

LAYAWAY DEPOT PTY LTD – GENERAL TERMS (07) 3088 4864

1. Definitions and Concepts Used in this Agreement

- (a) **"Agreement"** means the contract between us.
- (b) **"Business Day"** means a day other than a Saturday, Sunday or public holiday in the State or Territory in which the Premises are located.
- (c) **"Cancellation Charges"** are the charges payable by you if you elect to cancel this Agreement after the expiry of the Cooling Off Period. These charges are listed in the Specific Terms. They are set at a level to recover our costs arising due to you exercising the right not to exercise your option to purchase the Product (including costs we incurred in entering into or administering this Agreement which we will not recover because of you electing not to exercise the option to purchase the Product).
- (d) **"Cooling Off Period"** means:
- (i) if we concluded this Agreement with you by telephone, the period starting on the day on which this Agreement was made and ending at the end of the tenth Business Day after the day on which you received the documentation comprising this Agreement from us;
- (ii) otherwise, the period starting on the day on which this Agreement was made and ending at the end of the tenth Business Day after the day on which this Agreement was made.
- (e) **"Delivery Charge"** means either the Up Front Delivery Charge specified in the Specific Terms or the Cancellation Delivery Charge specified in the Specific Terms as part of the Cancellation Charges. Note these charges are mutually exclusive – that is the Specific Terms will either provide for you to pay an Up Front Delivery Charge or a Cancellation Delivery Charge but not both.
- (f) **"Hire Fee"** means the fee payable to us for allowing you to possess and use the Product prior to the time you become owner of it. (Note this fee will be waived if you exercise the Option).
- (g) **"Instalments"** means the instalments of the Option Price set out in the Specific Terms.
- (h) **"Option"** is the option we grant you to purchase the Product.
- (i) **"Option Price"** means the amount payable to us by you if you wish to exercise your option to purchase the Product (described in the Specific Terms as Total Option Price).
- (j) **"Option Term"** means the term over which Instalments are payable.
- (k) **"Premises"** means the place where the Product is to be kept once delivered to you. This place is that specified in the Specific Terms (unless we agree a replacement place with you).
- (l) **"Product"** means the Product described in the Specific Terms (unless you and we agree to change this Product). This is the Product we are giving you an option to purchase.
- (m) **"Required Instalments for Delivery"** is the minimum number of consecutive Instalments you must make before we will deliver the Product to you. The Required Instalments for Delivery is specified in the Specific Terms.
- (n) **"Specific Terms"** means the document provided to you which is titled "Specific Terms". It sets out, amongst other things, our contact details, the Instalments, the Premises, the Daily Hire Fee and the Cancellation Charges. The Specific Terms and these General Terms make up the contract between you and us.

2. What this Agreement involves

- (a) Under this Agreement we grant you an option to purchase the Product (**Option**). You exercise this Option by paying to us each Instalment on the day that Instalment is due.
- (b) The Option is taken to have been exercised once we have received all of the Instalments. At this point we will sell the Product to you and you will become the owner of it.
- (c) Once we have received the Required Instalments for Delivery we will deliver the Product to you. From that time you may use and possess the Product in accordance with these General Terms (but we remain owner of it until you pay all Instalments and thereby exercise the Option).
- (d) For each day for which the Product is in your possession a hire fee accrues (as at the end of that day).
- (e) The daily hire fee is specified in the Specific Terms. However your total hire fees under this Agreement will never exceed the maximum hire fee set out in the Specific Terms.
- (f) If you exercise the Option (by paying each Instalment to us) we will waive the Hire Fee (that is not collect it from you and you will have no obligation to pay it).
- (g) You do not have to exercise the Option – it is entirely at your discretion. You may at any time by returning the Product to us (if it has been delivered to you) and notifying us you are returning the Product elect not to exercise the Option. If the Product has not been delivered to you then you only need to notify us you have elected not to exercise the Option.
- (h) You will also be regarded as having elected not to exercise the Option if:
- (i) you do not, prior to when you have received the Product, pay three Instalments by the due date for the relevant Instalment or you do not, once you have received the Product, pay eight consecutive Instalments by the due date for the relevant Instalment; or
- (ii) you fail to pay an Instalment by the due date for the relevant Instalment and we notify you (**Election Notice**) within 5 Business Days that we are treating that failure by you to pay the relevant Instalment on the due date as an election by you not to exercise the Option; or
- (iii) we make an election under clause 11(b)(i) (that is due to the occurrence of an event of default).
- (i) If you fail to pay an Instalment and we do not give you an Election Notice then the missed Instalment will be due from you in the week or fortnight (depending on whether your Instalments are being paid weekly or fortnightly) immediately following the week or fortnight in which you complete payment of all other Instalments. For example if you were originally making 10 weekly Instalments and you did not pay Instalment 5 then that would become due in week 11.
- (j) To avoid doubt, paragraph 2(f) does not apply where clause 2(h)(i) applies.
- (k) If you elect (or are taken to have elected) not to exercise the Option:
- (i) you do not have to pay any further Instalments;
- (ii) you are entitled to a refund of Instalments paid;
- (iii) however (unless the election was during the Cooling Off Period) you must pay us the Cancellation Charges (and we may set off the amount due to us against any refund you are entitled to);
- (iv) you must pay any Hire Fees which have accrued due (and we may set off the amount due to us against any refund you are entitled to); and
- (v) if the Product has been delivered to you, you must return the Product to us within 10 Business Days.

Note if you have possession of the Product the Hire Fees will continue to accrue until you have returned the Product to us (or until liquidated damages commence to be payable due to your failure to return the Product).

- (l) Note if you do not return the Product to us when you are required to by this Agreement, you will be in breach of this Agreement.

- (m) If you fail to return the Product to us within 10 Business Days then from that point liquidated damages will be payable by you to us at the rate specified in the Specific Terms on account of you wrongfully retaining possession of the Product. These damages will accrue due each day until you return the Product to us provided that the maximum liquidated damages payable by you is an amount equal to the Total Option Price set out in the Specific Terms plus any enforcement costs we incur due to you wrongfully retaining possession of the Product. If you do return the Product (in accordance with clause 2(p)) to us we will, if reasonably satisfied the liquidated damages we have received overstate our total loss, refund any excess over our total loss to you.

- (n) The payment of, and our entitlement to, liquidated damages does not limit any other rights we have against you due to you not returning the Product to us (including without limitation our rights to general damages if the liquidated damages do not fully compensate us for all of our loss and our right to bring proceedings to compel return of the Product) or limit our rights against you due to any other breach by you of this Agreement.

- (o) We may set off the liquidated or other damages you owe us due to your breach of this Agreement against any amount we are required to refund to you.

- (p) The Product must be returned, properly packed (so it can be safely handled) in the packaging in which it came and with all accessories which came with the Product included, to us at the location we (acting reasonably) nominate.

3. You must be 18 or older

You must be 18 or older to enter into this Agreement.

4. Telephone Recording

- (a) Subject to your consent, all telephone interaction with us is recorded.
- (b) We will notify you before (or immediately upon commencement of) each call that it is being recorded. If you do not consent to the call being recorded please let us know after you have heard the notification.

5. Your Rights of Cancellation During the Cooling Off Period

- (a) You have the cooling off rights described in this clause. Where this Agreement is an unsolicited consumer agreement as defined in the Australian Consumer Law then cooling off rights arise under the Australian Consumer Law. However we extend to all of our customers (whether their agreement is an unsolicited consumer agreement or otherwise) a 10 Business Day cooling off right.
- (b) At any time during the Cooling Off Period you may cancel this Agreement by notice to us. Such notice must be sent or given verbally to our contact details as set out in the Specific Terms.
- (c) You may give us a notice by delivering it to us personally, by post, by delivery or by email. You may also give us the notice by telephoning us. The notice may be in any form you wish as long as you make it clear you are cancelling this Agreement. A form of notice you may use if you wish to is included with this Agreement when it is provided to you.
- (d) You are not required to pay us any fee or charge if you cancel this Agreement during the Cooling Off Period.

6. Your Rights of Cancellation After the end of the Cooling Off Period

- (a) This clause 6 does not apply if you are cancelling this Agreement in accordance with rights you have under the Australian Consumer Law (including because we have breached the consumer guarantees). No Cancellation Charges are payable in such instances.
- (b) You may, in accordance with this clause 6, cancel this Agreement at any time prior to the time you have exercised the Option. If you cancel this Agreement then you are taken to have elected not to exercise the Option.
- (c) As noted in clause 2 if you have elected not to exercise the Option you are entitled to a refund of any Instalments paid.
- (d) However if this Agreement is cancelled by you under this clause 6 after the end of the Cooling Off Period the Cancellation Charges described in the Specific Terms will apply. Also if you have taken possession of the Product a Hire Fee is payable.

- (e) To cancel this Agreement in accordance with this clause 6 you must:

- (i) if you have not taken possession of the Product, give us notice you are cancelling the Agreement; or
- (ii) if you have taken possession of the Product, give us a notice you are returning the Product (sent to our contact details as set out in the Specific Terms) and within 10 Business Days of when you serve that notice return the Product (properly packed (so it can be safely handled) in the packaging in which it came and with all accessories which came with the Product included) to us at the location we (acting reasonably) nominate,

and the other requirements of clause 2 (applicable upon you electing not to exercise the Option) apply

7. Delivery

- (a) We will arrange for the delivery of the Product to you once:
- (i) the Cooling Off Period has ended (unless you elect to terminate this Agreement during the Cooling Off Period);
- (ii) we have received from you a copy of the front page of the Specific Terms signed and dated by you;
- (iii) we have received from you the Required Instalments for Delivery; and
- (iv) after receiving the Required Instalments for Delivery, you confirm verbally or in writing to us the address for delivery.
- (b) We will attempt to contact you within two Business Days of receiving the Required Instalments for Delivery to confirm your delivery address. If you do not confirm the delivery address or we are unable to contact you, delivery of the Product will be delayed.
- (c) We will endeavour to deliver the Product to you at the Premises within 15 Business Days of the events referred to in clause 7(a) and 7(b) having occurred. You must ensure that you are at the Premises to accept delivery of the Product.

- (d) If we attempt to make delivery of the Product but are not able to because you are not present to accept delivery or because we are otherwise (despite acting reasonably) unable to obtain access to the Premises (for example due to presence of a dog) then we may charge you the costs we incur in storing the Product and attempting to make redelivery and any additional delivery costs we incur (to the extent these costs exceed the Delivery Charge set out in the Specific Terms).

- (e) In the case of certain customers (in particular rural customers) it may be necessary that the customer pick up the Product from an Australia Post collection centre rather than the Product be delivered to

CONTINUED OVER PAGE

LAYAWAY DEPOT PTY LTD – GENERAL TERMS (07) 3088 4864

the Premises. If you fall into this category we will notify you. You must pick up the Product within 5 days of it being delivered to Australia Post.

- (f) To the extent permitted by law, we will not be liable for any communications, deliveries or other matters that have been addressed to you but which have not reached you because you have failed to notify us of any change in your address or contact details in a timely manner.
- (g) If due to you not making the Required Instalments for Delivery on the dates contemplated in the Specific Terms or if due to a delay caused by your breach of this Agreement, delivery of the Product to you is delayed beyond the date delivery would otherwise have occurred and as a result our delivery costs are higher than the Delivery Charge set out in the Specific Terms we may recover that additional amount from you. We may either recover this amount at the time we incur it or, at our discretion, at a later time including on cancellation of this Agreement (but will waive our right to recover the amount if this Agreement is cancelled and we do not choose to recover it from you at, or within a reasonable time of, cancellation).
- (h) The Delivery Charge you pay will either be an Up Front Delivery Charge or a Cancellation Delivery Charge. If an Up Front Delivery Charge then it is payable once we have dispatched the Goods to you and the Cooling Off Period has expired. If a Cancellation Delivery Charge then it is payable only on cancellation of this Agreement.
- (i) If the actual costs charged to us by Australia Post or such other carrier we use are less than the Delivery Charge set out in the Specific Terms then we will reduce the Delivery Charge which would otherwise have been charged to you to pass through the benefit of those reduced actual costs.
- (j) If at the time a Product would otherwise be required to be delivered to you we cannot deliver the Product due to circumstances beyond our control we will, if we are able to, offer you a substitute Product. You may accept or reject the supply of the substitute Product at your absolute discretion. If:
 - (i) you accept the substitute this Agreement will continue in force and apply in all respects to the substitute as if it were the original Product;
 - (ii) you decline to accept the substitute or we are not able to supply a substitute, then we will refund to you any amounts we have received from you and this Agreement will end.

8. Payment

- (a) The Instalments payable to exercise the option to purchase the Product are set out in the Specific Terms and the first Instalment is due on the date set out in the Specific Terms.
- (b) You may at any time increase the frequency of your Instalments. If you wish to do so please contact us and we will issue you a new schedule setting out the frequency of Instalments which will replace the prior schedule.
- (c) Unless we agree alternative arrangements with you, you must pay the Instalments by direct debit. Any other amounts payable to us under this Agreement must also be paid by direct debit and we may collect liquidated damages payable by you by direct debit.
- (d) Direct debits of the Instalments will be made on the day specified in the Specific Terms or if one of those days is not a Business Day then on the Business Day prior to that day. We may make direct debits to collect other amounts due to us once they accrue due.
- (e) If we are unable to make a direct debit or if it is dishonoured (other than due to an act or omission attributable to us or attributable to your financial institution and not attributable to you) then you must reimburse us any amount we are charged by your financial institution.
- (f) If a direct debit is not able to be made due to our act or omission or the act or omission of your financial institution we will seek to make that direct debit as soon as practicable after the date on which the direct debit should have been made. Once that direct debit is successfully made, the relevant Instalment will be treated as having been made under this Agreement on the date it was required to be made. If it is no longer possible to make direct debits (not due to your act or omission) we will contact you to make alternative payment arrangements and (subject to your right to elect at any time not to exercise the Option) you must agree to any reasonable replacement payment methodology we propose.
- (g) If a direct debit is not able to be made due to your act or omission you will be regarded as having missed the relevant Instalment.

9. Ownership and Care of Product

- (a) We will remain the owner of the Product until such time as you have exercised the Option by paying to us all the Instalments.
- (b) Once we have received all Instalments from you in cleared funds, the ownership of the Product will transfer to you.
- (c) Once the Product is delivered to you, but prior to when you obtain ownership, you may use it for its ordinary intended purposes.
- (d) Until such time as you become the owner of the Product you must:
 - (i) keep the Product in good condition (fair wear and tear excepted);
 - (ii) exercise all due care and take all steps (consistent with those a prudent owner of an equivalent product would take) to ensure the Product is not damaged, lost or stolen;
 - (iii) ensure the Product is not damaged by either you or anyone else who ordinarily resides at the Premises (**Resident**) or any invitee to the Premises of you or a Resident;
 - (iv) use the Product in accordance with any instruction manual provided;
 - (v) not remove the Product from the Premises (unless we consent to such removal);
 - (vi) not (and not try to) sell, lease, mortgage, charge or otherwise deal with the Product;
 - (vii) notify us immediately if the Product is taken out of your possession for any reason whatsoever and provide us all information (in your possession or control) we require to identify who has the Product and where it has been taken; and
 - (viii) notify us as soon as practicable if you become aware the Product has been damaged or is not functioning as intended.
- (e) If you wish to relocate the Product (for example because you are moving house) you must first obtain our consent (which we will not unreasonably withhold). If we do consent the new location will be regarded as the Premises.

10. Damage to Product

- (a) This clause 10 applies if a Product is damaged after it is delivered to you (but does not apply to damage arising due to our contravention of the Australian Consumer Law, including any consumer guarantee applying under that law).
- (b) You must notify us of the damage as soon as is practicable and provide to us such information as we request in relation to the cause and nature of the damage.
- (c) If the damage arose due to your breach of this Agreement and we elect to repair, or arrange for the repair of, the Product then, without limiting any other rights we have, you must reimburse us the

costs we incur in having that repair undertaken.

- (d) Without limiting clause 10(c) the Product remains at our risk until such time as ownership of the Product transfers to you. At this point risk in the Product transfers to you.
- (e) If upon receipt of a Product you consider it is damaged or not working properly please let us know as soon as reasonably practicable.

11. Default

- (a) Each of the following is an event of default:
 - (i) you provide to us information that is false or misleading;
 - (ii) you sell, deal with or part with possession of the Product without our consent;
 - (iii) you cease to reside at the Premises (unless the Product is moved to a new premises with our consent);
 - (iv) you remove the Product from the Premises (unless with our consent or as expressly contemplated by this Agreement);
 - (v) the Product is damaged due to your breach of this Agreement;
 - (vi) you create or allow to be created or take a step which allows someone else to create a lien or security interest over the Product; or
 - (vii) you breach any other provision of this Agreement other than a breach which is inconsequential or trivial.
- (b) If an event of default occurs then we may:
 - (i) treat you as having elected not to exercise the Option;
 - (ii) if we have delivered the Product to you, require you to deliver the Product to us in accordance with clause 2 or, if we elect, allow us to take repossession of the Product; and
 - (iii) require you to pay the Cancellation Charges (and any Hire Fees which have accrued due).
- (c) If we exercise our rights under clause 11(b), we will refund to you any Instalments you have paid to us subject to our rights to set off against those Instalments any Cancellation Charges and Hire Fees and any damages due to us due to your default.
- (d) As set out in clause 2, if you fail to return the Product when required to, liquidated damages will be payable.
- (e) Without limiting the liquidated damages regime in clause 2, if you breach this Agreement (including allowing an event of default to occur) you will be liable to us for damages to the extent determined in accordance with the common law.

12. Our rights to Cancel

We may cancel this Agreement by notice to you at our absolute discretion within 10 Business Days of the date it is entered into, if we form the view that you are unlikely to comply with your obligations under this Agreement. We may form that view based upon your past history with us and other relevant information available to us. If we so cancel this Agreement no charges are payable by you under this Agreement and this Agreement will be of no further force or effect.

13. Information

- (a) You must ensure any information you provide to us is accurate and not misleading. If any information you have provided to us changes you must notify us as soon as practicable and if possible not later than 1 Business Day prior to the change occurring (or if not possible then within 2 Business Days of the day the change occurs).
- (b) If you become aware of any inaccuracy in any information you have provided to us you must notify us within 2 Business Days.
- (c) The notifications under this clause 13 must be given by calling us on the number specified in the Specific Terms (or on such other number as we notify to you from time to time).
- (d) To the extent permitted by law, we are not liable for any notification we are unable to give you because your contact details change but you do not give us timely notification of these changes.

14. Your rights under the Australian Consumer Law

- (a) You have rights under the Australian Consumer Law in respect of the Product and this Agreement, including your rights in respect of the consumer guarantees which apply under the Australian Consumer Law. You do not have to return the Product to us in circumstances where the Australian Consumer Law obliges us to collect the Product from you (including where you terminate pursuant to Australian Consumer Law cooling off rights).
- (b) Nothing in this Agreement derogates from those rights or limits our liability under the Australian Consumer Law.

15. Limitation of our liability for matters not covered by the Australian Consumer Law

- (a) This clause 15 does not apply to any guarantees arising under or rights you have under, or obligations we have under, the Australian Consumer Law and does not limit our liability under the Australian Consumer Law.
- (b) To the extent permitted by law, any warranties or terms which may otherwise (that is other than under the Australian Consumer Law) be implied in respect of the quality, performance, characteristics or other attributes of the Product are excluded.
- (c) To the extent permitted by law our liability (and that of our directors, employees, officers, suppliers, subcontractors and related bodies corporate (as defined in the *Corporations Act 2001*) is limited to the amount equal to the Option Price. In addition to the extent permitted by law neither we nor our directors, employees, officers, suppliers, subcontractors and related bodies corporate (as defined in the *Corporations Act 2001*) are liable to you for any indirect, consequential, special or incidental losses or damages of any kind. This paragraph (c) applies irrespective of the nature of the claim against us and whether it is brought in tort (including negligence), for breach of contract, under statute or on any other basis whatsoever (unless that basis is the Australian Consumer Law).
- (d) Clause 15(c) does not limit our obligation to refund to you any amount due to you under this Agreement.
- (e) Nothing in this Agreement limits your rights under the *Privacy Act 1988*.

15. Miscellaneous

- (a) We may assign our rights under this Agreement without your consent.
- (b) To the extent permitted by law we may novate this Agreement by notice to you. If we wish to novate this Agreement you will sign such documentation as we reasonably require to give effect to the novation. However no novation affects your rights against us under the Australian Consumer Law.
- (c) Failure by us to exercise our rights on an occasion is not a waiver of our ability to later exercise those rights or require your performance of this Agreement in accordance with its terms.
- (d) We may set off any amount we owe you (whether under this Agreement or otherwise) against any amount you owe us (whether under this Agreement or otherwise).