all reasonable costs that you incur in having the failure remedied, or terminate your agreement with the Company for the provision of the service.

***2. Information about the Company's liability to the Customer and the Customer's liability to the Company***

Except to the extent caused by the Company's negligence or breach of these Terms, or as otherwise required by law, the Company shall not be liable to the Customer for any loss to the Customer to the extent it is caused by: (i) your credit account information being incomplete or inaccurate; (ii) any unauthorised use of your credit account which takes place before you notify the Company; (iii) your order information being incomplete or inaccurate; (iv) being unable to change or cancel your order once it has been accepted by the Company; (v) your order not being received, being lost, misdirected or delayed as a result of the facility to place orders being unavailable due to issues with the Company's sales systems beyond the reasonable control of the Company; (vi) cancellation of your order; (vii) the availability of any goods beyond the reasonable control of the Company; (viii) delay in delivery of the goods to you or delay in the availability of goods for pick up in-store beyond the reasonable control of the Company; (ix) any delay in you receiving any refund due to you beyond the reasonable control of the Company; (x) any late, lost or misdirected deliveries of goods beyond the reasonable control of the Company; (xi) any loss, damage, cost or expense suffered as a direct or indirect result of the Company leaving the goods in accordance with any "authority to leave" given by you; (xii) any breach of these Terms by you; or (xiii) any other loss to the extent resulting from something outside of the Company's control and within the Customer's control.

***3. Price List and Orders***

3.1 The price list as made available by the Company from time to time and/or any quotation made by the Company is not an offer or obligation to sell and the Company reserves the right to accept or reject, in its absolute discretion, any orders which may be received by it.

3.2 Except to the extent otherwise agreed between the Company and the Customer in writing, the prices quoted or made available by the Company from time to time are subject to change without notice. Once an order has been accepted by the Company, the Company will be bound by the price in the accepted order unless the Company has, prior to accepting the order, notified the Customer of the possibility of price change (for example, where orders are placed a significant time before delivery) and the Customer has agreed to proceed on this basis.

***4. Payment Terms and Charges***

4.1 Payment for the goods or services supplied by the Company to the Customer must be made without deduction unless otherwise agreed and must be made within 30 days from the end of the calendar month that the invoice is dated.

4.2 Each amount payable by the Customer under the Agreement in respect of a "taxable supply" (as defined in the GST Act) by the Company is a GST exclusive amount and the Customer must, in addition to that amount and at the same time, pay the GST due in respect of that supply.

4.3 Payment shall be deemed to have been made:

(a) if cash is tendered – on the date it is tendered;
(b) if a credit card is tendered – on the date upon which the credit is authorised by the Company's bankers; and
(c) if a cheque or other negotiable instrument is tendered or payment is made by direct debit – on the date upon which such cheque, other negotiable instrument or direct debit is cleared by the Company's bankers.

***5. Orders and Delivery***

5.1 The Customer agrees that the Company may, without incurring any liability, refuse to accept any order for goods or services made by the Customer in whole or in part in its absolute discretion.

5.2 Each order placed by the Customer shall be deemed to include a representation that the Customer is solvent and able to pay all of its debts as and when they fall due.

5.3 When any order is placed, the Customer shall inform the Company of any facts which might reasonably be expected to affect any decision to accept the order and/or grant credit.

5.4 From the time of placing an order (including forward orders), the Customer is obliged to accept and pay for the goods and services in accordance with the Agreement and a cancellation, or alteration, of the order by the Customer for any reason, or any delay in delivery or cancellation of the order by the Company pursuant to clause 5.6, shall not discharge this obligation to accept the goods or services and make payment. Alternatively (at the Company's absolute discretion), where an order is cancelled or altered by the Customer, or delayed in delivery or cancelled by the Company pursuant to clause 5.6, the Company may agree that the Customer need not accept the relevant goods or services and need not make payment for them PROVIDED that the Customer pays to the Company a restocking fee equal to 20% of the relevant order value.

5.5 Subject to clause 5.6, the Company shall use its reasonable endeavours to ensure that the goods are available within the time frame requested by the Customer, but shall not be liable for any loss or damage caused by any delay. The Customer shall only be entitled to reject the goods by reason of any delay if the delivery of the goods is delayed by more than 60 days after the agreed delivery date and where the delay is not the result of the Company's action under clause 5.6.

5.6 In the event that any payment due to the Company by the Customer is overdue under clause 4.1, then the Company may (without any liability to the Customer) choose to delay delivery of, or cancel an order for, any goods or services that have been ordered by the Customer but not yet delivered to the Customer, despite the fact that the Company has previously accepted the order for these goods or services.

5.7 From time to time the specifications of goods supplied by the Company may be changed by the manufacturer of the goods. The Company will inform the Customer if the specifications of the goods change to a material extent.

5.8 Responsibility for delivery of the goods shall be as agreed by the parties. Risk of loss or damage of goods passes to the Customer upon delivery of the goods.

5.9 If the Company is responsible for delivery of the goods, the Company shall be responsible for any loss or damage to the goods in transit and delivery of the goods shall be deemed to take place upon arrival of the goods at the premises of the Customer.

5.10 If the Customer is responsible for delivery, the Customer is responsible for any loss or damage to the goods in transit and delivery of the goods shall be deemed to take place at the time the goods leave the premises of the Company.

5.11 The Company has the right to deliver goods by instalments. Failure by the Company to deliver any instalment will automatically be deemed to be a back order and will not entitle the Customer to cancel the balance of the order. If the Customer fails to take delivery of any instalment (except as agreed in advance with the Company), the Company may cancel the balance of the order.

5.12 The Company is entitled to charge, and the Customer must pay, the Company's costs and expenses associated with handling and/or holding any goods in the event of Delayed Delivery and the Company's costs and expenses of any Frustrated Delivery. For the purposes of this clause "Delayed Delivery" means where the Customer is not able to take delivery of the goods within 30 days from the date on which the Customer is notified that the goods are ready for collection and "Frustrated Delivery" is where the Company attempts to deliver the goods to the Customer at an agreed place and time and the Customer is unable or unwilling to take delivery of the goods.

5.13 Unless otherwise specified in relation to an order, the Company's **Home Delivery Terms of Sale** are applicable to any order for goods to be delivered by the Company. If there is any inconsistency between these Terms and Conditions and the Home Delivery Terms of Sale, these terms will prevail to the extent of any inconsistency.

***6. Acceptance***

The Customer must check the goods as soon as they are delivered in order to ensure that: (i) they are what the Customer ordered; and (ii) they are not damaged. If this is not the case, the Customer must contact the Company on commercialsupport@thegoodguys.com.au as soon as possible. Where the Customer is not a Consumer, if the Customer fails to give notice to the Company of any problem or defect with the order within 7 days of delivery, the Company reserves the right (acting reasonably and in good faith) not to accept return of the goods or any liability for any alleged damage.

***7. Risk and Retention of Title***

7.1 The Company's rights under this clause 5 secure:
(a) the Company's right to receive the price of all goods sold under the Agreement; and
(b) all other amounts owing to the Company under the Agreement or any other agreement.

7.2 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

7.3 Until full payment in cleared funds is received by the Company for all goods supplied by it to the Customer, as well as all other amounts owing to the Company by the Customer under any other contract:
(a) legal title and property in all goods supplied under this contract remain vested in the Company and do not pass to the Customer;
(b) the Customer must not sell the goods except in the ordinary course of the Customer's business;
(c) in addition to any rights the Company may have under Chapter 4 of the PPSA, the Company may, upon reasonable prior written notice, enter any premises where it suspects the goods may be located and

remove them without committing a trespass, even though they may have been attached to other goods or land which is not the property of the Company, and for this purpose the Customer irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause. If there is any inconsistency between the Company's rights under this clause 7.3(c) and its rights under Chapter 4 of the PPSA, this clause 7.3(c) prevails;

(d) the Customer acknowledges and warrants that the Company has a security interest (for the purposes of the PPSA) in the goods and any proceeds until title passes to the Customer in accordance with this clause 7. The Customer must do anything reasonably required by the Company to enable the Company to register its security interest with the priority the Company requires and to maintain that registration; and

(e) the security interest arising under this clause 7 attaches to the goods when the Customer obtains possession of the goods and the parties confirm that they have not agreed that any security interest arising under this clause 7 attaches at any later time.

7.4 For the purposes of section 275(6) of the PPSA, the parties agree to keep confidential and not disclose any information relating to the Agreement which is information which an interested person could access under section 275(1) of the PPSA.

7.5 The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest.

7.6 If the Customer orders or otherwise intends to purchase goods or services from the Company through third party finance, the Customer will be responsible for all loss or damage to the goods from the time that the Customer obtains possession of the goods and shall possess the goods as bailee only until full payment in cleared funds is received by the Company for all goods supplied by it to the Customer.

***8. Returns***

8.1 Except to the extent otherwise required by law, all returns of goods that are not in breach of the Agreement or a Consumer Guarantee must be approved in writing by the Company (**Approved Returns**). The Company reserves its absolute discretion to accept or reject requests for return of goods that are not in breach of the Agreement or a Consumer Guarantee. Approved Returns must be freight prepaid.

8.2 The Company will credit Approved Returns only if they are in saleable condition (as reasonably determined by the Company) upon return and then only upon conditions acceptable to the Company and at the Customer's entire cost and provided the goods are and remain sealed in a manner in which they were delivered and accompanied by documentation showing:

(a) customer name, address and account number;

(b) invoice number; and

(c) the reason for return and copy of approval issued by the Company.

8.3 Approved Returns are at the Customer's risk as to loss or damage until such time as the goods reach the Company's place of business.

***9. Claims and limitation of liability***

9.1 Our goods usually come with warranties from the manufacturer. The Customer's rights under these warranties are governed by the specific terms of the warranty. The Company has no liability to the Customer in respect of such warranties.

9.2 In respect of goods supplied under these Terms, subject to clause 9.4, if the Customer is a Consumer and is purchasing goods which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the Company for loss, however caused (including by the negligence of the Company), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited to the Company (at its election):

(a) replacing the goods or supplying equivalent goods;

(b) repairing the goods;

(c) paying the cost of replacing the goods or of acquiring equivalent goods; or

(d) paying the cost of having the goods repaired.

9.3 In respect of services supplied under these Terms, subject to clause 9.4, if the Customer is a Consumer and is purchasing services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of the Company for loss, however caused (including by the negligence of the Company), suffered or incurred by the Customer because of a failure to comply with a Consumer Guarantee is limited to the Company (at its election):

(a) resupplying the services; or

(b) paying the cost of having the services re-supplied.

9.4 Clauses 9.2 and 9.3 do not apply if it is not fair or reasonable for the Company to rely on them, if the goods are Consumer Goods, the services are Consumer Services or in relation to Title Guarantees.

***10. Termination***

10.1 The Company may, at its option, terminate: (i) the terms of credit provided to the Customer; (ii) any order placed by the Customer; or (iii) the Agreement:

(a) upon thirty days' notice in writing of its intention to terminate these Terms;

(b) immediately by notice in writing, if the Customer breaches the Agreement; or

(c) immediately by notice in writing if the Customer suspends payments of its debts generally, is or becomes unable to pay its debts when they are due, an application or order is made for the winding up or dissolution of the Customer or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Customer, or the Company is placed under official management, or a receiver, or a receiver and manager, or an administrator (or similar official) is appointed in respect of the Customer; or

(d) immediately by notice in writing, if the Customer ceases carrying on business or the Company believes that it will do so.

10.2 The Customer may, at its option, terminate these Terms upon thirty days' notice in writing of its intention to terminate the terms of credit.

10.3 Clauses 4, 7, 9, 11, 12 and 16, survive termination of the Agreement.
10.4 Termination of the Agreement or the terms of credit will be without prejudice to any accrued right or remedy of a party in relation to any breach of, or default under, the Agreement or the terms of credit by the other party occurring prior to termination.

***11. Other Terms and Conditions and Variation***

11.1 Subject to any terms implied by law (including, without limitation, the Consumer Guarantees under the Australian Consumer Law), unless the Company otherwise agrees in writing, these Terms (along with any terms set out on our Website in relation to purchases on the Website, the terms set out in any proposal issued by the Company or the terms of any agreement negotiated between the parties (**Terms of Sale**)) are the only terms which shall apply to all goods or services supplied by the Company. To the extent of any inconsistency between these Terms and any Terms of Sale, these Terms prevail.
11.2 The Customer agrees that these Terms will in all circumstances prevail over the Customer's terms and conditions of purchase (if any) and override any quotes, invoices or other documentation (including, without limitation, any terms and conditions attached or forming part of any Customer purchase order) exchanged between the parties whether or not such documents expressly provide that they override these Terms.
11.3 These Terms may only be varied: (i) if agreed by the parties in writing; or (ii) by the Company giving notice to the Customer in writing. If these Terms are varied by the Company giving notice to the Customer in writing, the amended Terms shall only apply to orders submitted by the Customer after the date of variation.
11.4 Each of the rights and remedies as set out in the Agreement shall be in addition to, and shall not derogate from, any other rights and remedies available including, without limitation, under contract, in tort, under statute, in equity or for specific performance.

***12. Expenses***

The Customer must pay to the Company all reasonable costs, charges and expenses (including legal fees on a full indemnity basis) incurred by the Company, its legal advisers, mercantile agents and others in connection with the failure of the Customer to comply with the Agreement, the recovery of monies owed, re-possession of any goods, enforcing the Company's security interest in the goods pursuant to the PPSA or otherwise.

***13. Set off***

A party (**First Party**) is entitled in its absolute discretion to set off any credits that may appear in the other party's (**Second Party**) account with the First Party against any other amounts owed in connection with this Agreement by, or debts of, the Second Party to the First Party.

***14. Credit Limit***

The grant of any credit facility and/or the nomination of any credit limit is an indication only of the Company's intention at that time and the Company may vary, reduce or (pursuant to clause 10.1) withdraw any credit facility at any time and without any liability to the Customer or any other person or entity. The Customer agrees to pay all sums owing in connection with this credit facility if the credit facility is withdrawn, in accordance with the payment terms originally agreed in relation to the order to which the debt relates. The Customer acknowledges that the Company may make additional periodic credit checks on the Customer to ensure the Customer remains credit worthy.

***15. Force Majeure***

The Company will not be, or be deemed to be, in default or breach of any contract or the Agreement as a result of the effects of force majeure. Force majeure will include any cause beyond the reasonable control of the Company (such as, without limitation, an act of God, war, revolution or any other unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances, a governmental restraint, a shortage or unavailability of raw materials, production capacity or transportation). The Company will not be liable for any loss incurred as a result of delay or failure to meet an order or to observe the terms of the Agreement due to the effects of force majeure.

***16. General Provisions***

16.1 The Agreement shall be governed by the laws of the State of Victoria and the Company and the Customer submit to the non-exclusive jurisdiction of the Courts of that State.
16.2 No waiver by a party of any one breach of the Agreement by the other party shall operate as a waiver of another breach of the same or of any other term by the other party.
16.3 The persons executing the Agreement on behalf of the Customer warrant they are duly authorised to make and execute this application and warrant the information contained in the application is true and correct.
16.4 You may only place an order for goods to be used in connection with your Business. You are not permitted to resell any goods purchased unless authorised by the Company in writing in advance. The unauthorised resale or attempted resale of any goods will be considered a breach of these Terms.

***17. Enforcement of Security Interest***

If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under the Agreement, the Customer agrees that the following provisions of the PPSA will not apply:

17.1 section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer;
17.2 section 121(4) (enforcement of liquid assets – notice to grantor);
17.3 section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer;
17.4 paragraph 132(3)(d) (contents of statement of account after disposal);
17.5 subsection 132(4) (statement of account if no disposal);
17.6 section 135 (notice of retention);
17.7 section 142 (redemption of collateral); and
17.8 section 143 (reinstatement of security agreement).

***18. Notices under PPSA***

The Company does not need to give the Customer any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

***19. Privacy***

The Customer acknowledges and agrees (if the Customer is not a natural person, on behalf of any representatives of the Customer whose Personal Information is provided to the Company (**Customer Representatives**)), that:

19.1 the Company's privacy policy contains important information about how the Company will handle any Personal Information which it collects and other information required to be disclosed by the Company to individuals whose Personal Information it collects under the *Privacy Act 1988* (Cth);

19.2 the Customer (or if the Customer is not a natural person, the Customer Representatives) should read the Company's privacy policy before providing any Personal Information to the Company; and

19.3 by providing Personal Information to the Company, the Customer agrees (or, if the Customer is not a natural person, the Customer Representatives agree) to the Company's privacy policy.

***20. Definitions***

In these Terms:

**Australian Consumer Law** means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the Fair Trading Act 1999 (Vic);

**Consumer** has the meaning given to it in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Consumer Goods** means goods of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in section 3 of the Australian Consumer Law;

**Consumer Guarantee** means a guarantee pursuant to any of Subdivision A and Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law;

**Consumer Services** means services of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in section 3 of the Australian Consumer Law;

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999;

**Personal Information** has the meaning given in the Privacy Act 1988 (Cth);

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Title Guarantee** means a guarantee pursuant to any of section 51, 52 or 53 of the Australian Consumer Law.