

LAYAWAY DEPOT LIMITED
Layby Agreement – General Terms and Conditions

(09) 296 8151

1. Definition

- 1.1 **Act** means the Fair Trading Act 1986
- 1.2 **Cancellation Charge** means the cancellation charge which is our reasonable costs arising directly from the Layby Agreement and is the aggregate of the fixed charge, the Additional Costs described on the reverse of the front page of the Specific Terms, and the Other Costs.
- 1.3 **Completion Date** means the date by which you agree to complete the purchase of the Products from us and will be a date that corresponds with when your final payment has been received by us and the balance of the Total Price you have agreed to pay has been reduced to zero.
- 1.4 **Delivery Date** means the date determined under clause 9.1.
- 1.5 **Minimum Payments** means the minimum number of Payments required to be made before you are entitled to delivery of the Products as specified under the heading "Minimum Payment" on the front page of the Specific Terms but as may be varied under clauses 6.2, 6.3 or 6.4.
- 1.6 **Layby Agreement** means this agreement which comprises the Specific Terms and the Sales Terms.
- 1.7 **Other Costs** means those costs and charges arising from an Event of Default as provided for under clause 8.5.
- 1.8 **Payment** means the instalment payments of the Total Price in the amount and on the dates specified in the Specific Terms.
- 1.9 **Payment Plan** means a plan setting out the frequency, number and amount of the Payments, as set out in the Specific Terms.
- 1.10 **Products** means the product or products described as such in the Specific Terms.
- 1.11 **Total Price** means the total price (including GST) of the Products.
- 1.12 **Sales Terms** means these general terms and conditions.
- 1.13 **Specific Terms** means the terms set out on the front page of the Layby Agreement.
- 1.14 **Third Party** means a person who is not an associated person (as defined in the Credit Contracts and Consumer Finance Act 2003) of us.
- 1.15 **We, our and us** means Layaway Depot Limited, together with our successors and assigns.
- 1.16 **You** means the person (or persons) named in the Layby Agreement who orders or purchases the Products from us, together with your executors, successors and permitted assigns.

2. Contract

- 2.1 The Layby Agreement constitutes a layby sale agreement between us and you for the sale and purchase of the Products.
- 2.2 By entering into the Layby Agreement, you agree to purchase Products on the terms and conditions of the Layby Agreement and you represent and acknowledge to us that you are aware of, and agree to, all terms and conditions in the Specific Terms and the Sales Terms..
- 2.3 If you disagree with any provision of the Layby Agreement, you should not apply to purchase any products from us.

3. Orders

- 3.1 The Layby Agreement is not binding on us until we accept it (by written notice to you) and we will not be liable to any person if we do not accept the Layby Agreement. If we do not accept the Layby Agreement then any money paid to us with the Layby Agreement will be refunded to you in full.
- 3.2 We reserve the right to revise and/or discontinue any products shown on our website at any time without notice. By entering into the Layby Agreement, you agree and are aware that the Products shown on our website may not be available from time to time, or may have limited availability.
- 3.3 We will make our best efforts to source the Products specified in the Layby Agreement. However, if such Products are not available at the time of delivery owing to circumstances beyond our control:
- (a) we may offer to substitute similar products (as to type, specifications and standard) ("Substitute Products"), and at the same price, for the Products specified in the Layby Agreement, and if you accept that offer such Substitute Products will become subject to the terms of the Layby Agreement in the place of the Products as if the Substitute Products had originally been named as the Products in the Layby Agreement. We will send to you a notice confirming any such change to the Layby Agreement; or
- (b) If we are unable to offer any Substitute Products or you do not accept the offer of Substitute Products, then we may cancel the Layby Agreement and we will repay all monies paid to us by you.

Nothing in this clause 3.3 will prevent us supplying to you, and we are entitled at our sole discretion to supply to you, a product which complies with the description of the Products in the Layby Agreement although that product or products may not be the same product shown now or in the future on our website, provided that at all times we must comply with the guarantee given to you under section 9 of the Consumer Guarantees Act 1993.

- 3.4 The Total Price for the Products is confirmed by us accepting the Layby Agreement.

4. Payment Terms in General

- 4.1 Payment must be made by way of direct debit or in such other manner as we may nominate from time to time.
- 4.2 All payments are payable in New Zealand dollars.

5. Title & Risk

- 5.1 Title. Notwithstanding delivery of the Products, title in the Products remains with us until we have received full payment of the Total Price.
- 5.2 Risk. The Products remain at our risk until legal title has passed to you.

6. Layby Terms

- 6.1 **Payment Plan**
- (a) When you enter into the Layby Agreement, you will be asked to choose a Payment Plan which suits your financial circumstances. This will determine the Delivery Date.
- (b) The Total Price must be paid in accordance with the Payment Plan.
- (c) We may at our sole discretion accept any reasonable request from you to change the Payment Plan.
- 6.2 **Missed Payments**
- If you miss a Payment, we may at our discretion do any one or more of the following:
- (a) recalculate the number and dates of the Payments, including without limitation, increase the number of Payments to ensure that you are able to pay the balance of the Total Price by the Completion Date;
- (b) increase the number of Minimum Payments required before delivery;
- (c) change the Delivery Date of your Product; and
- (d) exercise any of our rights and remedies in clauses 8.1 and 8.3 including, without limitation, by cancelling the Layby Agreement.
- 6.3 **Increasing Payments at your Request**
- If you would like to increase the amount, frequency or number of your Payments, please call our office on (09) 296 8151.
- 6.4 **Decreasing Payments at your Request**
- If you would like to decrease the amount or frequency of your Payments, please call our office on (09) 296 8151. We may at our sole discretion decline any request to decrease the amount or frequency of your Payments.
- 6.5 **Missing Payments at Your Request**
- (a) If you want to miss a Payment for any reason, please call our office on (09) 296 8151.
- (b) If a Payment is scheduled to occur on a day which is not a working day, the Payment must be made on the last working day before the Payment is due.
- 6.6 **Cancellation by You**
- You may cancel the Layby Agreement at any time before you take possession of the Product by giving us notice, whether written or oral.
- 6.7 If we cancel the Layby Agreement under clause 8.1 or if you cancel the Layby Agreement under clause 6.6 (but after a cooling down period of 10 working days), you must pay to us the Cancellation Charge. If the Payments made by you under the Layby Agreement exceed the Cancellation Charge, then we will refund to you the excess. If the Payments made by you under the Layby Agreement are insufficient to cover the Cancellation Charge then we are entitled to recover the difference from you as a debt. If the Products are in your possession then subject to us giving you any required notices under any applicable legislation, we may retake and you must permit us to retake possession of the Products from your address at any reasonable time requested by us. You must take reasonable care of the Products provided that we collect the Products in accordance with the time period specified in the Act.

7. Information about You and your Account

- 7.1 You must ensure that the information you have given us is accurate at all times. You must call our office on (09) 296 8151 to let us know of any changes to that information at least 1 working day prior to a change occurring.
- 7.2 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 a timely manner.
- 7.3 In the course of our relationship with you we may collect, use, disclose, and hold personal information and other data about you. This information will be used, disclosed and held by us in accordance with our Privacy Policy. See <https://layawaydepot.co.nz/pages/our-privacy-policy> for details of our Privacy Policy. You acknowledge that you have read our Privacy Policy and accept its terms and conditions.
- 7.4 You have rights under the Privacy Act 1993 to access and ask for the correction of any personal information which we hold about you. See our Privacy Policy for more details.

CONTINUED OVER PAGE

LAYAWAY DEPOT LIMITED
Layby Agreement – General Terms and Conditions

(09) 296 8151

- 7.5 You have the right to request a written statement at any time which sets out the Total Price, the amount you have paid, the amount of any Cancellation Charge payable and the amount outstanding under the Layby Agreement. We will forward the statement to you within 5 working days of receiving your request.
8. **Default**
- 8.1 If an Event of Default occurs, we may do any one or more of the following:
- cancel the Layby Agreement by giving you notice to that effect in accordance with any mandatory notice requirements specified in the Act (without prejudice to any of our other rights or remedies contained or implied in the Layby Agreement or any other agreement between you and us or at general law), in which case clause 6.7 applies;
 - charge you the Other Costs under clause 8.5, provided that if the Layby Agreement is cancelled these charges will be included in the Cancellation Charge; or
 - if you have possession of any Products, allow us to take possession of the Products, in which case the following provisions will apply:
 - you must permit us to take possession of any Products in your possession from the delivery address at any reasonable time requested by us; and
 - subject to our complying with any mandatory notice requirements under the Act or other relevant legislation relating to repossession of the Products, we shall be entitled to retake possession of any Products; and
 - you must take reasonable care of the Products until we take possession of the Products (subject to section 36Q of the Act).
- 8.2 An Event of Default occurs if any one or more of the following occur (which you agree are material terms):
- you fail to make a Payment in full on or before the due date, time being of the essence;
 - a Direct Debit Authority for the Payments is cancelled by you or your bank;
 - you default in the performance of any obligation owed by you under the Layby Agreement;
 - you make a false statement in the Layby Agreement or in applying to purchase any Product;
 - you commit an act of bankruptcy or you are adjudicated bankrupt or you die;
 - you sell or part with possession of the Products without our consent following delivery;
 - a lien or security interest is claimed over all or part of the Products or any person other than you takes any steps to take possession of any Product;
 - we deem you to be an unacceptable risk, for example because of your past history with us;
 - you default in the performance of any obligation owed by you under any other layby agreement you may have with us;
 - you change address without notifying us or any Product is removed from the delivery address without our consent; or
 - we consider any of the Products is "at risk" within the meaning of section 109 of the PPSA.
- 8.3 If an Event of Default occurs and you have possession of any products not yet fully paid for (whether under the Layby Agreement or any other layby agreement we may have with you), we may at our discretion treat some or all of the payments you have made for undelivered products as payments for those delivered products you have not yet fully paid for. We will do this by debiting your account for the relevant undelivered products, and crediting your account for the relevant delivered products.
- 8.4 You are responsible for all bank fees and other charges (including dishonour fees) charged by your bank or any other person in connection with the Layby Agreement.
- 8.5 The following amounts (which are not included in the Total Price specified in the Specific Terms) are, or may become, payable under, or in connection with, the Layby Agreement to the fullest extent permitted by law, if we demand:
- any amounts incurred or paid by us to a Third Party:
 - in protecting our interests or rights in the Products or under the Layby Agreement, or to remedy any failure by you to meet any of your obligations under the Layby Agreement;
 - in exercising any of our rights under the PPSA;
 - as a result of your actions or inactions in breach of the Layby Agreement or to recover the outstanding amounts owing under the Layby Agreement; or
 - in respect of any administration or similar fees of any nature relating to the Products or the Layby Agreement including without limitation default fees;
 - all levies, charges, duties, fees and imposts payable to any governmental or statutory body or similar entity in respect of the Products or the Layby Agreement; (including, in each case, our legal expenses charged on a solicitor and own client basis) but in no case will we charge you any "credit fees" or "interest charges" as those terms are defined under the Act. We may implement or vary any fee(s) and charge(s) from time to time by notice in writing to you provided such fees and/or charges are not "credit fees" or "interest charges" as those terms are defined under the Act.
9. **Delivery**
- 9.1 We will deliver the Products to your residential address within fifteen (15) working days of our receiving the Minimum Payments.
- 9.2 If you are not available to collect your delivery or for any other reason we are unable to make delivery to the delivery address provided, we may hold the Products you have purchased until we can make contact with you to confirm your current delivery address or until we are able to make delivery.
- 9.3 You must ensure someone is present to accept delivery of the Products during the delivery period.
- 9.4 If a Product is damaged in transit, we will arrange for a replacement Product to be provided.
- 9.5 We will not be liable for any Products missing, lost or damaged after they have been delivered to the correct delivery address.
- 9.6 Your delivery address must be registered with NZ Post.
- 9.7 Rural deliveries may need to be made to NZ Post and collected by you.
- 9.8 Following delivery of the Products, you agree that until all Payments and all other moneys and obligations outstanding to us under the Layby Agreement have been paid or satisfied:
- you will not part with possession of the Products except with our prior written consent;
 - you will ensure that the Products are always kept at the address you have given us, you will not remove the Products from that address without first notifying us, and you will not remove the Products from New Zealand without our prior written consent; and
 - you will notify us immediately if the Products are taken out of your possession for any reason whatsoever, and you must give full particulars of the address (if known) to which the Products have been moved.
10. **Product Guarantee**
- 10.1 We will honour all of our responsibilities under the Consumer Guarantees Act, the Act and all other relevant legislation that protects you as our customer. All other warranties and representations, whether express or implied, in relation to the Products are excluded to the maximum extent permitted by law.
- 10.2 You agree that, to the maximum extent allowed by law, the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply to the Layby Agreement. You must comply with any additional terms and conditions which relate specifically to the Products including without limitation in any manual or other document provided by the manufacturer or which may be provided by us on or before delivery.
- 10.3 If any provision in the Layby Agreement is held to be invalid as a result of the application of the provisions of the Act, the Consumer Guarantees Act 1993 or any other legislation to it, then that provision shall apply with such modification so as to ensure compliance with the provisions of the Act, the Consumer Guarantees Act 1993, or such other legislation.
11. **General**
- 11.1 Under no circumstances shall we, our related companies, employees, agents, suppliers or licensors be liable for any direct, indirect, punitive, incidental, special, or consequential damages, directly or indirectly resulting from or in relation to the Products or from your use of them. This limitation applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if we have been advised of the possibility of such damage. To the extent that any applicable law does not allow the exclusion or limitation of incidental or consequential damages, our liability in such circumstances shall be limited to the fullest extent permitted by law.
- 11.2 You acknowledge and agree that you are 18 years of age or over and have full legal capacity to enter into the Layby Agreement as a binding and enforceable contract.
- 11.3 The Layby Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties unconditionally and irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.
- 11.4 If we exercise or fail to exercise any right or remedy available to us, this shall not prejudice our rights in exercising that or any other right or remedy.
- 11.5 If any provision of the Layby Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of all other provisions of the Layby Agreement and the remainder of the provisions in question shall not be affected.
- 11.6 We may assign or transfer any of our rights under the Layby Agreement without your consent being required.