

COMPETITION AND CONSUMER ACT 2010

**Undertaking to the Australian Competition and Consumer Commission
given under section 87B of the *Competition and Consumer Act 2010* (Cth)**

by

BigWarehouse Pty Limited
ACN 119 434 847

Person giving this undertaking

1. This undertaking (**Undertaking**) is given to the Australian Competition and Consumer Commission (ACCC) by BigWarehouse Pty Limited ACN 119 434 847 (**BigWarehouse**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (Cth) (the Act).

Background

BigWarehouse

2. BigWarehouse carries on a business in Australia as a supplier of spare parts for electrical appliances manufactured by third parties (**Spare Parts**) to consumers.
3. BigWarehouse sells Spare Parts via its online store at 'https://m.bigwarehouse.com.au' and 'https://spares.bigwarehouse.com.au' (**Websites**).

Australian Consumer Law (ACL)

4. The ACL includes in Division 1 of Part 3-2 statutory guarantees which provide consumers with a guaranteed level of protection for goods and services they purchase within Australia (**Consumer Guarantees**). Consumers who are supplied with goods or services that fail to meet the Consumer Guarantees are entitled to certain remedies, including repair, replacement or refund.
5. Section 18 of the ACL provides that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. Statements that purport to limit or exclude remedies available under the ACL may mislead consumers about their rights.
6. Section 29(1)(a) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or services, make a false or misleading representation that goods are of a particular style or model.
7. Section 29(1)(m) of the ACL provides that a person must not, in trade or commerce, in connection with the supply or possible supply of goods or services, or in connection with the promotion by any means of the supply or use of goods or service, make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2).
8. Section 36(4) of the ACL provides that a person who in trade or commerce accepts payment or other consideration for goods or services must supply all the goods or services within a reasonable time.

Conduct of concern

9. Prior to the date of this Undertaking, the ACCC received complaints alleging that BigWarehouse made statements in communications with consumers or on the Websites which the ACCC considers gave rise to the following representations:
- (a) Spare Parts were 'available' when, in fact, the Spare Parts ordered by the consumer were not supplied within a reasonable time after BigWarehouse received payment for them from the consumer;
 - (b) Spare Parts supplied by BigWarehouse were compatible with the model of electrical appliance set out in the consumer's order, when this was not the case;
 - (c) the consumer was not entitled to a full refund or replacement in circumstances where:
 - (i) the Spare Part ordered by the consumer was not supplied to them within a reasonable time after BigWarehouse received payment for them from the consumer;
 - (ii) the Spare Part was not compatible with the model of electrical appliance set out in the consumer's order; or
 - (iii) the Spare Part was damaged during delivery and the consumer had not purchased shipping insurance from BigWarehouse.

Admission and Resolution

10. BigWarehouse admits that the conduct of concern as described in:
- (a) paragraph 9(a) was likely to have contravened sections 18 and/or 36(4) of the ACL; and
 - (b) in paragraph 9(b) was likely to have contravened sections 18 and/or 29(1)(a) of the ACL; and
 - (c) paragraph 9(c) was likely to have contravened sections 18 and/or 29(1)(m) of the ACL.
11. BigWarehouse has agreed to resolve the ACCC's concerns by:
- (a) the payment by BigWarehouse of an infringement notice under section 134A of the Act in the amount of \$12,600; and
 - (b) the provision of this Undertaking.

Commencement of this Undertaking

12. This Undertaking comes into effect when:
- (a) the Undertaking is executed by BigWarehouse; and
 - (b) the ACCC accepts the Undertaking so executed,

(Commencement Date).

Undertaking

13. BigWarehouse undertakes that subject to paragraph 14, for a period of three years from the Commencement Date, it will not, whether by itself, its officers, employees,

contractors, representatives or agents make any representation to a consumer (via communications to the consumer or via the Websites) to the effect that:

- (a) Spare Parts are 'available' unless BigWarehouse has a reasonable basis to conclude that Spare Parts will be supplied within a reasonable time after the consumer has paid BigWarehouse for them;
- (b) Spare Parts are compatible with the model of electrical appliance set out in the consumer's order unless those Spare Parts are so compatible; or
- (c) the consumer is not entitled to a full refund or replacement of the Spare Part the consumer has ordered in circumstances where:
 - (i) the Spare Part ordered by the consumer was not supplied within a reasonable time after BigWarehouse received payment;
 - (ii) the Spare Part was not compatible with the model of electrical appliance set out in the consumer's order; or
 - (iii) the Spare Part was damaged during delivery.

14. BigWarehouse undertakes that within 30 days of the Commencement Date, it will conduct a review of the Websites and make any changes necessary to ensure compliance with paragraph 13. Amendments to all Spare Parts pages listed with a status 'available' will clearly disclose that the Spare Part needs to be ordered from the manufacturer.

15. BigWarehouse undertakes that within 90 days of the Commencement Date, it will undertake a review of its records to identify every instance in the 12 months before the Commencement Date where a consumer ordered a Spare Part from BigWarehouse and requested a full refund or replacement in circumstances where the consumer alleges:

- (a) the Spare Part was not supplied within a reasonable time from the date BigWarehouse accepted payment from the consumer and was still not supplied as at the Commencement Date;
- (b) the Spare Part supplied was not compatible with the model of electrical appliance set out in the consumer's order; or
- (c) the Spare Part supplied was damaged on arrival,

and where BigWarehouse refused to provide the full refund to the consumer or if the consumer requested a replacement, where BigWarehouse charged or sought to charge an additional fee to the consumer.

16. BigWarehouse undertakes that within 90 days of the Commencement Date, it will write to each person for whom BigWarehouse has contact details, identified as a result of the review in paragraph 15 where BigWarehouse determines, acting reasonably, that the person was entitled to compensation in accordance with the ACL. BigWarehouse will offer compensation that ensures each such person receives a full refund of the price for the Spare Part. A full refund means the price originally invoiced to them, or where a replacement has been provided to the consumer, the amount of any additional fee imposed by BigWarehouse. It also includes the cost of shipping to the consumer and any shipping costs incurred by the consumer to return an incompatible or damaged Spare Part to BigWarehouse.

- (a) Where the consumer has retained the relevant Spare Part, BigWarehouse will arrange for the return of the Spare Part and will cover the cost of doing so.
- (b) Where a consumer has not retained the relevant Spare Part, they will still be entitled to receive a full refund from BigWarehouse.

Reporting to the ACCC

17. In respect of the undertakings set out in paragraph 14-16, within 180 days of the Commencement Date, subject to paragraph 18, BigWarehouse will provide the ACCC with:
- (a) The total number of consumers BigWarehouse has identified in the review undertaken at paragraph 15;
 - (b) The total number of consumers BigWarehouse has offered to compensate as required by paragraph 16;
 - (c) The total number of consumers identified at paragraph 15 but that BigWarehouse did not offer to compensate under paragraph 16 and the reasons why in relation to each such consumer;
 - (d) The total number of consumers who responded to BigWarehouse as a result of BigWarehouse contacting the consumer; and
 - (e) The total number of consumers for which BigWarehouse provided compensation.

ACCC enquiries

18. In addition to the above, for the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with BigWarehouse, and BigWarehouse will respond to such enquiries within a reasonable time.
19. If requested by the ACCC during the term of this Undertaking, BigWarehouse will provide to the ACCC copies of all documents evidencing the obligations set out above in this Undertaking and their implementation, excluding any documents protected by legal professional privilege.

Acknowledgments

20. BigWarehouse acknowledges that:
- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
 - (b) the ACCC may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
 - (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by **BigWarehouse Pty Limited** (ACN 119 434 847) pursuant to section 127(1) of the Corporations Act 2001 by:



Signature of director



Name of director (print)

1/7/2019

Date



Signature of director/company secretary



Name of director/company secretary

1/7/2019

Date

Accepted by the **Australian Competition and Consumer Commission** pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

Date

30/7/19

And signed on behalf of the Commission:



Rodney Graham Sims
Chair

30/7/19

Date

