

Trading Terms and Conditions

1. Agreement

- 1.1. These terms are between Phoenix Leisure Group Pty Limited (ABN 37 073 884 983) (referred to as “we” or “us”) and you, the person or organisation who or which purchases products from us (referred to as “you”).
- 1.2. These terms, together with each order you raise and we accept, form the agreement under which we will supply products to you (**the Agreement**). Unless we agree in writing any terms you provide or submit to us form no part of the Agreement and will not bind us.
- 1.3. No change to this Agreement will be effective unless agreed to by us in writing.
- 1.4. This Agreement supersedes any terms and conditions that previously governed the supply of products from us to you.

2. Quotations and Orders

- 2.1. Any quotation given by us is merely an invitation to treat and does not constitute a contractual offer. All quotations lapse 30 days after issue but we may vary or withdraw a quotation at any time.
- 2.2. You must place orders for products in accordance with our processes, as notified by us from time to time.
- 2.3. We are not obliged to accept an order from you. If you place an order with us, it becomes binding once we give you notice that we have accepted the order or otherwise take action to fulfil its terms.
- 2.4. Once an order is accepted it cannot be altered or modified without our prior written consent, which may be withheld in our absolute discretion.
- 2.5. Our labels, brochures and catalogues are published sources of general information. They do not constitute contractual offers.

3. Price and Payment

- 3.1. Unless otherwise specified in a quotation or acceptance of an order, prices for products are as set out in our price list current on the date we accept your order. Prices do not include delivery or administrative surcharges.
- 3.2. We may adjust our prices to take account of any additional costs we incur in meeting your order, by reason of increases in delivery charges (if applicable) and government charges and to correct any errors or omissions on our part.
- 3.3. All amounts are stated in Australian dollars. Unless otherwise specified all quoted and list prices exclude goods and services tax (**GST**). Delivery, insurance and other taxes, excises or duties will be separately shown and are payable by you, unless otherwise agreed by us.
- 3.4. We will invoice you for products you have ordered.

- 3.5. All products are to be paid for before they are supplied, unless you have an approved credit account with us. Payment will generally not be accepted by any means other than cash, electronic funds transfer, direct debit or approved credit cards.
- 3.6. A credit card surcharge is applicable to all payments made by approved credit cards.
- 3.7. If you have an approved credit account with us, all invoices are payable within 30 days of the end of the month in which the invoice was issued unless otherwise agreed by us. Payments received will be applied against the oldest outstanding invoice.
- 3.8. Any approved credit limit may be reduced, suspended or withdrawn at any time in our absolute discretion. If your account exceeds the approved credit limit, we reserve the right to refuse to supply products to you.
- 3.9. For the purposes of assessing your credit-worthiness and the collection of payments, you authorise us and our agents to make such enquiries as we consider necessary including, without limitation, making enquiries of and obtaining reports (as allowed by law) from persons nominated by you as trade referees, your creditors, bankers and financiers, credit providers, mortgage and trade insurers and credit reporting agencies.
- 3.10. We may grant you a discount or rebate to quoted or list prices depending on the volume of products purchased and other criteria we establish from time to time including your contribution to the marketing and promotion of the products, store presentation and dealings with customers as well as the effectiveness of particular channels to market you use in reselling any products we supply to you.
- 3.11. We may, from time to time, supply you with complimentary or sample products. You agree that you will not sell or attempt to sell any complimentary or sample products.
- 3.12. We may charge interest at a rate equal to the Reserve Bank of Australia cash rate from time to time plus 4% per annum, calculated daily and compounding monthly, on any amounts unpaid after the due payment date.
- 3.13. If invoices are unpaid after the payment date, we have the right to engage debt collection services and the right to commence legal proceedings for any outstanding amounts owed to us. You agree to reimburse us for all costs (including legal costs on an indemnity basis) incurred by us in collecting any outstanding debts due by you to us.

4. Delivery and Risk

- 4.1. Risk in the products passes to you when the products are delivered to your nominated delivery address or, if you have nominated a carrier, on

dispatch from our premises, each a delivery under this Agreement.

- 4.2. We may charge for and recover from you on demand all costs incurred by your failure to take delivery of the products.
- 4.3. Delivery times are estimates only. We are not liable for any loss or damage caused by any delay in delivery. We may charge for and recover from you on demand all costs incurred by your failure to collect or take delivery of the products.
- 4.4. We may deliver parts of an order at different times. All such deliveries, when separately invoiced, must be paid for without regard to the delivery of subsequent parts of the order and will include all applicable charges and taxes set out in clause 3.3.
- 4.5. You may not vary a delivery date without our prior written consent. If we agree to postpone delivery we will store the products at your risk. We may impose a weekly storage charge. If you postpone delivery for more than 2 months, we may increase the amount payable at our discretion to reflect our then current price per unit.
- 4.6. We offer a free into store (**FIS**) freight service for certain specified product orders valued at \$500 or more (excluding GST), which is limited to deliveries made to major capital cities in Australia. In all other cases clause 3.3 applies. Freight will not be charged for backorders or replacements made under an accepted warranty claim.

5. **Inspection of Products**

You agree to inspect all products supplied on delivery. To the fullest extent permitted by law, we are not liable for shortages or other errors in delivery unless you submit a written claim to us within 14 days of the delivery to which the claim relates.

6. **Retention of Title and Security Interest**

- 6.1. We retain title to products we supply to you until we have received payment in full for those products.
- 6.2. Until we receive payment in full, you must hold the products as our fiduciary and bailee and must keep the products:
 - (a) physically separate from all other goods purchased or owned by you; and
 - (b) clearly identified as owned by us.
- 6.3. If you default in making a payment under this Agreement or become insolvent before paying any amount due and owing to us we (including our agents) may, without notice to you, enter any premises at which products are located and retake possession of them. This does not affect our right to any other remedy that we may have.
- 6.4. If any products belonging to us are sold or otherwise disposed of by you or an insurance claim is made in respect of them, we are entitled to trace and receive the sale or insurance

proceeds. You must keep the proceeds in a separate bank account on trust for us.

- 6.5. You acknowledge that this Agreement creates a security interest in all present and after acquired products supplied or to be supplied by us to you and any proceeds of the sale of the products as security for all your obligations to us pursuant to the *Personal Property Securities Act 2009 (PPSA)* and that we may register a financing statement to perfect our security interest in products delivered or to be delivered to you in accordance with the provisions of the PPSA. You will provide all information, execute or arrange for the execution of all documents and do all other things we may reasonably require to ensure that we have a perfected first ranking security interest in the products under the PPSA. You give us power of attorney to complete any such documentation. To the extent permitted under the PPSA you agree to waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest we may have in products supplied to you from time to time. You will immediately, on request by us, procure from any person considered by us to be relevant to our security position such agreements or waivers as we may at any time require. You will immediately notify us of any change of your name, address details and any other information provided to us to enable us to register a financing change statement (if required).

7. **Cancellation and Suspension**

- 7.1. You may cancel, in whole or in part, any order under this Agreement for the supply of products before the products have been dispatched if:
 - (a) we have given you our prior written consent; and
 - (b) you pay any cancellation charges, being a reasonable and genuine pre-estimate of our loss, as notified by us.
- 7.2. We may immediately cancel or suspend this Agreement or any order under it without incurring any liability to you if:
 - (a) you fail to pay an invoice by its due date;
 - (b) you breach this Agreement;
 - (c) you enter into bankruptcy, liquidation, administration, have a receiver or receiver and manager appointed over all or any part of your assets or you become insolvent; or
 - (d) your performance under this Agreement is materially delayed or prevented for any reason.

8. **Non-Availability and Substitutes**

- 8.1. We are not liable for any loss or damage arising from non-availability of products.

8.2. We may make changes to the specification, performance criteria and design of any product, without notice to you. Despite any such changes you agree to accept in satisfaction of any order an alternative product provided we have reasonable grounds for believing that it is substantially similar to the product previously available.

9. **Claims and Returns for Faulty Products**

9.1. If you are of the reasonable opinion that a product we have supplied to you is faulty in material or defective in workmanship you may return the product to us.

9.2. All returns for faulty products will be assessed according to our "statement of limited product-lifetime warranty" and, if applicable, the *Australian Consumer Law*.

9.3. We will accept your claim provided that:

- (a) the claim is made within 10 days of you having taken delivery of the product;
- (b) you supply us with proof of purchase;
- (c) the defect is attributable to faulty material or workmanship; and
- (d) the product is returned to us at your cost

9.4. If we approve your claim we will, at our option and subject to any statutory remedy available to you under the Australian Consumer Law, repair, replace or pay the cost of repairing or replacing the product.

9.5. We will endeavour to process all claims within 14 days of receipt of the product but are not bound to do so.

10. **Repackaging**

You must not repackage or relabel any products we supply to you without our prior written consent, which may be withheld in our absolute discretion.

11. **Resale**

11.1. We may provide to you a list of minimum and maximum resale prices at which the products are to be sold.

11.2. The parties agree for the purposes of the *Competition and Consumer Act 2010* (Cth) that:

- (a) the minimum resale prices set out in that list are recommended minimum resale prices only and there is no obligation on you to comply with those recommendations;
- (b) we may set maximum resale prices and you are obliged to comply with those prices; and
- (c) this clause 11.2 is taken to be incorporated by reference into every price list issued by us to you under or pursuant to this Agreement.

11.3. So as to protect our brands and the reputation we have in our products as well as our shared

investment with you in product development, promotion and support, we will require you not to promote, market or on-sell products we supply to you on third party on-line platforms except with our express knowledge and written permission. You may sell products we sell to you on on-line platforms you yourself operate and control without our permission. In any case in which you do sell products we supply to you on on-line platforms, we will require you to comply with clauses 12.2 and 12.3.

12. **Intellectual Property Rights**

12.1. The products we supply may be subject to intellectual and industrial property rights including patents, trade marks, copyright, design rights or other rights of third parties. No right or licence is granted to you, except the right to use the products or re-sell the products in the ordinary course of your business.

12.2. You must not:

- (a) remove, deface, destroy or conceal in any way any trade mark, brand name, insignia, label or other marking placed on any products or their packaging;
- (b) use our trade marks or brand names in any advertisement or promotion, without our prior written consent; or
- (c) use our trade marks or brand names in connection with the sale or distribution of any goods or services other than our products.

12.3. You must also comply with any instructions and directions we give you in relation to the proper use and presentation of any trade mark, brand name, insignia, label or other marking placed on our products or their packaging.

13. **Your obligations**

You acknowledge and agree that:

- (a) you have legal capacity, power and authority to enter into this Agreement;
- (b) there are no legal restrictions preventing you from selling the products;
- (c) you will comply with any reasonable directions and instructions given to you by us from time to time;
- (d) you have a valid ABN and have disclosed it to us (if relevant); and
- (e) you are registered for GST purposes (if relevant).

14. **Representations**

You agree:

- (a) not to make any representation, statement or warranty to your customers which is different to, more onerous than, or inconsistent with, any product literature or other publication issued by us; and

- (b) not to engage in any illegal, false, misleading or negligent activities with respect to any products supplied by us.
15. **Information and Enquiries**
- 15.1. You agree to:
- (a) bring to our notice any information received by you which is likely to be of interest, use or benefit to us in relation to the promotion, marketing, sale and development of our products; and
- (b) pass on to us any information which may prejudice the sale of our products.
16. **Limitation of Liability**
- 16.1. Nothing in this Agreement is to be read as excluding, restricting or modifying the application of the Australian Consumer Law or the application of any equivalent legislation that cannot by law be excluded, restricted or modified.
- 16.2. Our liability for breach of the *Australian Consumer Law* to the extent permitted by law under this Agreement is limited at our option:
- (a) in the case of goods, to the replacement or repair of the goods or paying the cost of replacing or repairing the goods; and
- (b) in the case of services, supplying the services again or paying the cost of supplying the services again.
- 16.3. Subject to clauses 9 and 16.2, we exclude all other guarantees, conditions and warranties, whether or not implied by law, which would otherwise apply or be implied concerning the products or services related to the supply of the products.
- 16.4. The warranties set out in our “statement of limited product-lifetime warranty” (if applicable) are in addition to the statutory guarantees set out in the *Australian Consumer Law*.
- 16.5. To the extent permitted by law, we exclude all liability for any claim (whether direct, indirect, incidental, special and/or consequential) for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise suffered by you or made against you arising out of or in connection with your inability to access or use the products or the late supply of products, even if we were expressly advised of the likelihood of such loss or damage.
17. **Indemnity**
- 17.1. You are liable for and agree to indemnify us from and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of this Agreement by you;
- (c) any misuse of the products by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.
- 17.2. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of the promotion, marketing and use of our products by you or your customers.
18. **General**
- 18.1. **Privacy:** The parties agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 18.2. **Assignment:** This Agreement is personal to the parties. A party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other party.
- 18.3. **Successors and assigns:** This Agreement binds you and us and our respective permitted successors and assigns.
- 18.4. **Survival:** Each indemnity and other term capable of taking effect after the expiration or termination of this Agreement will remain in force and effect after the expiration or termination of this Agreement.
- 18.5. **Notice:** Any notice required or permitted to be given by either party to the other under this Agreement will be in writing addressed to the relevant address notified by the other. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 18.6. **Severance:** If any provision in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 18.7. **Governing law:** This Agreement is governed by the laws in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts in New South Wales and the Commonwealth of Australia.
- 18.8. **Entire agreement:** This Agreement represents the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangements, whether oral or in writing.