

FILE No

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Mr Scott Gregson
General Manager, Adjudication
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Dear Mr Gregson

Coles Myer Ltd and related companies notifications lodged under section 93 of the Trade Practices Act 1974

We refer to the notifications lodged on 18 May 2005 by Coles Myer Ltd and 17 related companies concerning possible third line forcing conduct under the *Trade Practices Act 1974* in connection with the supply of loyalty program services to persons issued a Coles Myer branded credit card.

Accompanying the notifications was a confidential final draft copy of the terms and conditions relevant to the conduct the subject of the notifications. This document was provided on a confidential basis by reason that, at the time of lodging the notifications, the final details of the arrangements had not been finalised.

We advise that the arrangements have now been finalised and enclose a final public version of the relevant terms and conditions. We consent to the enclosed document being placed on the public register.

Please feel free to contact Emma Gordon on 03 9288 1655 should you wish to discuss this matter.

Yours faithfully
Freehills



Bob Baxt
Partner

Encl.

Coles Myer Source® MasterCard Loyalty Terms and Conditions

FlyBuys is a registered trademark of Loyalty Pacific. Loyalty Pacific is the operator of the FlyBuys program. GE is not affiliated to the FlyBuys program and is not a party to these Terms and Conditions.

1 General Information

These Terms and Conditions will apply to you if you are an individual and you are provided with a credit facility under which you have been issued with a Participating Card.

These Terms and Conditions explain how you can earn FlyBuys Points by using your Participating Card.

PLEASE NOTE: You need to be a member of the FlyBuys program to accrue Points by using your Participating Card and for us to allocate FlyBuys Points to your FlyBuys Account. If you would like to become a member of the FlyBuys program, please call 131116 or enrol at www.flybuys.com.au. Membership of the FlyBuys program is subject to the terms and conditions of the FlyBuys program.

Please read these Terms and Conditions carefully. It is your responsibility to read and understand these Terms and Conditions prior to you or an Additional Cardholder using your Account. If you have difficulty reading or understanding them, please seek help from an interpreter or adviser. We recommend that you keep these Terms and Conditions for future reference. If you misplace these Terms and Conditions or do not understand any part of them, please call 1300 360 888 for assistance.

2 Definitions and interpretation

2.1 Definitions

In these Terms and Conditions:

Account means a credit facility that is linked to the Accountholder's Participating Card;

Accountholder means the person in whose name an Account is opened and who has selected a Participating Card;

Additional Card means an additional Participating Card issued at the request of the Accountholder to a third party which is linked to the Account, and includes any replacement or reissued cards provided to an Additional Cardholder;

Additional Cardholder means the person to whom an Additional Card is issued;

Balance Transfer means a transaction under which you ask GE to debit your Account with an amount you specify and to pay that amount to GE or another card issuer or financial institution for the credit of your specified account with GE or that card issuer or financial institution made pursuant to an

offer made in writing by **GE** and accepted by **you** in accordance with the terms of that offer from time to time;

Bonus Points means extra **Points** that accrue in accordance with promotional or incentive programs offered by **Coles Myer** from time to time and forms part of the **Points** balance that is subject to clause 4.1(l);

Card means the **Participating Card** issued by **GE** to the **Accountholder** and any **Additional Card** and includes any replacement or reissued card;

Cardholder means, in relation to an **Account**, the **Accountholder** and each **Additional Cardholder**;

Cash Advances means cash obtained using a **Participating Card** in accordance with the **Participating Card Conditions of Use**;

Coles Myer means Coles Myer Ltd. (ABN 11 004 089 936);

Eligible Transaction means:

(a) if **you** have a Coles Myer Source® MasterCard (with FlyBuys®) or a Coles Myer Source Gold® MasterCard (with FlyBuys®), all transactions posted to **your Account** other than:

- (1) **Cash Advances**;
- (2) purchases of foreign currency, travellers cheques, convenience cheques, casino gambling chips, or telegraphic transfers;
- (3) credit fees and charges payable in connection with **your Account**;
- (4) interest charges payable in connection with **your Account**;
- (5) government fees and charges payable in connection with **your Account**;
- (6) transactions **GE** decides are disputed or fraudulent or involve abuse of **your Account** or a **Card**;
- (7) transactions **we** decide are wholly or partly for business purposes;
- (8) payments credited to **your Account**;
- (9) purchase transactions refunded or reimbursed as they are posted to **your Account**;
- (10) adjustments resulting from disputed transactions or otherwise; and
- (11) **Balance Transfers**;

(b) if **you** have a Coles Myer Source® MasterCard, all transactions at **Participating Retailers** which are posted to **your Account** other than:

- (1) **Cash Advances**;
- (2) purchases of foreign currency, travellers cheques, convenience cheques, casino gambling chips, or telegraphic transfers;
- (3) credit fees and charges payable in connection with **your Account**;

- (4) interest charges payable in connection with **your Account**;
- (5) government fees and charges payable in connection with **your Account**;
- (6) transactions **GE** decides are disputed or fraudulent or involve abuse of **your Account** or a **Card**;
- (7) transactions **we** decide are wholly or partly for business purposes;
- (8) payments credited to **your Account**;
- (9) purchase transactions refunded or reimbursed as they are posted to **your Account**;
- (10) adjustments resulting from disputed transactions or otherwise; and
- (11) **Balance Transfers**;

FlyBuys Account means the account **Loyalty Pacific** maintains in **your** name detailing the number of **FlyBuys Points** that have been allocated to **your FlyBuys Account** in accordance with the terms and conditions of the **FlyBuys program**;

FlyBuys Point means a point in the **FlyBuys program**;

FlyBuys program means the loyalty program of that name operated by **Loyalty Pacific**;

GE means GE Capital Finance Australia (ABN 42 008 583 588), trading as **GE Money**;

Loyalty Pacific means Loyalty Pacific Pty Ltd (ABN 82 057 931 334), the administrator of the **FlyBuys program**;

Participating Card means a Coles Myer Source[®] MasterCard (with FlyBuys[®]), a Coles Myer Source[®] Gold MasterCard (with FlyBuys[®]) or a Coles Myer Source[®] MasterCard issued to **you** at **your** request and, where the context allows, includes any **Additional Card** and any replacement or reissued card;

Participating Card Conditions of Use means the Conditions of Use of the **Participating Card** held by the **Accountholder**;

Participating Retailer means any Coles Myer group company that participates in the **FlyBuys program**. A current list of Coles Myer group companies that participate in the **FlyBuys program** is available at www.flybuys.com.au;

Point means a point that **you** accrue in accordance with these **Terms and Conditions** and that will (subject to these **Terms and Conditions**) be allocated to **your FlyBuys Account** as **FlyBuys Points**;

Points Statement means a record of **Points** activity in respect of **Eligible Transactions** for a **Statement Period**, which may be included in the **Statement of Account**, or may be in any other form **we** choose to issue to **you**;

Statement of Account means a statement of account issued by **GE** in respect of **your Account**;

Statement Period means the statement period for your **Account** as determined in accordance with the **Participating Card Conditions of Use**; and

Terms and Conditions means these Coles Myer Source® MasterCard Loyalty Terms and Conditions.

2.2 Interpretation

When interpreting these **Terms and Conditions**, a reference to:

- (a) "these **Terms and Conditions**" means these Coles Myer Source® MasterCard Loyalty Terms and Conditions, as amended from time to time;
- (b) "**we**", "**us**", "**our**" or "**Coles Myer**" is a reference to **Coles Myer** or any of its agents or contractors from time to time;
- (c) "**you**" or "**your**" is a reference to the **Accountholder**;
- (d) a party (other than a reference to a **Cardholder**) is a reference to that party and its successors or assigns;
- (e) words importing the singular include the plural and vice versa; and
- (f) headings are for convenience only and do not affect the interpretation of these **Terms and Conditions**.

3 Participation

(a) By selecting and accepting a **Participating Card** for use in conjunction with your **Account**, you agree to accept and be bound to these **Terms and Conditions** upon their becoming effective. These **Terms and Conditions** will become effective as between you and **Coles Myer** when you:

- (1) when you have selected a **Participating Card**; and
- (2) when you have been provided with a **Participating Card**; and
- (3) if your **Participating Card** is a Coles Myer Source® MasterCard, have provided us with your FlyBuys membership number by calling 1300 360 888 or writing to Coles Myer Source® MasterCard Loyalty Service Centre, PO Box 826, South Melbourne VIC 3205; and
- (4) when you first use the **Participating Card** or the **Account**.

(b) You need to be a member of the **FlyBuys program** in order for us to allocate **Points** to your **FlyBuys Account**. Acceptance of these **Terms and Conditions** does not entitle you to membership of the **FlyBuys program**. If you are not already a member of the **FlyBuys program**, you will need to apply separately for membership of that program. Membership of the **FlyBuys program** is subject to the terms and conditions of the **FlyBuys program**.

4 Earning FlyBuys Points using your Participating Card

4.1 When do you earn FlyBuys Points?

(a) Subject to these **Terms and Conditions**, you will accrue **Points** on all **Eligible Transactions** posted to your **Account**. A **Point** is not a **FlyBuys Point**, but may subsequently be used (as described in these **Terms and Conditions**) to earn **FlyBuys Points** on your **FlyBuys Account**. A **Point** cannot be used for

any other purpose other than to be allocated to your **FlyBuys Account** as a **FlyBuys Point** and a **Point** is not property and has no cash or monetary value.

(b) If your **Participating Card** is a Coles Myer Source[®] MasterCard, you will only start accruing **Points** after you have provided us with your FlyBuys membership number. We will issue **Points** to you for all **Eligible Transactions** posted to your **Account** in the calendar month in which you provide us with your FlyBuys membership number.

(c) If your **Participating Card** is a Coles Myer Source[®] MasterCard (with FlyBuys[®]) or a Coles Myer Source Gold[®] MasterCard (with FlyBuys[®]), you have up to 36 months from the date you accept these **Terms and Conditions** to provide your FlyBuys membership number to us. In the event that:

- (1) you have not provided your FlyBuys membership number to us within 36 months; or
- (2) you have closed your FlyBuys **Account** or otherwise changed your FlyBuys membership number and you have not provided your new FlyBuys membership number to us within 36 months of such closure or change,

all **Points** accrued under these **Terms and Conditions** (but which are yet to be allocated to your FlyBuys **Account**) will be cancelled. No further **Points** will accrue under these **Terms and Conditions** until you provide your FlyBuys membership number.

(d) Subject to paragraph 4.1(l), the number of **Points** you will accrue on an **Eligible Transaction** is calculated by reference to:

- (1) the dollar value of the **Eligible Transaction** (inclusive of any taxes, including any GST, included on the **Eligible Transaction**) indicated in your **Statement of Account**; and
- (2) the rate notified to you by Coles Myer from time to time at which **Points** will accrue for each whole dollar value of **Eligible Transactions**, rounded down, posted to your **Account** during the period to which the notified rate applies.

The rate may differ depending upon the type of **Participating Card** that has been issued to you.

Coles Myer may increase or decrease the rate that applies for your type of **Participating Card** from time to time, including for selected **Eligible Transactions**, by giving you at least 30 days prior notice.

- (e) All references to dollars are to Australian dollars. An **Eligible Transaction** in a currency other than Australian dollars will be valued as converted to Australian dollars in accordance with the **Participating Card Conditions of Use**.
- (f) You may also accrue **Bonus Points** as a result of promotional or incentive programs offered by Coles Myer from time to time. This may include the accrual of **Bonus**

Points for purchasing qualifying goods or services or by making other qualifying transactions by using a **Participating Card** or the **Account**. The terms of any such promotional or incentive offer will be advertised or notified to selected **Accountholders**.

(g) Any **Points** (including **Bonus Points**) that accrue as a result of an **Eligible Transaction** performed by an **Additional Cardholder** will accrue to **you** and not to the **Additional Cardholder**.

(h) **We** reserve the right to adjust (retrospectively or otherwise) **your Points** at **our** absolute discretion in the event of incorrect crediting or debiting of **Points** whether due to **our** error or for any other reason.

(i) The number of **Points** **you** accrue under these **Terms and Conditions** will be adjusted to reflect refunds or reimbursements or other credit adjustments to **Eligible Transactions** posted to **your Account**.

(j) Where an accrual of **Points** is reversed by **us**, either because of returned purchases, or because the **Points** were issued in error, or for any other reason under these **Terms and Conditions**, the reversed **Points** will be deducted from the total number of **Points** accrued to **you**. Where such deduction would result in the total **Points** accrued to **you** reducing below zero, the total number of **Points** accrued to **you** may be shown as a negative amount. In these circumstances, any future **Points** accrued by **you** will be accrued towards setting off any deficit before otherwise being available to **you**. If the **Points** reversed have already been allocated to **your FlyBuys Account** then **we** may, at **our** discretion, deduct those **FlyBuys Points** from **your FlyBuys Account**.

(k) **We** reserve the right to suspend **your** right to accrue **Points** in connection with **Eligible Transactions** at any time and in **our** absolute discretion. If **we** suspend or terminate **your** ability to earn **Points** for **Eligible Transactions** and **you** have not provided **your** FlyBuys membership number to **Coles Myer** within 60 days from the date of suspension or termination, any unallocated **Points** will be cancelled. If **you** have provided **us** with **your** FlyBuys membership number, then all **Points** **you** have accrued under these **Terms and Conditions** up to the date of suspension (but which are yet to be allocated to **your FlyBuys Account**) will be automatically allocated to **your FlyBuys Account** at the next time the automated periodic allocation occurs.

(l) The rate notified to **you** by **Coles Myer** under paragraph 4.1(d)(2) only applies in respect of the first 80,000 **Points** accrued in a calendar year. Once this limit has been reached, **you** will earn 1 **Point** per \$5 of **Eligible Transactions**.

(m) This limit does not apply in relation to any **FlyBuys Points** **you** may earn on **your FlyBuys Account** that do not solely arise from the use of **your Participating Card**.

4.2 When are FlyBuys Points allocated to your FlyBuys Account?

(a) **Coles Myer** requires **your** current FlyBuys membership number to allocate **Points** to **your FlyBuys Account**. **You** need to be a current member of the **FlyBuys program** at the time of allocation. **You** can ensure that **Coles Myer** has **your** current FlyBuys membership number by calling **1300 360 888** or writing to Coles Myer Source® MasterCard Loyalty Service Centre PO Box 826, South Melbourne, Victoria 3205.

(b) **Points** are allocated to **your FlyBuys Account** when **we** notify **Loyalty Pacific**. **Loyalty Pacific** then records an equivalent number of **FlyBuys Points** in **your FlyBuys Account**. **We** will automatically allocate **Points** to **your FlyBuys Account** by notifying **Loyalty Pacific** on a periodic basis (see paragraph (c)) or when **you** make a request in accordance with these **Terms and Conditions** (see paragraph (d)).

(c) The timing of the automatic allocation of **Points** to **your FlyBuys Account** is at **Coles Myer's** discretion. This will be on a periodic basis. **PLEASE NOTE:** This means that there may be some delay between the time at which **you** accrue a **Point** under these **Terms and Conditions** and the time at which the corresponding **FlyBuys Point** is allocated to **your FlyBuys Account** in respect of that **Point**.

(d) In addition, **you** may request that **Coles Myer** allocate **Points** that **you** have accrued on **Eligible Transactions** at any time to **your FlyBuys Account** by calling **1300 360 888**, by visiting www.sourcecard.com.au or by writing to Coles Myer Source® MasterCard Loyalty Service Centre PO Box 826, South Melbourne, Victoria 3205. If another method becomes available for requesting an allocation of **Points**, **you** may also request an allocation using that method.

(e) **Your** request for **Coles Myer** to allocate **Points** to **your FlyBuys Account** will only be processed if:

- (1) at the time of **your** request, **you** are not in default or in arrears under **your Account**;
- (2) at the time of **your** request **your Account** has not been closed (other than at **your** request);
- (3) **your** request is for the allocation of a minimum of 500 **Points**; and
- (4) **we** hold **your** current FlyBuys membership number.

It may take up to 30 days after receipt of a request for the corresponding **FlyBuys Points** to appear on **your FlyBuys Account**.

(f) If **you**:

- (1) close **your Account** (including where **you** cancel **your** Coles Myer Source® MasterCard (with FlyBuys®) or Coles Myer Source Gold® MasterCard (with FlyBuys®) and replace it with a Coles Myer Source® MasterCard); or
- (2) notify **us** that **you** no longer wish to accrue **Points** under these **Terms and Conditions**; or

(3) notify **GE** that you wish to cancel your **Participating Card** and select another card option under your **Account** (that is not a **Participating Card**);

and you have not provided us with your FlyBuys membership number within 60 days from the date of closure or notification, any unallocated **Points** will be cancelled. If you have provided us with your FlyBuys membership number, then all **Points** you have accrued under these **Terms and Conditions** up to the date of closure (but which are yet to be allocated to your **FlyBuys Account**) will be automatically allocated to your **FlyBuys Account** at the next time the automated periodic allocation occurs.

(g) If **GE** closes your **Account** (other than at your request) and you have not provided your FlyBuys membership number within 60 days from the date of closure, any unallocated **Points** will be cancelled. If you have provided us with your FlyBuys membership number, then all **Points** you have accrued under these **Terms and Conditions** up to the date of closure (but which are yet to be allocated to your **FlyBuys Account**) will be automatically allocated to your **FlyBuys Account** at the next time the automated periodic allocation occurs.

(h) Once a request to allocate **Points** to your **FlyBuys Account** has been processed by us, you cannot amend or withdraw your request.

(i) You cannot request an allocation of **Points** to any other person or entity.

(j) **Points** allocated to your **FlyBuys Account** in accordance with these **Terms and Conditions** can only be dealt with in accordance with the terms and conditions of the **FlyBuys program**.

5 General

5.1 Suspension or termination and variation

(a) **Coles Myer** reserves the right to:

- (1) suspend or terminate accruals and allocations under these **Terms and Conditions**; and
- (2) vary these **Terms and Conditions** (including to introduce or vary a fee or charge),

by giving you at least 30 days prior notice.

(b) If we suspend or terminate accruals and allocations under these **Terms and Conditions** in accordance with clause 5.1(a)(1) and you have not provided us with your FlyBuys membership number within 60 days from the date of suspension or termination, any unallocated **Points** will be cancelled. If you have provided us with your FlyBuys membership number, then all **Points** you have accrued under these **Terms and Conditions** up to the date of suspension or termination (but which are yet to be allocated to your **FlyBuys Account**) will be automatically

allocated to your **FlyBuys Account** at the next time the automated periodic allocation occurs.

5.2 Notices

(a) **Coles Myer** may give you notice:

- (1) by advertisement in a newspaper circulating throughout Australia; or
- (2) in writing; or
- (3) in your **Points Statement**.

(b) Where **Coles Myer** gives notice to you by post, you agree that, unless otherwise stated in these **Terms and Conditions**, the notice is deemed to have been given to you:

- (1) on the date of actual receipt of the notice or on the date it would have been delivered in the ordinary course of post, whichever occurs first; and
- (2) if it is sent to your last known address according to our records of your **Participating Card**.

5.3 Points Statement

Your **Points Statement** will document your **Points** activity in respect of **Eligible Transactions** under these **Terms and Conditions** for the **Statement Period**.

5.4 Errors

(a) If you believe that an error has occurred in relation to any accrual or allocation under these **Terms and Conditions**, you must contact us on **1300 360 888**, or write to **Coles Myer Source® MasterCard Loyalty Service Centre**, PO Box 826, South Melbourne, Victoria 3205, within 60 days of your receipt of your **Points Statement**. **Coles Myer** may require you to confirm in writing, with supporting sales receipts or other evidence, the details of any error you believe has occurred.

(b) Any matter related to any accrual or allocation under these **Terms and Conditions** will be resolved in our sole and absolute discretion, except to the extent that the terms and conditions of the **FlyBuys program** provide otherwise, regarding any **FlyBuys points** allocated.

(c) If you have any other complaints or queries in relation to **FlyBuys Points** or the **FlyBuys program** you should contact the operator of the **FlyBuys program** on **131116**.

5.5 Taxation

Any tax, liability or duty arising from you holding a **Participating Card** or from any accrual or allocation of **Points** under these **Terms and Conditions** is your responsibility.

5.6 General

(a) No failure or delay by **Coles Myer** in exercising its rights under these **Terms and Conditions** constitutes a waiver of those rights. Any waiver by **Coles Myer** must be in writing and signed by an officer of **Coles Myer**.

(b) **Additional Cardholders on your Account** will not be able to access information about any accruals or allocations under these **Terms and Conditions** and will not be able to request any allocation of **Points to your FlyBuys Account**, unless an appropriate authority has been completed and recorded by **us**.

(c) **You** agree to notify **us** immediately if **you** become aware of any fraudulent or dishonest use of **your Points**.

(d) All questions or disputes regarding **your** eligibility for **Points** and any accruals and allocation under these **Terms and Conditions**, or as to these **Terms and Conditions** will be resolved by **us** at **our** sole and absolute discretion.

(e) **We** reserve the right not to rely on any term or condition in these **Terms and Conditions** without any notice to **you**. **We** may exercise any right, power or remedy granted to **us** by these **Terms and Conditions** at **our** sole and absolute discretion and separately or concurrently with another right, power or remedy. A single or partial exercise of that right, power or remedy by **us** does not prevent a further exercise of that or of any other right, power or remedy.