**Part A - Terms and conditions - retail customers**

Last updated 17/11/2022

These Terms and Conditions (**Terms**) set out the basis on which you can purchase Mighty Craft’s products online. By clicking the ‘I accept’ button or otherwise submitting an Order, you agree that you have read, understood and will be bound by these Terms.

1. Definitions

In these Terms, the words below have the following meanings:

**Agreement** means each Offer which is accepted by Mighty Craft under clause 3.2.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Brand Supplier** means a manufacturer or supplier of Goods which has either (a) appointed Mighty Craft as its sales agent in respect of particular Goods; or (b) been approved by Mighty Craft to use the Mighty Craft sales platform to sell Goods manufactured by it in its own right.

**Brand Supplier Sale** has the meaning provided to it in clause 3.3.

**Consumer** is definedin section 3 of the Australian Consumer Law.

**Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

**Force Majeure Event** means an event that is beyond the reasonable control of Mighty Craft which prevents Mighty Craft from fulfilling any of its obligations under an Agreement, including Australia-wide or global pandemic, strike, lockout, fire, flood, inability to source materials, parts or labour.

**Goods** means the goods to be supplied to you under an Agreement, including alcoholic beverages and any other products the subject of an Order that is accepted by Mighty Craft.

**Intellectual Property Rights** means any and all intellectual property rights anywhere in the world including but not limited to the rights comprised in any patent, copyright, design, trade mark or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

**Mighty Craft** means, as the context requires, either:

* 1. Mighty Craft Operations;
  2. a Mighty Craft Subsidiary; or
  3. where clause 17 applies, the Brand Supplier.

**Mighty Craft Operations** means Mighty Craft Operations Pty Ltd ACN 120 464 182.

**Mighty Craft Subsidiary** means any entity in respect of which Mighty Craft Operations holds a 50% or greater ownership interest.

**Offer** has the meaning provided to it in clause 3.1.

**Order** means any order you submit to Mighty Craft through the Website to supply any Goods to you.

**Purchase Price** has the meaning provided to it in clause 4.1.

**Tax or Taxes** means any tax, levy, duty, charge, impost, fee, deduction or withholding (including withholding tax, excise and import duties, consumption tax, value added tax or any other taxes, levies or charges) which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of those amounts.

**Website** means the Mighty Craft website accessible at www.mightycraft.com.au or any other website through which Goods are made available from time to time.

1. Application
   1. These Terms apply to and govern the supply of Goods to you under any Order placed by you using the Website.
   2. (**Business customers**): Customers who wish to set up a business account will be bound by separate terms and conditions specific to business customers, which will be provided upon setting up a business account. To set up a business account with Mighty Craft please click [**here**]](mailto:here]) or contact us at [enquiries@mightycraft.com.au](mailto:enquiries@mightycraft.com.au?subject=Account%20Set-Up).
   3. Your use of the Website must also comply with Mighty Craft’s website terms of use [Website Terms of Use](https://www.mightycraft.com.au/terms-conditions/).
2. Formation of Agreement
   1. By submitting an Order, you make an irrevocable offer for Mighty Craft to supply you with the Goods on the terms of:
      1. these Terms; and
      2. the Order

(**Offer**).

* 1. An Agreement will be formed when Mighty Craft accepts your Offer.
  2. While Goods supplied to you under these Terms will generally be supplied by Mighty Craft in its own right, you acknowledge that, from time to time, Goods may instead be supplied:
     1. by Mighty Craft Operations on behalf of Brand Suppliers (including, for example, where Goods are sold by Mighty Craft Operations on an agency or consignment basis); or
     2. by Brand Suppliers in their own right.

(each a **Brand Supplier Sale**).

* 1. In the case of a Brand Supplier Sale you agree and acknowledge that the provisions in clause 17 (*‘Brand Supplier Sales’*) will apply to the Offer.
  2. You represent and warrant to Mighty Craft that all details provided to Mighty Craft when completing the Order are true and accurate.
  3. It is illegal to sell alcohol to persons under the age of 18 or to purchase alcohol on behalf of a person under the age of 18. An Order will only be processed if you confirm when you submit your Order that you are 18 years of age or over and that you are not purchasing Goods for someone who is under the age of 18. Mighty Craft will rely on your confirmation in processing your Order.
  4. A contract will be formed between Mighty Craft and you in respect of each Offer upon the earlier of Mighty Craft:
     1. notifying you in writing that it accepts your Offer;
     2. accepting, in full or part, payment from you for any Goods the subject of the Offer; or
     3. making delivery of the Goods the subject of the Offer to you.
  5. An Agreement formed under clause 3.2 will comprise these Terms and the Order.
  6. Mighty Craft is not bound to accept any Offer and may decide not to accept any Offer for any reason and in the sole discretion of Mighty Craft including, without limitation, due to concerns that you are or may be purchasing Goods for resale or a retail purpose.

1. Price and payment
   1. Unless otherwise agreed between Mighty Craft and you in writing, the price you must pay for the Goods under each Agreement will be:
      1. the applicable price for the Goods the subject of your Order set out on the Website from time to time; plus
      2. a delivery fee, as notified by Mighty Craft from time to time.

(**Purchase Price**).

* 1. Subject to clause 10, unless otherwise expressly specified by Mighty Craft or in these Terms, all prices stated are stated exclusive of Taxes and you are solely responsible for the payment of all Taxes levied or payable in respect of the Goods.
  2. Mighty Craft requires payment of the Purchase Price in full by electronic funds transfer or by any other electronic payment means accepted by Mighty Craft from time to time at the time an Order is placed.

1. Delivery of Goods
   1. Mighty Craft will deliver the Goods to you in the manner:
      1. determined by Mighty Craft or
      2. as otherwise agreed between Mighty Craft and you (which may include collection by you).
   2. Mighty Craft will endeavour, but is not obliged, to deliver Goods or make the Goods available for collection between the hours of 9.00 am and 5.00 pm Monday to Friday at the place of delivery or service provision (excluding on any public holiday at the place of delivery or service provision).
   3. Mighty Craft may, from time to time, be unable to deliver to certain areas or regions and you will be made aware of this after you have provided your delivery details.
   4. You authorise Mighty Craft and its agents to enter the delivery address specified in your Order in order for Mighty Craft or its agent to deliver the Goods to you.
   5. Mighty Craft is not obliged to accept delivery instructions which require it or its agent to deliver the Goods beyond the front door or other entry point of your premises. To the extent that you request and Mighty Craft agrees to deliver in this manner, you indemnify Mighty Craft and its directors, employees, contractors or agents against any loss suffered or otherwise incurred from the delivery of the Goods beyond the front door or other entry point of your premises.
   6. You must, prior to taking possession of the Goods, inspect the Goods and immediately notify Mighty Craft in writing if the Goods are not fit for any purpose, are less than the number specified in the relevant Order or have any defect.
   7. Without limiting any rights you may have under the Australian Consumer Law or clause 6, if you return or decline to accept any delivery of the Goods (including failure to collect the Goods), Mighty Craft will be entitled to:
      1. payment for those Goods;
      2. treat the obligation to supply the remainder of the Goods (if any) as cancelled by you.
   8. Mighty Craft will use its reasonable endeavours to deliver the Goods on any date specified or estimated by Mighty Craft, however you acknowledge that:
      1. these dates are estimates only; and
      2. if Mighty Craft does not currently stock a particular Good, then there may be a delay in the supply of that Good until Mighty Craft has restocked that Good.
   9. Without limiting clause 5.8, Mighty Craft may deliver or provide a portion of the Goods and may invoice or otherwise charge you for that portion. You may not refuse to accept delivery of the Goods or to pay for the Goods because only a portion of the quantity ordered was delivered or provided and you agree that Mighty Craft will not be liable for any loss that you suffer as a result of any delay or cancellation.
   10. Mighty Craft or its agent may rely on any person who is at the delivery address specified in an Order and who takes receipt of Goods, as being authorised by you to do so.
   11. Mighty Craft reserves the right not to deliver Goods where it determines in its absolute discretion (or in the discretion of its agents) that it is not appropriate to do so, including without limitation where:
       1. any recipient of the Goods is or appears to be under the influence of alcohol or drugs, under the age of 18 or acting on behalf of a person considered unsuitable for any reason (including because they may be under the age of 18); or
       2. any request for verification (such as proof of identity or age) is not complied with; or
       3. the delivery instructions are unclear or unsuitable.
   12. You acknowledge and agree that:
       1. Mighty Craft may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
       2. you will not request proof of delivery or other similar documentation from Mighty Craft.
2. Return of Goods
   1. If a Good is not of acceptable quality, faulty, defective or damaged, you may have rights under the Australian Consumer Law which are not affected by this clause 6.
   2. You may only return the Goods to Mighty Craft with the prior written consent of Mighty Craft and Mighty Craft will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of any Goods returned.
   3. Any claims in respect of the Goods made by you to Mighty Craft must be made by written notice to Mighty Craft within 7 days of the date of delivery of the Goods to you.
   4. If you give Mighty Craft a written notice under clause 6.3, you must:
      1. preserve the Goods in the state in which they were received; and
      2. at Mighty Craft’s option, allow Mighty Craft or its authorised representative to inspect the Goods or return some or all of the Goods to Mighty Craft in the same condition as when received by you.
   5. The provision to you of any refund or other remedy in respect of any Goods which are returned to Mighty Craft and determined by Mighty Craft to be damaged will be at Mighty Craft’s sole discretion.
   6. If any Goods which are returned to Mighty Craft are not damaged, then Mighty Craft may, at your cost, return those Goods to you.
3. Title and risk of Goods
   1. Title to, and property in, any Goods supplied under an Agreement remain with Mighty Craft and will only pass to you once all moneys owing by you to Mighty Craft in respect of the Goods have been paid in full.
   2. Risk in the Goods passes to you upon delivery to the delivery address specified in your Order (including where such delivery is to an unattended location).
   3. If you are required to return any Goods to Mighty Craft, risk in the Goods passes to Mighty Craft on confirmation of receipt of the Goods by Mighty Craft.
   4. The Goods are sold to you for personal use and consumption and must not be resold or on-supplied to any person for a resale or retail purpose.
4. Liability
   1. You may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the Goods supplied by Mighty Craft and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.
   2. If Goods supplied by Mighty Craft are faulty, damaged, incorrectly described or breach a Consumer Guarantee, Mighty Craft will provide you with either a refund or replacement goods upon presentation by you of proof of purchase
   3. If you make a claim against Mighty Craft which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Mighty Craft’s liability to you (whether in contract, tort (including negligence) or otherwise) is limited to an amount equal to the lower of:
      1. the cost of replacing the Goods; or
      2. the cost of obtaining equivalent Goods.
5. Notification of claims

You agree to notify Mighty Craft immediately if you become aware of:

* + 1. any claim that the Goods have caused any loss or damage or have breached any contract or law; or
    2. any death, injury or illness,in respect of, or caused by, the Goods.

1. GST
   1. In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.
   2. Unless otherwise expressly stated in writing in an Agreement, all amounts payable by you in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Mighty Craft under these Terms, you must pay to Mighty Craft, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply.
2. Privacy

Mighty Craft collects personal information from you when you interact with us, by for example, placing an Order or making an agreement with us. Mighty Craft’s Privacy Policy explains how personal information is collected, used and disclosed, how it can be accessed and how complaints are handled. By using our Website or otherwise interacting with us, you agree to be bound by our [Privacy Policy](https://www.mightycraft.com.au/privacy-policy/).

1. Force Majeure
   1. Mighty Craft will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.
   2. If a Force Majeure Event under clause 12.1 exceeds 5 days, Mighty Craft may immediately terminate the Agreement by written notice to you.
2. Termination
   1. Without limiting Mighty Craft’s other rights under these Terms, and to the extent permitted by law, Mighty Craft may terminate any Agreement with you with immediate effect by written notice to you if you have breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, you have not remedied the breach within 24 hours of notice requiring the breach to be remedied.
   2. Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to the party at law or in equity.
3. Cancellation
   1. Without limiting clause 13, Mighty Craft may cancel or suspend any Agreement at any time by giving you written notice of cancellation or suspension where Mighty Craft believes (for any reason) that it will be unable to supply the relevant Goods to you. If Mighty Craft cancels an Agreement under this clause 14.1 it will refund to you any amounts already paid by you for the Goods subject to the cancellation and which are not provided to you. The refund of any amounts will be your sole remedy against Mighty Craft in respect of any cancellation under this clause 14.1.
   2. Neither an Agreement nor any Offer that has been submitted can be cancelled by you except with the prior written consent of Mighty Craft.
4. Acknowledgements and representations
   1. By making an Offer, you warrant and represent to Mighty Craft that you have read and understood these Terms prior to making the Offer, and agree to be bound by them in full.

15.2 You acknowledge that the law prohibits the sale of alcohol to persons under the age of 18. By placing an Order you represent and warrant to Mighty Craft that:

* + 1. you are 18 years of age or over and you agree to provide proof of age to the satisfaction of Mighty Craft if requested by Mighty Craft or its agents, including upon delivery of the Goods;
    2. any person that you obtain the Goods for, or supply the Goods to, is 18 years of age or over; and
    3. you will not take, deliver or supply the Goods provided to you under an Order to any area or community that alcohol is prohibited from being taken, delivered or supplied to.
  1. Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Mighty Craft do not constitute an offer by Mighty Craft to supply Goods appearing in those lists or catalogues or an offer by Mighty Craft to supply Goods at the prices set out in those lists or catalogues. Mighty Craft’s price lists and catalogues may be changed by Mighty Craft at any time without notice.

1. Intellectual Property
   1. You acknowledge and agree that Mighty Craft or its related entities own or are licensed to use the Intellectual Property Rights relating to the Goods and the Website and you must not make any representation to the contrary or otherwise use the Intellectual Property Rights in a manner inconsistent with the rights of the owner or licensee of the Intellectual Property Rights.
2. Brand Supplier Sales
   1. This clause 17 applies to any Brand Supplier Sales, being Orders where the Goods will be supplied to you either:
      1. by Mighty Craft on behalf of a Brand Supplier (for example, where Goods are sold by Mighty Craft on an agency or consignment basis); or
      2. by a Brand Supplier directly.
   2. For all Brand Supplier Sales you agree and acknowledge that:
      1. subject to clauses 17.2(b) and 17.2(c), these Terms (being all terms and conditions of this document) will apply as between you and the relevant Brand Supplier;
      2. all references to Mighty Craft in these Terms are to be taken to be references to the relevant Brand Supplier, other than:
         1. the reference to ‘Mighty Craft’ in the definition of ‘Website’;
         2. references to ‘Mighty Craft Subsidiary’; and
         3. references to ‘Mighty Craft’ in clause 2.3, 4.1(b, 11 (‘Privacy’) and 18.2;
      3. the relevant Brand Supplier, and not Mighty Craft, will be liable to you in relation to the supply or failure to supply the relevant Good; and
      4. any other amendments to the Terms that need to be made to give effect to paragraph (b) above, are considered to be made.
3. Miscellaneous
   1. In these Terms:
      1. the meaning of general words is not limited by specific examples introduced by ‘includes’, ‘including’, ‘for example’ or ‘such as’ or similar expressions;
      2. a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
      3. headings are inserted for convenience and do not affect the interpretation of these Terms;
      4. no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
      5. unless otherwise provided, a reference to payment means payment in Australian dollars.
   2. Mighty Craft may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective upon publication of the variation on the Website (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date.
   3. A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.
   4. If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.
   5. The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations under an Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 6, 7, 8, 9, 10, 13, 16 and 17.
   6. These Terms are governed by the laws in force in Victoria, and you and Mighty Craft submit to the non-exclusive jurisdiction of the courts of Victoria.