

**KONG Company Pty Ltd**

 **Direct Reseller Account Form**

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**Terms and Conditions of Supply 2019**

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**Authorised Reseller Addendum**

**KONG Company Key Contacts**

**Sales**

* President KONG Company Kathy Decker Frueh

* Sales Director - Australia Bill Hansen
1. **Sales, Finance & Warehouse Address**

**KONG Company Pty Limited**

* Address: Unit 1, 12 Zenith Road, Dandenong South VIC 3175
* Telephone: +61 (0)3 9904 1900

**Company Information**

* [www.KONGcompany.com.au](http://www.KONGcompany.com.au)
* Unit 1, 12 Zenith Road, Dandenong South VIC 3175

**Our Terms and Conditions of Supply are found at Addendum 1, including:**

**Title**

* 1. Legal and equitable title to the Products will pass from the Supplier to the Customer upon the later of:
		1. delivery of the Products; and
		2. receipt by the Supplier of all amounts due from the Customer to the Supplier under any and all Contracts.
	2. The Supplier may bring an action for the Prices of Products, and any other amounts due under any Contract, notwithstanding that title to the Products has not passed to Customer. In the event of insolvency of the Customer, the Supplier will send copies of the unpaid invoices to the official receiver. These invoices do not have to correlate to the goods held at the Customer’s warehouse (see clause5.4). All stock held at the Customer’s warehouse is considered to be the latest invoice stock (up to the value of the debt).

**Cover Sheet**

**All payments are made strictly on net turnover (i.e. after any promotional investments discounted off invoice or retrospectively paid)**

* Account (“**Reseller**”):

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* Term:

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| * For each Contract (as defined) - as set out in the Terms and Conditions of Supply (Addendum 1), unless terminated in accordance therewith
* Of Reseller Authorisation - as set out in the Authorised Reseller Addendum (Addendum 2), unless terminated in accordance therewith
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* Payment Terms:

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| N/a (as agreed with wholesaler) |

* Invoice Terms:

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| --- |
| N/a (as agreed with wholesaler) |

* Marketing Terms:

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| --- |
| Not applicable - included in Invoice Terms  |

* Growth Terms:

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| --- |
| Not applicable - included in Invoice Terms |

* Customer Contact Person, Physical Address and Email Address for Notices:

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| --- |
|   |

* Supplier Contact Person, Physical Address and Email Address for Notices:

|  |
| --- |
| Gill MaileAgline110 Levels Road, Cavan SA 5094gill.maile@agline.com  |

* Addenda:

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| --- |
| * Addendum 1 - Terms and Conditions of Supply (applicable to each Contract as defined therein)
* Addendum 2 - Authorised Reseller Addendum
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* Signed & dated by Reseller (include authorised representative’s name and title)

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* Signed & dated by KONG Company Pty Limited (“Supplier” or “KONG”) (include authorised representative’s name and title)

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ADDENDUM 1
Terms and Conditions of Supply relating to each Contract

**Please read these Terms carefully**, **as they set out some of our and your legal rights and obligations in relation to the Products that we sell**.

1. **Definitions and interpretation**
	1. In these Terms:
2. “**Authorised Reseller Addendum"**” means the agreement between the parties governing the Customer’s authorisation to sell the Products;
3. “**Contract**” means a contract between the parties for the sale and supply of Products entered into in accordance with Clause 3;
4. “**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);
5. "**PPSA"** means the Personal Property Securities Act 2009 (Cth);
6. "**Security Interest"** means a security interest as defined in the PPSA;
7. “**Prices**” means the Supplier's standard list prices for the Products as sent by the Supplier to the Customer from time to time;
8. “**Products**” means the products which may be or are purchased by the Customer from the Supplier under these Terms (details of which are set out in the supplier pricelist and catalogue);
9. “**Supplier**” means KONG Company Pty Limited, a company incorporated in Australia;
10. “**Terms**” means these terms and conditions of supply.
	1. Other defined terms used in these Terms shall have the meanings as set forth in the Cover Sheet or the Authorised Reseller Addendum as agreed between the Parties.
	2. The ejusdem generis rule is not intended to be used in the interpretation of these Terms; it follows that a general concept or category utilised in these Terms will not be limited by any specific examples or instances utilised in relation to such a concept or category.
11. **Contracts**
	1. Each order for Products given by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase Products from the Supplier subject to these Terms.
	2. In order for a Contract to come into force:
		1. the Customer must submit an order to the Supplier and must give to the Supplier its express written acceptance of these Terms; and
		2. upon acceptance of the order from the Customer by the Supplier a Contract will come in to force between the parties.
	3. The Supplier reserves the right not to accept an order or deliver any Products which are short of stock and requests that the Customer reorders when available.
12. **Delivery**
	1. Unless otherwise agreed in writing:
		1. all Products will be delivered by the Supplier to the Customer's premises;
		2. the Supplier will be responsible for arranging loading, carriage, transport, unloading and insurance for the Products and for clearing the Products for export and import (except that, for the avoidance of doubt, the Customer shall be liable for any export, import, and other taxes or other duties in accordance with Clause 7.3);
		3. the Supplier will be responsible for paying all costs relating to loading, carriage, transport, unloading, insurance, export and import of the Products; and
		4. risk in the Products will pass from the Supplier to the Customer when the Products are delivered to the Customer.
	2. If the parties agree that delivery of the Products under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.
	3. Any date or dates for the delivery of the Products agreed by the parties as part of a Contract will not be of the essence of the Contract.
13. **Title**
	1. Legal and equitable title to the Products will pass from the Supplier to the Customer upon the later of:
		1. delivery of the Products; and
		2. receipt by the Supplier of all amounts due from the Customer to the Supplier under any and all Contracts.
	2. The supplier may, at its discretion, do any of the following: register or give any information in connection with any relevant PPSA Security Interest and exercise rights in connection with the PPSA Security Interest; and give notice to the Customer requiring it to do anything at its expense that the Supplier requires for the purposes of exercising its rights under this clause. The Customer must: (i) comply with any notice re3ceived pursuant to this clause within the time stipulated in the notice; (ii) irrevocably and unconditionally waive its right to receive from the Supplier any notice under the PPSA unless required by the PPSA and if the notice cannot be excluded; (iii)must notify the Supplier immediately of any change in its name, address and any other information provided to the Supplier to enable the Supplier to register a financing change statement under the PPSA if required. The parties agree that the subject matter referred to in section 275(1) of the PPSA is confidential and each party must not disclose any such information to third party.
	3. Until title to the Products has passed to the Customer:
		1. the Customer will hold the Products as fiduciary agent and bailee of the Supplier; and
		2. the Customer will: (i) store the Products in a secure, safe, dry and clean environment separately from other products and goods; (ii) ensure that the Products are easily identifiable as belonging to the Supplier; (iii) not deface, destroy, alter or obscure any identifying mark on the Products or their packaging; (iv) ensure that no charge, lien or other encumbrance is created over the Products; and (v) deliver up the Products to the Supplier upon demand.
	4. In the event of insolvency of the Customer, the title of all Products (up to the value of the debt) will remain with the Supplier. The Supplier shall be entitled without further notice to inspect or recover possession of any Products to which it retains title; and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Products are or may be situated for the purpose of inspecting or removing any such Products the title in which has remained with the Supplier.
	5. The Supplier may bring an action for the Prices of Products, and any other amounts due under any Contract, notwithstanding that title to the Products has not passed to Customer. In the event of insolvency of the Customer, the Supplier will send copies of the unpaid invoices to the official receiver. These invoices do not have to correlate to the goods held at the Customer’s warehouse (see clause 5.3). All stock held at the Customer’s warehouse is considered to be the latest invoice stock (up to the value of the debt).
14. **Customer’s obligations**
	1. The Customer will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees:
		1. on behalf of the Supplier; or
		2. in relation to the Products.
	2. Without prejudice to the Supplier's obligations under Clause 8, the Customer must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to:
		1. the marketing, promotion and advertising of the Products; and
		2. import, export, distribution, sale, supply and delivery of the Products.
	3. Without limiting the generality of Clause 5.2, the Customer shall at all times:
		1. be in compliance with all applicable privacy, accessibility, and data security laws, regulations, and industry standards, including, but not limited to, the *Privacy Act 1998 (Cth)*;
		2. maintain detailed privacy policies and be in compliance with its privacy policies and the requirements of any contract to which the Customer is a party; and
		3. if the Customer is holding any personal information, the Customer must take such steps as are reasonable in the circumstances to protect the personal information from misuse, interference ad loss, and from unauthorised access, modification or disclosure.
15. **Prices and payment**
	1. The Supplier may issue an invoice for the Prices under a Contract to the Customer at any time after the Contract has come into force.
	2. The Customer will pay the Prices to the Supplier within [30] days of the date of issue of an invoice issued in accordance with Clause 7.1;
	3. All amounts payable under a Contract are exclusive of all value-added, export, import, and other taxes and duties which will be payable by the Customer (except for taxes payable on the Supplier's net income, which will be payable by the Supplier).
	4. If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract, the Supplier may charge the Customer interest on the overdue amount at the rate of [1]% per month from time to time which interest will accrue daily until the date of actual payment and be payable on demand
	5. In this clause, the expressions 'Consideration', 'GST', 'Input Tax Credit', 'Recipient', 'Supply', 'Tax Invoice' and 'Taxable Supply' have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act); and 'Supplier' means any party treated by the GST Act as making a Supply under this Agreement.
	6. Consideration is GST exclusive, unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST. If GST is imposed on any Supply made under or in accordance with this Agreement, The Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.
	7. If this Agreement requires a party (the First Party) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or incurred by the other party (the Other Party), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of: the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply, such that after the Other Party meets the GST liability, it retains the Net Amount.
16. **Warranties**
	1. The Supplier warrants that:
		1. the Supplier has (or will have at the relevant time) the right to sell the Products;
		2. the Products are free from any charge or encumbrance, subject to Clause 5;
		3. the Customer shall enjoy quiet possession of the Products, subject to the rights referred to in Clause 8.1(b);
		4. the Products correspond to any description of the Products supplied by the Supplier to the Customer;
		5. the Products are of acceptable quality;
		6. the Products are fit for any purpose expressly or impliedly made known by the Customer to the Supplier before the relevant Contract is made;
		7. the Products correspond to any sample of the Products supplied by the Supplier to the Customer, and will be free from any defect making their quality unsatisfactory, which would not be apparent on reasonable examination of the sample;
		8. the Products will comply with all laws, rules, regulations applicable to the marketing and sale of the Products in Australia; and
		9. the Products will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause 8.1(h).
		10. All of the parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms, elsewhere in the relevant Contract, the Cover Sheet and the Authorised Reseller Addendum. Subject to Clause 10.1 and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related contract.
17. **Complaints, credits and replacements**
	1. The Supplier will promptly and in any event within [10] Business Days, fully respond to all reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Products.
	2. If Products do not comply with any warranty given by the Supplier under a Contract, the Customer may with the prior agreement of the Supplier return those Products for either at the option of the Supplier:
		1. a full credit of the price paid to the Supplier for such Products excluding original delivery and related charges;
		2. replacement Products; or
		3. a credit note in respect of the Price of the Products to be offset against future purchases from the Supplier.
	3. Products returned under Clause 9.2 must be properly packed and returned to KONG Company Pty Limited within [30] Business Days of receipt of the Products by the Customer. Any Products returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Products.
18. **Limitations of liability**
	1. Nothing in any Contract will exclude or limit the liability of either party for:
		1. death or personal injury caused by that party's negligence;
		2. fraud or fraudulent misrepresentation on the part of that party; or
		3. any other liability which may not be excluded or limited under applicable law.
	2. Subject to Clause 10.1, the Supplier's liability to the Customer under or in connection with each Contract, whether in contract or tort (including negligence), will be limited to the extent permissible by law as follows:
		1. the Supplier will not be liable for any: (i) loss of profits, income or anticipated savings, (ii) loss or corruption of any data, database or software, (iii) reputational damage or damage to goodwill, (iv) loss of any contract or commercial opportunity, or (v) indirect, special or consequential loss or damage;
		2. the Supplier will not be liable for any losses arising out of a Force Majeure Event;
		3. the Supplier's liability in relation to any event or series of related events will not exceed the total amount paid or (if greater) payable by the Customer to the Supplier under the Contract.
19. **Contract term and termination**
	1. Each Contract will come into force in accordance with Clause 3, and will continue in force until the earlier of:
		1. the later of completion of: (i) delivery of all Products; and (ii) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
		2. the termination of the Contract in accordance with the provisions of this Clause.
	2. A Contract may be terminated in the following circumstances:
		1. either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract;
		2. the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under the Contract by the due date for payment;
		3. the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to accept delivery of the Products; and
		4. the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer commits a material breach of the Authorised Reseller Addendum or if the Authorised Reseller Addendum is terminated for any reason in accordance with its terms.
	3. Either party may terminate any Contract immediately by giving written notice to the other party if:
		1. the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
		2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
		3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract);
		4. (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
20. **Effects of termination**
	1. Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect Clauses 1, 4, 5, 6.4, 8, 9, 10, 11, 12 and 13.
	2. Termination of a Contract will not affect either party’s accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.
21. **Notices**
	1. Any notice given to a party under or in connection with a Contract shall be in writing and shall be:
		1. delivered by hand or by pre-paid recorded delivery post at the addresses as detailed in the Cover Sheet or as otherwise notified by the other party from time to time; or
		2. sent by email to the address as specified in Cover Sheet.
	2. Any notice shall be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt;
		2. if sent by pre-paid recorded delivery post at the time recorded by the delivery service; and
		3. if sent by email, at the time of transmission, or, if this time falls outside business hours, when business hours resume. In this Clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
22. **General**
	1. No breach of any provision of a Contract will be waived except with the express written consent of the party not in breach.
	2. If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
	3. Contracts may not be varied except by a written document signed by or on behalf of each of the parties.
	4. The Supplier may freely assign its rights and obligations under a Contract without the Customer’s consent. Save as expressly provided in this Clause or elsewhere in a Contract, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
	5. Each Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.
	6. Subject to Clause 10.1:
		1. neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract; and
		2. neither party will have any liability other than pursuant to the express terms of a Contract.
	7. Contracts will be governed by and construed in accordance with the laws of the State of Victoria ; and the courts of the State of Victoria will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract.

**ADDENDUM 2**

**KONG Authorised Reseller Addendum**

**Please read the terms of this Addendum carefully**, **as it sets out your and our additional legal rights and obligations in relation to the Products that we sell**.

**WHEREAS:**

a. KONG manufactures the Products and distributes them in Australia (as further defined below) through Authorised Distributors and Authorised Resellers (as further defined below), which is essential to maintaining the viability and promoting the objectives of the KONG Australian Partner Program; and

b. KONG wishes to appoint the Reseller as a non-exclusive Authorised Reseller for the promotion and sale of the Products to End-Users, in Australia, and the Reseller wishes to promote and sell the Products on the terms and conditions of this Addendum;

**The parties hereby agree as follows:**

1. **Definitions**
	1. “**Authorisation Date**” has the meaning given in Clause 8 of this Addendum.
	2. “**Authorisation Term**” has the meaning given in Clause 8 of this Addendum.
	3. “**Authorised Distributor**” means a wholesale distributor within Australia which has entered into an Authorised Distributor Addendum with KONG and received KONG’s prior written confirmation that it is authorised to sell KONG products to Authorised Resellers or in Australia due to its compliance with the Distributor Authorisation Criteria.
	4. “**Authorised Physical Location**” shall mean a physical address retail store operated by the Reseller which KONG has pre-authorised in writing for the offline sale of the Products by the Reseller, due to the physical address’s compliance with the Reseller Authorisation Criteria for offline sales.
	5. “**Authorised Reseller**” means a retailer within Australia which has entered into an Authorised Reseller Addendum with KONG and received KONG’s prior written confirmation that it is authorised to sell KONG products offline and/or online (as applicable) to End-Users, in Australia due to its compliance with the relevant Reseller Authorisation Criteria.
	6. “**Authorised Web Shop**” shall mean a web shop operated by the Reseller which KONG has pre-authorised in writing for the online sale of the Products by the Reseller, due to the web shop’s compliance with the Reseller Authorisation Criteria for online sales.
	7. “**Distributor Authorisation Criteria**” means the authorisation criteria for the sales of the Products by Authorised Distributors, which KONG may update from time to time by giving notice.
	8. “**End-User**” shall mean any purchaser of the Product(s) who is the ultimate consumer for whom the Product is designed and who does not intend to resell the Product to a third party.
	9. “**Licensed IP**” means the trade marks, trade names, product images, marketing banners and/or any other intellectual property provided by KONG in writing, in the approved image or form provided by KONG.
	10. “**KONG Australia Partner Program**” means the selective distribution system under which KONG undertakes to sell the contract goods, whether directly or indirectly, only to Authorised Distributors or Authorised Resellers selected on the basis of their compliance with the Distributor Authorisation Criteria or Reseller Authorisation Criteria respectively, and where such Authorised Distributors and Authorised Resellers undertake not to sell such goods to any unauthorised distributors or unauthorised resellers.

## “**Reseller** **Authorisation Criteria**” means the authorisation criteria for the sales of the Products by Authorised Resellers offline (“the Bricks Criteria”) or online (the “Clicks Criteria”), which KONG may update from time to time by giving notice.

1. **Appointment**
	1. KONG appoints the Reseller as a non-exclusive Authorised Reseller and hereby grants the Reseller (pursuant to such appointment) a licence and right, during the Authorisation Term, to market, distribute and sell the Products under the Licensed IP to End-Users, Authorised Resellers in Australia from the Reseller's Authorised Physical Location(s) and/or Authorised Web shop(s) (as applicable), on the terms of this Addendum.
	2. The Reseller shall not make any sales of the Products to any customers before the Authorisation Date.
	3. This Agreement supersedes any prior agreement between KONG and the Reseller regarding the sale of the Products offline or online.
2. **Offline Sales of the Products**
	1. If the Reseller has been expressly authorised by KONG to sell the Products offline, the Products shall only be offered for sale from the Reseller's Authorised Physical Location(s) and the Authorised Physical Location(s) shall comply at all times with the terms of the Reseller Authorisation Criteria for offline sales. The Reseller is expressly prohibited from selling the Products from any physical store or premises that has not been expressly authorised in writing by KONG as an Authorised Physical Location.
3. **Online Sales of the Products**
	1. If the Reseller has been expressly authorised by KONG to sell the Products online, the Products shall only be offered for sale on the Reseller's Authorised Web shop(s) and the Authorised Web shop(s) shall comply at all times with the terms of the Reseller Authorisation Criteria for online sales.
4. **Sales to authorised members of KONG Australian Partner Program only**
	1. The Reseller agrees that it shall not sell or transfer any Products to any person or entity for resale. Customers shall not be entitled to purchase more than 5 units of a product.
	2. The Reseller shall not sell or offer for sale any product bearing a trade mark, copyright, patent, or name associated with KONG, which the Reseller purchased or obtained from a source other than KONG, an Authorised Distributor or an Authorised Reseller.
5. **Geographic Sales Boundary**
	1. The Reseller may only sell and advertise for sale the Products within Australia. The Reseller is hereby expressly prohibited from soliciting or consummating sales outside of Australia.
6. **Intellectual Property**
	1. During the Authorisation Term and so long as the Reseller’s appointment has not been terminated by either party, the Reseller is granted a limited, non-sublicenseable, non-exclusive, non-transferable, revocable license to use the Licensed IP for the sole purpose of advertising and promoting the sale of Products within Australia. This license will cease immediately upon termination of the Reseller’s status as an Authorised Reseller.
	2. The Reseller acknowledges and agrees that KONG owns all proprietary rights in and to the KONG brand, name, logo, trade marks, service marks, trade dress, copyrights, and other intellectual property related to the Products and the Licensed IP. The Reseller shall have no right, title, or interest in the Licensed IP. All use of the Licensed IP and the goodwill associated therewith shall inure to the benefit of KONG.
	3. The Reseller shall ensure that the Licensed IP is:
		1. used in conjunction with the ® or TM designations as directed by KONG;
		2. not modified in any manner without the prior written consent of KONG;
		3. used alone without any other terms, marks, or designs which may detract from the Licensed IP; and
		4. used and displayed according to any branding or intellectual property specifications or conditions which KONG may provide or amend from time to time, including but not limited to KONG’s brand voice and brand visual guidelines.
	4. The Reseller shall not do anything inconsistent with KONG’s ownership of the Licensed IP, including, but not limited to, using, causing or permitting another party to use the Licensed IP as any part of a uniform resource locator ("**URL**") or metadata tag, or as a keyword or search engine term without KONG’s prior written consent. This does not include the use through Google’s and Yahoo’s Adword programs and/or other web service providers’ similar Adword programs.
	5. The Reseller shall not, at any time during or after termination of this Reseller Addendum, in connection with any business similar to that of KONG, adopt, use or register without the prior written consent of KONG a word or symbol or a combination of the two which is (in KONG’s sole discretion) the same as or confusingly similar to the Licensed IP.
	6. The Reseller undertakes not to copy the Products or to manufacture its own versions of the Products nor shall the Reseller authorise any third party so to do. Additionally, the Reseller shall not sell any Product for the purposes of incorporation into the Reseller’s own products to any customer who would use them to manufacture the same type of goods as those produced by KONG.
	7. The Reseller shall not, during the Authorisation Term or thereafter, challenge KONG's title to or rights in the Licensed IP. If the Reseller challenges the validity of the Licensed IP or KONG's title to or rights in the Licensed IP, KONG shall be entitled to immediately terminate this Addendum and any supply agreement or accepted purchase orders it has in place with the Reseller.
	8. KONG alone is responsible for the registration and maintenance of any marks or designs that relate to the Products. The Reseller shall not obtain or try to obtain or register for itself anywhere in the world any trade marks or trade names, or other intellectual property that is the same as or similar to the Licensed IP.
	9. The Reseller shall promptly give notice in writing to KONG if it becomes aware of:
		1. any infringement or suspected infringement of the Licensed IP or any other intellectual property rights relating to the Products within Australia; or
		2. any claim that any Product or the manufacture, use, sale or other disposal of any Product within Australia, whether or not under the Licensed IP, infringes the rights of any third party.
	10. In respect of any matter that falls within Clause 7.9:
		1. KONG shall in its absolute discretion, decide what action to take in respect of the matter (if any);
		2. KONG shall conduct and have sole control over any consequent action that it deems necessary and the Reseller shall on being so requested by KONG and at KONG’s cost assist in taking all steps to defend the rights of KONG including the institution at KONG’s cost of any actions which it may deem necessary to commence for the protection of any of its rights;
		3. KONG shall pay all costs in relation to that action and shall be entitled to all damages and other sums that may be paid or awarded as a result of that action; and
		4. the Reseller shall, at the request and expense of KONG, provide any reasonable assistance to KONG (including the use of its name in, or being joined as a party to, proceedings) with any action to be taken by KONG under this Clause , provided that the Reseller is given such indemnity as it may reasonably require against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance.
7. **Auditing / reporting**
	1. KONG reserves the right to request from the Reseller reports of inventories, sales and other pertinent information regarding its handling of the Products, as KONG may from time to time reasonably request. KONG shall grant the Reseller at least thirty (30) days within which to comply with any such request, except that KONG is permitted to require an immediate response to a notice requesting information required to verify the Reseller's compliance with this Agreement.
	2. KONG reserves the right to audit and/or monitor the Reseller's activities for compliance with this Agreement, including, but not limited to, inspection of the Reseller's facilities and records concerning the Products.
8. **No agency**
	1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person. The Reseller shall not (a) act as, or represent itself as, an agent of KONG for any purpose; (b) pledge KONG’s credit; (c) give any condition or warranty on KONG’s behalf; (d) make any representation on KONG’s behalf; or (e) attempt to commit KONG to any sales contracts or any other legally binding agreement.
9. **Authorisation Term and Termination**
	1. The term of this Addendum shall begin on the date that KONG provides the Reseller with KONG’s express written confirmation that the Reseller is authorised as an Authorised Reseller (the “Authorisation Date”), and shall continue in full force and effect for one (1) year from the Authorisation Date (the "Initial Authorisation Term"). This Addendum will automatically renew, unless either party provides at least 30 days' notice, prior to the end of the Authorisation Term that it does not wish to renew for consecutive one (1) year terms ("Renewal Authorisation Term(s)", and together with the Initial Authorisation Term, the "Authorisation Term").
	2. This Addendum may be terminated as follows:
		1. by KONG, immediately upon written notice to the Reseller in the event of a breach by the Reseller of Clauses 2, 3, 4, 5, 6 or 7 of this Addendum; or

### by KONG, immediately upon written notice to the Reseller if any Contract (as defined in the Terms and Conditions of Supply between the Parties, if applicable) is terminated as a result of a breach or default by the Reseller;

* + 1. by either party immediately by giving written notice to the other party if:
			1. the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due; (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
			2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
			3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Addendum);
			4. (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
	1. If this Addendum is terminated for any reason:

### any Contract (as defined in the Terms and Conditions of Supply between the Parties, if applicable) between KONG and the Reseller shall immediately terminate;

* + 1. the Reseller shall immediately cease:
			1. selling the Products;
			2. selling the Products or acting in any manner that may reasonably give the impression that the Reseller is an Authorised Reseller or has any affiliation whatsoever with KONG; and
			3. using the Licensed IP.
	1. The following provisions in this Addendum shall survive termination: 10.

# General

## No breach of any provision of this Addendum will be waived except with the express written consent of the party not in breach.

## If any provision of this Addendum is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Addendum will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

## KONG may freely assign its rights and obligations under this Addendum without the Reseller’s consent. Save as expressly provided in this Clause, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under this Addendum.

## This Addendum is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Addendum are not subject to the consent of any third party.

## This Addendum will be governed by and construed in accordance with the laws of the State of Victoria; and the courts of the State of Victoria will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Addendum.

**I confirm that I have carefully read, understand and agree to be bound by the terms of this Authorised Reseller Addendum:**

 **Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Name of authorised representative: ------------------------------------------------------------------------------**

**Job Title: \_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Reseller company name: ---------------------------------------------------------------------------------------**

**Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**