

# Terms and Conditions



1. Definitions: 1.1. "BIRD HABITATS" means Bird Habitats. 1.2. The "Customer" means the applicant, including any of its authorised officers, directors or proprietors, placing an order or request for the purchase of goods from BIRD HABITATS. 1.3. "Order" or "Request" means an order or request by the customer to BIRD HABITATS for goods.

2. Orders: 2.1. All orders are subject to acceptance by BIRD HABITATS. 2.2. An order will only be accepted if it issues an invoice to the customer. 2.3. BIRD HABITATS will not be bound by any terms attaching to an order, and the customer agrees that those terms are excluded. 2.4. BIRD HABITATS may require payment of an initial amount by the customer upon an order or request being submitted to it by a customer. In circumstances where payment of an initial amount is required by BIRD HABITATS then acceptance of the order or request will not be made by BIRD HABITATS until such time as the payment of the initial amount has been made by the customer to BIRD HABITATS.

3. Terms of Payment: 3.1. Subject to Clause 2, or unless otherwise stipulated by BIRD HABITATS in writing, payment for all goods is to be made before goods will be shipped or collected. 3.2. Any agreement by BIRD HABITATS to the failure of the customer to pay for goods by the due date will in no circumstances constitute a waiver by BIRD HABITATS of its rights to payment on the due date nor will it be construed as an agreement to provide credit otherwise than in accordance with these terms. 3.3. If a credit limit is approved, and the customer orders goods to an aggregate above that limit, then the customer and guarantor/s accept responsibility for payment should BIRD HABITATS supply those goods. 3.4. The customer will not be entitled to withhold payment (in whole or part) of the moneys owed to BIRD HABITATS or to make any deduction from those monies in respect of any set off or counter claim.

4. Delivery: 4.1. If a BIRD HABITATS invoice specifies it is the responsibility of BIRD HABITATS to deliver the goods to the customer or it is otherwise agreed that BIRD HABITATS will deliver the goods to the customer, the following will apply: 4.1.1. BIRD HABITATS is entitled to a delivery fee from the customer. 4.1.2. Delivery times advised to the customer are estimates only and BIRD HABITATS will not be liable for any loss, damage or delay suffered or incurred by the customer or its clients arising from late or non-delivery of the goods; and 4.1.3. If the customer does not accept delivery of the goods, the customer has no entitlement to be repaid the initial amount and BIRD HABITATS will in addition be entitled to pursue the customer pursuant to its rights under these terms and conditions and at law. 4.2. If a BIRD HABITATS invoice specifies it is the responsibility of the customer to collect the goods from BIRD HABITATS or it is otherwise agreed that the customer will collect the goods from BIRD HABITATS, the following will apply: 4.2.1. BIRD HABITATS will be entitled to require the customer to collect the goods as agreed in their order; 4.2.2. Collection times advised to the customer are estimates only and BIRD HABITATS will not be liable for any loss, damage or delay suffered or incurred by the customer or its clients arising from late collection or an inability to collect the goods; 4.2.3. If the customer does not collect the goods within the time specified by BIRD HABITATS for the collection of the goods, the customer has no entitlement to be repaid the initial amount and BIRD HABITATS in addition will be entitled to pursue the customer pursuant to its rights under these terms and conditions and at law.

5. Title and Risk: 5.1. Goods supplied to the customer by BIRD HABITATS shall remain the sole and absolute property of BIRD HABITATS until such time as BIRD HABITATS has been paid by the customer all monies due and owing to it by the customer in relation to any account. 5.2 Risk in the goods supplied by BIRD HABITATS to the customer will pass from BIRD HABITATS to the customer; 5.2.1. When the goods are being shipped, once the goods are on board the ship; and 5.2.2. When the goods are not being shipped, immediately upon the goods being dispatched from BIRD HABITATS premises. If goods are collected by the customer or being delivered by

# Terms and Conditions



BIRD HABITATS to the customer from a location other than BIRD HABITATS' premises (the departure point) the risk in the goods will pass to the customer immediately upon dispatch from the departure point. 5.3. Until BIRD HABITATS has been paid all money due and owing to it the customer agrees; 5.3.1. To keep all goods supplied by BIRD HABITATS as fiduciary and trustee for BIRD HABITATS and to store the goods in a manner that discloses BIRD HABITATS is the owner of the goods; and 5.3.2. To only sell the goods supplied by BIRD HABITATS in the normal course of business on the condition that the customer holds all proceeds on trust for BIRD HABITATS.

6. Default by Customer: 6.1. In the event the customer dishonours any cheque or defaults in the payment of any invoice, all moneys owing by the customer to BIRD HABITATS on any account whatsoever shall, at BIRD HABITATS' option, become immediately due and payable in full by the customer. 6.2. BIRD HABITATS shall not be obliged to deliver goods pursuant to an order until all moneys owing and overdue to BIRD HABITATS by the customer on prior orders or requests or invoices are paid to BIRD HABITATS. 6.3. Unless otherwise agreed, in the event payment is not made in accordance with BIRD HABITATS' terms, BIRD HABITATS shall be at liberty to charge the customer and be paid interest on the outstanding balance from the date of the invoice until the date of payment at the rate calculated using the indicative "cash" rate of the Reserve Bank of Australia as published in the Australian Financial Review plus a margin of 3% per annum. 6.4. In the event the customer defaults in any payment owing to BIRD HABITATS, the customer has no entitlement to the Initial Amount and the customer shall pay to BIRD HABITATS all costs and expenses incurred by BIRD HABITATS in respect to the recovery of moneys owing by the customer and/or the recovery of goods in the possession of the customer or a third party on a solicitor and client basis. 6.5. Payments received by BIRD HABITATS may be credited first against any costs and expenses payable by the customer to BIRD HABITATS, then accrued interest, and thereafter the debt. 6.6. In the event of the customers death, bankruptcy, administration, receivership, liquidation or any other external administration, suspension of payments, dissolution or modification of partnership, non-payment or non-acceptance of any shipment(s) BIRD HABITATS may cancel the order or request or suspend or discontinue shipments or deliveries, always reserving all rights to recover from the customer any loss occasioned thereby, in addition to any lien to which BIRD HABITATS may by statute or otherwise be entitled. 6.7. In the event the customer is in default of any term or condition of any order or request and the customer has been in default thereof for a period of 7 days, BIRD HABITATS at its election, at any time thereafter shall be at liberty to cancel any or all orders or requests yet to be completed or fulfilled and recover from the customer any or all losses, damages, costs, interest, charges, including handling charges payable to both BIRD HABITATS and its suppliers and expenses incurred or suffered by BIRD HABITATS as a result of the customer's default. 6.8. In the event the customer purports to cancel any order or request, BIRD HABITATS is entitled to view this act as a repudiation of the contract between the parties and the customer shall pay BIRD HABITATS all losses, damages, costs, fees, charges, interest including handling charges payable to both BIRD HABITATS and its suppliers and expenses incurred or suffered by BIRD HABITATS as a result of the repudiation of the contract. 6.9. In the event BIRD HABITATS elects, because of the customers prior indebtedness to BIRD HABITATS to retain possession of the goods, the delivery of or completion date referred to in any order or request shall be replaced by a date being 30 days from the date of satisfaction by the customer of the customers prior indebtedness to BIRD HABITATS. 6.10. BIRD HABITATS' obligation to deliver or sell shall always be conditional upon it being satisfied of the customer's ability to pay and comply with these terms and conditions. If BIRD HABITATS ceases to be so satisfied it may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost arising therefrom, and all moneys then outstanding by the customer shall immediately become due and payable.

# Terms and Conditions



7. Acknowledgement: 7.1. The customer acknowledges that BIRD HABITATS product has the following characteristics: 7.1.1. It is susceptible to exposure to the elements; 7.1.2. It is a natural product and variations in colour, texture and inherent quality occur.

8. Liability: 8.1 BIRD HABITATS accepts no liability in respect of any loss, costs, injury, harm or damage (whether direct, indirect, consequential or of any other kind, whether loss of profit or any other economic loss) suffered or incurred by the customer or any other person arising out of or in connection with the supply of goods by BIRD HABITATS.

9. Warranties: 9.1. Subject to any express written warranty given by BIRD HABITATS, and subject to any statutory warranties express or implied which by law cannot be excluded, all warranties, conditions and representations, express or implied, are expressly negated 9.2. Where a warranty or condition is implied by law, BIRD HABITATS' liability, to the extent that same can be so limited, is limited to one of the following at the election of BIRD HABITATS in the case of goods. 9.2.1. Replacement of the goods or supply of equivalent goods, 9.2.2. Repair of goods, 9.2.3. Payment of the cost of replacing the goods or acquiring equivalent goods, 9.2.4. Payment of the cost of having the goods repaired. 9.3. To the maximum extent permitted by law BIRD HABITATS excludes all liability to the customer for any consequential or indirect losses of any kind arising in any manner. Consequential losses will be taken to include (without limitation): 9.3.1. Any loss of income, profit or business; 9.3.2. Any loss in overhead costs; and 9.3.3. Any loss of goodwill or reputation.

10. Assignment: 10.1. BIRD HABITATS is entitled at any time to assign its rights pursuant to these terms and conditions to any third party. The customer is not entitled to assign its rights pursuant to these terms and conditions unless with the written consent of BIRD HABITATS.

11. Return of Goods Procedure: 11.1. Goods shall not be returned to BIRD HABITATS for credit unless agreed to in writing by BIRD HABITATS. 11.2. If BIRD HABITATS agrees in writing to accept the return of any goods, the customer must pay to BIRD HABITATS a return fee equivalent to 10% of the invoice price of the returned goods.

12. Force Majeure: 12.1. Deliveries may be totally or partially suspended by BIRD HABITATS during any period in which BIRD HABITATS is prevented or hindered from making delivery through any circumstances outside its reasonable control, including but not limited to strikes, shortages in any necessary materials, equipment breakdowns, accidents, war, riot, government restriction, civil commotion or act of God. During these times, BIRD HABITATS will not be under any liability whatsoever to the customer for loss or damage suffered by the customer (including consequential loss or damage) and will not be under any obligation to deliver at any future date any goods not delivered during the period of suspension.

13. Jurisdiction: 13.1. The customer and BIRD HABITATS agree that the appropriate jurisdiction for any disputes relating to the sale of goods or the provision of services by BIRD HABITATS to the customer shall be the state of Victoria and that the laws of the state of Victoria are the governing laws of this agreement.

14. Agreement: 14.1. These term and conditions represent the entire terms and conditions between BIRD HABITATS and the customer.

15. Variation: 15.1. Subject to Clause 14, any variations to these terms and conditions must be in writing and signed by BIRD HABITATS and the customer. 15.2. The customer acknowledges that BIRD HABITATS shall have the right to vary all or any of these terms and conditions by providing one month's notice of the changes to the customer. The customer acknowledges that any changes made by BIRD HABITATS to these terms and conditions in accordance with this clause will apply to all orders made by the customer for the supply of goods by BIRD HABITATS following the expiry of the notice period.