



# Terms and Conditions

## Article 1. Applicability and Interpretation

### 1.1 Indemnified Parties

#### As defined in Article 7.1

The following words and expressions used in these Rules have the following meanings:

<b>Application Form</b>	A completed application form (whether paper or online) in the form specified by the Organiser for entry of a Product to the Program
<b>Article</b>	Any article in these Rules.
<b>Finalists</b>	As set out in Article 4.2.
<b>Finalist Fee</b>	The amount set out in the Application Form as payable in respect of each Finalist.
<b>Licence</b>	As defined in Article 5.1.
<b>Licence Period</b>	As defined in Article 5.2.
<b>Trade Mark Guidelines</b>	The guidelines as to display of the Trade Marks published by the Organiser from time to time
<b>Marketing Period</b>	The 18 month period prior to <b>1st October</b> of the calendar year preceding the Program Year (for example for the Program Year 2018, the Marketing Period will be <b>1 October 2015</b> to <b>31 May 2017</b> )
<b>Organiser</b>	Product of the Year Australia Pty Limited a company incorporated in Australia with ABN number 58137171085 and registered office at Suite 101, Level 1, 80 William Street, East Sydney, NSW 2011.
<b>Product or Products</b>	As defined in article 2.1.
<b>Program</b>	The marketing program operated by the Organiser known as the "Voted - Product of the Year" program as more fully described in these Rules.
<b>Program Year</b>	The year referred to in the title of a Program (for example, the Program Year for "Voted - Product of the Year 2018" will be <b>2018</b> )
<b>Researcher</b>	A reputable market research company or organisation engaged by the Organiser
<b>Territory</b>	Australia
<b>Trade Mark</b>	The name "Product of the Year" and the logos, devices and getup associated with it as shown in the Trade Mark Guidelines.
<b>Winner Fee</b>	The amount set out in the Application Form as payable in respect of each Winning Product
<b>You</b>	The person or company named on the Application Form. Yours will be interpreted accordingly.

**1.2** These Rules apply to any application submitted by you to enter a Product into the Program and by submitting an Application Form you agree to be legally bound by these Rules. No other terms or conditions, whether express or implied shall apply to your participation in the Program.



An agreement is entered into between You and the Organiser on the basis of these Rules only when your completed Application Form is delivered to and accepted by the Organiser. The agreement will remain in force unless it is terminated in accordance with Article 7.10.

**1.3** The Organiser reserves the right to change these Rules from time to time, and the version posted on the Organiser's website [www.productoftheyear.com.au](http://www.productoftheyear.com.au) will apply to Your participation in the Program.

**1.4** You acknowledge that by submitting a completed Application Form You commit Yourself to the whole Program and in particular to the payment of any fees that become due under Article 6. You agree to pay these fees to the Organiser and you cannot withdraw from the Program in the event that a Product of Yours is nominated as a Finalist or a Product of Yours is "Voted - Product of the Year".

**1.5** Where an agent submits an Application Form on behalf of another person, that agent will be personally responsible for performance of Your obligations under the Rules.

## **Article 2. Program scope**

**2.1** The Program is open to most branded consumer goods on sale nationally (Products). The scope, nature and other characteristics of Products to be included in the Program is at the discretion of the Organiser.

**2.2** The Program is open, subject to these Rules and the discretion of the Organiser, to new Products first sold to consumers in the Territory during the Marketing Period, but (as the Marketing Period is greater than 12 months) if You enter a Product into the Program for one Program Year and it is a Winning Product, you may not enter the same Product in succeeding Program Years.

## **Article 3. Application process and categorisation**

**3.1** Completed Application Forms and full support materials must be sent by You or completed online at the latest by the close of entries prior to the date notified by the Organiser to: [www.productoftheyear.com.au](http://www.productoftheyear.com.au) or to the Organiser at Suite 101, Level 1, 80 William St, East Sydney, NSW, 2011. Time is of the essence. The Organiser will have the right to reject (without giving reasons) any Application Form submitted.

**3.2** The Organiser will notify You, after its acceptance of Your Application Form, of the categories of Product that the Organiser has set for the Program for that Program Year. Products will be classified by the Organiser at its absolute discretion into categories which, where possible and subject to the discretion of the Organiser, will consist of a minimum of two brands. The Organiser reserves the absolute right to amend, add or withdraw one or more categories, depending, amongst other things, on the nature and number of applications received, and to assign Products to the category it deems appropriate.



**3.3** Subject to Article 2.2, You may enter Products in the Program in different categories. In the case of substantially similar Products, or the same Product sold in different sizes, You may enter only one Product in any category in any Program Year. However, so long as the Products are different in some significant manner, You may enter more than one Product in the same category, The Organiser will have absolute discretion to accept a Product into the Program or into any particular category, to assign Products to categories and to determine if Products that You submit are sufficiently different to warrant multiple entries in a category.

**3.4** The Organiser agrees that, except as otherwise provided in Article 7.2, all information and documents submitted by You will be treated by the Organiser as confidential and will not be disclosed or published by the Organiser without Your consent, except as may be required by law or any regulatory authority. Information contained in Application Forms submitted by You will be kept by the Organiser and will be dealt with by the Organiser as it sees fit. If You specifically request for Your Application Form to be returned to You then the Organiser will only be able to do so after the end of March of the year following the Program Year.

**3.5** You warrant that any information provided by You as part of or in support of your application is sustainable for use in advertising in Australia, is true, accurate and complete in all respects and is in no way misleading or deceptive. You will upon request provide evidence to verify any claims made in such information.

#### **Article 4. Procedure to determine Winning Product**

**4.1** The procedure used to choose Winning Products is in two stages and is as set out below subject to any changes that the Organiser may in its absolute discretion make and notify to You.

**4.2** Selection of Finalists: a panel selected by the Organiser, including representatives from the retail trade, design, industry and advertising, will review all of the entries received and accepted under Article 3.1. The selection criteria and procedures of the panel will be determined by the Organiser and will include matters relating to the innovative character of the Product such as, but not limited to, formula, packaging and recipe. The panel will select from all Application Forms submitted and accepted by the Organiser a number of entrants to be Finalists. There will be no fewer than two entrants selected as Finalists in each category; and

**4.3** Consumer vote: the Product selected to be the Winning Product in each category will be determined from among the Finalists selected under Article 4.2 in that category by the vote of a panel of consumers administered by both the Organiser and Researcher. The panel will be reasonably representative of the population of Australia (as determined by the Organiser) and will consist of not less than 7,000 adults. A first rating will be based on the vote expressed by the whole of this panel of consumer households selected to vote on a category . A second rating will be based on the vote expressed by those consumer households within the panel which have purchased one or more of the Products in the particular category. The Product selected to be Winning Product in each category will be determined by the Organiser using a proprietary and confidential formula of the Organiser reflecting both ratings.

**4.4** The Organiser may (without prejudice to its other rights and remedies) disqualify any Product at any time (even after announcement of Winning Products) where:



**4.4.1** The Organiser considers that the Product does not meet the criteria in Article 2.**4.4.2** The Organiser considers that You have breached Article 3.5.

**4.4.3** You do not make any payment due under these Rules;

**4.4.4** There are bona fide safety or public health concerns regarding the Product; or

**4.4.5** the Organiser has reasonable grounds for considering that the continued participation in the Program of the Product would damage the reputation and goodwill of the Program and the Trade Mark

and if the disqualified Product is a Finalist or Winning Product, all Finalist Fees and Winner Fee will remain due and payable regardless of its disqualification and no refund of fees will be made. **Alternatively you may be offered withdrawal option in which case the product second in the voting, having met all criteria, may be given the POY title.**

#### **Article 5. Trade Mark Licence**

**5.1** Subject to You making the payments set out in Article 6, if Your Product is selected as a Winning Product You will be granted a limited, revocable, non transferable, non assignable licence (Licence) to use the Trade Mark only in Australia subject to these Rules.

**5.2** The duration of such Licence is limited to the period commencing at midnight of the awards show and ending on 30 November of that Program Year (Licence Period).

**5.3** Any use must refer to the Program Year, the number of people in the survey and to the category which the Winning Product has won. The Trade Mark may only be used in the form, dimensions and graphic representation approved, in each instance, in writing by the Organiser in its sole discretion. You will comply at all times with Trade Mark Guidelines and with the reasonable instructions and the directions of the Organiser in relation to Your use of the Trade Mark under the Licence.

**5.4** Use under the Licence will be limited to use on your Winning Product in the same form and composition as the Product is presented in the Application Form and use by you or on your behalf in promoting and distributing the same. The Trade Marks may only be used in advertising aimed primarily within the Territory, and on Winning Products which are intended for sale within the Territory.

**5.5** Unless otherwise approved in each instance by the Organiser You may not use the Trade Marks on packaging or advertising which includes products other than the Winning Product (unless otherwise approved in each instance in advance in writing by the Organiser). The Organiser will have the right, in its absolute discretion, to permit the use of the Trade Mark for groupings of some or all of the Winning Products for the purpose of promotions directly or indirectly referring to "Products of the Year".



**5.6** You acknowledge that the Trade Mark is the exclusive trade mark of the Organiser or its licensors. You agree not to apply for or obtain registration of the Trade Mark for any goods or services in any jurisdiction, nor to use the Trade Mark (or anything confusingly similar to the Trade Mark) as a company, business, trade or product name in any jurisdiction.

**5.7** You undertake to monitor use of the Trade Mark under the Licence to ensure that it is no longer used by or on behalf of You on, and no longer appears in advertising for, the winning Product or for You after expiry of the Licence Period. In particular You will stop manufacturing and/or ordering Products and packaging incorporating the Trade Mark sufficiently early so that all Products and packaging incorporating the Trade Mark are reasonably likely to be sold. If material quantities of Your Winning Product bearing the Trade Mark remain in stock or in transit or on retail sale after the expiry of your Licence, You must immediately notify the Organiser, take all such steps as may be required by the Organiser to remove or reduce such stocks and provide ongoing reports of steps taken to the Organiser (which you acknowledge may be disclosed to the owner of the Winning Product in the new Program Year).

**5.8** If a Winning Product is disqualified for any reason, the Licence in this Article 5 will automatically terminate. In such circumstances you will at your own cost:

**5.8.1** remove from sale and recall all Products bearing the Trade Mark; and

**5.8.2** effect the withdrawal and termination of all advertising and promotional material for the Product which includes the Trade Mark (including print, POS, broadcast and website material).

**5.9** You agree to indemnify the Organiser for any costs, claims or expenses it may incur or suffer as a result of a failure to comply with the provisions of this Article 5. You further acknowledge that damages would not be an adequate remedy for breach of the above and that the Organiser should be entitled to seek interim order to prevent distribution and sale of stock after expiry or termination of the Licence.

**5.10** You agree that the Organiser may in the course of organisation and promotion of the Program use copies of any advertisement or other materials using the Trade Mark under the Licence in the Program Year and afterwards.

## **Article 6. Fees**

**6.1** There will be no fee for submitting an Application Form.

**6.2** You will pay the Organiser the Finalist Fee for each Product submitted by You that is selected as a Finalist under Article 4.2.

**6.3** You will pay the Organiser the Winner Fee for each of your Products which is a Winning Product in a category in consideration for the grant of the Licence under Article 5.1.



**6.4** Payment of the amounts set out in 6.2 and 6.3 is due within 30 days of receipt of invoice. Unless otherwise agreed with the Organiser, You will not be allowed to make use of the Trade Mark prior to receipt of such payment. Failure to make such payment may, at the discretion of the Organiser, result in all Your Products being disqualified from the Program, in addition to any other remedies of the Organiser

**6.5** The Organiser will be entitled to charge You interest on any amounts not paid on the due date, at the rate of 3 above the base rate of National Australia Bank from time to time, compounded monthly.

### **Article 7. Indemnity**

**7.1** You indemnify the Organizer, its directors, employees, suppliers and agents (together the Indemnified Parties) against any action, claim, loss, expense or cost, suffered or incurred, whether directly or indirectly by the Indemnified Parties as a result of:

**7.1.1** any breach by You of this agreement

**7.1.2** any negligent act, omission or representation by You

**7.1.3** a claim by any person arising out of or in respect of the marketing, advertising, promotion, sale, consumption or usage of products or delivery of services in connection with the Program

**7.1.4** any claim by any person arising out of any loss of revenue or expense incurred in respect of either being selected as a Finalist or a Winning Product or failing to be selected as a Finalist or a Winning Product or of any change in Finalist/Winning status or use or non-use of the Trade Mark due to disqualification or any other circumstances

**7.2** If Your Product or Products are selected as Finalists You permit the Organiser to give out Your name, address and a description of the Finalist Products together with a qualitative analysis of the results of the consumer panel survey conducted by or on behalf of the Organiser under Article 4.3 as part of the publication and promotion of the Program.

**7.3** Any question regarding the interpretation or application of these Rules or other question relating to the Program will be settled by the Organiser, in its sole discretion.

**7.4** Whenever the singular number is used in these Rules and when required by the context, the same will include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

**7.5** The headings in these Rules are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of these Rules or any of their provisions.



**7.6** If any provision of these Rules is invalid, illegal, or unenforceable to any extent, the remainder of these Rules and their application will not be affected and will be enforceable to the fullest extent permitted by law unless the provision held to be illegal, invalid or unenforceable is so fundamental to the sense of these Rules that its illegality, invalidity or unenforceability would make the enforceability of the remainder unreasonable.

**7.7** The Organiser may assign, subcontract or otherwise transfer all or any part of its rights or benefits under this agreement. The agreement is personal to You and any rights or benefits under this agreement may not be assigned or sublicensed by You.

**7.8** These Rules and the documents referred to in them, constitute the entire agreement between You and the Organiser and supersede all other agreements or arrangements, whether written or oral, express or implied, between You and the Organiser, its successors and assigns.

**7.9** Neither party will be affected by any delay or failure in exercising or any partial exercising of any rights under these Rules unless the party has signed an express written waiver or release.

**7.10** The Organiser may terminate this agreement with immediate effect at any time by notice in writing to You if:

**7.10.1** You are in breach of Article 5;

**7.10.2** You fail to pay any amount due under Article 5 or Article 6;

**7.10.3** You are in material or persistent breach of any other provisions of this agreement and the breach, if capable of remedy, has not been remedied within ten days after Your receipt of notice requiring the breach to be remedied.

**7.11** If the agreement is terminated, all the rights and obligations of the parties will cease immediately, except for those provisions expressly stated to survive termination of this agreement. Termination of this agreement will not affect any rights or liabilities arising prior to termination.

**7.12** All payments to be made by You under these Rules are exclusive of GST or other applicable taxes or duties which will, where applicable, be paid in addition by You.

**7.13** The rights, powers and remedies provided in these Rules are cumulative and not exclusive of any rights, powers and remedies provided by law. The exercise or partial exercise of any right, power or remedy provided by law or under these Rules will not preclude any other or further exercise of them or the exercise of any other right, power or remedy.

**7.14** The signatory accepting these Rules on behalf of another person represents and warrants that he is empowered to execute them and that all necessary action to authorise their execution has been taken.

**7.15** These Rules are to be governed by and construed in accordance with Australian law and the courts of Australia are to have jurisdiction to settle any dispute in connection with these Rules.



**7.16** In the event that:

**7.16.1** You dispute the entry, participation or result of another Product in the Program;

**7.16.2** Another participant disputes the entry, participation or result achieved by your Product in the Program;

**7.16.3** Closing date for entries for the 2018 awards is **31 May 2017**. Any extensions will be advised 2 weeks prior to the close date.

then the Organiser will determine such dispute in its absolute discretion, and the Organiser's decision in this regard will be final. The Organiser may refer such dispute to an expert for determination on such terms (including payment by You of any fees charged by the expert) as it thinks appropriate. You will co-operate with the Organiser in resolving such dispute and will provide such information and evidence as the Organiser may reasonably require.

#### **Costs**

Please note a discount applies to the research fee for entries submitted before the early bird deadline as specified on the entry form.

<b>Step 1</b>	Entry	Free
<b>Step 2</b>	Selection by Jury	\$6,000
<b>Step 3</b>	Category winner	\$18,500
<b>Total for winning</b>		\$24,500

*ONCE ENTERED INTO THE PROCESS YOU CANNOT WITHDRAW.*