



**ADDENDUM TO  
DAYCO GLOBAL TERMS AND CONDITIONS OF PURCHASE FOR DAYCO  
IN AUSTRALIA**

For all Orders issued by Dayco affiliates, subsidiaries or divisions domiciled in Australia, including Dayco Australia Pty Limited, the Global Terms are amended as follows:

- Under Section A of the Global Terms, immediately following A.3, A.4 shall be inserted stating:  
4. In these terms, a reference to:  
(a) a business day is a reference to a day that is not a Saturday, Sunday or public holiday in Melbourne, Australia.  
(b) the "Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as given effect under Part XI of the *Competition and Consumer Act 2010*, and under the same or similar provisions of State or Territory legislation (as amended or replaced from time to time).
- (c) a "Consumer" means a consumer within the meaning of section 3 of the Australian Consumer Law. In Section C.2 of the Global Terms, the words 'has reason to believe' shall be deleted and replaced with the words 'reasonably believes'.
- In Section C.3 of the Global Terms, the words '; or (d) terminate the Order' shall be deleted.
- Under Section D of the Global Terms, immediately following D.2, D.3 shall be inserted stating:  
3. The Seller acknowledges and agrees that these terms do not create a security interest (including a security interest as defined in the Personal Property Securities Act 2009 (Cth) ("PPSA")) in favour of the Seller or any third party over the Purchaser or any of its assets. The Seller agrees that it will not register (or procure any other person to register) a financing statement (as defined in the PPSA) in relation to the Purchaser or its assets. If, in breach of this provision, the Seller registers (or procures any other person to register) a financing statement (as defined in the PPSA) then the Seller must discharge the registration immediately upon request by the Purchaser.
- In the second sentence of Section E.1 of the Global Terms, immediately following the words 'on a case by case basis', the words 'but these terms shall prevail over those Incoterms to the extent of any inconsistency between them' shall be inserted.
- Immediately after the last sentence of Section G.1 of the Global Terms, the following shall be added to G.1:

To the extent that the Purchaser acquires goods from the Seller as a Consumer, or acquires goods from the Seller that are ultimately supplied to a Consumer (whether by the Purchaser or by a third party), the Purchaser may have certain rights and remedies (including, without limitation, consumer guarantee rights or rights to indemnity) that cannot be excluded, restricted or modified by agreement. To avoid doubt, nothing in these Global Terms operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute where to do so would contravene that statute or cause any of these terms to be void.



- Under section G.2 of the Global Terms, immediately following the words 'any failure of the Items to comply with all terms and conditions of the Order', the words, 'except to the extent that such Damages or Claims were caused by any negligence or breach of contract by the Purchaser' shall be inserted.
- Under section G.3 of the Global Terms, the sentence 'Such policies of insurance shall not be cancellable except upon ten days advance written notice to Purchaser.' shall be deleted.
- Under section G.3(a) of the Global Terms, the phrase "general liability insurance" shall be replaced with "public and product liability insurance."
- Section H.1 of the Global Terms shall be replaced with the following:

1. Termination by Purchaser: Purchaser may terminate the Order, in whole or in part, by written notice to the Seller (including by way of electronic notice) at any time following the occurrence of any of the following events: (a) failure by Seller to comply with any of its obligations under the Order that (if the failure is capable of remedy) is not remedied within 14 days of the Purchaser giving written notice to the Seller requiring the failure to be remedied; (b) Seller disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; (c) Seller ceases to carry on business; (d) Seller ceases to be able to pay its debts as they become due; (e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of Seller's assets, operations or business; (f) any step is taken to enter into any arrangement between Seller and its creditors; or (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of Seller's assets or business. Purchaser may also terminate the Order, in whole or in part, at Purchaser's sole convenience (without any obligation to act in good faith) by giving written notice to the Seller (including by way of electronic notice).

- In Section H.2 of the Global Terms, the words at the beginning of the section 'Purchaser's Rights and Remedies' shall be replaced with the words 'Purchaser's Rights, Remedies and Obligations'.
- In Section H.2 of the Global Terms, the words 'Section H(1)(a), (b), (c), (d) or (e) above' shall be replaced with the words 'Section H(1)(a), (b), (c), (d), (e), (f) or (g) above'.
- In Section H.3 of the Global Terms, immediately following the uses of the word 'Purchaser' shall be words 'or Seller'.
- Section I(3) of the Global Terms shall be deleted.
- Immediately after Section K.1(d) of the Global Terms, the following K.1(e)-(h) shall be inserted:

(e) Seller acknowledges that any agreement formed on these terms constitutes a security agreement in favour of Purchaser for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"). The Seller acknowledges and agrees that the Purchaser has a security interest in all present and future Purchaser's Property.

(f) Seller must ensure that no security interest (including any security interest as defined in the PPSA) is created, exists or subsists over the Purchaser's Property other than a security interest arising under these terms. Seller must immediately notify Purchaser if any other person enforces or attempts to



enforce a security interest in the Purchaser's Property.

(g) Seller must pay all costs incurred by Purchaser in connection with the registration of a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by Seller in favour of Purchaser. Seller must assist Purchaser to complete the registration of any financing statement and must do all things and provide all information necessary to enable Purchaser to perfect its security interest.

(h) To the extent permitted by law, Seller and Purchaser contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA. Seller irrevocably waives any rights under sections 95, 121(4), 130, 132(4) and 135 of the PPSA. Seller agrees that it irrevocably waives any rights it may have to receive a verification statement (as defined in the PPSA). Seller and Purchaser agree that neither of them will disclose, or authorise the disclosure, to any person of any information of the kind described in section 275(1) of the PPSA, except to the extent (if any) required by law.

- Under Section K.2 of the Global Terms, immediately following the words 'Seller's Property used to produce the Items,', the words, 'on reasonable notice,' shall be inserted.
- Immediately preceding the first sentence of Section L of the Global Terms, the following sentence shall be inserted:

The Seller must use properly skilled personnel to manufacture the Items and otherwise perform its obligations under these Global Terms.

- In Section N.1 of the Global Terms, immediately following the words 'for any reason' delete the words 'Seller grants to Purchaser' and insert the words 'other than Purchaser's convenience, Seller and Purchaser must negotiate in good faith for the grant to Purchase by Seller of'.
- Section O.1 of the Global Terms shall be replaced with the following:

The Seller must comply with all applicable laws and regulations in connection with the manufacturing, packing, packaging, marketing, branding, transportation and delivery of the Items. Items supplied by the Seller must comply with all consumer guarantees prescribed under the Australian Consumer Law.

- In Section P of the Global Terms, the following sentence is deleted:

Under such circumstances, Seller shall reimburse Purchaser for any amount paid in excess of the amount that Purchaser would have paid to Seller for such Item and the delivery of such Item at the date and place specified on the Order or in Purchaser's release.

- Section Q of the Global Terms shall be replaced with the following:

Seller may not assign any agreement formed between the Purchaser and Seller on these terms and conditions, or any right under such an agreement, without the prior written consent of Purchaser. Purchaser may assign or novate any or all its rights and obligations under any agreement formed between the Purchaser and Seller on these terms and conditions to its related bodies corporate, or to any corporation into which it has been or is to be merged, consolidated, or by which all or substantially all of its assets have been or are to be acquired. Seller must do anything reasonably requested by Purchaser to give effect to any such assignment or novation.

- Insert the words ', Dispute Resolution' and the end of the heading to Section T.



- Section T.3 of the Global Terms shall be replaced with the following:

### 3. Dispute resolution:

(a) The parties acknowledge that while disputes may arise from time to time, their common intent is to ensure that any dispute is resolved in a timely and cost effective manner.

(b) Subject to Section T(3)(g), a party must not start court proceedings unless it has complied with this Section T(3).

(c) A party claiming that a dispute arising out of or in connection with an Order or the terms and conditions hereof has arisen ("Dispute") must give the other party notice of the details of the Dispute ("Dispute Notice").

(d) The parties must attempt to resolve any Dispute by negotiations using the following escalation procedure: (i) When a Dispute Notice is given, refer any Dispute initially to a representative nominated by Purchaser, and a representative nominated by Seller, who will in good faith endeavour to resolve the Dispute within 10 business days after the Dispute Notice is given by a party, (ii) If they cannot resolve the Dispute within 10 business days after the Dispute Notice is given, each party must refer the Dispute to representatives of senior management who must then attempt to resolve it.

(e) If the parties do not resolve the Dispute within 20 business days of receipt of the Dispute Notice the dispute may be referred to court proceedings.

(f) Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the Order and the terms and conditions hereof, subject always to rights of termination under the Order and the terms and conditions hereof.

(g) Nothing in this Section T(3) will prejudice the right of either party to institute proceedings to seek injunctive or urgent declaratory relief.

4. Governing Law: The rights and obligations of the parties hereto shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the related Convention on the Limitation Period in the International Sale of Goods rather the rights and obligations shall be governed by and interpreted in accordance with laws of Victoria, Australia. Any dispute brought by Seller against Purchaser arising out of or in connection with the Order and the terms and conditions hereof is subject to the exclusive jurisdiction of the courts located in Victoria, Australia and the courts of appeal therefrom. Purchaser may bring suit against Seller in any court having jurisdiction over Seller.

- In the first sentence of Section U of the Global Terms, the words 'including but not limited to' shall be replaced with the words 'which the parties agree istaken to include'.

- At the beginning of Section V of the Global Terms, '1.' shall be inserted, and immediately following V.1, the following shall be inserted:

2. Any electronic notices given under these terms must be sent by email to the recipient's contact address specified in PURCHASE ORDER, as varied by any notice given by the recipient to the sender.

An email notice will take effect when it is received, and will be taken to be received when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address, provided that if the report is generated on a day that is not a business day or is after 5.00pm on a business day, the notice is taken to be received at 9.00 am on the next business day.

- Section Y of the Global Terms shall be replaced with the following:

Seller will at least six months before the nominal expiry date of any applicable enterprise agreement,



notify Purchaser of that expiry date, unless the enterprise agreement has been replaced by another enterprise agreement. Purchaser may thereafter direct Seller in writing to manufacture up to 30 days of additional inventory of Items required and any packaging and storage requirements. Seller will use commercially reasonable efforts to comply with Purchaser's written directions prior to the nominal expiry date of the applicable enterprise agreement, and after that date and until the enterprise agreement has been replaced by another enterprise agreement. By authorizing the additional inventory, Purchaser commits to buy the entire quantity of conforming Items requested and produced. Seller is responsible for carrying costs and any additional costs of manufacture.