

KIMDEC

hair + beauty supplies

YOUR *link* TO THE INDUSTRY

1. **Interpretation.** Nothing in these conditions
 - (a) shall be read or applied so as to exclude, restrict or modify any condition, implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions of Sale or in connection with the supply of the goods or services by the Supplier under law or statute or custom or international convention are excluded.
2. **Definitions.**
 - (a) 'Buyer' means the purchaser of the goods specified on the invoice or Credit Account Application.
 - (b) 'Conditions of Sale' means all the terms and conditions included in these Conditions of Sale.
 - (c) '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 equity, contract, tort (including without limitation negligence), statute or otherwise.
 - (d) 'goods' means all goods ordered from the Supplier by the Buyer.
 - (e) 'Insolvency Event' means, for the Buyer, as being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Buyer or any of the Buyer's property, being taken under section 459F(1) of the Corporations Act 2001 to have failed to comply with a statutory demand, being unable to pay the Buyer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Buyer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Buyer's members or creditors, or any analogous event.
 - (f) 'Interest Rate' means the standard contract default rate published by the Queensland Law Society from time to time and calculated, compounded and payable daily from the date upon which the payment was due until the invoice is paid in full.
 - (g) 'Loss' means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.
 - (h) 'Moneys Owed' means all principal, interest, capitalised interest, default interest, fees, costs, expenses, charges and other moneys of whatsoever nature owed or payable by the Buyer to the Supplier whether pursuant to these Conditions of Sale or otherwise; or otherwise of whatsoever nature and howsoever arising.
 - (i) 'PPSA' means the Personal Properties Securities Act 2009 (Cth).
 - (j) 'PMSI' means a purchase money security interest as defined by the PPSA.
 - (k) 'Real Property' means all real property interests held by the Buyer now or in the future.
 - (l) 'security interest', 'purchase money security interest', 'attached', 'attachment', 'perfected', 'accession', 'commingled' and all related terms have the meanings given them by the PPSA;
 - (m) 'Supplier' means Kimdec Hair and Beauty Supplies Pty Ltd ACN 122 738 970 as trustee for the Bebb Family Trust.
3. **General.** These conditions shall prevail over all conditions of the Buyer's order to the extent of any inconsistency. The goods and all other services sold by the Supplier are sold on these terms and conditions. The Buyer agrees that any professional products purchased from the Supplier, are for professional use only and must not be resold.
4. **Payment.**
 - (a) The Buyer must pay to the Supplier, without any deduction or setoff, the price charged by the Supplier for the goods supplied to the Buyer according to the payment terms specified on each and every invoice. If the Supplier requests payment for the goods before delivery to the Buyer, the Supplier is not required to deliver or make the goods available for collection until the Buyer has paid for them in full. Payment shall be due before delivery and time for payment is of the essence.
 - (b) The preferred method of payment is by electronic funds transfer or credit card. When paying by electronic funds transfer, payment is to be made into the following account and include as a reference the Buyer's trading name and the Supplier's invoice number.

ACCOUNT NAME: Kimdec Hair and Beauty Supplies Pty Ltd
BANK: National Australia Bank
5. **Interest on overdue payments.** Should the Buyer fail to pay the amount owing pursuant to the Supplier's invoice by the due date for the invoice then, without prejudice to any other right or remedy;
 - (a) The Supplier may charge interest on daily balances outstanding until paid at the standard contract default rate published by the Queensland Law Society Inc at the time the payment fell due;
 - (b) the Buyer shall pay all of the Supplier's costs and expenses (including legal costs determined on an indemnity basis and agents fees including mercantile agent's fees) which may be incurred in the recovery or attempted recovery of any overdue amounts from the Buyer;
 - (c) As security for any amounts due to the Supplier from time to time, the Buyer Page 1 of 4 charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any property including personal and real property to the Supplier;
 - (d) Without limiting the generality of the charge in clause 5(c) the Buyer, agrees, on request by the Supplier to execute any documents and do all things reasonably required by the Supplier to perfect the charge given in clause 5(c) including without limitation registering a mortgage security over any real property or a charge over the Buyer and its present and future assets. The Buyer appoints the Supplier to be the Buyer's lawful attorney for the purposes of executing and registering such Mortgage or charge or both and all things connected therewith. The Buyer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation, registration and stamping of the mortgage or charge or both.
 - (e) The Buyer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any real property;
 - (f) The Supplier may appoint an agent to collect any debts owed by the Buyer to the Supplier from time to time.
 - (g) A statement in writing signed by an

ACCOUNT NUMBER: 508449319
BSB: 084-391

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authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

6. **Prices.** Unless otherwise stated all prices quoted by the Supplier are exclusive of GST.
 - (a) Prices quoted are those at the date of issue of the quote and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production at the date of issue.
 - (b) A surcharge of 2.2% will apply to American Express cards.
7. **Quotes.** Unless withdrawn earlier, the Supplier's quotes are open for acceptance by the Buyer for 30 days from the date of the quote. Notwithstanding acceptance of the quote by the Buyer, the Supplier may in its discretion refuse any order based on the quote within 7 days after the receipt of the order.
8. **Cancellation.** No order may be cancelled by the Buyer without the written consent of the Supplier and terms which indemnify the Supplier against all losses.
9. **Delivery.**
 - (a) The Buyer agrees that delivery occurs when the delivery or collection docket is signed by or on behalf of the Buyer. The signed docket shall be conclusive evidence of delivery.
 - (b) The delivery times made known to the Buyer are estimates only and the Supplier is not liable for late delivery or non-delivery.
 - (c) The Supplier is not liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the goods.
 - (d) If the Supplier delivers any of the goods by instalments, and any one of those instalments is defective for any reason:
 - (e) It is not repudiation of the contract of sale formed by these conditions; and
 - (f) The defective instalment is a severable breach that gives rise only to a claim for compensation in respect of the defective instalment and limited to the cost of replacement of the defective goods.
10. **Collection of orders.** If at the time of placing an order the Buyer requests that the goods be made available for collection, the Supplier will prepare each

order for collection at the Supplier's premises by an agent, employee or contractor of the Buyer. When each order is ready for collection, the Supplier will notify the buyer either orally or in writing. Within 7 day receiving notification that an order is ready for collection pursuant to this clause, the Buyer must at the Buyer's expense remove the order from the Supplier's premises.

11. **Storage (if goods delivered).** The Supplier reserves the right to charge a storage fee if delivery instructions are not provided by the Buyer within 14 days of request by the Supplier. The fee will be calculated from the first day after the Supplier requests the Buyer to provide delivery instructions.
12. **Packing.** The cost of any special packing and packing materials used in relation to the goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quote.
13. **Shortage.** The Buyer waives any claim for shortage of any goods delivered or collected if a claim in respect of short delivery has not been lodged with the Supplier within 7 days from the date of delivery.
14. **Drawings, etc.** The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods or of the description applied to the goods.
15. **Performance.** Any performance figures given by the Supplier are estimates only. The Supplier is under no liability whatsoever and howsoever arising for damages for failure of the goods to attain such figures unless specifically guaranteed by the Supplier in writing.
16. **Loss or damage in transit.**
 - (a) The Supplier is not liable to the Buyer or any person claiming through the Buyer for any loss or damage to goods in transit whatsoever and howsoever arising including without limitation through negligence whether caused by the Supplier or any person or entity for whom the Supplier is legally responsible.
 - (b) The Supplier must provide the Buyer with such assistance as may be reasonably necessary to make a claim on the carrier of the goods so long as the Buyer:
 - (i) Has notified the Supplier and the carrier in writing immediately after loss or

damage is discovered on receipt of goods; and
(ii) Lodges a claim for compensation on the carrier within three 3 days of the date of receipt of the goods.

17. **Indemnity.** The Buyer shall indemnify and keep indemnified and hold the Supplier harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Supplier, and from and against all actions, proceedings, claims or demands made against the Supplier, whatsoever and howsoever arising from one or more of the following:
 - (a) As a result of the Buyer's failure to comply with any laws, rules, standards or regulations applicable in relation to the goods or the use of the goods;
 - (b) As a result of any other negligence or other breach of duty by the Buyer; or
 - (c) As a result of any compliance or adherence by the Supplier with any instructions of the Buyer in relation to the goods including without limitation in respect of their manner of fabrication.
18. **Rights in relation to goods.** The Supplier retains legal and equitable title in any goods supplied to the Buyer until payment in full for or in connection with the supply of the relevant goods has been received by the Supplier. Until payment in full has been received, the following terms apply:
 - (a) Notwithstanding that title in the goods remains with the Supplier until payment has been received in full, the Buyer may sell the goods or use the goods in the ordinary course of the Buyer's business. As between the Buyer and the purchaser of any item of the goods, the Buyer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of goods must be held by the Buyer in a separate fund on trust for the Supplier and the Buyer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Buyer to pay an amount to the Supplier for the goods supplied.
 - (b) Until the goods are sold or used by the Buyer, the Buyer must keep the goods safe and free from deterioration, destruction, loss or harm, clearly designate the goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier

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- and keep full and complete records, firstly, of the physical location of the goods and, secondly, the ownership of the goods by the Supplier.
- (c) The Supplier is irrevocably entitled at any time and from time to time before the sale of any item of goods by the Buyer to inspect or to recover and retake possession of the goods and otherwise exercise in relation to the goods any of its rights whether those rights are as owner and/or unpaid seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, The Supplier and its agents are irrevocably authorised by the Buyer to enter any of the Buyer's premises or vehicles or those of any third party. The Buyer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the goods. This reservation of title and ownership is effective whether or not the goods have been altered from their supplied form, or commingled with other goods.
19. **Limitation of liability.** To the maximum extent permitted by law, the Supplier's total liability whatsoever and howsoever arising out of or in connection with its performance of its obligations pursuant to these Conditions of Sale, or arising out of or in connection with the supply the goods (including without limitation pursuant to or for breach of these Conditions of Sale, repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:
- (a) The Supplier shall have no liability to the Buyer for any consequential loss;
- (b) The Supplier's total aggregate liability for loss, whatsoever and however arising, shall not exceed the GST exclusive aggregate price paid by the Buyer to the Supplier for the specific goods or services connected with the loss in question. The limitations and exclusions in this sub-clause 19 (b) do not apply to the extent that any Loss is directly attributable to:
- (i) the personal injury or death to a person or persons caused by the Supplier's default, breach of the Conditions of Sale or negligence; or
- (ii) fraud by Supplier.
- Each party must take reasonable steps to mitigate any loss it suffers or incurs.
20. **Warranty.**
- (a) To the extent that goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Buyer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Buyer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Buyer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:
- (i) replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
- (iv) the payment of the cost of having the goods repaired.
- (b) To the extent that any services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Buyer may have the benefit of is limited to, at the option of the Supplier:
- (i) the supply of the services again; or
- (ii) the payment of the cost of having the services supplied again.
21. **Satisfaction Guarantee.** If the Buyer is not completely satisfied with this product and returns it to the Supplier within 7 days of the date of delivery the Supplier will accept exchange of this item for another product or refund the Buyer's money as requested (whether of the same type or description so long as the exchange item is of the same value as the product being returned) or refund the Buyer's money as requested. If the Buyer obtains an exchange item or a refund, this discharges completely any liability at law of the Supplier to the Buyer.
22. **Returned goods.**
- (a) The Supplier will not accept returns of the goods for credit without prior written authorisation from the Supplier in its absolute discretion unless otherwise required by law.
- (b) Without limiting the Supplier's discretion, any goods which the Buyer returns for credit, other than materially defective goods, will only be accepted if they are in the original packaging and in an as new order and condition.
- (c) If the Supplier authorises the return of goods, the goods must be sent freight pre-paid or otherwise if approved by the Supplier, carried by the Supplier's nominated carrier.
23. Except in respect of the return of materially defective goods, the Supplier may in its discretion charge a handling fee equal to 10% of the credit value and to deduct this fee from the credit amount.
24. **Supplier's Guarantee.** If the goods are not manufactured by the Supplier the guarantee of the manufacturer of those goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the goods. The Supplier agrees to assign to the Buyer any benefit of any warranty or entitlement to the goods that the manufacturer has granted to the Supplier by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
25. **Buyer's obligations.** The Buyer must ensure that it uses the goods purchased from the Supplier in accordance with any and all rules, laws, standards, regulations, instructions and standard industry practice.
26. **Buyer's property.** Any property of the Buyer in the Supplier's possession, custody or control is completely at the Buyer's risk in regard to any loss or damage caused to the property or by it.
27. **Place of contract.** These Conditions of Sale shall be governed by and construed in accordance with the laws of Queensland. The Buyer agrees to submit to the non-exclusive jurisdiction of the Courts of Queensland and the Federal Court of Australia and that any legal proceedings may be heard

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- in those Courts.
28. **Notices.** Any notice pursuant to this Agreement must be in writing and may be given by a party or the party's solicitor.
- (a) Notices are effectively given if sent to the nominated email address, facsimile number or address of the other party or its solicitor.
- (i) Notices sent by email will be treated as given when the email enters the information processing system that the recipient has nominated even if the recipient is unaware of its receipt.
- (ii) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (iii) Notices sent by post will be treated as given on the second business day after posting.
- Either party may change its facsimile number or address for notices to another facsimile number or address by prior notice to the other party.
30. **Severance.** It is agreed that if any provision of these Conditions of Sale should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.
31. **Risk.** Unless otherwise agreed in writing, the risk in the goods shall pass to the Buyer upon the earlier of delivery of the goods to the Buyer or collection of the goods by the Buyer, its employees, agents or contractors.
32. **Force Majeure.** The Supplier shall not be liable for any failure or delay to supply the goods due to a cause beyond its control including but not limited to acts of God, strikes, lock-outs or other industrial disturbances, fire, flood, explosion, civil riot, government interference and the like.
33. **Entire Agreement.** These Conditions of Sale contain all the terms of the agreement between the parties and supersede all prior discussions and arrangements in relation to the subject of this Agreement. In the event that there is any conflict between the provisions of this Agreement and the provisions of the Credit Application Form and Guarantee and Indemnity Agreement then the provisions of this Agreement shall prevail.
34. **Personal Properties Securities Act 2009.**
- (a) The Buyer hereby acknowledges that these Conditions of Sale constitute a security agreement which creates a security interest:
- (i) In favour of the Supplier in all goods supplied by the Supplier to the Buyer and all after acquired goods supplied by the Supplier to the Buyer (or for the Buyer's account) to secure the payment from time to time and at a time, including future advances. The Buyer agrees to grant a PMSI to the Supplier; and
- (ii) In favour of the Supplier in all personal and all real property owned by the Buyer now or in the future to secure the payment of the goods and without limitation any Money's Owed to the Supplier by the Buyer from time to time.
- (b) The Buyer acknowledges and agrees that by assenting to these Conditions of Sale the Buyer grants a security interest (by virtue of clauses 5(d) and 18 respectively of the Conditions of Sale) to the Supplier and all goods previously supplied by the Supplier to the Buyer (or for the Buyer's account) and these Conditions of Sale shall apply notwithstanding anything express or implied to the contrary contained in the Buyer's purchase order.
- (c) The Buyer undertakes to:
- (i) Sign any documents and/or provide any information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable registration of a financing statement or financing change statement on the Personal Properties Securities Register (PPSR);
- (ii) Not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the goods without the prior written consent of the Supplier;
- (iii) Not enter into any security agreement that permits any other person to have or to register any security interest in respect of the goods or any proceeds from the sale of the goods until the Supplier has perfected its PMSI;
- (iv) Not assign or grant a security interest in respect of any accounts owed to it in relation to the goods without the Supplier's prior written consent;
- (v) Give the Supplier not less than 14 days' written notice of any proposed change in the Buyer's name and/or any other changes in the Buyer's details (including by not limited to changes in the Buyer's address, facsimile number, email address, trading name or business practice);
- (vi) Pay all costs incurred by the Supplier in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Conditions of Sale including executing subordinate agreements;
- (vii) Be responsible for the full costs incurred by the Supplier (including actual legal fees and disbursements on an indemnity basis) in obtaining an order pursuant to section 182 of the PPSA; and
- (viii) The Buyer waives any rights it may have under sections 115 of the PPSA upon enforcement.
- (d) For any goods supplied that are not goods that are used predominately for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the goods.
- (e) The Buyer hereby waives any rights the Buyer may otherwise have to:
- (i) receive any notices the Buyer would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135 of the PPSA.
- (ii) apply to a Court for an order concerning the removal of an accession under section 97
- (iii) object to a proposal of the Buyer to purchase or retain any collateral under sections 130 and 135.
- (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in goods supplied to the Buyer from time to time.
- (v) Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Supplier, the Buyer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.
- (f) The Buyer agrees that immediately on request by the Supplier the Buyer will procure from any persons considered by the Supplier to be relevant to its security position such agreement and waivers as the Supplier may at any time require.
- (g) The Buyer gives the Supplier a security interest in all of the Buyer's present and after-acquired property in which goods or materials supplied or financed by the Supplier have been attached or incorporated.

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