



COLDY HOLDER PRODUCTS



44 Meta St
Caringbah NSW 2229



Ph: 02 9525 6629



Email:
sales@coldyholder.com.au



A.B.N.
71 657 096 589

Manufacturers of Australian Made Stubby Holders and other Neoprene Products

ALL SALES OF GOODS BY COLDY HOLDER PRODUCTS ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

1. DEFINITION – “COLDY HOLDER PRODUCTS” means “THE ESSENTIAL MANUFACTURING CO PTY LTD.” “Customer” means the person(s) who has requested the supply of goods by COLDY HOLDER PRODUCTS and, unless the contrary is proven, to whom the goods are invoiced. “Orders” means all orders (written or oral) placed by the Customer or its servants or agents for the supply of goods by COLDY HOLDER PRODUCTS, being orders which are accepted by COLDY HOLDER PRODUCTS, in its absolute discretion.

2. GENERAL – These terms and conditions apply to all sales of goods by COLDY HOLDER PRODUCTS despite any contrary terms in any documents of the Customer. These terms & conditions commence the date on which the last party signs the document and will continue to operate until terminated in a manner specified within these terms and conditions (“The Term”).

3. SALES – All sales are firm. COLDY HOLDER PRODUCTS does not sell on a ‘sale or return’ basis, and no employee or agent of COLDY HOLDER PRODUCTS has any authority to offer such terms or alter any condition of sale. In addition, orders are non-cancellable. The minimum order value is \$500.00 (plus GST). A surcharge of \$100.00 (plus GST) will be applicable to all orders under minimum order value.

4. TERMS AND PAYMENT – Normal Trading terms are net cash thirty (30) days from receipt of a valid and reconciled tax invoice, subject to the completion and obtaining approval of a credit account application form. In the event the Customer fails to pay any undisputed amount by the due date, LICENSING ESSENTIALS will issue a written notice to the Customer advising payment has not been received (“Written Notice”). If the Customer fails to pay any undisputed overdue amounts within fourteen (14) days of receipt of the Written Notice. COLDY HOLDER PRODUCTS reserves the right to charge interest on any unpaid amounts at the rate of 2% per month and continuing. COLDY HOLDER PRODUCTS also reserves the right to suspend deliveries of further goods if the terms of payment are not strictly adhered to by the Customer. If payment for the goods is not made by the customer to COLDY HOLDER PRODUCTS PTY LTD in accordance with this clause, Customer shall be liable to pay to COLDY HOLDER PRODUCTS on demand all costs of whatsoever nature of and associated with exercise of COLDY HOLDER PRODUCTS’s rights under this clause AND the Customer hereby grants permission and an irrevocable license to COLDY HOLDER PRODUCTS’s agents to enter upon the premises where the unpaid goods shall be for the purpose of doing anything necessary to take possession of the unpaid goods. The Customer agrees to be liable for any and all of COLDY HOLDER PRODUCTS’s debt collection and legal fees properly incurred in enforcing this agreement and to pay interest on any monies outstanding at the rate prescribed by the Penalty Interest Rate Act 1983 (VIC).

5. OWNERSHIP OF GOODS – The following are separate and dependent conditions, namely that: a) Ownership and property of the goods shall, notwithstanding delivery to the Customer, only pass from COLDY HOLDER PRODUCTS to the Customer when payment in full (“Payment”) for the goods has been received by COLDY HOLDER PRODUCTS (whether or not the goods are delivered in installments and some have been paid for by the Customer) and until such time the Customer shall ensure that the goods are readily identifiable as the property of COLDY HOLDER PRODUCTS and shall keep the goods as bailee for and on behalf of COLDY HOLDER PRODUCTS. b) Payment shall become due immediately upon the commencement of any act or proceeding in relation to the Customer’s insolvency. c) If payment is not made within seven (7) days of final demand in writing made by COLDY HOLDER PRODUCTS the Customer irrevocably authorises COLDY HOLDER PRODUCTS without prejudice to any other remedies to enter

the premises where the goods are stored and re-take possession of the goods. COLDY HOLDER PRODUCTS must at all times when attending premises where the goods are stored comply with all relevant policies, procedures and directions as advised by the Customer. d) Notwithstanding the above, until COLDY HOLDER PRODUCTS has received full payment for the goods the Customer shall be entitled to offer for sale and sell the goods in the ordinary course of business as principal not agent at the best obtainable price and will be legally and beneficially entitled to the proceeds of sale to the extent of any payments due to COLDY HOLDER PRODUCTS and the Customer must keep the proceeds of any such sale separate from its own money and account to COLDY HOLDER PRODUCTS for such proceeds according to the rule of common law. e) Notwithstanding the above, all risk in the goods passes to the Customer on delivery to the Customer or an agent of Customer at the location named in the corresponding invoice. If the goods are collected by the Customer, risk in the goods passes to the Customer when the Customer collects the goods from the COLDY HOLDER PRODUCTS premises.

6. PRICES – All quotations provided for the sale of goods are based on current costs (Australian Currency) and are subject to amendments and variation in duty, GST and currency fluctuations up to the time of invoicing. COLDY HOLDER PRODUCTS shall make every endeavor to estimate the correct delivery date.

7. SUSPENSION AND TERMINATION OF TRADING ACCOUNT – COLDY HOLDER PRODUCTS may, acting reasonably, cancel or suspend the trading account provided to the Customer in any of the following events: a) The failure of the Customer to make payment for the goods in accordance with these terms & conditions, b) if the Customer enters into an agreement for the sale or proposed sales of its business, c) the Customer fails to order the minimum calendar year purchase value of \$10,000.00 d) in the event that the Customer goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or is unable to pay its debts within the meaning of the corporation Law or if an Administrator, a Receiver is appointed e) in the event that COLDY HOLDER PRODUCTS suspended or terminated of the trading account of the Customer, COLDY HOLDER PRODUCTS shall not be liable for any loss or damage whatsoever which may result directly or indirectly to the Customer from such cancellation or suspension f) either party may terminate these conditions at any time by giving the other party one (1) month’s written notice. The Customer may in its sole and absolute discretion and without prejudice to any other right or remedy it may have, immediately terminate these terms and conditions by notice in writing to COLDY HOLDER PRODUCTS, if (i) COLDY HOLDER PRODUCTS is in breach or default of any of these terms and conditions and fails to rectify that breach or default (if capable of remedy) within ten (10) days after being requested to do so in writing by the Customer, (ii) COLDY HOLDER PRODUCTS has a liquidator, provisional liquidator, receiver and manager or official manager appointed to it, (iii) COLDY HOLDER PRODUCTS has an administrator appointed to it pursuant to the Corporation Act 2001 (Cth), (iv) COLDY HOLDER PRODUCTS resolves to wind itself up or is subject to an order to wind up; or enters into a scheme of arrangement with its creditors.

8. DELIVERY a) Times given for delivery are approximate and for guidance only. COLDY HOLDER PRODUCTS shall not be under any liability nor subject to Clause (b) hereof shall the Customer be entitled to terminate the Contract in the event of reasonable delay and without limiting the generality of the foregoing. COLDY HOLDER PRODUCTS shall in no event be liable if dispatch is delayed by alterations to the Contract or specifications of the Goods by the Customer. Any other act



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of default on the part of the Customer, or by fire, flood, earthquake, storm, tempest and other natural phenomenon, acts of God, strikes, lock-outs, shortage of raw material or shipping or transport facilities or insurrection, riot, civil commotion and any embargoes, restraint order or restrictions imposed directly or indirectly by any Government or Governmental Authority, Agency or Departments, wrecks, mutinies or barratry or from any other cause which is unavoidable or beyond the reasonable control of COLDY HOLDER PRODUCTS and if delays from such cause or causes should occur then COLDY HOLDER PRODUCTS's delivery time shall be correspondingly extended. b) If COLDY HOLDER PRODUCTS is rendered wholly or in part unable to deliver the goods due to causes beyond its control at the time or in the manner provided in this Contract for a continuous period or more than three (3) months either party may rescind this Contract by notice in writing to the other party without penalty but nevertheless without prejudice to any antecedent right of COLDY HOLDER PRODUCTS in relation to any breach by the Customer of any of the conditions hereunder. In the event that the Customer requires a specialized delivery for an order, resulting in expedited delivery, overtime charges or additional costs being incurred by COLDY HOLDER PRODUCTS for that order, such increased working costs shall be paid by the Customer and form part of the Purchase Price. COLDY HOLDER PRODUCTS reserves the right to deliver the Goods by instalments and each installment shall be deemed to be sold under a separate contract incorporating these terms and conditions and then failure of COLDY HOLDER PRODUCTS to deliver any installments shall not entitle the Customer to cancel or rescind the balance of the contract.

9. DELIVERY FREIGHT TERMS: All account customers (who has trading accounts with COLDY HOLDER PRODUCTS) as well as Pre-Paid customers will be charged road freight cost based on delivery territory. Please note that the road freight cost may vary for items with personalisation, items on pre-sale, indent sales, clearance items, fridges, and memorabilia pieces. We will contact you in advance to discuss about the road freight costs, with any increase costs to be submitted in writing and approved by the Customer.

10. RETURN OF GOODS – No claim shall be made to or accepted by COLDY HOLDER PRODUCTS in respect of faulty goods or workmanship or short delivery unless such claims are forwarded in writing to COLDY HOLDER PRODUCTS within seven (7) days after delivery of the Goods to the Customer. Goods will not be accepted for credit unless prior written approval, in the form of a Return Authorisation Number (RAN) has been obtained from COLDY HOLDER PRODUCTS.

11. DAMAGES OR SHORT DELIVERY – Claims for short delivery or damaged goods must be made within seven (7) working days of delivery. The Credit Claim Form must be completed and sent together with supporting documents to sales@coldyholder.com.au. All packaging must be retained for inspection and carrier delivery notes must be signed "short delivery" or "damaged".

12. BACKORDERS – COLDY HOLDER PRODUCTS does not retain back orders on customer accounts. All items that cannot be supplied at the time of the invoice will be deleted from the sales order and customers should re-order the goods with their next order.

13. LEGAL CONSTRUCTION – the construction together with any performances of contract of which these conditions form part shall be governed by the laws of the State. If any of these Conditions (or part thereof) shall to any extent be held by any Court of Competent Jurisdiction to be invalid or unenforceable the remaining conditions (or any part thereof) shall not be affected thereby and shall remain in full force and effect.

14. EXCHANGING INFORMATION WITH OTHER CREDIT PROVIDERS - (section 18N (1)(b) Privacy Act 1988) I agree to COLDY HOLDER PRODUCTS checking personal information about me with any credit provider named on my credit application and with other providers that may be made in a credit report issued by a credit report agency, for any of the following purposes to assess my credit worthiness to assess an application by me for credit to help me avoid defaulting on my credit obligations; and to notify a default by me. I understand that this information can include any information about my credit worthiness, credit standing, credit history or credit capacity providers are allowed to give or receive from each other under the Privacy Act 1988. If you wish to obtain additional information regarding COLDY HOLDER PRODUCTS's Privacy Policy, Collection Statement or Access Policy, the web address is www.coldyholder.com.au. Further agree that the COLDY HOLDER PRODUCTS may disclose a credit report, or any personal information derived from another credit provider for any of the purposes mentioned above. I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act

15. CREDIT REPORTING AND NOTIFICATIONS – COLDY HOLDER PRODUCTS's goods may not be offered for sale on the internet or any similar communication medium or sold through a retailer's website or through any other third party internet sites (online marketplace websites) without the written approval of COLDY HOLDER PRODUCTS in advance. At no time may COLDY HOLDER PRODUCTS goods be offered for sale to any broker, third party, retailer, distributor, website, or internet seller or to any buyer located outside Australia without the written approval of COLDY HOLDER PRODUCTS. Advertising of COLDY HOLDER PRODUCTS goods on the internet by the Customer is permissible, subject to the prior approval of the relevant website by COLDY HOLDER PRODUCTS and subject to strict compliance with COLDY HOLDER PRODUCTS's corporate identity guidelines on trade name and trademark use, as well as applicable laws. The provision contained in this term and Condition may be changed by COLDY HOLDER PRODUCTS and the rights hereby granted to the Customer may be revoked forthwith upon notice in writing to the Customer. The provision of the paragraph will apply notwithstanding any other provisions in these Terms and Conditions.

16. PASSWORD POLICY 1. You acknowledge that you have an obligation to guard against the unauthorised use of the password issued to you in relation to the COLDY HOLDER PRODUCTS Internet Site. You must not disclose your password to any other person, and you must take all reasonable steps to ensure that any other person does not know your password. 2. You agree that COLDY HOLDER PRODUCTS may assume that any access to the material gained by use of your password is authorised by you regardless of whether you have authorised another person to use your password. You agree that COLDY HOLDER PRODUCTS will not be liable for any cost, damage, loss or claim arising from the use or misuse of your password. 3. You must protect your password from being lost, stolen or disclosed to any person without the prior written approval of COLDY HOLDER PRODUCTS. As soon as you have finished accessing the information, exit the Website containing the Information immediately. Notify COLDY HOLDER PRODUCTS as soon as you think or suspect that someone knows your password or that it has been lost or stolen.

17. STATEMENT BY APPLICANT (s) FOR CREDIT PLEASE READ CAREFULLY BEFORE SIGNING THIS AGREEMENT 1) Access to



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Commercial Credit Information (Section 18L(4) Privacy Act 1988) I/we agree that COLDY HOLDER PRODUCTS may obtain information about me/us from a business which provides information about the commercial credit worthiness of persons for the purpose of assessing my/our application for consumer credit. 2. Access to Consumer Credit Information (Section 18K(1)(b), Privacy Act 1988) I/we agree that COLDY HOLDER PRODUCTS may obtain a consumer credit report containing information about me from a credit reporting agency for the purpose of assessing my/our application for commercial credit. 3. Exchange of Credit Worthiness Information (Section 18N, Privacy Act 1988) I/we agree that COLDY HOLDER PRODUCTS may exchange information with credit providers or named in a consumer credit report issued by a credit reporting agency for the purposes of deciding whether to enter into or maintain this agreement with the Purchaser. 4. I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 5. Your privacy is very important to COLDY HOLDER PRODUCTS. We are committed to protecting your personal information. We are bound by the Australian Privacy Principles in the Privacy Act 1988 (Commonwealth) ("Privacy Act") and other applicable laws affecting your personal information. 6. By providing your personal information to us, you agree to the use of your personal information in accordance with our Privacy Policy. 7. You may contact us on the following contact information, Chief Finance Officer, COLDY HOLDER PRODUCTS, 18 Hudson Court Keysborough Victoria 3173, accounts@coldyholder.com.au , 03 9754 0782.

18. SLAVERY – COLDY HOLDER PRODUCTS represents, warrants, and undertakes that in the course of operating any of its business (including its performance of these conditions), COLDY HOLDER PRODUCTS and its operations will a) comply with all applicable law in relation to the Modern Slavery Act 2018 (Cth) ("Modern Slavery Act") b) pay fair wages in line with legislation and awards applicable for the industry and market c) promote safe environment free from discrimination, harassment and victimisation d) oppose Modern Slavery in all forms e) have processes to review the risk of Modern Slavery practices in its operation and its supply chains f) monitor its supply chain on regular basis for compliance with the above requirement and promptly investigate any reported or suspected non-compliance of the Modern Slavery Act, g) have any other processes required to ensure COLDY HOLDER PRODUCTS conducts its business in alignment with the principles and objectives of laws in relation to Modern Slavery, and h) COLDY HOLDER PRODUCTS acting reasonably do anything what would not put the Customer in breach of Modern Slavery Laws.

COLDY HOLDER PRODUCTS must notify the Customer in writing as soon as practical after it becomes aware of any actual or potential breach of this clause. Such notice must set out full details of the circumstances concerning the actual or potential breach of this clause. On request by the Customer, COLDY HOLDER PRODUCTS must: a) promptly and accurately complete a Modern Slavery questionnaire and declaration relating to the sources of its product, materials, and business practices and compliance with such laws, policies, and objectives; b) permit the Customer to conduct social accountability audits, during normal working hours, to verify that COLDY HOLDER PRODUCTS' business practices are in compliance with this clause, alternatively, COLDY HOLDER

PRODUCTS agrees that it will, at its expense, provide a statement signed by its auditor confirming that COLDY HOLDER PRODUCTS' business practices are in compliance with this clause. For the purposes of this clause, Modern Slavery means conduct which would constitute an offence under the Modern Slavery Act, and this includes trafficking of persons, illegal forms of child labour, slavery, forced labour, deceptive recruiting, debt bondage, or offences involving non-citizens working in Australia without the correct visa.

19. CONFIDENTIALITY - Confidential Information" means: a) all material, information and know-how concerning either party; b) the business affairs, dealings and correspondence between the parties which are of a confidential nature or marked as 'confidential'; c) all process, methods, procedures, marketing strategies, trade secrets, market research, information concerning customers, product development, know-how, technology, computer programs, models, databases and modifications to such things and all other information which, by its nature, places or potentially places a party at an advantage over their present and future business competitors; and d) any information that would at law be considered secret or confidential information of a party, excluding: (i) Information which is or becomes generally available to the public other than by disclosure in breach of the terms of these Conditions; or (ii) Information which is disclosed by order of law or by the requirements of any stock exchange or is required in order to obtain any necessary approval or consent of any government or governmental body, authority or agency having authority over a party or disclosed in judicial, arbitral or administrative proceedings, provided the receiving party has used its best efforts and has afforded the disclosing party reasonable opportunity to obtain protective orders or other assurances satisfactory to the disclosing party. The parties acknowledge and agree that at all times during and after the Term they will: a) maintain the absolute confidentiality of all Confidential Information provided to it; b) it may not disclose Confidential Information to any third party without the prior written consent of the discloser; c) it will not use or cause anyone to use the Confidential Information in any business or capacity other than for the provision of Goods; d) it must not make or cause anyone else to make any unauthorised copies of the Confidential Information and information derived from Confidential Information; e) it will use its best efforts to ensure that those who receive the Confidential Information are bound by the same obligations of confidentiality set out in these Conditions and disclose only that portion of the Confidential Information that a party's lawyer advise is legally required to be disclosed; and f) on demand, each party will return or destroy all documents and other materials (including computer programs) in possession relating to or containing any Confidential Information and shall not retain any copies or replicas or reports or memoranda or computer programs or any documents containing or referring to any of the Confidential Information.

20. LIMIT OF LIABILITY – COLDY HOLDER PRODUCTS or the Customer are not liable under these terms & conditions for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of profit howsoever arising and whether in an action in contract, tort (including without limitation, negligence or in equity). COLDY HOLDER PRODUCTS warrants will comply with all legal requirements, regulations and other requirements applicable to the purchase, sale or resale, storage, use, transportation



and handling of the goods while the goods are under the control or in the possession of COLDY HOLDER PRODUCTS, its agents or employees.

21. GOVERNING LAWS – this agreement will be governed by the law of Victoria; Australia and the parties hereby unconditionally submit to the jurisdiction of the state.