



TERMS & CONDITIONS

Applicable for all orders placed on or after 24 January 2023

PLEASE READ THESE TERMS CAREFULLY BEFORE PLACING YOUR ORDER OR VISITING OUR WEBSITE. IF YOU PLACE AN ORDER, OPEN AN ONLINE ACCOUNT OR VISIT OUR WEBSITE, YOU ARE AGREEING TO ALL THESE TERMS WITHOUT AMENDMENT.

You are contracting with Love Cosmetics Pty Ltd (ACN 134 601 791) ("**Loving Tan**" or "**we**"), an Australian corporation.

We have websites and mobile applications located at lovingtan.com, us.lovingtan.com, au.lovingtan.com, int.lovingtan.com, uk.lovingtan.com, ca.lovingtan.com and eu.lovingtan.com ("our Website"). These Terms apply to our Website and all orders placed via our Website regardless of where you are located. If you do not agree to these Terms, then you do not have permission to visit and use our Website.

If you have any questions about these Terms, please email us at info@lovingtan.com

1 ELIGIBILITY

- (a) You must be at least 13 years of age to use our Website. If you are under 13 years of age, you are not authorised to use our Website.
- (b) If you are under 18 years of age, please consult with your parents or guardians before using our Website.
- (c) You must be at least 18 years of age to place an order. If under 18 years of age, you must obtain the consent of your parent or guardian to place an order.
- (d) You are responsible for ensuring that your use of our Website complies with all laws, rules and regulations that are applicable to you in your country. You must not use our Website or place an order with us via our Website if prohibited by any laws, rules or regulations.
- (e) We reserve the right to revoke your access to or use of our Website.

2 ONLINE ACCOUNT

- (a) You may create an online account via our Website.
- (b) When an account is created, you must:
 - (i) provide accurate, current and complete information for the indicated mandatory fields (including a valid email address); and
 - (ii) maintain and update the information you provide to us to keep your account details accurate, current and complete; and
 - (iii) not provide us with inaccurate, false or incomplete information.
- (c) You are fully responsible for maintaining the confidentiality of your username and password for your online account, and for all activities that are conducted through or under your account.
- (d) You must not under any circumstances share a password for your account with any other person.
- (e) You must not share, transfer, sell, rent, lend or otherwise dispose of a username or password for your account (or attempt to do any of the foregoing).
- (f) If we detect any misuse or suspected misuse of your login details, your account may be terminated or suspended.
- (g) You must inform us immediately if you suspect or become aware of a breach of security relating to your account, and you must promptly change your password.



- (h) Our Website and your online account may not be available at all times or from all geographic locations.

3 OUR PRODUCTS

3.1 Quality

- (a) We will ensure that the products that we provide to you are dispatched in an unopened and unused state and will confirm with the description of the products on our Website.
- (b) You should not store our products in direct sunlight.

3.2 Allergies and Skin Sensitivity

- (a) We accept no liability should you experience any issues because of Loving Tan products. As our products contain active ingredients, we strongly suggest you consult a doctor or dermatologist prior to use of our products. Should you wish to be provided with a full list of ingredients for reference, you can request this by emailing info@lovingtan.com.

4 PLACING AN ORDER

- (a) You may order products by selecting products on and submitting your order through our Website in accordance with these Terms.
- (b) You agree to provide us with current, complete, and accurate details when asked to do so. We may ask you to provide additional details or require you to confirm your details to enable us to process any orders placed through our Website.
- (c) You must pay the price stated on our Website as being the purchase price for the relevant products for an order made by you, plus any relevant shipping charges and taxes.
- (d) It is your responsibility to confirm what is in your cart before making a purchase. We do not provide refunds for products that are mistakenly purchased.
- (e) All orders are subject to acceptance by us, in whole or in part. We reserve the right to refuse any order you place with us. We may, in our sole discretion, limit or cancel quantities purchased per person, per household, or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, or orders that use the same billing or shipping address.
- (f) After ordering online, you will receive an email confirmation from Loving Tan containing your order details. This will be sent to the email address you notified us of in your order.
- (g) If we make a change to or cancel an order, we will attempt to notify you by contacting the email or billing address or phone number provided by you at the time the order was placed.
- (h) You cannot cancel or vary an order after you have placed the order.
- (i) We may cancel or suspend delivery of an accepted order if you are in breach of any obligation under these Terms.
- (j) You may only place an order on our public section of our Website if you are a consumer. We reserve the right to limit or reject orders that, in our sole judgment, appear to be placed by dealers, resellers, or distributors.
- (k) Please contact our customer care team at info@lovingtan.com if you need assistance with your order.

5 PRICE

- (a) The price of our products and our shipping fees will be as quoted on our website from time to time, except in cases of obvious error.



- (b) We will charge you, and you agree to pay, the following fees concerning an order that we accept (as applicable): the purchase price of each product that is ordered, relevant taxes, shipping fees, and any other fees set out in these Terms.
- (c) The prices of our products and shipping fees are current at the time of order confirmation.
- (d) We may change prices and delivery charges at any time, but changes will not affect orders in respect of which we have already sent you an order confirmation email.
- (e) The prices of our products and shipping fees displayed on our Website are in different currencies, depending on which part of our Website you are visiting, as follows:

COUNTRY	STORE SITE	CURRENCY
Australia	au.lovingtan.com	AUD (\$)
United States of America	us.lovingtan.com	USD (\$)
United Kingdom	uk.lovingtan.com	GBP (£)
Europe	eu.lovingtan.com	Euro (€)
Canada	ca.lovingtan.com	CAD (\$)
International (Rest of World)	int.lovingtan.com	USD (\$)

6 PAYMENT

- (a) You must pay us for the products ordered by you, in accordance with these Terms.
- (b) You must pay us using one of the payment methods specified on our Website.
- (c) We may change the payment methods from time to time.
- (d) We will not dispatch your order until the purchase price, shipping fees and any other applicable fees or charges have been received.
- (e) Unless otherwise specified in these Terms, payments made to us are non-refundable.
- (f) If you pay by credit card and we do not receive payment from your payment card issuer or there is a chargeback, you agree to pay all amounts to us due upon demand.

7 DELIVERY

7.1 Shipping and delivery address

- (a) We will organise shipment of the products that you have ordered and paid for to the delivery address that you provide to us.
- (b) Unless otherwise stated on our Website, the purchase price of the product does not include third-party shipping fees of our transport or shipping providers (e.g., FedEx, DHL, Australia Post).
- (c) You must pay for shipping of any order unless you are eligible for free shipping in accordance with any offer published on our website.
- (d) We will use reasonable commercial endeavours to punctually ship the products which are the subject of an accepted order to you. We will not be responsible for delays attributable to the unavailability of products.
- (e) We are not responsible for shipping delays.

- (f) It is your responsibility to ensure the delivery address provided to us is entered correctly by you.
- (g) Should there be any issues with the delivery address associated with your account, it is your responsibility to notify us of the correct address within 15 minutes of placing your order.
- (h) We cannot make changes to your delivery address or redirect your parcel once we send you the email order confirmation.
- (i) We cannot send you a replacement product or give you a refund for a parcel sent to the delivery address that you provide to us where that delivery address is wrong or incomplete due to your error.
- (j) Please contact the shipping or local transport provider if you have any parcel redirection requests.
- (k) Packages undeliverable by shipping partners and returned to us will be refunded once received and processed at our warehouse, less any restocking fee that we may charge. You will not receive a refund for shipping costs in this circumstance.
- (l) Please email info@lovingtan.com if you require assistance with your delivery address.
- (m) The products will be considered delivered under these Terms when your parcel is scanned as delivered to your nominated shipping address by the applicable shipping or local transport provider. All risks shall pass to you upon delivery. From the time when risk passes to you, we will not be liable for loss or damage in respect of the product.
- (n) Provided that you have made payment, title passes on delivery.
- (o) If your parcel is lost or stolen, you should contact your shipping or local transport provider for resolution. We cannot send you a replacement product or process a refund in these circumstances.

7.2 Damages, Missing or Wrong Product Delivered

- (a) We take immense pride to ensure all items are shipped correctly and in perfect condition.
- (b) You must make any claim for shortage in supply, damage occurring during delivery, delivery of the wrong products or failure to conform to product description within 7 days of receipt of the delivery by you. Subject to relevant Laws, we reserve the right to refuse requests for replacement products made outside this timeframe. You must make such a claim to us via email to returns@lovingtan.com, including providing photographic evidence of all affected product and shipping details of the packages, and we will promptly accept or reject your claim. Subject to relevant Laws, you will not receive a refund or credit for any products returned to us that do not comply with the above or where we reject your claim.
- (c) If you make a claim as set out above, and we have provided you with a damaged, defective or the wrong product, you will be issued with a full refund. You must return the shipment to us and follow the returns process set out below. Your bank or credit card company may take a further 3 to 5 days to process the refund.
- (d) Subject to relevant Laws, if no such claim as described above is made within 7 days of delivery of the products you are deemed to have accepted the products as supplied and you cannot make a later claim in relation to the products.
- (e) We are not responsible for any correspondence or business dealings with third parties, such as distributors or third-party shipping services, found on or through our website, including payment and delivery of related goods or services. Any other terms, conditions, warranties, or representations associated provided by such third parties are solely between you and that third party. You agree that we are not responsible or liable for any loss or damage incurred as the result of any such dealings or as the result of the presence of such a third-party on our website.
- (f) If you reside in the EU or UK, under the EU Directive on Consumer Rights 83/2011 and the Consumer Contracts Regulations 2013, you may cancel your contract if you so wish provided you



exercise your right no longer than 14 days after the day you receive your order and the products are unused, unopened and in original packaging.

7.3 Returns

- (a) We hope that you love your Loving Tan products as much as we do. If you change your mind about your purchase, you are welcome to return your unopened, unused, undamaged, original packaging products to us within 30 days from the date of delivery, in exchanged for a store credit. You must follow the returns process set out below.

7.4 Returns Process

- (a) We do not accept returns purchased from Loving Tan stockists, retail stores or online stores other than our Loving Tan online store. All items purchased from retail partners must be returned to the retailer from which the products were purchased under their return policies.
- (b) To return an item, send an email to our customer care team at returns@lovingtan.com with the following details regarding your return:
 - (i) Name
 - (ii) Order number
 - (iii) Reason for return
- (c) Photos help us understand your issue. We recommend that you include these in your email so we will be able to assist you faster.
- (d) Once approved, our customer care team will reply to you with a Return Authorisation Form, which will include the Return Authorisation number and the return address to send your parcel to.
- (e) Once you have received a Return Authorisation, you must return the items to us together with your Return Authorization Form. We recommend using a registered tracking delivery service to ensure your parcel reaches us safely. We are not liable for returns that are lost in transit without parcel tracking. We cannot accept return parcels that do not include the Return Authorisation Form.
- (f) Once received by our warehouse, your return will be processed within 7 business days. Once we have received your return, you will be entitled to a store credit, which will not include the cost of the return or delivery postage unless you are returning products because of our error or fault. Unless required by Law, we do not refund any additional costs incurred by you (such as taxes and/or duties).
- (g) We do not refund or exchange items that appear to have been used, opened, or are not in original condition, unless you are returning products because of our error or fault and have followed the process set out above in section 7.2.
- (h) If you have purchased a gift set or received a complimentary product with your order - all items must be returned to us. If products are missing from your return, the RRP of the missing products will be deducted from any store credit.
- (i) Any return shipping costs must be paid by you, and you will not be liable to any reimbursement for any shipping relating to returns, unless you are returning products because of our error or fault and have followed the process set out above in section 7.2.
- (j) We may experience slightly longer return processing times during holiday and peak periods, adverse weather, or other postal service delivery issues that are unforeseen or unavoidable events beyond our reasonable control.



8 TAXES

8.1 GST, VAT and Sales Taxes

- (a) If you are in Australia and order from the Australian section of our Website, the prices on our Website include GST.
- (b) If you are in the United States or order from the United States section of our Website, the prices on our Website do not include sales taxes. You will be charged all applicable sales or use taxes when completing your order.
- (c) If you are in the United Kingdom or make a purchase from the UK section of our website, you will be charged VAT at the applicable rate.
- (d) If you are in the EU and make a purchase from the EU section of our website, the prices on our Website are inclusive of all taxes.
- (e) If you are in Canada or make a purchase from the CA section of our website, you will be charged GST/PST/HST/QST at the applicable rate.
- (f) For deliveries outside of Australia, the United States, the United Kingdom, Canada or the EU, you will be charged all applicable taxes, VAT, duties, sales taxes and customs fees as required by Law.

8.2 Import Charges

- (a) You will not be entitled to reimbursement from us for Import Charges payable concerning your order. If you fail to pay the Import Charges and your order is returned to us undamaged and in saleable condition, we will provide you with a refund of your order excluding shipping costs and fees. In the event delivery of your order is rejected by the government, postal, or customs authorities for unpaid Import Fees and is not promptly returned to us, we will deem your order delivered and will not send a replacement package or make a refund.

9 PROMOTIONS

- (a) We love our customers. As such, we often run promotions and giveaways. For certain campaigns, promotions, or contests, additional terms and conditions may apply. These are located on the promotions pages of our Website, and such promotional terms and conditions are incorporated herein.
- (b) If you want to participate in such a campaign, promotion, or contest, you must agree to the relevant terms and conditions applicable to that campaign, promotion, or contest. In case of any inconsistency between such terms and conditions and these terms, those terms and conditions will prevail.
- (c) Promotions may be limited to a particular geographic area or customer segment.
- (d) We may cap the number of customers who participate in a promotion.
- (e) Promotions are subject to a promotional period.
- (f) We reserve the right to end promotions at any time with no warning. Promotions and offers generally end at 11.59 pm AEST unless otherwise specified.
- (g) We may require use of a discount code to participate in a promotion or giveaway. Unless otherwise stated, you must not share the discount code with others.
- (h) A discount code may only be used once by you. A discount code may have eligibility requirements, such as being a new customer, minimum spends or located in a particular region. Discount codes cannot be combined with other discount codes, promotional offers, bundles, or sets. A discount code will have an expiry date.
- (i) We do not provide refunds, credits or giveaways if you forget to use a discount code at checkout or if you use the wrong discount code.



10 REWARDS PROGRAM

- (a) We operate the Loving Tan Rewards Program. You may elect to apply to join this program.
- (b) By opting into the Loving Tan Rewards Program, you agree to the Terms and Conditions of the Rewards Program (located at <https://lovingtan.com/pages/rewards-terms-and-conditions>) which are incorporated herein.
- (c) We may discontinue the Loving Tan Rewards Program or limit membership in this program.

11 SHADE FINDER

- (a) By opting in to the Loving Tan Shade Finder program, you agree to receive marketing and promotional emails from us.
- (b) The Loving Tan Shade Finder program can suggest products and shades based on answers that you provide to us to questions that we ask you. We are not liable if you are not satisfied with the products or shades suggested to you.
- (c) Please email info@lovingtan.com if you have questions about the Loving Tan Shade Finder program or the products or shades recommended to you.

12 GIFT CARDS AND STORE CREDITS

12.1 Gift Cards

- (a) Gift cards are provided in electronic format and are not physical cards.
- (b) The person who receives the gift card can redeem the value of the gift card for goods or services from us. In the event the purchase exceeds the value of the gift card, the gift card can be applied as a partial payment and another payment method can be selected to settle the remaining balance of the purchase.
- (c) If only part of the balance of the gift card is used, the remaining balance can be used for future purchases.
- (d) Gift cards obtained from us can only be used on our Website.
- (e) The currency of the gift card is shown on the gift card. See clause 5 above which sets out the address of our Website where the card can be used. For example, an Australian dollar gift card can only be used on our Australian website.
- (f) Gift cards will not be replaced if lost or stolen.
- (g) You must provide an email address when purchasing a gift card. If you provide the wrong email address, the gift card will not be received. We will not reissue the gift card or refund the purchase price in such circumstances.
- (h) Gift cards cannot be exchange for cash.
- (i) Our gift cards cannot be reloaded or topped up.
- (j) Unless otherwise stated, our gift cards have a 3-year expiry date from the date of issue. The date of issue and the expiry date will be shown on the gift card.
- (k) Depending on where you are located, the gift card may be subject to additional terms and conditions applying to the gift card, which will be made known to you at the time of purchase.

12.2 Store Credits

- (a) In certain circumstances, we may issue you with a store credit. A store credit is not a gift card.
- (b) A store credit will be issued to you in the form of a store credit code.
- (c) The store credit code is linked to the email address associated with the original purchase.



- (d) The person who receives the store credit can exchange it for goods or services from us to the value of the amount of the store credit.
- (e) Store credits obtained from us can only be used on our Website where the original purchase was made.
- (f) Store credit codes will not be replaced if lost or stolen.
- (g) Store credits expire 6 months after issuance.
- (h) Store credits cannot be transferred or exchange for cash.
- (i) If only part of the store credit is used, the remaining balance can be used for future purchases.
- (j) Store credits cannot be used in conjunction with any other special offer code, coupon code or discount code.
- (k) Depending on where you are located, the store credit may be subject to additional terms and conditions which will be made known to you at the time the store credit is issued.

13 INTELLECTUAL PROPERTY

- (a) Unless otherwise stated, we own all Intellectual Property in our products and in our Website.
- (b) Under no circumstances will you acquire any right, title or interest in our Intellectual Property.
- (c) We will not infringe any Intellectual Property of others when creating or supplying products to you.
- (d) You acknowledge that we are the exclusive owner of the trademarks that we use for and in respect of the Goods. This includes LOVING TAN and the LOVING TAN logo. Unless permitted by Law, you have no right or license to use our trademarks.
- (e) You must not register our trademark "Loving Tan" or any variant of that name, as part of any domain name, business name or corporate name.
- (f) You agree that you will not copy our Website, or the images or content located on our Website.
- (g) You agree that you will not scrape or crawl our Website or assist another person to do so.
- (h) If our Website links to another website, we are not responsible for the content on such third-party website. We do not endorse any third-party websites, even if we link to them.

14 REVIEWS

- (a) All submitted reviews are subject to our review guidelines and conditions.
- (b) We aim to make your reviews visible within 24 hours of submission. However please be aware that it could take up to 7 days for your review to appear on our Website.
- (c) We reserve the right to remove or refuse to post any review.
- (d) Reviews published on our Website are the opinion of the person who wrote the review, may be subjective, and may not represent our opinion.
- (e) If you provide us with a review, you give us permission to edit your review, publish your review on our Website, provide your review to another person for them to publish, and credit or not credit you as the author of the review.
- (f) If you provide us with a review, you represent that the review was written by you, was not copied from another source, represents your true opinion and does not infringe another's rights or violate any law. Please do not refer to people by name in your review.
- (g) If you work for us or one of our competitors, you must not submit a review to us.

15 USER GENERATED CONTENT

- (a) You represent and warrant that all content you upload or provide to the Website or our social media pages, such as submissions, comments, likes, dislikes, feedback, photos, information, videos, concepts, or ideas (collectively “User Content”) does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy rights, publicity rights, copyrights, trademark, and other intellectual property rights.
- (b) Subject to our Privacy Policy and applicable law, you acknowledge and agree that the User Content that you submit or upload to the Website, our social media pages (e.g. “Loving Tan Instagram”, “Loving Tan Tik Tok”), and third-party review platform (e.g. Okendo) may be stored in our database vault and will be treated as non-confidential and non-proprietary and may be used or disseminated by Loving Tan or affiliated companies, successors and assigns for any purpose and without any compensation to you.
- (c) If you upload or send any ideas to us, we may use your ideas without payment to you.
- (d) You agree to hold us harmless from any damages suffered or claims asserted by a third party as a result of any information you submit through the Website or on our social media pages. You may be held legally responsible for damages suffered by us or third parties as a result of legally actionable content that you submit through the Website or our social media pages. We disclaim responsibility for any comments, information, or other content posted or made available on the Website or our social media pages by you or a third party, even if such information is defamatory or otherwise legally actionable.
- (e) If at our request, you send certain specific submissions (for example contest entries, reviews) or without a request from us you send creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, 'comments'), you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that you forward to us. We are and shall be under no obligation (1) to maintain any comments in confidence; (2) to pay compensation for any comments; or (3) to respond to any comments.

16 PRIVACY AND SECURITY

16.1 General

- (a) Our Privacy Policy, located at lovingtan.com/pages/privacy-policy is incorporated herein.
- (b) By using our Website, or by providing personal information to us, you agree to the terms of our Privacy Policy. If you open a Loving Tan online account or sign up a Loving Tan newsletter or join the Loving Tan Rewards Program, you agree to the terms of our Privacy Policy as part of the account opening or sign-up process. When you agree to the terms of our Privacy Policy, you consent to the collection, use, storage and disclosure of that information as described in our Privacy Policy. You have a right to withdraw your consent at any time and may do so by contacting us via the details provided below
- (c) We comply with all relevant Privacy Laws.
- (d) We are an Australian corporation, and we comply with the Australian Privacy Act.
- (e) We may disclose your personal information to recipients that are located outside of Australia.
- (f) You must comply with all our reasonable directions regarding privacy and security.

16.2 Collection Statement

- (a) We collect personal information about you to facilitate the buying of our products and for purposes otherwise set out in our Privacy Policy.

- (b) When you browse our website, we also automatically receive your computer's internet protocol (IP) address to provide us with information that helps us learn about your browser and operating system.
- (c) With your permission, we may send you emails about our online store, new products, and other updates.
- (d) We may disclose the information that you provide to us or that we collect about you to third parties that help us deliver our services (including information technology suppliers, delivery suppliers, and our business partners) or as required by Law. If you do not provide this information or consent to us collecting this information, we may not be able to provide all of our services or products to you.
- (e) By providing your personal information to us, you consent to the collection, use, storage, and disclosure of that information as described in the privacy policy and these Terms.

16.3 Further information

- (a) Our privacy policy explains: (i) how we store and use, and how you may access and correct your personal information; (ii) how you can lodge a complaint regarding the handling of your personal information; and (iii) how we will handle any complaint.
- (b) If you would like any further information about our privacy policies or practices, please contact us at privacy@lovingtan.com.

17 FORCE MAJEURE

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (**Affected Party**) of all or any of its obligations under these Terms is prevented or delayed (in whole or in part) due to any Force Majeure Event, these Terms will continue and remain in effect but the Affected Party will not be in breach of these Terms for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

18 LIABILITY

- (a) Except as expressly provided in these Terms and to the full extent permitted by Law, we are not liable for any indirect or consequential Loss, including loss of profits, loss of business, loss of goodwill, loss of reputation, loss of privacy, loss of friends or any other special, incidental, indirect or consequential damages whatsoever (and whether caused by our negligence or our Personnel or otherwise) including Losses arising out of or in connection with any act or omission of us relating to the manufacture or supply of the product, your use of the Website, the information contained on the Website, and the failure of the Website to operate correctly or its availability, whether for breach of contract, tort (including negligence and strict liability), or otherwise, even if we have been advised of the possibility of such damages.
- (b) Unless prohibited by Law, and subject to the provisions below, our liability to you is capped at AUD\$500.
- (c) Where legislation implies into these Terms any condition or warranty or provides any other rights or remedies, which avoid or prohibit provisions in a contract excluding or modifying the application of, or exercise of, or liability under such condition or warranty or other rights or remedies, the liability of us to you for any breach of the condition or warranty or under any other rights or remedies will be limited, at our option to one or more of the following:
 - (i) if the breach relates to products:

- (A) the replacement or the repair of the products, or the supply of equivalent products; or
 - (B) the payment of the costs of replacing or repairing the products, or acquiring equivalent products; or
- (ii) if the breach relates to services, the supply of the services again or the payment of the cost of having the services supplied again.

19 RELATIONSHIP

- (a) You are not our agent or employee. You have no authority to bind us.
- (b) We do not have fiduciary obligations to you.
- (c) You must not assign or novate, directly or indirectly, any of its rights or obligations under these Terms without our prior written consent.
- (d) We may assign or novate all of, or part of these Terms on written notice to you.

20 DISPUTE RESOLUTION

- (a) If a dispute arises out of or in relation to these Terms, the parties must promptly attempt in good faith to resolve the dispute.
- (b) If the parties are unable to resolve the dispute within 21 days following notification of the dispute to the other party, then any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be Brisbane, Australia. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law of Queensland, Australia.
- (c) Nothing in this clause prevents a party from seeking urgent injunctive relief before an appropriate court.

21 CHANGES TO THESE TERMS

- (a) We may modify, add, or delete portions of these Terms.
- (b) Although we will post a notice of any material change to the Terms on our Website prior to the change coming into effect, you are responsible for checking our website periodically for changes to these Terms.
- (c) By continuing to use our website, or logging into your account, or placing an order with us, you agree to be bound by these Terms, as modified.
- (d) Your access and use of the Website is subject to the most current version of these Terms, which were last updated on the date set out at the top of this document.

22 GENERAL

- (a) These Terms and the terms of any accepted order contain the entire agreement between the parties with respect to its subject matter.
- (b) No failure to exercise or delay in exercising any right, power or remedy under these Terms operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) The rights, powers and remedies provided to a party in these Terms are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.

- (d) Any provision of these Terms which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these Terms nor affect the validity or enforceability of that provision in any other jurisdiction.
- (e) The agreement between the parties includes these standard Terms and the details set out any accepted order made under these Terms. In the event of any express inconsistency, the provisions of an accepted order will prevail over these standard terms. The terms set out in any purchase order, procurement policy or similar document that you provide to us are not part of this agreement and are not binding on us.
- (f) These Terms and, to the extent permitted by Law, all related matters including non-contractual matters, are governed by the laws of Queensland, Australia. In relation to such matters each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction in Queensland, Australia and waives any right to object to the venue on any ground.

23 DEFINITIONS AND INTERPRETATION

23.1 DEFINITIONS

The following definitions apply unless the context requires otherwise.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under these Terms, including acts of God, pandemic, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, or power, water and other utility shortage.

Intellectual Property means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software), trademarks, service marks, designs, patents, trade secrets, semi-conductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know-how and other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these, which may subsist anywhere in the world, but excludes moral rights, and similar personal rights, which by Law are non-assignable.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments, and includes any Privacy Laws.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent.

Personal Information has the meaning given to that term in the Australian Privacy Act and includes information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular person.

Privacy Laws means all legislation, principles, industry codes and policies, as amended or replaced from time to time, which relate to the collection, use, disclosure, storage or granting of access rights to Personal Information, and includes the *Privacy Act 1988* (Cth).