

## **ENFORCEABLE UNDERTAKING**

**Pursuant to section 218 of the Australian Consumer Law (Victoria)**

The commitments in this Undertaking are offered to the Director of Consumer Affairs Victoria by:

**MYTINYHOMEKIT PTY LTD**

(ACN 663 997 448)

of 11 Hamersley Drive, Clyde North VIC 3978

-and-

**Spencer William Porter**

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## Parties

### The Director

1. The Director of Consumer Affairs Victoria (**the Director**) is established under section 107 of the *Australian Consumer Law and Fair Trading Act 2012 (the Act)*. The Director has responsibility for the operation of Consumer Affairs Victoria (**CAV**).
2. The Director is responsible for the administration of the Act, the Australian Consumer Law (**ACL**), which is Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* and V other Victorian consumer protection legislation. The ACL is applied as a law of Victoria by Part 2-2 of the Act and known as the Australian Consumer Law (Victoria) (**ACL (Vic)**).
3. The Director may accept an Undertaking under section 218 of the ACL (Vic) to address a breach or alleged breach of the ACL (Vic).

### MYTINYHOMEKIT PTY LTD

4. MYTINYHOMEKIT PTY LTD (ACN 663 997 448) (**MTHK**) is an Australian proprietary company limited by shares, which was registered on 22 November 2022.
5. MTHK has its registered office at 11 Hamersley Drive, Clyde North VIC 3978.

### Spencer William Porter

6. Spencer Porter is, and was, at all times relevant to this Undertaking:
  - (a) the sole director and shareholder of MTHK from 22 November 2022; and
  - (b) a person who acts on behalf of MTHK, in the usual and ordinary course of its business.

## Background

7. MTHK is an online business which manufactures and supplies custom Tiny Home Kits, operating Australia wide since November 2022.
8. MTHK acknowledges:
  - (a) the importance of having strong internal processes to ensure that customer complaints are addressed appropriately and that consumers are accurately informed of, and able to easily access, their legal rights and remedies;
  - (b) the statutory obligation to supply goods within the time specified at or before accepting payment from a consumer or, if no time was specified, within a reasonable time;
  - (c) that CAV has received a number of complaints about MTHK accepting payment for Tiny Home Kits and either partially supplying them or failing to supply them within the specified timeframe, or at all;
  - (d) that CAV has received complaints about MTHK's complaint management system, particularly where a customer of MTHK has requested a refund; and
  - (e) CAV's concerns that MTHK's current business practices and internal processes, including its handling of complaints, do not ensure compliance with the ACL (Vic).

9. To address the Director's concerns raised in paragraph 8, MTHK has offered this Undertaking to the Director pursuant to section 218 of the ACL (Vic)

## Legislation

### Australian Consumer Law (Vic) – Relevant Provision

10. The ACL (Vic) prohibits certain business practices, which are deemed unfair because they are used to trick, deceive or take advantage of consumers.
11. Section 36(4) of the ACL (Vic) deals with the practice of a person accepting payment for goods or services to be delivered in the future, and imposes on them an absolute obligation (subject to some exceptions) to supply all the goods or services:
  - (a) within the period specified by or on behalf of the person at or before the time the payment was accepted; or
  - (b) if no period is specified at or before that time – within a reasonable time.

## Undertakings

### Refrain from non-compliant conduct

12. Spencer Porter, personally and on behalf of MTHK, undertakes that it will:

(a) refrain from:

- (i) offering to supply; and
- (ii) accepting payment for –

tiny home kits that MTHK is unable to deliver to customers within the period specified, as provided on the MTHK website or as otherwise agreed and, if no period is specified, within a reasonable time.

### MTHK to offer specified customers refund or delivery of tiny home kits in set timeframe

13. Spencer Porter, personally and on behalf of MTHK, undertakes that it will:

- (a) within 3 business days of the Commencement Date, contact by email, post and text message each customer identified in Schedule A and offer the customer the choice of:

- (i) a full refund within 21 days of their written acceptance of the refund offer and the provision of a bank account into which the refund can be made; or
- (ii) delivery of a completed tiny home kit by the Delivery Date corresponding to the relevant customer in Schedule A, provided that MTHK receives written confirmation of design specifications on or before 3 January 2024; and

- (b) Within 4 business days of signing the Enforceable Undertaking MTHK must provide written evidence to the Director that all consumers listed within Schedule A been contacted by way of email or letter advising of their option to receive a full refund. The email or letter must also include within it the contact email address of Mr Craig Hodgson, Senior Investigator, CAV

Grant Hudson [grant.hudson@vic.gov.au](mailto:grant.hudson@vic.gov.au) advising that he can be contacted if the Consumers wish to make any further complaints.

- (c) Within three months of the Commencement Date, provide to CAV evidence which confirms that MTHK has provided refunds to all customers who elected for a refund pursuant to paragraph 13(a)(i) and to whom redress has not been provided at the time of MTHK signing this Undertaking.

#### **Complaint management system**

14. Spencer Porter, personally and on behalf of MTHK, undertakes that it will:

- (a) create and maintain a dedicated email account ([feedback@mytinyhomekit.com.au](mailto:feedback@mytinyhomekit.com.au)) for customers to send refund requests and feedback;
- (b) publish prominently on the MTHK website (<https://www.mytinyhomekit.com>), the dedicated customer feedback email address ([feedback@mytinyhomekit.com.au](mailto:feedback@mytinyhomekit.com.au));
- (c) create and maintain a form accessible on the MTHK website titled "Refund Request Form" for completion by customers seeking to make contact with respect to refunds specifically;
- (d) implement an Internal Complaints Management System for recording, storing and responding to customer complaints which provides for:
  - (i) an automated email acknowledging the complaint, advising the expected timeframe for a response and providing contact details for any further contact;
  - (ii) a clear process for staff to consider complaints and the options available to the customer;
  - (iii) the processing of refunds within 21 business working days from receipt of a refund request from, where the circumstances give rise to an entitlement to a refund;
  - (iv) an unconditional delivery timeframe for the tiny home kit where an amended timeframe is sought by the customer; and
  - (v) a process for updating customers on the status of their complaint.

#### **Reviews and Reporting**

15. Spencer Porter, personally and on behalf of MTHK, undertakes to the Director that it will:

- (a) cause, at its own expense, within 12 months of the commencement date of this Undertaking, a review (**Review**) of its Complaints Management System to be undertaken by an independent reviewer, who is a suitably qualified compliance professional, approved by CAV before the Review is undertaken (**Reviewer**);
- (b) request that the Reviewer:
  - i. report to it in relation to the efficacy of complaints handling procedures;
  - ii. report to it in relation to refund requests received and actioned, and other matters referred to in this Undertaking; and
  - iii. make findings as to whether there are any material deficiencies or areas of further development which are required by MTHK; and

- iv specify how MTHK can implement any recommendations made by the Reviewer to rectify any identified failures in policies and procedures for addressing consumer complaints and ensuring ongoing compliance with the ACL (Vic),
- (c) ensure that a Review is completed within 12 months of this Undertaking coming into effect and that subsequent Reviews are completed annually for a period of three years;
- (d) ensure that the initial Review report, and all subsequent Review reports, are provided to CAV within 10 business days of receipt by MTHK; and
- (e) promptly respond to CAV inquiries for the purposes of monitoring compliance with the Undertaking, including maintaining a record of, and store all documents relating to, the implementation of procedures and policies referred to in this Enforceable Undertaking and, if requested by CAV, cause to be provided to CAV all requested documents including Review reports provided to it.

### **Commencement**

16. This Undertaking comes into effect when:

- (a) this Undertaking is executed by Spencer Porter on behalf of MTHK; and
- (b) this Undertaking so executed is accepted by the Director (**Commencement Date**)

### **Duration**

17. This Undertaking has effect for two years from the Commencement Date.

### **Public Nature of Undertaking**

18. Spencer Porter, personally and on behalf of MTHK, acknowledges that:

- (a) CAV will make this Undertaking publicly available, including by publishing it on CAV's public register of undertakings on its website and making it available for public inspection
- (b) this Undertaking in no way derogates from rights and remedies available to the Director or any other person arising from the alleged conduct;
- (c) this Undertaking in no way derogates from the obligation of MTHK, its officers, employees, and agents to fully comply with the provisions of ACL (Vic) and associated regulations in the marketing and conduct of its business at all times.

## Execution

Signed by:

SPENCER PORTER, personally and as the director of MTHK

On: 8.12.23 2023

In the presence of Adam Sharp

Witness

(PRINT NAME)

On: 08/12/2023 2023

Signed by:

Accepted by:

Nicole Rich, Director of Consumer Affairs Victoria, pursuant to section 218 of the ACL (Vic)

On: 11/12/2023