

Terms & Conditions

RESIDENTIAL CUSTOMERS

1) DEFINITIONS:

"Agreement" means the Agreement Form, incorporating these Terms and Conditions.

"Agreement Form" means the form signed by the Customer.

"Bottle Deposit" means a refundable amount payable by the Customer to Neverfail as set out in the Agreement, for the use of certain Neverfail springwater bottles.

"Contact Sales Agreement" has the meaning given to it under the Victorian Fair Trading Act (1999).

"Cooling-Off Period" means:

- i) in the case of a Contact Sales Agreement or Direct Commerce Contract - within 10 days of signing the Agreement;
- ii) in the case of a Telephone Marketing Agreement - within 10 days of receipt of the Agreement,
- iii) in the case of a Non-Contact Sales Agreement – within 10 days from the day on which the Products or Equipment are first received by the Customer;
- iv) in the case of Other Agreements – 10 days from the day on which the Agreement is signed by the Customer.

"Direct Commerce Contract" has the meaning given to it under the New South Wales Fair Trading Act (1987).

"Equipment" means springwater bottle/s, springwater cooler/s, filtered water cooler, water vapourisation equipment, bottle rack/s, coffee machine/s and other materials rented by the Customer from Neverfail as identified in the Agreement Form.

"Neverfail" means Neverfail Springwater Limited, located at: Level 2, 29-57 Christie Street, St Leonards, NSW, 2065.

"Non-Contact Sales Agreement" has the meaning given to it under the Victorian Fair Trading Act (1999).

"Other Agreements" means agreements to which one of the following Acts (or parts of Acts as specified) applies:

- i) Western Australian Door to Door Trading Act (1987);
- ii) ACT Door to Door Trading Act (1991);
- iii) Tasmanian Door to Door Trading Act (1986);
- iv) Part 3 of the South Australian Fair Trading Act (1987);
- v) Division 4 of the Queensland Fair Trading Act 1989;
- vi) Part 7 of the Northern Territory Consumer Affairs and Fair Trading Act.

"Products" means springwater, coffee, filter cartridges, under sink water filtration systems, jugs, cups and other consumables or products sold to the Customer by Neverfail.

"Telephone Marketing Agreement" has the meaning given to it under the Victorian Fair Trading Act (1999).

"Water Filtration Installation Charge" means an amount payable by the Customer for installation of water filtration products, as set out in the Agreement Form.

2) AGREEMENT:

This document sets out the Terms and Conditions applicable to the Agreement between the customer ("Customer") and Neverfail Springwater Limited ("Neverfail") under which Equipment may be rented by the Customer and Products may be purchased by the Customer from time to time.

3) COMMENCEMENT DATE:

The commencement date of the Agreement is the date the Agreement Form is signed by the Customer.

4) TERM:

- a) The Agreement remains in force for the minimum term (the "Term") as stated on the Agreement Form or the first invoice (the "Invoice"). Subject to clause 12(e) below, at the end of the Term, the Agreement will automatically renew on the same terms and conditions until terminated by either party with thirty (30) days written notice to the other party.
- b) If the Customer elects to return the Equipment prior to the end of the Term, the Customer is still liable to pay for all outstanding rentals, Invoices, reasonable overdue interest charges, reasonable debt collection fees, reasonable dishonour fees and any other reasonable charges (the "Charges"), which may apply on demand as a debt due from the Customer to Neverfail.
- c) Upon termination of the Agreement, the fee for any unused Products will not be refunded.

5) OWNERSHIP:

The Customer acknowledges that the ownership of the Equipment is retained by Neverfail at all times. Neverfail shall have the right to remove the Equipment in the event that the Customer fails to abide by the material terms and conditions of the Agreement, or becomes bankrupt, insolvent, is wound-up or discontinues

operation. The above shall be in addition to the right of Neverfail to demand the immediate payment of the balance of the consideration due from the Customer in these circumstances.

6) EXCLUSIVE USAGE:

The Customer agrees that the Equipment shall be used for the sole purpose of using and dispensing products supplied by Neverfail.

7) WARRANTY AND REPAIRS:

- a) Neverfail provides a full warranty on the Equipment for the duration of the Agreement and will perform without charge, all repairs necessary to keep the Equipment in good operating condition or, at its discretion, to replace it with equivalent Equipment.
- b) Neverfail will provide a 12 month replacement warranty on any under sink water filtration Product.
- c) The Customer agrees to exercise due care to protect the Equipment, and acknowledges that the warranty will be null and void and the Customer will be responsible for the reasonable cost of repair or replacement of the Equipment if the failure of the Equipment is a result of extraordinary wear and tear caused by the Customer, alteration or tampering with the merchandise parts, misuse or negligence by the Customer.
- d) To the full extent permitted by law, all conditions and warranties that would be implied (by statute, general law, customs or otherwise) are expressly excluded.
- e) If any condition or warranty is implied into this document under the Trade Practices Act 1974 (Cth) or under any applicable legislation, and cannot be excluded, the liability of Neverfail for breach of the condition or warranty is limited to one of the following, at the option of Neverfail:
 - i) in the case of goods:
 - (1) the replacement of the goods or the supply of equivalent goods;
 - (2) the repair of the goods;
 - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (4) the payment of the cost of having the goods repaired; or
 - ii) in the case of services:
 - (1) the supplying of the services again; or
 - (2) the payment of the cost of having the services supplied again.
- f) Subject to clause (g) below, under no circumstance is Neverfail liable to the Customer for any indirect loss or consequential loss, however it arises or for punitive or exemplary damages or for any loss of profit, loss of revenue, or loss of opportunity.
- g) Neverfail acknowledges that certain laws imply terms, conditions or warranties into consumer contracts for the supply of goods or services that cannot be excluded (eg Part V Division 2 of the Trade Practices Act). Clause (f) above is not intended to exclude or restrict the application of such laws.
- h) The Customer agrees to maintain the Equipment in a clean and hygienic condition and acknowledges that if Neverfail considers the Equipment to be in a substantially unclean or unhygienic condition, Neverfail reserves the right to clean and sanitise (or exchange) the Equipment on the Customer's behalf at the Customer's reasonable expense. Neverfail agrees to notify the Customer in advance of its intention to clean and sanitise the Customer's Equipment and any charges which may apply.

8) MOVING:

The Customer agrees not to remove the Equipment from the premises where it is initially installed (or subsequently moved to under the provisions of this clause) without first notifying Neverfail in writing and only after receiving approval from Neverfail. Neverfail agrees not to unreasonably withhold its approval to move the Equipment.

9) LOST OR DAMAGED EQUIPMENT:

In the event of the Equipment being lost or damaged while in the care of the Customer, the Customer agrees to reimburse Neverfail in full for the reasonable costs of repair or replacement of the Equipment. This includes Neverfail's right to charge for lost bulk springwater bottles.

10) PAYMENT TERMS:

- a) The Customer must make payment by credit card or direct debit deduction or any other payment method approved by Neverfail in writing, before or on installation of the Equipment. Invoices thereafter are payable by automatic credit card or direct debit deduction facility only.
- b) The Customer agrees that all payments received will be allocated as per the Invoice number specified by the Customer or alternatively, if no Invoice number is specified, then at Neverfail's discretion.

11) OVERDUE PAYMENTS:

- a) The Customer agrees that any payments dishonoured or reversed by the Customer's bank (made by cheque, direct debit or credit card) will be reimbursed by the Customer to Neverfail including all fees charged by the Customer's bank to Neverfail plus reasonable administration charges.
- b) The Customer agrees that any reasonable costs or disbursements incurred by Neverfail in recovering any outstanding monies including Equipment pick up fees, debt collection agency fees, solicitor's costs plus overdue interest charges calculated daily from due date and applied at 15% per annum, shall be paid by the Customer.
- c) The Customer agrees that at the conclusion of the Agreement, Neverfail may set-off the amount of the Bottle Deposit against any amount owing to Neverfail under the Agreement which has not been paid by the Customer within a reasonable timeframe.

12) PRICING:

- a) The total amount to be paid by the Customer under the Agreement is not currently ascertainable, but may be calculated by having regard to the total initial payment set out in the Agreement Form, Neverfail's current price list, the volume of Products ordered by the Customer during the life of the Agreement and this section 12.
- b) The Customer agrees to pay for the Products and Equipment supplied by Neverfail on a monthly or annual basis, including GST where applicable, at the price specified on the initial delivery Invoice, the Agreement Form or at the revised price specified by Neverfail according to clauses 12(e) or (f).
- c) The Customer agrees that the total initial payment as set out in the Agreement Form is payable after expiration of the relevant Cooling-Off period, but before or on installation of the Equipment or Products (as applicable).
- d) The Customer agrees that the Water Filtration Installation Charge (again, payable after the expiration of the relevant Cooling-Off period), is non-refundable.
- e) Neverfail reserves the right to adjust the price of Products during the Term, acting reasonably taking into account increases in the costs of Products to Neverfail and the Consumer Price Index, by giving 30 days' notice to the Customer of the price increase.
- f) Neverfail reserves the right to adjust the price of the Products and/or Equipment after expiration of the initial Term acting reasonably taking into account increases in the costs of Products and Equipment to Neverfail and the Consumer Price Index, by giving 30 days' notice to the Customer of the price increase.
- g) If renting certain Neverfail springwater bottles, the Customer agrees to pay a Bottle Deposit amount, which will be refunded by Neverfail to the Customer at the conclusion of the Agreement, subject to clause 11(c) above.
- h) Neverfail will provide two replacement cartridges per annum for each filtered water cooler at no additional cost to the Customer. The Customer agrees to pay for any additional replacement cartridges.
- i) Neverfail reserves the right to charge the Customer an "un-plumb" fee if the Agreement is terminated by either party and the Customer requests that Neverfail removes pipes from or repairs walls in the Customer's premises. Neverfail agrees that the un-plumb fee will be a reasonable amount which reflects the costs incurred by Neverfail in removing pipes and/or repairing walls.

13) COOLING OFF PERIOD

- a) The Agreement is subject to a Cooling Off Period, the commencement date of which varies according to the state in which the Agreement is struck and in some cases, the manner in which the Agreement is formed.
- b) The Customer has a right to terminate the Agreement during the relevant Cooling-Off Period.
- c) Cancellation during the Cooling-Off Period may be effected by:
 - (i) leaving the cancellation notice at, or posting the cancellation notice to the address of Neverfail shown on the form of notice of cancellation accompanying the Agreement; or
 - (ii) by faxing the cancellation notice to the facsimile number of Neverfail; or
 - (iii) in NSW, by giving notice in writing to Neverfail, by post, facsimile, e-mail or by delivery to the address of Neverfail.
- d) If the Agreement is cancelled before expiration of the relevant Cooling-Off Period (and assuming state legislation permits the collection of payment during the relevant Cooling-Off period), Neverfail will refund any money paid to Neverfail by the Customer under the Agreement or a related contract or instrument.

14) AGREEMENT TO OBTAIN CERTAIN INFORMATION:

- a) The Customer consents to Neverfail using and disclosing its personal information for the express purposes of accepting, processing and fulfilling the Customer's order, notifying the Customer of its order status, product research and development, assisting Neverfail to improve customer services and allowing Neverfail to market the services of its partners.
- b) The Customer may notify Neverfail at any time if the Customer does not wish to continue receiving marketing information from Neverfail.
- c) Neverfail will not disclose the Customer's personal information to any person unless it is:
 - i) required or authorised by law;
 - ii) to a contracted mailing house or to another organisation providing services to Neverfail bound by confidentiality agreements; or
 - iii) to an entity that acquires the business or assets of Neverfail.
- d) The Customer agrees that Neverfail may exchange personal information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the purpose of exchanging references about the Customer's credit worthiness.
- e) Neverfail may give personal information about the Customer to a credit reporting agency for the purpose of:
 - i) obtaining a consumer credit report about the Customer; and/or
 - ii) allowing the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- f) The personal information provided by Neverfail to a credit reporting agency under clause 13(e) is limited to:
 - i) identity particulars – Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
 - ii) Customer's application for credit - the fact that the Customer has applied for credit and the amount;
 - iii) repayments which are overdue by more than 60 days, and for which debt collection action has started;
 - iv) advice that the Customer's repayments are no longer overdue in respect of any default that has been listed;
 - v) information that, in the opinion of Neverfail, the Customer has committed a serious credit infringement (that is, the Customer has acted fraudulently or has shown an intention not to comply with its credit obligations);
 - vi) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once; and
 - vii) the fact that credit provided to the Customer by Neverfail has been paid or otherwise discharged.
- g) The personal information that Neverfail may exchange with credit providers under clause 14(d) includes any information about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the Privacy Act 1988 (Cth).
- h) The Customer is able to access personal information maintained by Neverfail. There shall be no fee to apply for access.

15) DELIVERY:

- a) Neverfail will deliver the Equipment and Products to the Customer's nominated premises and thereafter will deliver Products on a regular scheduled delivery cycle based on the Customer's needs.
- b) The Customer agrees to pay a fuel levy amount on each delivery, as set out in the Agreement Form.
- c) Should the Customer require delivery outside of the regular delivery cycle, additional charges will apply, as set out on www.neverfail.com.au/fees.aspx.
- d) The Customer acknowledges and agrees that Neverfail may impose minimum delivery quantities for certain Products subject to Neverfail notifying the Customer 30 days in advance of any minimum delivery quantities which may apply.
- e) The Customer agrees to provide Neverfail's representative reasonable and safe access to its premises to allow the efficient delivery of Equipment and Products, and where applicable to use its best endeavours to have its empty bottles available for collection on its scheduled delivery day.